
IBFD002796

IBFD Journals IBFD Materials
Bulletin for International fiscal documentati
on
1958

BULLETIN

FOR

INTERNATIONAL FISCAL DOCUMENTATION

Bulletin de Documentation Fiscale Internationale

Publication of the
International Bureau of Fiscal Documentation

Publication du
Bureau International de Documentation Fiscale

Official Organ of the International Fiscal Association (I.F.A.)
Organe Officiel de l'I.F.A.

Vol. XII
1958

SWETS & ZEITLINGER N.V.
AMSTERDAM - 1965

Reprinted with the permission of the
International Bureau of Fiscal Documentation

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

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

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

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

In close 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 en sans objet politique, dont le but est défini dans les statuts comme suit:

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

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

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

Le Bureau veut, par une coopération avec l'IFA et avec l'aide d'experts d'un grand nombre de pays, rassembler toutes les données possibles dans le domaine du droit fiscal national et international. De cette façon, le Bureau est à même de fournir 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.

INTERNATIONAL FISCAL ASSOCIATION

Honorary President Président d'honneur	C. W. Bodenhausen
President Président	Mitchell B. Carrol
General Secretary Secrétaire General	Dr. K. H. Donkers
General Treasurer Trésorier Général	J. Kasteel
Assistant Secretary Secrétaire Adjoint	K. H. Dronkers

Executive Committee
Comité Directeur

Dr. K. G. A. Sandström, Stockholm	president
A. C. Burgersdijk, Amsterdam	vice-presidents
Prof. Edgar Schreuder, Bruxelles	vice-presidents
Prof. Cesari Cosciani	members
Dr. Paul Gmür	members
Dr. Yves de la Villeguérin	members

***

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 février 1938 par un nombre d'experts en matière fiscale de divers pays. Le but et l'organisation sont définis dans les Statuts comme suit:
(*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:

AUSTRALIA — C. J. Berg F.A.S.A., A.C.I.S., A.C.A.A.
Commercial Bank Chambers (9th Floor) 62 Margaret Street, Sydney.

AUSTRIA — Dr. Robert Bechinie, Rennweg 255II, Wien III — AUTRICHE

BELGIUM — BELGIQUE
Monsieur Charles Cardijn, 203 rue Franz Merjay, Bruxelles.

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

CUBA — CUBA
Dr. Oscar Morales y Garcia, Consejo Nacional de Economia, Paseo de Marté, La Habana.

EGYPT	Prof. Nagib Yousef, 46 Falaky Street, Caïro.	EGYPTE
FRANCE	Monsieur A. Jacot, 5 rue du Cardinal Mercier, Paris	FRANCE

GERMANY — ALLEMAGNE
Dr. Carl Ganser, Bundesverband der Deutschen Industrie, Habsburgerring 2—12, Köln, 10.

GREAT BRITAIN — GRANDE BRETAGNE
Mr. O. Brooks c/o Gray, Dawes & Co. Ltd., 122, Leadenhall St. London EC3

GREECE	M. George Nézis, 28, rue Em. Bénaki, Athènes.	GRECE
ISRAEL	Dr. E. Klimowski 46, Lilienblum Street, Tel-Aviv.	ISRAEL
ITALY	Prof. Cesare Cosciani, 11, Piazza Venezia, Roma.	ITALIE
NETHERLANDS	H. G. Hootsen, Grotestraat 9, Almelo.	PAYS-BAS
SPAIN	Prof. D. Narciso Amoros Rica, Arintana 15, Madrid	ESPAGNE

SWEDEN — SUEDE
Mr. P. A. Thorsten Hultman, Vasagatan 12, Stockholm.

SWITZERLAND — SUISSE
Dr. Paul Gmür-Henggeler, Löwenstrasse 1, Zürich.

UNITED STATES OF AMERICA — ETATS-UNIS D'AMERIQUE
Mr. Dirck van R. Vreeland, 67 Broad Street, Room 2100, New York 4, N.Y.

CONDITIONS OF MEMBERSHIP

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 2 categories: I. (individuals): Dfl. 13.30 p.a. ($ 3.50); II. (corporations etc.): Dfl. 57.— p.a. ($15.—).

2. *Documentation Bureau only.* III. those who wish to further the scientific activities of the Bureau can do so by paying an annual membership fee of Dfl. 25.— ($ 10.00) or more.

Members under categories I-III are entitled to subscribe to the Bureau's "Bulletin" at the *reduced* price of Dfl. 12.50 ($ 3.50) without, and Dfl. 20.00 ($ 5.75) with supplements.

Members under category III are allowed a reduction of 25% on the Bureau's other publications.

For members under categories I-II this reduction is 10%.

3. *Combined membership.* IV (= I + III); V (= II + III).

CONDITIONS UNDER WHICH INFORMATION IS SUPPLIED

Information for academic purposes is supplied free of charge. The Director decides whether the information requested falls into this category.

For supplying information for non-academic or commercial purposes a charge is made dependent upon the time involved.

Those who wish to do so can pay an annual subscription to the Bureau's services. The amounts to be paid vary from Dfl. 200.— ($50.00) to Dfl. 1.000.- ($ 250.00) with reductions from 10 to 20% in the fees for information requested as compared with non-subscribers.

Full details will be supplied on request. Please write to the INTERNATIONAL BUREAU OF FISCAL DOCUMENTATION, Herengracht 196 - Amsterdam (C) - The Netherlands.

CONDITIONS D'ADHESION:

On peut être membre: 1. de l'I.F.A.; 2. du Bureau de Documentation; 3. des deux organismes ensemble

1. *Membres l'I.F.A.* Il y a 2 catégories: I (personnes physiques): fl 13,30 par an ($ 3.50); II (personnes morales): fl 57.— par an ($ 15.00).

Membres du Bureau. III. Ceux qui désirent favoriser les travaux scientifiques du Bureau pourront le faire en versant une cotisation annuelle de fl. 25.- ($ 10.00) ou plus.

Les membres des catégories I - III ont le droit de s'abonner au "Bulletin" du bureau au prix *réduit* de fl. 12.50 ($.3,50) sans, et de fl. 20,- ($ 5.75) avec les supplements.

Les membres de la catégories III ont droit à une réduction de 25.p.c. sur le prix d'autres publications du Bureau. Pour les membres des catégories I-II cette réduction est de 10 p.c.

Adhésion combinee. V (= I + III); V (= II + III);

CONDITIONS AUXQUELLES LE BUREAU PROCURE DES RENSEIGNEMENTS.

Les services rendus au profit de travaux purement scientifiques, sont entièrement gratuits. C'est le directeur, qui juge de caractère scientifique des travaux en question.

Pour les renseignements qui ne se rapportent pas à des travaux scientifique, le directeur fixera le montant de la rémunération basé sur le temps employé pour les renseignements en question.

Ceux qui en expriment le désir, peuvent s'abonner aux services du Bureau en versant des montants allants de fl. 200,— ($ 50,00) à fl. 1000,— ($ 250.00) avec des réductions de 10 à 20 p.c. sur les rémunérations dues pour renseignements par des non-abonnés.

Pour plus de details, on peut s'adresser au Bureau International de Documentation Fiscale, Herengracht 196 - Amsterdam (C) - Pays Bas:

GENERAL INDEX 1958 TABLE DES MATIERES

DOCTRINAL PART I PARTIE DOCTRINALE

Taxation of United Kingdom shipowners by Chas. W. Aston 1
Overseas Trade Corporations by A. Dale 65
Au sujet de la décision anticipée en matière d'impôts by C. O. Sandström 129, 211
Avoidance of double taxation through multilateral conventions. The first report of the O.E.E.C. Fiscal Committee by J. van Hoorn Jr . . 193
Problems of Public Finance in Developing Countries by A. W. Duesterwald-Doroth 197
Les aspects fiscaux du Marché Commun par George Vedel 321

STATUTE LAW II LÉGISLATION

Surveys of Tax Legislation - Aperçus de législation fiscale 11, 12, 14, 15, 78, 80, 141, 143, 225, 226, 227, 229, 340
Miscellaneous - Faits Divers .
Austria - Besteuerung der Lizenzeinkünfte britischer und amerikanischer Filmunternehmer in Oesterreich 16
Neues Finanstrafrecht in Oesterreich 344
Australia - Tax agreement with Canada 144
Royalties to English companies 144
Brazil - Taxes to finance specific projects 144
Canada - Modest tax reduction 82
Revised depletion regulations 145
Colombia - Income tax rules amended 145
Eire - Budget 230
Egypt - Régime fiscal des administrateurs de Soc. Anon. 17
France - Taxes sur les chiffres d'affaires 17
Retablissement de l'équilibre financier. 82
Germany - Aufhebung der Aufsichtsratsteuer 17, 230
Tax programme 17
Proposals for tax reform 85
India - New taxes. 87
Double taxation conventions 147
Indian budget proposals 147
Remittances out of foreign income 344
Malaya (Federation of) - Tax facilities 345
Mexico - U.S.-Mexico to resume tax discussions 232
Netherlands - Investment allowance 87
New Zealand - Inland revenue department 18
Overseas employees temporarily working in New Zealand 345
Nigeria - Company tax reduced 148
Pakistan - Heavier tax burden on upper-income classes 148
New taxes 231
Peru - Taxes on residents modified 148
Philippines - Tax measures proposed 148
Portugal - Tax concessions. 89
Scandinavia - Nordic Customs Union 149
Serawak - Measures to encourage the establishment of industries . . . 149
Spain - Taxation 89
Sweden - Revision of Death Duty Legislation 149
Steuersenkung in Schweden erwünscht 346
U.S.A. - Ceiling on taxes? 19
Ratification tax convention U.S.-Canada 19
Withholding of tax on non-resident aliens 150
Venezuela - Tax concessions 347

CASE LAW III JURISPRUDENCE

Belgique - Bénéfices qu'une société étrangère retire d'établissements situés en Belgique 91
Jurisprudence fiscale belge 153
Société étrangère-établissement en Belgique 245
Canada - Foreign exchange gain held taxable 23
Egypt - Jurisprudence Egyptienne. 154
France - Entreprise exploitant des établissements à l'étranger et ayant son siège social en France 151
Germany - Ruhegehälter aus inländischer Kasse an einen in Grossbritannien wohnhaften und nur die britische Staatsangehörigkeit besitzenden Empfänger gezahlt unterliegen der Besteuerung durch die Bundesrepublik 94
Wann liegt bei ausländischen Lizenzen eine steuerbare Leistung im Inland vor? 348
New Zealand - Credit under tax convention with U.S.A. 27
Southern Rhodesia - Source of income from services performed abroad 351
Switzerland - Vermögensbesteuerung von Militair-Wehrsteuer bei Gratisaktien Italienischer Gesellschaften 29
United Kingdom - Trading "within" the United Kingdom 25
Ordinary residence 233

REVIEWS IV COMPTES RENDUS

Bibliography, bibliografie 31, 97, 156, 248, 354

VARIOUS DOCUMENTS V DOCUMENTS DIVERS

Austria - Steuerermäszigung = Steuererhöhung 123
Australia - Federal tax conference 48
Commonwealth taxation summary of changes proposed in 1957-58 budget 55
Belgium - Convention Franco-Belge 367
Canada - How the federal tax department operates, by H. F. Herbert . 117
Germany - IATA financial committee 63
Inland revenue extra-statutory concessions. 279
O.E.E.C. 291
New Zealand - Tax rates and tax yields 125
United Kingdom - What the Chancellor said 175
The Budget resolutions 182
United States - Economic report of the president of the United States . 190
Index, Tables 370

I

TAXATION OF UNITED KINGDOM SHIPOWNERS

by

CHAS. W. ASTON

Information about the taxation of shipowning companies in Great Britain can only be supplied in the context of the taxation of businesses as a whole as there is no separate or special basis for the taxation of sea transport. The only way in which they are in any sense different from other business organisations is in the granting of an investment allowance to which reference will be made later.

INCOME TAX

1. SCOPE OF BRITISH INCOME TAX

Broadly speaking, income tax is chargeable on:

(a) all income arising in the United Kingdom irrespective of the residence or the nationality of the person to whom the income accrues; and

(b) all income, wherever originating, accruing to a person resident in the United Kingdom.

The term "person" includes companies and other corporate bodies and associations.

2. INCOME CHARGEABLE

Income tax is a tax not only on the income of individuals but also on the income accruing to and retained by corporate bodies — e.g., the undistributed profits of companies. It is imposed for each year of assessment — running from 6th April in one calendar

year to 5th April in the next — at a standard rate, which at present (1957/58) is 8s 6d. in the £.

Companies are liable at the standard rate on their total income (or profit) irrespective of the amount of that income. They are not entitled to any personal allowances or reliefs such as are given to individuals. In so far as the profit of companies is distributed by way of dividends to shareholders, the income tax paid by the company is passed on deducting tax at the standard rate from the payments. Thus the income (or profit) retained by a company and not distributed as dividend is taxed at the full standard rate of income tax.

The normal basis of assessment of a company's profits (which would include shipowning companies) is the profit made in the company's accounting year ending in the preceding year of assessment.

Profits are computed for tax purposes broadly on ordinary commercial accounting principles, subject to certain modifications which are unimportant for the purpose of this article. There are no special modifications for shipowners.

3. CAPITAL ALLOWANCES

As regards allowances for the depreciation of capital assets, the amounts charged in the company's accounts are not allowed. There is, instead, a comprehensive system of "capital" allowances calculated at various percentage rates on original cost and covering all the main classes of productive assets, such as industrial and agricultural buildings, ships, plant and mining works. This system differs for the different classes of assets but, generally speaking, it provides for either an "initial" or an "investment" allowance when the expenditure is incurred, annual allowances until it is completely written off or until the asset is sold, lost, or ceases to be used, and a final "balancing" allowance or charge to bring the total allowances (other than any "investment" allowance) into line with the difference between the original cost and any sale proceeds or insurance recoveries. These allowances, i.e. the "initial" or "investment" allowance, the annual allowance (sometimes called the wear and tear allowance) and the "balancing" allowance or charge collectively constitute the "capital" allowances.

Annual allowance

The Commissioners of Inland Revenue determine the appropriate basic percentage rate for the annual allowance for each class of machinery or plant, etc. In arriving at the basic percentage rates the Commissioners fix such rates as, when applied over the normal working life of the asset, leave a residual fraction of one-tenth. In practice these rates are frequently agreed between the Commissioners and a representative body of the industry concerned.

An agreement between the Board of Inland Revenue and the Chamber of Shipping of the United Kingdom was made in December 1949 which laid down the method of calculating the annual allowance on the "straight line" method in respect of ships. A copy of this agreement is included in Appendix I to this article. The allowance at the shipowner's option can be calculated instead on the "reducing value" basis, the basic rates of wear and tear being higher than on the "straight line" basis. The intention is to write the asset down to approximately one-tenth of cost at the end of its useful life on either basis. A comparison of the two allowances is set out below:-

"Straight line" basis		*"Reducing value" basis*
4%	equivalent to	10%
4¼%	,,	10½%
4½%	,,	11%
4¾%	,,	11¼%
5%	,,	12%

All rates have been increased by one quarter so that in practice the cost of assets is written off over a shorter period than the normal working life. I do not attempt to explain the logic of this confusing method of arriving at annual allowances.

Initial and Investment allowance

The initial allowance has been in force since 1946. The investment allowance was introduced by the Finance Act, 1954, and is given, instead of the initial allowance, on expenditure incurred after 6th April, 1954 on *new* (but not on secondhand) industrial and agricultural buildings, plant, ships and mining works. It differs from the

"initial" allowance, which merely anticipated subsequent depreciation allowances, in that it is not taken into account in computing annual allowances and balancing allowances or charges and is given *in addition to* these allowances which of themselves normally amount to the full net cost. There is no system of revalorisation but the investment allowance is widely regarded as an acceptable alternative.

The investment allowance was withdrawn on 17th February, 1956 except for ships, scientific research expenditure and amounts spent on fuel saving appliances. The allowance was increased from 20% to 40% in respect of expenditure on ships after 9th April, 1957. The following summarises the changes in these allowances from time to time.

Initial allowance

On expenditure after 6th April 1946 (in special cases earlier expenditure could be post-dated to 6th April 1946 in order to qualify)	20 per cent
On expenditure after 6th April 1949	40 per cent
Withdrawn on 6th April 1952	Nil
Reintroduced on 15th April 1953	20 per cent
Withdrawn on 6th April 1954 and replaced by the *Investment allowance at*	20 per cent
17th February 1956 withdrawn except for ships 9th April 1957 increased for ships to	40 per cent

Balancing charge and Balancing allowance

There is no taxation of capital gains in the United Kingdom. If, however, any item of plant etc. is sold for more than its income tax written down value, or if any asset is lost and the insurance policy recovery exceeds the written down value, the excess is taxable by means of a "balancing" charge, subject to this proviso, that the profit assessable is not to exceed the "initial" and "annual" allowances written off. In the case of a deficit in the above circumstances, there would be a "balancing" allowance which would be deductible from trading profits. Instead of paying tax on a "balancing" charge, the amount assessable can be deducted from the cost of any new asset purchased to replace the one sold or lost. The annual allow-

ances on the new asset would then be calculated on the cost as reduced by the deduction of the balancing charge. Balancing charges and balancing allowances apply both for income tax and profits tax. As indicated, these arrangements apply to all assets on which capital allowances are given and include ships.

Appendix II explains by means of examples the operation of balancing allowances or charges and the difference between initial and investment allowances.

If in any year the capital allowances exceed the profit of a company, the excess can be carried forward indefinitely against profits of later years.

4. TRADING LOSS

If a trading loss (i.e. before deduction of capital allowances) is incurred, it may be carried forward indefinitely against subsequent profits. This is in addition to the capital allowances that may be carried forward under the previous paragraph.

5. RENEWALS

The cost of renewals of plant, machinery, ships, etc., may be claimed as a deduction in computing a Company's profit *as an alternative* to the initial and annual allowances. Where the renewals basis is adopted, the allowance given is the cost of the new asset less the scrap value or realised price of the old asset. This basis is not used by shipowners, the capital allowances method being preferred. The latter allows the shipowner a deduction from his profits each year in respect of depreciation, instead of one large deduction in one year and nothing for perhaps two or three years depending upon the building programme. The investment allowance would be granted whichever method is used.

6. DOUBLE TAXATION ARRANGEMENTS

Britain has made agreements with most Commonwealth and several foreign countries whereby income of certain classes arising in one country is exempt from that country's tax if it flows to a resident of the other country who is charged to tax on it there, and shipowning companies are included in these arrangements, a detailed review of which is outside the scope of this article.

PROFITS TAX

This tax applies to trades and businesses carried on in the U.K. by a corporate body or by an unincorporated society or body, or carried on abroad by such a body ordinarily resident in the United Kingdom. Thus, profits tax is payable by companies but not by individuals or partnerships. The tax is charged by reference to the profits and distributions of profits for each "chargeable accounting period" which is normally the yearly accounting period of the business. A different rate is applied to undistributed profits.

For the purposes of the tax, profits are computed as for income tax, subject to certain modifications.

The tax is at present payable at the following rates:-

30% on the gross amount distributed (i.e. before the deduction of income tax)

3% on the remaining, undistributed profit (before deducting income tax).

Profits tax is not allowed as a deduction from profits when calculating the income tax liability.

October, 1957

APPENDIX I

COPY OF AN AGREEMENT BETWEEN THE INLAND REVENUE AND THE CHAMBER OF SHIPPING OF THE UNITED KINGDOM IN DECEMBER, 1949

SHIPPING
WEAR AND TEAR FOR 1949-50 AND SUBSEQUENT YEARS

General

1. The arrangements governing wear and tear on ships for 1949-50 and subsequent years set out in the succeeding paragraphs have been agreed with the Chamber of Shipping of the United Kingdom and the Liverpool Steam Ship Owners' Association. They relate to cases where computations continue to be made according to the straight line method; the percentage rates involved have been determined by the Board under Rule 2, Part I, Sixth Schedule, Finance Act, 1949.

In this section, "basic allowance" does not include the increase of one quarter authorised by Rule 2 (1) (b).

New ships with no refrigerating plant - general

2. In the case of new ships with no refrigerating plant, the basic rates are:-

(a) steamers and motor vessels	4 per cent
(b) tankers	5 per cent.

Additional capital expenditure

3. When additional capital expenditure is incurred, it is to be aggregated with the previous expenditure. Subsequent annual allowances are to be calculated by reference to the appropriate percentage (para. 2) of the aggregate expenditure and continued until the whole of the aggregate expenditure has been written off.

Any case in which, exceptionally, capital expenditure incurred on an old ship is so substantial that the original cost plus all later expenditure cannot be written off at the end of 30 years (25 years in the case of tankers) should be submitted to the Chief Inspector (Shipping).

Example

4. A ship cost £100,000 in the basis period for 1949-50. The expenditure ranks for a 20 per cent initial allowance. During the basis period for 1963-64 her engines are replaced at a cost of £20,000.

The following allowances will be due on the ship:-

	£	
Initial allowance, 1949-50 (20 per cent of £100,000)	20,000	
Annual allowances, 1949-50 to 1962-63 inclusive (five-fourths of 4 per cent of £100,000)	5,000	(per annum)
Initial allowance, 1963-64 (40 per cent of £20,000)	8,000	(Assuming, of course, that initial allowances are in operation in 1963-64)
Annual allowances, 1963-64 and subsequent years (five-fourths of 4 per cent of £120,000)	6,000	(per annum)

The last year of allowance will be 1966-67 when an allowance of £4,000 will complete the writing off, as follows:-

	£
1949-50 initial allowance	20,000
annual allowance	5,000
1950-51 to 1962-63 inclusive, annual allowances (£5,000 for 13 years)	65,000
1963-64 initial allowance	8,000
annual allowance	6,000
1964-65 annual allowance	6,000
1965-66 annual allowance	6,000
1966-67 annual allowance	4,000
	£120,000

New refrigerated ship - scale of rates

5. In the case of a new refrigerated ship, the percentage rate is to be applied to the combined cost of the ship itself and its refrigerating plant and insulation, in accordance with the following scale:-

Where the cost of refrigeration in relation to the whole cost of the ship including its refrigerating plant and insulation is:-	*The basic rate for the whole is--*
less than 1 per cent	The appropriate rate according to para. 2.
1 per cent but less than 10 per cent	4¼ per cent.
10 per cent do. 20 per cent	4½ per cent.
20 per cent do. 30 per cent	4¾ per cent.
30 per cent do. 40 per cent	5 per cent.

Subsequent capital expenditure on a refrigerated ship (including its refrigerating plant and insulation) should be dealt with in the same way as expenditure on a non-refrigerated ship (para. 3). If such capital expenditure alters the proportion between the cost of refrigeration and the whole cost sufficiently to transfer the ship to a different category of the percentage table above, the basic rate appropriate to the new category should be applied thereafter.

Example

6. In the basis period for 1949-50 a refrigerated ship is bought for £50,000 of which refrigerating plant and insulation account for £11,000. In the basis period for 1954-55 further capital expenditure is incurred of £20,000, of which £15,000 is for refrigeration.

The cost of the refrigeration amounted originally to 22 per cent of the whole cost. The basic rate is therefore 4¾ per cent and the annual allowance for the years 1949-50 to 1953-54 inclusive is five-fourths of 4¾ per cent of £50,000, i.e. £2,969.

After the further expenditure is incurred the total expenditure on refrigeration (£26,000) will amount to approximately 37 per cent of the whole (£70,000). The basic rate will therefore be increased to 5 per cent and the annual allowance for 1954-55 and subsequent years will become five-fourths of 5 per cent of £70,000, i.e. £4,375. This allowance will continue until the cost of the ship and the refrigeration has been wholly written off.

Second-hand ships - General

7. The basic allowance on a second-hand ship (whether refrigerated or not) should be computed by applying to the cost to the new owner (including the cost of any refrigerating plant) the appropriate fraction given by the table in para. 8 or the appropriate rate indicated in para. 5 whichever is the greater.

Where the ship is over 30 years old at the date of purchase the allowance should be computed as may be appropriate having regard to the facts of the particular case.

Rates of wear and tear

8. The fractions in the following table are to be employed in computing basic allowances on second-hand ships:-

Age at date of purchase		Fraction of cost to be written off annually	
Over	Under	Ships other than tankers	Tankers
0	1	1/24	1/19
1	2	1/23	1/18
2	3	1/22	1/17
3	4	1/21	1/16
4	5	1/20	1/15
5	6	1/19	1/14
6	7	1/18	1/13
7	8	1/17	1/12
8	9	1/16	1/11
9	10	1/15	1/10
10	11	1/14	1/9
11	12	1/13	1/8
12	13	1/12	1/8
13	14	1/11	1/8
14	15	1/10	1/7
15	16	1/10	1/7
16	17	1/10	1/7
17	18	1/10	1/7
18	19	1/9	1/7
19	20	1/9	1/6
20	21	1/9	1/6
21	22	1/8	1/6
22	23	1/8	1/6
23	24.	1/7	1/6
24	25	1/6	1/6
25	26	1/6	1/5
26	27	1/5	1/5
27	28	1/5	1/5
28	29	1/4	1/4
29	30	1/4	1/4

Additional capital expenditure

9. When additional capital expenditure is incurred on a secondhand ship, it is to be aggregated with the previous expenditure. Subsequent annual allowances are to be calculated on the aggregate expenditure, at the fraction appropriate to the date of purchase of the ship given by the table in para. 8, or at the appropriate rate indicated in para. 5, whichever is the greater. Any case in which, exceptionally, capital expenditure on a second-hand ship is so substantial that the original cost plus all later expenditure cannot be written off at the end of 30 years (25 years in the case of tankers) should be submitted to the Chief Inspector (Shipping).

Example

10. A second-hand ship which is over 14 but under 15 years old is bought for £50,000 in the basis period for 1949-50. Capital expenditure of £10,000 is incurred in the basis period for 1953-54.

The basic fraction under para. 8 is one-tenth. For 1949-50 to 1952-53 inclusive the annual allowance will therefore be five-fourths of one-tenth of £50,000, i.e., £6,250. For 1953-54 and subsequent years the annual allowance will be five-fourths of one-tenth of £60,000 i.e. £7,500 which will continue until the cost has been wholly written off.

Ships laid up

11. Where a ship is laid up by an owner in circumstances which indicate that it is intended to restore it to active use in his business as soon as trade conditions permit, the full wear and tear allowance should be continued without regard to the length of time for which it is laid up.

Where a ship is laid up with a view to disposal, the wear and tear allowance should be discontinued.

APPENDIX II

CAPITAL ALLOWANCES — EXAMPLES

		Initial allowance		*Investment allowance*
		£		£
Cost of ship or plant			100,000	100,000
40% initial allowance	40,000			
40% investment allowance	—			—
			40,000	
5% annual (or wear and tear) allowance	5,000		5,000	5,000
Total "capital" allowances for Year 1	45,000	45,000	45,000	
Written down value at end of Year 1		55,000		95,000
5% annual (or wear and tear) allowance for Year 2		5,000		5,000
Written down value at end of Year 2		50,000		90,000
			and so on.	
If the ship or plant were sold in Year 3, adjustments would be made as follows:-				
Sold for £60,000				
Balancing charge on excess over £50,000		10,000		
Balancing allowance				30,000
Sold for £110,000				
Balancing charge on all "capital" allowances granted, i.e.		50,000		10,000

Note that the excess of sale price over original cost, i.e. £10,000, is not taxable, it being a capital profit.

II

SURVEYS OF TAX LEGISLATION
APERCUS DE LEGISLATION FISCALES

AUSTRIA

Period from November 1st., until December 31st, 1957.

General

Bundesgesetz vom 20. November 1957, mit dem das Abgabenrechtsmittelgesetz abgeändert wird. BGBl. 13.12.1957, p. 1431.

Bundesgesetz vom 17. Dezember 1957, betreffend die Verlängerung der Geltungsdauer des Bundesgesetzes, womit der Dritte Teil der Abgabenordnung abgeändert und das gerichtliche Steuerstrafverfahren geregelt wird. BGBl. 31.12.1957, p. 1521.

Conventions

Abkommen zwischen der Republik Österreich und den Vereinigten St. von Amerika zur Vermeidung der Doppelbesteuerung auf dem Gebiete der Steuern vom Einkommen. BGBl. Österreichs 15.11.1957, p. 1349.

Income tax

Bundesgesetz vom 17. Dezember 1957, mit dem das Einkommensteuergesetz 1953 abgeändert wird (Einkommensteuernovelle 1957, BGBl. 31.12. 1957, p. 1513.

Land tax

Bundesgesetz vom 17. Dezember 1957 über die Festsetzung und Einhebung der Grundsteuer in den Bundesländern Niederösterreich und Steiermark (Grundsteuereinhebungsgesetz). BGBl. 31.12.1957, p. 1521.

Excise duties

Bundesgesetz vom 17. Dezember 1957, betreffend eine Änderung des Bundesgesetzes über das Tabakmonopol. BGBl. 31.12.1957, p. 1522.
Bundesgesetz vom 17. Dezember 1957 über weitere Änderungen des Tabaksteuergesetzes. BGBl. 31.12.1957, p. 1522.

BELGIUM

Period from November 1st until December 31st, 1957.

Généralités

Loi du 24 décembre 1957 contenant le budget des voies et moyens et le budget des recettes extraordinaires pour l'exercise 1958. Moniteur Belge 29.12.1957, p. 9433.

Conventions

Loi du 31 juillet 1957 portant approbation de la Convention entre la Belgique et la Suède en vue d'étendre au Congo belge et aux territoires sous tutelle du Ruanda-Urundi la Convention du 1er avril 1953 entre la Belgique et la

Suède, tendant à éviter les doubles impositions et à régler certaines autres questions en matière d'impôts sur les revenus et sur la fortune, signée à Stockholm, le 12 décembre 1955, Moniteur Belge 9.11.1957, p. 7996.
Accord entre la Belgique et l'Egypte sur l'exonération réciproque de certains impôts frappant les sociétés de transports aériens, conclu par échange de lettres, datées au Caire, les 18 et 31 octobre 1956. Moniteur Belge 2 et 3 novembre, 1957, p. 7831.
Accord entre la Belgique et l'Union de l'Afrique du Sud, tendant à éviter la double imposition des revenus des entreprises de navigation aérienne et maritime, conclu par échange de lettres, datées à Capte-Town, 1e 11 juin 1957, Moniteur Belge 15.11.1957, p. 8115.
Accord entre la Belgique et la Suède sur l'exemption réciproque de la taxe de circulation sur les véhicules servant au transport rémunéré de personnes ou au transport de choses, conclu par échange de notes, datées à Bruxelles, les 10 et 20 novembre 1956, Moniteur Belge 18.12.1957, p. 8878.

Impôts sur les revenus

Loi du 24 décembre 1957 modifiant les lois coordonnées relatives aux impôts sur les revenus en matière de taxe mobilière sur les revenus de certains dépôts. Moniteur Belge 29.12.1957, p. 9431.

Taxes assimilées au timbre

Arreté royal du 10 décembre 1957 modifiant le Règlement général sur les taxes assimilées au timbre. Moniteur Belge, 14.12.1957, p. 8815.
Arrêté royal du 28 décembre 1957 modifiant l'arrêté royal du 11 mars 1953 majorant le taux de la taxe de transmission à l'importation. Moniteur Belge 30/31.12.1957, p. 9501.
Arrêté royal du 28 décembre 1957 modifiant le Code et le Règlement général sur les taxes assimilées au timbre. Moniteur Belge 30/31.12.1957, p. 9501.

Droits d'accise

Arrêté ministériel du 5 novembre 1957 relatif au régime d'accise du tabac. Moniteur Belge 8.11.1957, p. 7970.

Droits de douane

Arrêté royal du 24 décembre 1957 relatif au tarif des droits d'entrée. Moniteur Belge 29.12.1957, p. 9463.

Matières diverses

Loi du 24 décembre 1957 modifiant les lois coordonnées relatives à la taxe de circulation sur les véhicules automobiles, en ce qui concerne les véhicules fonctionnant à l'huile lourde ou aux hydrocarbures gazeux dérivés du pétrole. Moniteur Belge 29.12.1957, p. 9432.

FRANCE

Period from November 1st., until December 31st., 1957.

Généralités

Loi de finances pour 1958 (no. 57-1344 du 30.12.57). J.O. 30/31.12.1957, p. 11924.

Conventions

Décret no. 57-1224 du 16 novembre 1957 portant publication des lettres échangées les 26 octobre et 5 novembre 1954 entre le Gouvernement français et le Gouvernement suédois en vue de modifier et de compléter la convention tendant à éviter les doubles impositions et à établir des règles d'assistance

administrative réciproque en matière d'impôts directs, signée à Paris le 24 décembre 1936 entre la France et la Suède et de l'avenant à la même convention, signé à Paris le 29 mars 1956. J.O. 24.11.1957, p. 10863.

Décret no. 57-1240 du 16 novembre 1957 portant publication de l'échange de lettres franco-suédois des 31 juillet-2 octobre 1957 étendant aux territoires de l'Union française et aux Etats ou territoires dont la France assume la responsabilité des relations internationales l'application des articles 9 à 12 de la convention d'établissement et de navigation conclue entre la France et la Suède le 16 février 1954. J.O. 2/3.12.1957, p. 11083.

Impôts directs

Loi no. 57-1260 du 12 décembre 1957 tendant à faire ristourner aux fermiers et colons partiaires les exonérations d'impôts accordées à la suite des calamités agricoles aux propriétaires. J.O. 13.12.1957, p. 11316.

Décret no. 57-1267 du 13 décembre 1957 complétant le décret no. 49-1105 du 4 août 1949 et relatif au régime des valeurs mobilières. J.O. 14.12.1957, p. 11356.

Décret no. 57-1268 du 13 décembre 1957 relatif à l'adaptation du régime fiscal des stocks. J.O. 14.12.1957, p. 11357.

Décret no. 57-1334 du 28 décembre 1957 prorogeant les dispositions du décret no. 57-807 du 19 juillet 1957 relatif au régime fiscal applicables aux primes de certains contrats d'assurances. J.O. 29.12.1957, p. 11870.

Chiffre d'affaires

Décret no. 57-1339 du 28 décembre 1957 relatif au régime fiscal de certains produits ou services d'utilisation courante. J.O. 29.12.1957, p. 11900.

Décret no. 57-1340 du 28 décembre 1957 relatif aux taux majorés des taxes sur le chiffre d'affaires. J.O. 29.12.1957, p. 11900.

Droits de timbre

Décret no. 57-1333 du 28 décembre 1957 portant fixation des taux de divers droits de timbre. J.O. 29.12.1957, p. 11870.

Décret no. 57-1351 du 30 décembre 1957 portant suppression du droit de timbre dit „Droit Nansen". J.O. 30/31.12.1957, p. 11957.

Taxes de consommation

Arrêté du 28 novembre 1957 fixant la date d'application des quotités de la taxe intérieure de consommation applicable aux produits du pétrole. J.O. 29.11.957, p. 11000.

Décret no. 57-1238 du 30 novembre 1957 portant majoration de la taxe intérieure de consommation applicable au gas oil. J.O. 1.12.1957, p. 11054.

Arrêté du 1er décembre 1957 relatif aux conditions d'application aux stocks de produits pétroliers dédouanés des modifications des taux de la taxe intérieure de consommation prévues par le décret no. 57-726 du 27 juin 1957, le décret no. 57-1238 du 30 novembre 1957 et l'arrêté du 28 novembre 1957. J.O. 6.12.1957, p. 11157.

Décret no. 57-1317 du 27 décembre 1957 portant majoration de la taxe intérieure de consommation applicable au gas oil. J.O. 28.12, p. 11840.

Droits de douanes

Décret no. 57-1242 du 3 décembre 1957 portant modification du tarif des droits de douane d'importation. J.O. 4.12.1957, p. 11118.

Décret du 23 décembre 1957 portant nonapprobation partielle d'une délibération no. 16 de l'assemblée territoriale de la Polynésie francaise en date du 10 septembre 1957 suspendant les droits de douane sur un certain nombre de produits. J.O. 23/24.12.1957, p. 11706.

Décret no. 57-1316 du 27 décembre 1957 portant modification du tarif des droits de douane d'importation. J.O. 28.12.1957, p. 11836.

Matières diverses

Décret no. 57-1266 du 13 décembre 1957 complétant l'article 2 du décret no. 56-875 du 3 septembre 1956 relatif à l'institution d'une taxe différentielle sur les véhicules à moteur. J.O. 14.12.1957, p. 11356.

Décret no. 57-1300 du 24 décembre 1957 relatif au régime fiscal des billets d'entrée dans les salles de spectacles cinématographiques. J.O. 25.12.57, p. 11743.

Décret no. 57-1341 du 28 décembre 1957 relatif aux sociétés d'investissement à capital variable. J.O. 29.12.1957, p. 11901.

Décret no. 57-1367 du 30 décembre 1957 complétant et modifiant le nouveau tarif des patentes et tendant à faciliter l'extension de ce tarif à l'ensemble du territoire. J.O. 31.12.1957, p. 11963.

Décret no. 57-1368 du 30 décembre 1957 relatif à l'introduction de la réforme de la patente dans le departement de la Martinique. J.O. 31.12.1957, p. 11964.

GERMANY

Period from November 1st., until December 31st., 1957

Conventions

Bekanntmachung vom 7.12.57 über das Inkrafttreten des Zusatzprotokolls zum Abkommen zwischen dem Deutschen Reich und der Schweizerischen Eidgenossenschaft zur Vermeidung der Doppelbesteuerung auf dem Gebiete der direkten Steuern und der Erbschaftsteuern. BGBl. II, 31.12.1957, p. 2331.

Corporation income tax

Bekanntmachung der Neufassung des Einkommensteuergesetzes vom 13.11.57, BGBl. 26.11.1957, p. 1793.

Körperschaftsteuergesetz in der Fassung vom 19.12.57 (KStG 1957). BGBl. 24.12.1957, p. 1865.

Equalization of burden law

Erste Verordnung vom 30.12.57 zur Änderung der 13. Durchführungsverordnung über Ausgleichsabgaben nach dem Lastenausgleichgesetz. BGBl. I., 31.12.1957, p. 1907.

Property tax

Verwaltungsanordnung vom 19.11.57 zur Ergänzung der Vermögensteuer-Richtlinien 1953 für die Vermögensteuer-Hauptveranlagung 1957 (VStER 1957), p. 530.

Business tax

Gewerbesteuergesetz in der Fassung vom 19.12.57 (GewStG 1957). BGBl. 24.12.1957, p. 1871.

Turnover taxes

7. Verordnung von 18. Dezember 1957 über Änderung der Ausgleichsteuerordnung. BGBl. 21.12. 1957, p. 1843.

Excise duties

2.12.57 - Verordnung zur Änderung der Durchführungsbestimmungen zum Biersteuergesetz. BGBl. I.13.12.1957, p. 1831.

5.12.57 - Neufassung des Mineralölgesetzes. BGBl. I. 13.12.1957, p. 1833.

Customs

Verordnung vom 23.10.1957 über die Befreiung saarländischer Waren von Eingangsabgaben, BGBl. 8.11.1957, I, p. 1778.

72. Verordnung vom 8.11.57 über Zollsatz-Änderungen (Flechtwaren, Hutstumpen usw), BGBl. Teil I, 13.11.1957, p. 1788.

15. Verordnung vom 11.12.57 über Zolltarifänderungen zur Durchführung des Gemeinsamen Marktes der Europäischen Gemeinschaft für Kohle und Stahl. BGBl. I., 13.12.1957, p. 1837.

Verordnung vom 18.12.1957 über Erläuterungen zum Deutschen Zolltarif 1958. BGBl. II 30.12.1957, p. 1697.

Erste Verordnung vom 27.12.57 zur Änderung des Deutschen Zolltarifs 1958 (Uberleitungs Verordnung). BGBl. T.I, 30.12.1957, p. 1886.

Miscellaneous

Verordnung vom 21.12.57 über die Verlängerung der Geltungsdauer der Verordnung über die Mitwirkung des Bundes bei der Verwaltung der Einkommensteuer und der Körperschaftsteuer. BGBl. I, 30.12.1957, p. 1905.

LUXEMBOURG

Period from November 1st., until December 31st., 1957

Impôts sur les revenus

Arrêté ministériel du 23 décembre 1957 portant publication des barèmes applicables à partir du 1er janvier 1958 en matière de retenue d'impôt sur les traitements et salaires. Mémorial du G-D. de Luxembourg, 24.12.1957, p. 1717.

Arrêté ministériel du 11 décembre 1957 portant fixation de la valeur moyenne des rémunérations en nature au point de vue de l'application de la loi du 17 décembre 1925 sur les assurances sociales et en matière de retenue d'impôt sur les salaires. Mémorial du G-D de Luxemb. 27.12.1957, p. 1765.

NETHERLANDS

Period from November 1st., until December 31st., 1957

Convention

Law of 23.10.57 by which the double taxation agreement between the Netherlands and Denmark, concluded on 20.2.57 is approved. Stbl. 438.

Turnover tax

Law of 23.10.57 by which the royal decree of March 28, 1957 (Stbl. 96) providing for an increase of turnover tax on certain imported goods, is approved. Stbl. 435.

Excise duties

Law of 4:12.57 containing modifications of penal provisions with respect to excise duties on distilled spirits. Stbl. 517.

Customs

Decree issued by the Ministry of Finance of November 25, 1957, by which the exemptions in the tariff decree 1947 have been modified. Ned. Stcrt. 26.11.1957, p. 4.

Decree of 19.12.57 providing for the extension of the lifting of import duties in connection with the European Coal and Steel Community, Stbl. 543.

Decree of 19.12.57 providing for an extension of the lifting of certain import duties. Stbl. 544.

AUSTRIA

Besteuerung der Lizenzeinkünfte britischer und amerikanischer Filmunternehmer in Österreich

(Erlass des BMfF vom 17. Jänner 1957, Zl. 172.611-8/56)

Unter Bezugnahme auf die hö. Erlässe vom 18. März 1954, Zl. 1-683-8/54 vom 7. März 1955, Zl. 15.322-B/55 und vom 5. Jänner 1956, Zl. 151.188-8/55, wird eröffnet:

Mit Rücksicht auf die mit dem Vereinigten Königreich von Grossbritannien und Nordirland am 20 Juli 1956 und mit den Vereinigten Staaten von Amerika am 25 Oktober 1956 abgeschlossenen, jedoch noch nicht in Kraft getretenen Abkommen zur Vermeidung der Doppelbesteuerung auf dem Gebiete der Steuern vom Einkommen wird die FLD zur Milderung der sich aus der Doppelbesteuerung ergebenden Härte auf Grund der §§15 und 131 AO ermächtigt, jenen amerikanischen und britischen Filmproduzenten, die ihre Filme in Österreich durch inländische Verleihfirmen verwerten, auf Antrag die Hälfte der auf ihre lizenzeinnahmen entfallenden Abzugsteuerbeträge (§ 90 Abs. 1 Z. 2 EStG 1953), soweit diese im Jahre 1957 fällig geworden sind oder fällig werden, gemäss § 8 Abs. 1. AbgEG bis zum Wirksamwerden der vorzitierten Doppelbesteuerungsabkommen, längsten jedoch bis zum Ablauf des Jahres 1957 zu stunden.

Überdies wird die FLD ermächtigt, britischen und amerikanischen Filmproduzenten diese Abzugsteuern, soweit die in den Jahren 1954 bis 1956 gestundet wurden, über Antrag weiterhin bis zum Wirksamwerden der beiden vorerwähnten Doppelbesteuerungsabkommen, längstens jedoch bis zum Ablauf des Jahres 1957 zu stunden.

Source: *Oesterreichische Steuer- und Wirtschaftskartei* 10.6.1957

Anwendung der Steuerrechtlichen Vereinbarungen mit der Bundesrepublik Deutschland auf das Saarland.

(Erl. d.B.M.f.F.v. 3. September 1957, Z.94.826-8/57)

Durch den Vertrag zwischen der Bundesrepublik Deutschland und der Französischen Republik vom 27. Oktober 1956 zur Regelung der Saarfrage (Saarvertrag), das Gesetz vom 23. Dezember 1956 über die Eingliederung des Saarlandes (Deutsches BGBl. 1956 I S. 1011) und das saarländische Gesetz vom 12. Juni 1957 über steuerliche Massnahmen im Saarland, ist im Saarland auf dem Gebiete des Steuervertragsrechtes folgende Rechtslage gegeben:

Die von der Bundesrepublik Deutschland mit dem Ausland abgeschlossenen Abkommen zur Vermeidung der Doppelbesteuerung und über Rechtshilfe in Abgabensachen sind ab 1. Jänner 1957 auch im Saarland anzuwenden.

Ab diesem Zeitpunkt sind daher das Abkommen zwischen der Republik Österreich und der Bundesrepublik Deutschland vom 4. Oktober 1954 zur

Vermeidung der Doppelbesteuerung auf dem Gebiete der Steuern vom Einkommen und vom Vermögen sowie der Gewerbesteuern und der Grundsteuern, BGBl. Nr. 221/1955', das Abkommen zwischen der Republik Oesterreich und der Bundesrepublik Deutschland vom 4. Oktober 1954 zur Vermeidung der Doppelbesteuerung auf dem Gebiete der Erbschaftsteuern, BGBl. Nr. 220/1955, sowie der Vertrag zwischen der Republik Oesterreich und der Bundesrepublik Deutschland vom 4. Oktober 1954 über Rechtsschutz und Rechtshilfe in Abgabensachen, BGBl. Nr. 249/1955, im Verhältnis zum Saarland anzuwenden.

Source: *Amtsblatt der Oesterreichischen Finanzverwaltung*, 9.10.1957.

FRANCE

Donneurs de licences étrangers et taxes sur le chiffre d'affaires français

La France a conclué avec les Pays-Bas un accord en termes desquels certains droits de licences, payés par des entreprises françaises à des entreprises néerlandaises sont exonérées de la taxe sur les prestations de services françaises. Cet accord comprend des dispositions similaires à celles contenues dans les accords précedemment conclues par la France avec la Suisse, les Etats-Unis et la Suède. (Voir Rothstein dans *Bulletin* 1956, p. 321.

L'accord est entré en vigueur le 19 août 1957.

Un pareil accord vient être conclu entre la France et la République Fédérale Allemande, d'après une communication du 7 décembre 1957 dans le „Bundessteuerblatt", I, p. 590.

EGYPT

Régime fiscal des administrateurs de sociétés anonymes.

Par loi no. 153 du 13 juillet 1957 (J.O.A. 53 bis „G" du 13 juillet) un impôt complémentaire a été établi sur la totalité des sommes reçues, par les administrateurs dans les conseils d'administration des sociétés anonymes à titre de rémunération, d'émoluments, de jetons de présence ou sous n'importe quelle autre forme, soit d'une ou soit de plusieurs sociétés, et ce outre les autres impôts dus en vertu des dispositions de la loi n. 14 de 1939.

Les taux de cet impôt sont les suivants:

10% sur la tranche de plus de 2.000 à 3.000 livres
15% sur la tranche de plus de 3.000 à 4.000 livres
25% sur la tranche de plus de 4.000 à 6.000 livres
40% sur la tranche de plus de 6.000 à 8.000 livres
60% sur la tranche de plus de 6.000 à 10.000 livres
80% sur la tranche de plus de 10.000 livres.

Source: *La Gazette Fiscale, Commerciale et Industrielle,*
Septembre-Octobre 1957

GERMANY

Aufhebung der Aufsichtsratsteuer

Mit dem „Gesetz zur Änderung steuerlicher Vorschriften" vom 26. Juni 1957 wurde in Deutschland die Aufsichtsratsteuer für unbeschränkt Steuerpflichtige aufgehoben. Diese Steuer, die „die gesamten Vergütungen (Gewinnanteile, Tantiemen, Gehälter, Taggelder, Reisegelder), die den zur Überwachung der Geschäftsführung verfassungsmässig bestellten Personen — also den Mitgliedern des Aufsichtsrates — gewährt werden", erfasst, stammte aus dem Jahre 1906. Der seinerzeit auf 8% festgesetzte Steuersatz erfuhr im Laufe der Zeit zahlreiche Erhöhungen.

Zuletzt betrug der Steuersatz 40 %. Wurde die Steuer durch die Gesellschaft bezahlt, so kam ein erhöhter Steuersatz von 66,66 % zur Anwendung.

Allerdingst ist vorgesehen, die Aufsichtsratsteuer für beschränkt Steuerpflichtige-das heisst in erster Linie für Ausländerweiterhin beizubehalten. Der Steuersatz wird jedoch von 40 auf 30 % ermässigt. In den Fällen, in denen die Unternehmung die ausländischen Aufsichtsratmitglieder übernimmt, sieht das Gesetz nun einen Satz von 42,85 % des tatsächlich bezahlten Betrages vor.

Aus welchen Gründen die Aufsichtsratsteuer für die ausländischen Mitglieder des Aufsichtsrates beibehalten wurde, ist nicht bekannt. Auf jeden Fall ist die diskriminierende Behandlung der Ausländer geeignet, in ausländischen Kreisen ein gewisses Befremden auszulösen. Mit der Übernahme eines Aufsichtsratmandates ist in der Regel doch ein beträchtliches Kapitalengagement verbunden, so dass eine Diskriminierung nicht gerade dazu beiträgt, das allgemeine Klima für ausländische Investitionen in Deutschland, über deren Wünschbarkeit nicht der geringste Zweifel besteht, zu fördern.

Source: *Steuer-Revue*, October 1957

Tax Programme

In his inaugural address to the Bundestag, the Chancellor of the Federal Republic of Germany gave a general outline of the economic and fiscal program for the forthcoming third legislative period. Plans are to be presented for a reform of the capital market, and the double taxation of shares and the tax on capital yield are to be abolished in order to encourage savings in securities. One of the scemes aimed at encouraging savings is to lower the tax rate on corporate dividends from the present rate of 30 % and to adjust it to the rates prevailing for income taxes. Tax exemptions of up to 25 % are proposed for savings of persons in the lower medium income groups, with a limit of DM 100 per month. Federal participations and other assets held by public authorities are to be sold to the private sector, without undue loss, the proceeds to be used for the construction of roads, schools, and hospitals. A simplification of the present tax system is also under consideration.

As part of the fiscal reform, various measures would be introduced to simplify fiscal administration and to make the fiscal year — which now runs from April 1 to March 30 — coincide with the calendar year.

Source: *International Financial News Survey*, November 15, 1957.

NEW ZEALAND

Inland revenue department

Taxes Division: The revenue collected by the Taxes Division during 1956-57 amounted to £161,300,013, which exceeded the 1955-56 total by £9,163,043. Compared with 1954-55, the increase was £14,481,710. The principal items of revenue were income tax £98,117,734 and social security charge £61,635,224.

The extent to which tax evasion is still being practised continues to cause the Department concern and every endeavour is being made to cope with the problem by strenghthening the inspectorial staff and by the implementation of new methods for the detection of evasion. During the year the Department conducted a series of "blitzes" in selected areas, and the process will be extended during the current year as staff becomes available.

Tax discrepancies uncovered during the year totalled £1,628,687, the lowest since 1952-53. Possibly tax-evaders are becoming more conscious of their obligations but the decrease could also be attributed to the fact that

fewer investigations were carried out by income tax inspectors in the last two years, due to staff shortages.

Duties Division: The revenue collected by the Duties Division during 1956-57 amounted to £15,012,036, a decrease of £58,006, compared with the previous year. Estate duty at £7,624, 901 and racing duties at £4,127,636 are the main revenue items. Last year was the first full year affected by reductions in duty under the new Act. Nevertheless the increase in estate duty was £1,380,969. The number of estates recorded was 11,870, being an increase of 421.

The duty paid on gifts amounted to £732,824, a decrease of £89,361.

The total expenditure incurred by the Department in 1956-57 amounted to £1,501,451 or 0,86 per cent, compared with £1.372, 498 or 0,82 percent for the previous year.

Source: *The N.Z. Economist and Taxpayer,* September 1957.

U.S.A.

Ceiling on taxes?

There have been bills pending in Congress for the past several sessions looking to a constitutional amendment which would place a ceiling on federal income tax rates. Two surveys taken in recent years throw some light on the public attitude toward such a proposal. The first survey, which tested the appeal of a ceiling without reference to what other provision would have to be made to cover the loss in revenue, showed 53 percent in favor of the ceiling, 36 percent opposed, and 11 percent with no opinion. The second survey, taken over two years later and accompanied by reference to other kinds of taxes to make up the loss, showed 17 percent in favor of the ceiling, 68 opposed and 15 percent with no opinion. These American Institute of Public Opinion (Gallup poll) figures appeared in the *Chicago Sun Times* issue of July 14, '57.

Source: *Tax Administrators News, September* 1957.

U.S., Canada Ratify Convention on Taxes, Effective Jan. 1.1957.

The United States and Canada on September 26, 1957 exchanged instruments of ratification of the supplementary income tax convention signed on August 8, 1956, between the countries. The convention was brought into force by such exchange.

It is provided in article 11 of the supplementary convention that the convention shall become effective with respect to taxable years beginning on and after the first day of January of the calendar year in which occurs the exchange of instruments of ratification took place. Accordingly, when the exchange took place on September 26, 1957, the convention became effective for the taxable years beginning on and after January 1, 1957.

The U.S. Senate gave advice and consent to the ratification of the supplementary convention of August 8, 1956, and the U.S. ratification thereof was signed by President Eisenhower on August 29, 1957.

The supplementary convention signed on August 8, 1956, further modifies and supplements the convention and accompanying protocol of March 4, 1942, for avoidance of double taxation and prevention of fiscal evasion of income taxes, as modified by the supplementary convention of June 12, 1950.

The new convention reflects further experience in connection with tax problems arising from application of existing treaty provisions for avoidance of double taxation and from economic relations between the two countries. It contains a single substantive article (article I divided into a number of lettered paragraphs).

Article I (a) amplifies the provisions relating to relief from double taxation of income derived from operation of ships and aircraft so as to extend the same principle to operation of motor vehicles as common carriers or contract carriers.

Article I (b) amends the provisions relating to taxation of income from personal services so that, on a reciprocal basis, an employee in a Canadian branch of an American enterprise would be considered an employee of a Canadian enterprise and would receive the same tax treatment as an employee of a wholly Canadian enterprise.

Article I (c), by excluding earned income from the scope of article XI of the 1942 convention, eliminates a problem created by the 1950 supplementary convention. It also confirms the authority for administrative procedures to assure that persons not entitled to the benefit of a reduced rate of tax on investment income will not receive such benefits.

Article I (d) relates to intercorporate dividends and reduces from 15 to 5 per cent the tax on dividends paid by a subsidiary corporation in any case where at least 51 percent of the voting stock of the subsidiary is held by the parent corporation, either alone or in association with not more than three other corporations each of which owns at least 10 percent of the voting stocks.

Article I (e) adds a new article relating to deductions for contributions to charitable organizations.

Article I (f) adds a new article establishing on a reciprocal basis the principle, already applicable under United States law, whereby a resident of one of the countries who is a beneficary of an estate or trust in the other country would be exempt from taxation by such other country with respect to "that portion of any amount paid, credited, or required to be distributed by such estate or trust to such beneficiary out of income from sources" outside such other country.

Article I (g) modifies provisions relating to administrative cooperation in order to reflect a practical situation, particularly in regard to the furnishing of certain information.

The text of the supplementary convention, together with the text of the President's proclamation thereof, will be printed in the Department of State pamphlet series, "Treaties and Other international Acts Series". (TIAS), and thereafter in a bound volume of the statutory publication "United States Treaties and Other International Agreements" (U.S.T).

Source: Foreign Commerce Weekly, October 14, 1957.

III

AUSTRALIA

I - SOURCE OF DIVIDENDS

Dividends received by a non-resident, from shares located ex-Australia, partly out of Australian profits, were held not to be exempt under Section 23 (r) of the Income Tax Assessment Act.

6 C.T.B.R. (N.S.) Case 35 provided an interesting interpretation of the relationship between s. 44 (1) (b) and s. 23 (r) of the Act.

The taxpayer, a non-resident of Australia, was paid certain dividends on shares which were registered on an ex-Australian share register. The dividends were paid in part from profits derived by the companies from sources out of Australia.

For the taxpayer, it was contented before the Board that the dividends were not to any extent assessable income, by virtue of the operation of Section 23 (r), which provides for the exemption of income derived by a non-resident from sources wholly out of Australia. The source of the dividends was claimed to be the place where the shares were located, that is, the ex-Australian share register.

The Commissioner, however, argued that the dividends were assessable income, that Section 23 (r) had to be read subject to Section 44 (1) (b) the appropriate provisions of which are to the effect that dividends paid to a non-resident are assessable to the extent to which those dividends have been paid out of profits derived by the company from sources in Australia.

The question whether the "source" of a dividend is the locality of the shares on which it is paid, or the place where the relevant profits had been derived, has been discussed on many occasions both in English and Australian courts. In the present case, however, the Board considered that the source of the dividends was not exclusively one or the other. On the authority of a recent decision of the Full High Court, in Commissioner of Taxation (N.S.W.) v. Freeman (1956) 6 A.I.T.R. 225, the Board observed that the dividend income "has firstly a direct and immediate source" namely, the locality of the shares, and "secondly and concurrently an ultimate source", that is, the place where the profits were earned from which the dividend was paid.

Consequently, taking the view that the dividends received by the taxpayer had both an Australian and an ex-Australian source, it could not be said that the dividends were paid wholly from sources out of Australia, as required by Section 23 (r).

Therefore it was held that section 44 (1) (b) should apply, to include in the taxpayer's assessable income that part of the dividends which was calculated as having been paid out of the various companies profits which arose from sources in Australia.

Source: *The Australian Accountant*, August, 1957

II - DIVIDENDS RECEIVED FROM OVERSEAS

Dividends received by a resident of Australia from a company resident in Ceylon were treated as subject to the tax credit allowed by Section 45 of the Income Tax Assessment Act.

At this time, when the introduction of a withholding tax on dividends received by non-resident investors from Australian companies is contemplated by the Commonwealth Government, it is of interest to examine the method employed by Ceylon in taxing dividends paid by companies resident in that country.

The Ceylon Income Tax Ordinance provides for the charging of tax on income earned by companies. A resident company is then entitled to deduct tax from dividends paid, at a rate substantially equivalent to the tax rate charged on the company's profits. The gross dividends paid by a Ceylon company to a person resident outside that country are subject to Ceylon Income Tax in his hands. Against the tax payable on the non-resident's personal assessment is set off the tax deduction from dividends which was made by the dividend-paying company. If the personal tax liability is greater than the deduction from dividends, the balance is payable to the Ceylon Income Tax authorities; if it is less, a repayment is made to the non-resident.

6 C.T.B.R. (N.S.) Case 51 was concerned with a resident of Australia who received dividends from certain companies in Ceylon. Tax at eighteen per cent. was deducted by the dividend-paying companies, but after the allowance of tax reliefs, the personal tax charged in Ceylon to the Australian resident was substantially less than eighteen per cent., and the difference was accordingly repaid by the Ceylon taxation authorities to the taxpayer.

The Australin Tax Commissioner assessed the taxpayer on the basis of the net dividends which he received, that is, the gross dividends less eighteen per cent. The taxpayer contended that he should be assessed on gross dividends, and that he should be allowed a credit under Section 45 of the lesser of the two taxes (Australian and Singhalese) charged on the total of the dividends.

The Commissioner contended that Section 45 could not apply because the taxpayer had not paid Ceylon income tax on the dividends, for which he was personally liable, by deduction from the dividends, nor had he paid such a tax directly.

The Board of Review agreed that the taxpayer had not paid, by deduction from the dividends, income tax for which he was personally liable. The amount so deducted was only brought into account as a set-off when his own personal liability to Ceylon tax was ascertained. This latter fact, however, was considered by the Board to support the view that a payment of Ceylon tax, for which he was personally liable, had been made directly by the taxpayer.

The debt for tax assessed in Ceylon was regarded as having been discharged by the certificates which had been produced, showing the amount of tax (at eighteen per cent.) deducted from the dividends by the dividend-paying company. This was the same as if cheques in full payment of the respective amounts due from one to the other had passed between the parties.

Accordingly it was held that Section 45 should apply, and for that purpose the Ceylon tax for which the taxpayer was personally liable was not the amount represented by the eighteen per cent. deducted from the dividends, but the amount actually assessed to him.

(The Commissioner has lodged notice of appeal to the High Court.)

Source: *The Australian Accountant*, October, 1957

CANADA - FOREIGN EXCHANGE GAIN HELD TAXABLE

The Supreme Court of Canada has decided Tip Top Tailors Limited v. M.N.R. in favour of the Minister, with one dissent, but for reasons which make the issue seem even more complicated than it has been heretofore. The appeal which came from the Exchequer Court (1955 C.T.C. 113) relates to a profit made on sterling purchased by the company through its London branch. The taxpayer, which manufacturers and sells clothes at retail prices, purchased substantial quantities of cloth in the United Kingdom. Its earlier practice had been to remit the necessary funds for payment to London. However, in the year in question, 1947 it obtained a line of credit with a London Bank and established a large overdraft on the conviction that the pound sterling would be devaluated in the future. The United Kingdom suppliers continued to be paid by the London branch but the remittances of sterling funds were reduced so as to increase the overdraft. When sterling was eventually devalued in 1949 the company paid off its liability to the London branch by purchasing sterling at the reduced rate and made a profit of $169,614.96 as a result. The company was assessed for income tax and was successful upon its appeal to the Income Tax Appeal Board. The ground upon which Mr. Fisher upheld the company was that the bank loan was really borrowed capital and that the exchange profit realized did not arise out of the trading operations of the company.

Upon appeal to the Exchequer Court, Cameron, J., came to the conclusion that the purchase of the sterling funds in October, 1949, was an essential part of an integrated commercial operation and that the loan was used to pay trade gains and was thus circulating capital used in the trade. In addition to this he held that the profit made was in the ordinary course of the respondent's business operations and was thus from a scheme of profit-making.

In the Supreme Court of Canada Cartwright, J., finds for the taxpayer but the Chief Justice, Rand, Locke and Fauteux; JJ. for a variety of reasons, upheld the Minister.

Mr. Justice Rand, with Mr. Justice Fauteux concurring, concludes that since the loan was effected as each payment was made to a seller, in substance the creation of debt in the Bank was merely the substitution of a creditor for the actual transactions: "no advance was ever made or, so far as the case goes, was ever agreed to be made to the company itself". Further, it was not in his opinion an investment in foreign currency. It was an accumulated debt exclusively made of payments in the course of trade.

What is even more interesting, however, in Rand, J. 's treatment of the argument raised by analogy comparing it to a loan by way of bonds or debentures repayable in one or two years. This was the basis upon which Mr. Fisher disposed of the issue. Rand, J., finds, however, that even if the money were raised in that fashion and used as in this case for working capital that was immediately employed in the course of the company's business, there would be no difference and "the profit realized upon the redemption of the bonds or debentures might find itself gathered into income".

Locke, J., with whom the Chief Justice concurred, finds that the exchange profit was one which arose from the trade and could not be distinguished from that which was successfully taxed in the case of ATLANTIC SUGAR REFINERIES LIMITED v. M.N. R., (1949) C.T.C. 196. This is really the ration of the judgment.

This decision narrows substantially the already restricted field of manoeuvre within which gains on foreign exchange can be tax-free. It does, however, re-affirm the basic principle that if the gain clearly relates to fixed capital and is not related to the company's trading assets it will not be taxable.

Source: *The Canada Tax Service Letter, Oct.* 22, 1957.

GREAT BRITAIN — TRADING „WITHIN" THE UNITED KINGDOM

We reproduce below a note on an interesting tax case, *Firestone Tyre & Rubber Co. Ltd., v. Llewellin* (37 T.C. III)

The second case referred to in the preceding note is that of *Firestone Tyre & Rubber Co., Ltd v. Llewellin* where the House of Lords affirmed a decision of the Court of Appeal.

Although a non-resident trading *with* the United Kingdom does not become assessable to tax in respect of the profits and gains arising therefrom should he trade *within* the United Kingdom, the consequent profits and gains become taxable. Whether the trade is being exercised within the United Kingdom is a question of fact. Liability is attracted if the trade is so exercised by the non-resident or by an agent on his behalf and thus not only the activities of the nonresident must be considered but also those of his agents. In determining where a merchanting business is carried on great importance must be laid on the place where the contract is entered into, but this is not necessarily decisive and the more accurate test would seem to be "where do the operations take place from which the profits in substance arise." There may be more than one contract between the parties where agency trading is to be established and the general test assists the determination of which of them brings the trading profit and thus influences the situs of the trade.

In *Firestone Tyre & Rubber Co., Ltd.* v. *Llewellin* the Revenue have finally established the assessability to tax of an English company (referred to throughout as "Brentford") as the regular agent of an American company (referred to throughout as "Akron") on the profits of the trade of Akron within the United Kingdom carried on through that agency. Not one dissentient judicial voice marred the smooth course of the Revenue's success, although both the situation of the trade and the personality of the trader were in issue. Akron, an American corporation, are the head of a world-wide organisation marketing and distributing *inter alia* branded tyres. By "distributor" agreements it granted exclusive rights to other persons to sell such tyres in certain areas in consideration of which the distributor agreed *inter alia* to buy, sell and distribute such tyres exclusively at prices and on other terms laid down by Akron who in turn agreed to provide such tyres on request. One such agreement was made with the company (referred to throughout as "Sweden") covering the territory of Sweden. By a "manufacturing" agreement between Akron and Brentford the latter agreed to use its best endeavours to fulfil orders for the tyres obtained by Akron in Europe and elsewhere upon receipt of a request by Akron so to do, the purchase price to be remitted by the purchaser to Akron's order, Brentford being paid cost price plus 5 per cent. Owing to war-time difficulties orders were not in fact transmitted via Akron, but Sweden ordered direct from Brentford with Akron's permission. Brentford receiving the purchase price and crediting Akron with it less cost price plus 5 per cent. The profits on the sales through these orders were alleged by the Revenue to be profits of a trade

carried on within the United Kingdom by Akron.

Although it was strenuously argued that the sales were by Akron to Sweden, the whole being governed by the distributor agreement which was made in America, the courts unanimously held that the sale was by Brentford of Brentford's own goods to Sweden under the contract formed by the order from Brentford by Sweden made in England, carried out in England and the purchase price being paid in England. This sale constituted the trade which was thus situate in England. But was it Brentford's trade or Akron's? Can a man be trading as agent for someone else whilst selling his own goods? The House of Lords upholding the unanimous view of the lower courts, held that he could and that the trade was Akron's. The finding of the Special Commissioners was vindicated *in toto:* "the course of the dealings between Akron and Brentford was to set up standing arrangements whereby Brentfrod agreed to hold goods of its own at the disposal of Akron and to sell the same on Akron's behalf to customers approved of by Akron and subject to terms imposed by Akron; and, further, to account to Akron for the proceeds of the sales less the cost of the goods sold plus 5 per cent."

D.R.S.

Source: *British Tax Review,* June 1957.

NEW ZEALAND — CREDIT UNDER TAX CONVENTION WITH U.S.A.

CREDIT UNDER ARTICLE XIII OF U.S.A.-N.Z. DOUBLE TAX AGREEMENT

Subsection (2) of Article XVIII is as follows:—

"(2) If, under the law in force in New Zealand at any time while the present Convention is in effect; New Zealand tax is payable in respect of income from sources within the United States in respect of which United States tax is payable, the United States tax payable (whether directly or by deduction) in respect of any such income shall, subject to such provisions (which shall not affect the general principle hereof) as may be enacted in New Zealand, be allowed as a credit against any New Zealand tax payable in respect of that income . . ."

FF. received oil royalties from the United States. In assessing him, the Commissioner limited the credit in respect of United States tax to the amount of New Zealand tax payable in respect of the United States income. To have allowed the full amount of United States tax as a credit would have resulted in FF. paying less New Zealand income tax than if he had received no income from the United States. FF. agreed that the credit must be limited to the amount of New Zealand tax payable in respect of his United States income, but he objected to the Commissioner's computation which was the proportion of the New Zealand tax which the United States income bore to FF's total assessable income.

FF. contended that in order to arrive at the New Zealand tax payable in respect of the royalties in the words of the order, that an assessment should first be made of the income tax which would be payable in New Zealand, including in the assessable income both the New Zealand salary and the income from the royalties, and a second assessment should then be made omitting entirely these royalties from the assessable income, and that the difference in the tax resulting from these two assessments is the sum which is the New Zealand tax payable in respect of the royalties.

FF's objection was heard and determined at Auckland by McCarthy S.M., who decided in favour of the Commissioner. In a judgment delivered on May 9, 1957, the learned Magistrate stated—

". . . To determine what New Zealand tax is payable, therefore, on these royalties, a consideration of the Land and Income Tax Act 1954 is necessary, because that is the sum which determines the amount of credit which is to be allowed in respect of the United States taxation. Income tax is imposed by s. 78 of the Act and is imposed upon the taxable income of every taxpayer, etc. Taxable income is defined in s. 2 of the Act as meaning the residue of assessable income, after deducting the amount of all special exemptions to which the taxpayer is entitled. Assessable income is defined by the same sections as income of any kind which is not exempted from income tax. It is quite clear that these royalties are not exempt from income tax and that they

form part of the appellant's assessable income for the respective years. To ascertain his taxable income, therefore, the exemptions to which he was entitled, must be deducted from his assessable income which as I have said, includes these sums. That is the only method which the Land and Income Tax Act provides for the assessment of income tax.

"To adopt (F.F.'s) argument, one would need to read into the Act the provision which would enable one to have two differing amounts of assessable income in each year. There is no provision for such a course in the Land and Income Tax Act and borrowing from the words of Rowlatt J.—'looking merely at what is clearly stated, not reading in anything and implying nothing' I cannot see how it can fairly be said that (F.F.'s) method of assessment arrives at the New Zealand tax at all. It is the New Zealand tax which one must find and the New Zealand tax is that which is assessed in the method which I have indicated. To find how much of that tax is payable in respect of, or in relation to, or in connection with that income, one must have reference to the method of proportionate division which the Commissioner has adopted. I do not see how else one could arrive at the amount . . ."

Mr. Chilwell appeared for FF., and the Commissioner was represented by Mr. Rosen.

Source: *New Zealand Current Taxation*, July, 1957
M. I. Thompson & R. P. Kellaway, Editors.

SWITZERLAND

Vermögensbesteuerung von Mobilair im Schweiz.-Französischen Abkommen.

Nach dem französisch-schweizerichen Doppelbesteuerungsabkommen vom 13. Oktober 1937 wird Hausrat im Belegenheitsstaat besteuert. Der Begriff des Hausrates bestimmt sich nach dem Ort der gelegenen Sache. Sammlungen von Möbeln, Gemälden, Büchern usw. die zu einer Einheit zusammengeschlossen sind, bilden nach französischem Recht nicht Hausrat und sind im Wohnsitzstaat des Berechtigten steuerbar.

(Urteil der Staatsrechtlichen Kammer des Bundesgerichts vom 27. März 1957 i.S.X. gegen Kanton Zürich und Oberrekurskommission des Kantons Zürich.)

Source: *Schweizerisches Zentralblatt für Staats- und Gemeindeverwaltung*, 15.Nov., 1957.

SCHWEIZ - WEHRSTEUER BEI GRATISAKTIEN ITALIENISCHER GESELLSCHAFTEN

A. ist Aktionär mehrerer italienischer Gesellschaften. Bei seiner Veranlagung zur Wehrsteuer wurden die von den italienischen Gesellschaften ausgerichteten *Gratisaktien* bzw. die Kapitalerhöhungen aus Gesellschaftsmitteln seinem Reineinkommen zugerechnet. Sowohl die Kreiskommission wie die zentrale Rekurskommission des Kantons Tessin bestätigten diese Einschätzung. Sie machten insbesondere geltend, dass es sich hier nicht um eine *Anpassung* des Kurses der Aktien *an die entwertete Lira,* sondern um die Ausrichtung von Gratisaktien aus dem Reingewinn der betreffenden Gesellschaften gehandelt habe.

Gegen diesen Entscheid führte der Steuerpflichtige beim eidgenössischen Verwaltungsgericht Beschwerde. Er machte geltend, dass in der Ausrichtung von Gratisaktien überhaupt kein Einkommen gemäss Art. 21 lit. c WStB zu erblicken sei. Jedenfalls aber treffe das im vorliegenden Falle nicht zu, wo die Gratisaktien lediglich der Aufwertung der Aktiven zufolge der Entwertung der Lira ihre Entstehung verdankt hätten. Sowohl die kantonale Rekurskommission, wie die Eidgenössische Steuerverwaltung beantragen die Abweisung der Beschwerde. Das Bundesgericht has diesen Rekurs *teilweise gutgeheissen* und die Sache zu neuer Beurteilung an die Vorinstanz zurückgewiesen, dies aus folgenden Erwägungen:

Durch die bundesgerichtliche Praxis sei festgestellt worden, dass in der Ausrichtung von Gratisaktien aus den eigenen Mitteln der Gesellschaft Einkommen im Sinne von Art 21 lt. c WStB zu erblicken sei, und der Beschwerdeführer habe nichts Neues vorgebracht, was dieser Auffassung widersprechen würde. Zu prüfen sei also nur noch, ob die Ausrichtung der Gratisaktien wirklich aus dem Reingewinn der Gesellschaften erfolgt sei oder ob sie lediglich zu Lasten des Ausgleichsfonds für die entwertete Währung stattgefunden habe. Im letzteren Falle könnte allerdings von steuerbarem Einkommen nicht die Rede sein.

Die Akten des vorliegenden Beschwerdefalles geben jedoch über diese Frage keinerlei Auskunft. Die Vorinstanz hat allerdings geltend gemacht, dass es sich hier nicht um Ausrichtung von Gratisaktien zu Lasten des Ausgleichsfonds gehandelt habe, ihren Standpunkt jedoch nicht näher begründet. Die Rückweisung der Streitsache zur Fortsetzung der Instruktion des Falles ist daher unumgänglich.

Zu Unrecht hat die Vorinstanz auch geltend gemacht, dass die Frage von der staatsrechtlichen Kammer des Bundesgerichts in einem nicht publizierten Urteil vom 14. Mei 1952 bereits entschieden worden sei. Diese Kammer hatte den Fall nur vom Standpunkt des Art. 4 BV zu entscheiden, und sie fand, dass der Oberrekurskommission des Kantons Zürich keine Willkür vorgeworfen werden könne, wenn sie in der Aufwertung des Aktienkapitals keine bloss buchtechnische Operation zu Lasten des Ausgleichsfonds, sondern eine eigentliche Verteilung von Reingewinn erblickt habe. Es sei nämlich zu berücksichtigen, dass durch die Entwertung der Lira nicht bloss der Nominal-

wert der Aktien gesunken sei, sondern dass entsprechend auch die Passiven der Gesellschaft sich vermindert haben und so ihre finanzielle Situation günstiger geworden sei. Wie es sich damit im vorliegenden Falle verhalte, müsse erst noch untersucht werden.

Zu prüfen sei insbesondere die wirtschaftliche und rechtliche *Natur des Ausgleichfonds* der italienischen Gesellschaften, vor allem die Frage, ob es sich dabei um ein sog. gemischtes Konto handle, in welchem zwar einerseits die Währungsverlust berücksichtigt, anderseits aber auch wirkliche Geschäftsgewinne verbucht worden seien. Der Rekurrent werde der Rekurskommission die nötigen Belege, Bilanzen, Gewinn- und Verlustrechnungen, Protokolle von Generalversammlungen usw. vorlegen müssen. Nötigenfalls sei die umstrittene Frage durch das Gutachten eines Sachverständigen, z.B. eines schweizerischen oder italienischen Bankiers abzuklären.

Zufolge der Unzulänglichkeit des kantonalen Entscheides (es waren daraus kaum die Namen der italienischen Gesellschaften ersichtlich) auferlegte das Bundesgericht die sämtlichen Gerichtskosten dem Staate Tessin, sprach jedoch dem Beklagten keine Parteikosten zu, weil auch er es unterlassen hatte, seinen Standpunkt durch die nötigen Belege zu begründen. Ed. G.

Source: *Die schweizerische Aktien-Gesellschaft,* April 1957.

IV

REVIEWS — COMPTES RENDUS

ARGENTINA

FRANCISO MARTINEZ: *Derecho tributario Argentino*. Universidad Nacional de Tucuman, 1956, 203 pp.

This book deals with the general principles of the Argentine tax system.

The author discusses the autonomy of tax law, the interpretation and application of tax Acts, the determination of the tax obligation, the tax conflicts and the extinction of the tax obligation.

AUSTRALIA

J. A. L. GUNN and R. E. O'NEILL: *Guide to Commonwealth Income Tax*. Eight edition. Butterworth & Co. (Australia) Ltd., 6-8-O'Connell Street, Sydney, 1957, 413 pp.

Designed as an Introduction to the law and practice of Income Tax in Australia, this book has become so popular that this is the eighth new edition or reprint that has been called for in the past eleven years. The law and practice is clearly stated and there is no doubt that the book will be of great assistance, not only to accountants and businessmen, but also to solicitors who are entrusted with the tasks of preparing returns, checking assessments, lodging objections and conducting appeals. This new edition deals with the latest legislation, including that passed at the end of 1956. The examples throughout the book are the solution of many problems of assessment. A few of the subjects treated are: Business carried on partly in and partly out of Australia, Taxation of companies and dividends, Allowable deductions, Special rebates and credits, Objections and appeals, Rates of tax, Relief from international double taxation.

JOHN MCKELLAR WHITE: *Income Tax Guide, 1957 Edition*. Published for the Taxpayers' Association by Taxpayers' Publishers Pty. Ltd., 11c Castlereagh Street, Sydney, 1957, 80 pp.

This simple and concise guide is designed to assist taxpayers in correctly preparing their income tax returns to enable them to calculate the tax which will be payable and to verify their assessments when issued. This edition is based on the income tax law as it exists in June, 1957. Amendments to the law and alterations in tax rates and changes in administrative practice arising from Court and Board decisions are explained in the Taxpayers' Association's monthly journal *"The Taxpayers' Bulletin"*.

THE LAW BOOK COMPANY'S TAXATION SERVICE: *Income Tax and Social Services Contribution Assessment Act* 1936 - 1956. The Law Book Co. of Australasia Pty. Ltd., 140 Phillip Street, Sydney.

In this loose-leaf service of Australian tax Acts and case law has been published the above-mentioned Act. An extensive index has been added to it.

AUSTRIA

Dr. ERNST FRITSCH: *Das Recht der Einkommen- und Körperschaftsteuer.* Gesetze, Verordnungen und Erlässe. *Nachträge* 13 *bis* 21. Industrieverlag Peter Linde, Dominikanerbastei 10, Wien I.

In „Bulletin" Band XI S. 120/121 wurden das Hauptwerk und die ersten Ergänzungslieferungen dieses wertvollen Werkes einer eingehenden Würdigung unterzogen.

Nach der Neufassung des Einkommensteuergesetzes in 1953, die ab 1954 gilt, zeigte sich dass die Mappe des bisherigen Ergänzungsbandes voll geworden ist. Es ist daher eine neue Mappe begonnen worden in der der neue Text des Gesetzes samt amtlichen Begründungen gebracht ist. Der Aufbau des neuen Bandes unterscheidet sich von dem des bisherigen nur dadurch, dass der Stoff stärker gegliedert wurde als bisher und dass die einzelnen Abteilungen jedesmal mit Seite 1 beginnen. Für sämtlichen Ergänzungslieferungen (also sowohl für den I. als auch für den II. Nachtragsband) soll wie bisher so auch weiterhin stets ein Gesamt-Schlagwörterverseichnis geliefert werden.

BELGIUM

ALBERT BUISSERET: *Prescriptions civiles et fiscales relatives aux associations sans but lucratif.* Deuxième édition. Centre d'études et de documentation des associations sans but lacratif, 37, rue Juliette Wytsman, Bruxelles, 1957, 175 pp.

La loi du 27 juin 1921 dotant les associations sans but lucratif de la personnalité juridique a organisé en leur faveur un régime simple et facile. Toutefois, l'expérience et la lecture du Recueil Spécial des actes relatifs aux A.S.B.L. montrent que bien souvent les dirigeants d'associations perdent de vue l'accomplissement des quelques formalités que la loi leur impose. Les conséquences de pareilles négligences peuvent être graves car la loi les sanctionne en privant l'association du droit à la personnalité juridique avec toutes les suites que cela comporte. C'est pour mieux documenter les dirigeants d'associations sans but lucratif que le Centre d'Etudes et de Documentation des A.S.B.L. vient de rééditer le livre publié en 1943 par M. A. Buisseret. Cet ouvrage, entièrement remanié et complété pour tenir compte des récentes prescriptions en la matière, constitue le guide indispensable de tous dirigeants d'associations sans but lucratif qui trouveront dans ce livre un exposé clair et complet des dispositions légales régissant l'activité du groupement dont ils ont la charge.

Cours Pratique de Droit Fiscal. Deuxième édition. Edité par l'Union belge des Conseillers fiscaux, 343, Avenue des Pagodes, Bruxelles II.

Cet ouvrage forme une documentation détaillée, technique et administrative des divers objets fiscaux: Contribution foncière, taxe mobilière, impôts sur les revenus, divers impôts directs, droits de timbre et taxes assimilées, droits d'Enregistrement. Enfin l'ouvrage comprend une section „Matière et matériel didactiques". Les modifications et suppléments seront imprimés sur feuillets mobiles et envoyés aux abonnés.

Le Recueil des Lois Fiscales publié sous la surveillance de Mr. F. AMERIJCKX, Professeur à l'Université de Gand. Edité par l'Union belge des Conseillers fiscaux, 343, Avenue des Pagodes, Bruxelles II.

Il s'agit d'une édition bilingue et juxtaposée, sur feuillets volantes contenant: les Lois coordonnées relatives aux impôts sur les revenus et à la contribution nationale de crise; Arrêtés Royaux coordonnés relatifs aux impôts sur les revenus; Barèmes; Lois et arrêtés non coordonnés relatifs aux

impôts sur les revenus; le Code des droits de timbre; le Code des taxes assimilées au timbre; le Réglement général sur les taxes assimilées au timbre; le Code des droits d'enregistrement, d'hypothèque et de greffe; le Code des droits de succession.

LES CODES LARCIER en cinq Tomes, publiés sous la direction juridique de *Joseph Guissart* et *Jules Closon* avec la collaboration de Charles Goossens et Paul Schetter. *Tome IV Droit Fiscal. Complément* 1956. Maison Ferdinand Larcier, 26-28, rue des Minimes, Bruxelles, 1957, 80 pp.

Dans ce *Complément* 1956 se trouvent groupées toutes les dispositions législatives destinées à la mise à jour de l'édition 1953 (voir compte rendu dans le „Bulletin", Tome VII, page 357), d'après les textes publiés au „Moniteur" jusqu'au 1er janvier 1957. Toutes les modifications intervenues depuis l'édition 1953 sont fusionnées avec les précédentes, de sorte que le lecteur ne doit jamais consulter qu'un seul Complément, le dernier. Pour faciliter davantage les recherches, les tables alphabétique et chronologique, également fusionnées avec les précédentes, sont reproduites en fin de ce Complément.

EDOUARD BOURS: *La notion de revenu taxable en matière d'impôts directes.* Editions J. Duculax S.A. Gembloux, 1952, 355 pp. (Thesis) Liège.

The author of this thesis is a barrister at the High Court.

Prof. Victor Gothot wrote a preface to this work in which he points out the discouraging character of a work like this, because both legislation and case law are constantly changing. He agrees with the author that civil law rules tax law.

In the introduction a few general questions are discussed and the many alterations of law and case law since the introduction in 1919 are pointed out. The author explains how he sees the connection with civil law, gives definitions of capital, income, etc.

The book has been divided into three parts:

I. Income from immovables
II. from movable capital
III. income from business, employment and profession.

In these parts the material has been systematically subdivided so that a surveyable treatment of the material has been obtained.

An extensive alphabetical index has been added.

VICTOR PAUWELS: *Le nouveau Code des impôts sur les revenus.* Edition 1957. Les Editions Exelsior, 255 Blvd. de Smet de Naeyer, Bruxelles, 299 pp.

A recent work about Belgian income tax will be welcome to many, for as observed in the foreword, the new regulations of 1951 have put no end to the many changes. The material has been divided into six groups:

1. contribution foncière (land tax)
2. taxe mobilière (tax on income from movable capital)
3. taxe professionnelle des personnes physiques et des sociétés (tax on income from business, profession and employment)
4. impôt complémentaire personnel (additional income tax)
5. administration and case law
6. appeals

The texts of the Acts have been printed at the end of the book.

The regulations are commented on, often with the help of examples. Where necessary, extensive tables have been included.

ALBERT BUISSERET: *Répertoire de jurisprudence fiscale* 1952-1956. Bedofisc, Bureau d'Etudes et de Documentation Fiscales, 37, rue Juliette Wytsman, Bruxelles, 1957, 325 pp. 300 F.

Ce répertoire de jurisprudence a pour objet de classer toutes les décisions

rendues par la Cour de cassation et les Cours d'appel en les groupant par matières traitées de façon à permettre de trouver facilement l'interpretation qu'il convient de donner à une question précise. Devant le succès remporté par la première série du répertoire de jurisprudence fiscale consacré aux années 1944-1951, a redigé une seconde série consacrée aux années 1952-1956. Ces répertoires mettent à la disposition de tous ceux qui, par nécessité ou par profession, doivent être au courant des questions fiscales belges, un ouvrage ou rapidement et facilement ils trouveront tous les renseignements utiles pour interpréter correctement les plus récentes lois fiscales.

CANADA

JOHN G. McDONALD: *Canadian Income Tax. Seventh (Cumulative) supplement.* Butterworth & Co. (Canada) Ltd., 1367 Danforth Avenue, Toronto, 1957.

In *Bulletin* Volume XI p. 23 a review of this treatise on the income tax law of Canada has been published. The *Seventh Cumulative Supplement* which has now appeared incorporates all current amendments to the statute law and brings the case law up to date to September 15, 1957. In some instances amending legislation has necessitated the creation of new paragraph headings. Further Supplements will be cumulative and will replace those which preceded them.

CANADIAN TAX FOUNDATION: *The National Finances* 1957-58. An analysis of the programme of revenues and expenditures of the Government of Canada. Published by the Canadian Tax Foundation, 154 University Avenue, Toronto 1, Canada, 1957, 168 pp.

This is the 1957-58 edition of the annual study of Canada's federal revenues and expenditures. The previous editions have been reviewed in "Bulletin", Volume X, pp. 308 and 351. The general form has been retained almost unchanged. The book has become an accepted source of reference on Canadian public finance.

A. MILTON MOORE: *Forestry tenures and taxes in Canada.* The economic effects of taxation and of the regulating of the Crown forests by the provinces. Canadian Tax Foundation, 154 University Street, Toronto 1, 1957, 315 pp.

Tax Paper no. 11 of the Canadian Tax Foundation discusses the taxation of the biggest Canadian industry: forestry. There are general taxes and special taxes. The latter are a consequence of the circumstance that most of the forests are Crown property, and special exigencies are made. The director of the Canadian Tax Foundation, *J. Harvey Perry*, states in his foreword that this is the first time such a survey has been published. "The only comparable study of any vintage would appear to be the so-called "Fairchild" report prepared in 1935 for the Forestry Taxation Inquiry, Forest Service, Department of Agriculture, and this was devoted largely to property taxes". In the introduction the 10 states and the forest activities of the Federal Government are treated separately. Then the various taxes are discussed, some of which only apply to certain states. The book containes many appendices and tables.

EUGENE RIVARD: *Les droits sur les Successions dans la Province de Quebec.* En vente chez l'auteur 475, avenue Lemesurier, Quebec 6, 1956, 573 pp. Prix $ 18.00 francs.

An extensive work written by Eugène Rivard who as collector of succession duties for the Province of Quebec and as assistant professor at the "Laval" University is an authority on both theory and practice. Professor Beaulieu of the same university testifies in his foreword to the author's authority and praises his thorough knowledge of civil law which is manifested in so many places in the book. In the extensive bibliography not only

literature of the author's own country but also American English and especially French books are mentioned. This indicates that this is a work of scientific value and not only a commentary for the practice. The duty is levied on the estates of deceased persons as far as they are in the province; the tariff varies according as (the acquirers) belong to one of the three groups mentioned in the law. Goods outside the province are also taken into account for the percentage of the levy. In the introduction where many general subjects are discussed a comparison with other systems is also given. Connections with civil law are dealt with in a separate chapter. The material proper has been treated systematically in 10 chapters.

EIRE

Tolley's Synopsis of Taxation in the Republic of Ireland (Eire). 33rd Edition, 1957-58, 14 pp.

The Synopsis of Irish taxation law as amended down to 1957, showing bases of assessment and the many differences in the taxation laws as compared with those of the U.K., including full explanation of the system of relief from double tax of British residents deriving income from the Republic, or vice versa. With examples.

FRANCE

PIERRE CHAMPION: *Abrégé des sociétés d'investissement.* Les Editions de l'épargne, 174 Boulevard Saint-Germain, Paris-6e, 1957, 31 pp.

This booklet contains a short survey of the nature of investment companies and the legislation concerning these companies in France.

Régime fiscal des artisans. Société Lyonnaise d'Editions fiscales, juridiques et comptables, 31, place Bellecour, Lyon, 1957, 25 pp.

Cette monographie est un supplément à au numéro 43 de l',,Actualité fiscale", contenant une étude claire et détaillée de ce régime d'exception. Un résumé des règles de sécurité sociale applicables aux artisans complète cette étude.

A.N.S.A.: *Filiales et Participations.* Régime juridique et fiscal. No. 113 Association Nationale des Sociétés par Actions, 51, Rue Pierre-Charron, Paris (8e), 1957.

Der Zusammenschluss von Unternehmen ist eine Erscheinung, die man auch in Frankreich feststellen kann, ins besondere in den letzten 12 Jahren. Einige Länder — das Buch erwähnt die Vereinigten Staaten, Grossbritannien und die Niederlande — kennen in gewissen Fällen eine steuerrechtliche Konsolidierung, bei der Mutter- und Tochtergesellschaft steuerrechtlich als eine Einheit behandelt werden (Organlehre). Das vorliegende Werk (72 Seiten) handelt von der Weise in der in Frankreich die gegenseitige Abhängigkeit von Unternehmen erzielt wird und welche die steuerrechtlichen Folgen sind. Bereits eher, nach Veröffentlichung des Gesetzes vom 19. Februar 1943, war dieser Sache eine Publikation gewidmet. Wie alle Veröffentlichungen der A.N.S.A. ist dieses Werk übersichtlich abgefasst. Der erste Teil enthält allgemeine Betrachtungen über die Filiale und die Beteiligungen. Es wird auf die wirtschaftliche Bedeutung hingewiesen.

Der zweite Teil behandelt die steuerrechtliche Seite der Mutter- und Tochtergesellschaft, wobei der Weiterverkauf durch die Muttergesellschaft der Erzeugnisse der Tochtergesellschaften die Aufmerksamkeit auf sich lenkt. Die Umsatzsteuer wird besonders berücksichtigt. Die wichtigsten Gesetzestexte wurden am Schluss aufgenommen.

A.N.S.A.: *Le nouveau régime des titres nominatifs*. Nr. 106. A.N.S.A., 51, rue Pierre Charron, Paris (8e), 96 pp.

Ein französisches Dekret vom 7. Dezember 1955 brachte eine neue Regelung in bezug auf die Übertragung von Namensaktien. Obiges Werk enthält ausführliche Erklärung der vielen nicht-steuerrechtlichen Probleme, die sich uns hier bieten.

A.N.S.A.: *Les rémunérations des présidents, administrateurs et gérants de sociétés par actions*. Régime juridique et fiscal. A.N.S.A., 51, Rue Pierre-Charron, Paris (VIIIe). No. 105.

Pour la quatrième fois depuis sa création, l'ANSA a consacré une nouvelle brochure aux rémunérations des administrateurs et gérants de sociétés par actions. Comme les précédentes, la présente brochure est divisée en deux parties. La première traite du régime juridique des rémunérations des administrateurs des sociétés anonymes. Dans la seconde partie sont étudiées les conditions d'imposition qui diffèrent selon le domicile des administrateurs et la nationalité des sociétés.

SERGE DAIRAINES: *Les étrangers et les sociétés étrangères en France*. Statut juridique, fiscal et social, immunités. Editions de Villefort, 31, rue Tronchet, Paris. VIIIe, 1957, 376 pp.

L'auteur, a reproduit dans son ouvrage la plupart des textes s'appliquant en France aux étrangeres et aux sociétés étrangères. Il a procédé à une enquête auprès de 85 Etats étrangers afin d'établir la liste des conventions internationales intéressant le statut des étrangers et des sociétés étrangères en France. Une documentation abondante, une bibliographie importante, de copieuses tables analytique et alphabétique des matières et enfin une table chronologique des 1.051 textes cités font de ce livre un ouvrage à la fois technique et pratique qui, en des matières particulièrement à l'ordre du jour, devrait rendre des services appréciables tant aux praticiens qu'aux particuliers et aux dirigeants des sociétés étrangères aussi bien qu'aux diplomates.

MARCEL LE BRIS: *Professions et taxes sur le chiffre d'affaires*. Impôts et Sociétés, 23, rue Chauchat, Paris 9e.

Un compte rendu de la troisième édition de cet ouvrage a été publié dans Bulletin, Tome XI, p. 129. Maintenant la quatrième édition a paru. Cette édition est née du désir de l'éditeur de mettre à jour, non plus par bandes intercalaires, mais par feuillets de refonte, la troisième édition. Le nombre de feuillets à changer était si grand, qu'il a paru plus convenable d'éditer un nouvel ouvrage.

Cet ouvrage est un instrument de travail commode pour l'homme de la pratique.

FRANCIS LEMEUNIER: *Pourquoi et comment constituer une S.A.R.L.* 3e édition Editions Delmas, 13, Rue de l'Odéon, Paris, 1957.

„Ce qu'il vous faut savoir", collection dirigée par Francis Lemeunier.

The third edition of this work is up-to-date until May 1st, 1957. The rapid developments made this new edition necessary. No theoretical considerations are found in it, it is only a guide for the practice. The S.A.R.L. (société à responsabilité limitée) is treated from three points of view: legal, fiscal and social. This legal form is compared with other juridical forms and a few indications for the practice are given. Many subjects are discussed, also the formalities for registration, direct and indirect taxes. Important is the comparison with the partnership, the limited liability company and the private company. Some practical advice concludes a book we can highly recommend.

FRANCIS LEMEUNIER: *Pourquoi et comment constituer une société anonyme.* New edition. Editions Delmas, 13, Rue de l'Odéon, Paris, 1957. „Ce qu'il vous faut savoir", collection dirigée par Francis Lemeunier.

The first edition of this book was sold out within a few months. This fact in itself proves that it renders great services. In 22 parts information is given that will be of great service to the managers in many different occasions. The legal as well as the fiscal and social side have the interest of the author. It is not possible to mention all the subjects treated, we make only a choice: What is a société anonyme according to French law; why is this legal form chosen? A comparison is made with the position of the private company, the société en nom collectif, the limited partnership with and without shares, the société à responsabilité limité; a survey is given of the manner in which these legal forms have extended since 1920, after which the S.A.R.L. is treated more thoroughly. The fundamental act on the Société Anonyme of 1867 has been treated extensively and the foundation and its final consequences also receive attention. Detailed information about i.a. statutes, general assembly, publicity etc. is given. The formalities in connection with registration, direct and indirect taxes, social organisations and many other subjects are discussed, also the conversion of a S.A.R.L. into a société anonyme. Some practical advice concludes this very useful book.

MAURICE LAURE: *Traité de politique fiscale.* Presses Universitaires de France. 108, Blvd. Saint-Germain, Paris, 1956, 425 pp.

The author has continued his publications of 1953 and 1954 with an extensive work. The experience gained in several functions induced him to try to give a synthesis especially on the domain of economics. He puts himself the question: what is tax and fiscal policy really? Answering this question he focuses the attention not only on the budgetary, but also on the philosophic side of the matter. Many very important questions are discussed such as tax-burden, influence on prices, etc. Also the international side has been treated and especially the psychological aspect to which 7 chapters are devoted. A most recommendable book.

France d'outre-mer et Algérie

ASSOCIATION NATIONALE DES SOCIÉTÉS PAR ACTIONS (A.N.S.A.) Section Algérienne. *Les nouvelles taxes sur les Vehicules à moteur en Algérie,* 18-24 Avenue Claude-Debussy, Alger, 1957, 73 pp. No. A6.

A Decree of November 24th, 1956 has introduced an Old Age Pension for Algeria which is financed by a number of tax measures. These are a tax on motor-vehicles, a tax on spirits and an increase of some stamp duties. For the tax on motor-vehicles a distinction is made 1. tax differentielle (in respect to the age and the horse power of the vehicle); 2. tax speciale (for tourist cars); 3. a supplementary tax on *tourist* cars of corporations.

In this extensive booklet (73 pp.) a commentary is given. The first two parts of the booklet give the commentary, the third part gives the tariffs.

LOUIS BROËT: *Guide practique des impôts en Algérie.* Editions Le Messager, 2, Boulevard Carnot, Alger.

Supplement 18 brings this excellent loose-leaf guide to Algerian taxes, up-to-date. A review of this work was published in "Bulletin", Volume XI p. 220. Besides the usual alterations and additions this supplement contains already the new "Taxe sur les vehicules à moteur" (Motor vehicles tax) and a number of changes in the "Taxe unique à la production" (Production tax). This supplement contains altogether 109 pages which show with how much care the editor adapts his work to the changing tax conditions.

PIERRE FONTANEAU: *Essai sur les critères publiés d'investissements*. Librairie Ferraris, Rue Michelet, Alger, 1957, 139 pp.

In this book the levy of taxes does not stand in the foreground but other factors that influence investments are discussed also. Here one enters an extensive field of investigation: the development of under-developed countries. Two questions arise: is the present capital sufficient, and how can the application of capital further the maximum development?

Both subjects are discussed in the book in separate parts, it terminates with elaborate conclusions.

PIERRE FONTANEAU: *La détaxation des investissements*. Librairie Ferraris, Rue Michelet, Alger, 1957, 96 pp.

The second book of this author deals with fiscal matters. During the last few years many countries have started, after recovery of the financial equilibrium, to further the investment in enterprises by fiscal measures. The aim was to influence the structure, or economic situation of the country favourably. The writer examines the theoretical foundations of the limits of these measures. In this connection a distinction is made between the long term and short term consequences. Successively the general conditions under which this "détaxation" can have results, the influence on the capital market and the budgetary equilibrium are examined. This work ends with a number of important conclusions from which it appears that there are many factors, different for all countries, that determine the value and extension of the measures.

GERMANY

CARL HERRMANN und Dr. GERHARD HEUER: *Kommentar zur Einkommensteuer, einschl. Lohnsteuer, und Körperschaftsteuer*. 7. Auflage. Vertrag Dr. Otto Schmidt, Köln. *Lieferung* 34, October 1957.

Dr. W. HUBSCHMANN und PAUL KAATZ: *Steuerrechtsprechung in Karteiform*. Begonnen von Alfons Mrozek. Verlag Dr. Otto Schmidt, Köln. *Lieferungen* 69 *bis* 72, 1957.

Schnellkartei des deutschen Rechts. Verlag Dr. Otto Schmidt, Köln. Reihe III, *Lieferungen 75-77*, 1957.

Dr. LORENZ GÜRSCHING, Dr. ALFONS STENGER und Reg.-Oberinspektor HANS DIEDENHOFEN: *Bewertungsgesetz, Vermögensteuergesetz. Kommentar*. Verlag Dr. OTTO SCHMIDT, Köln. *Lieferung 6, Dez. 1957*, 2. Ersatz- u. Ergänzungslieferung.

Die Finanzpolitik in der Wahlperiode 1953-1957.

Institut „Finanzen und Steuern", Markt 14, Bonn am Rhein, 1957, 78. Heft 50.

Mit dieser Schrift gibt das Institut, gestützt auf seine früheren Untersuchungen und Veröffentlichungen, eine kritische Würdigung der finanz- und steuerpolitischen Entwicklung in Laufe der zweiten Wahlperiode des Deutschen Bundestages.

GERMANY (SAARLAND)

KLEIN: *Das Recht des Saarlandes. Teil 6: Steuerrecht.* Saarländische Verlagsanstalt und Druckerei, Ursulinenstrasse 1, Saarbrücken.

Diese Blattei ist eine Sammlung des geltenden saarländischen Rechts in Loseblattform. Sie bringt die Texte der Gesetze, Verfügungen, Erlasse und Anordnungen, die das saarländische Recht bilden. Erläuterungen, Darstellungen und Abhandlungen werden dann gegeben, wenn die Rechtsanwendung dies notwendig erscheinen lässt.

Änderungen und Ergänzungen werden in Änderungs- und Ergänzungsblättern gebracht die die Sammlung auf dem letzten Stand der Gesetzgebumg halten. Es sind erschienen:

Veranlagungsrichtlinien zu den steuerlichen Sondervorschriften nach dem Stand vom 18. Mai 1956;

Veranlagungsrichtlinien zum Gesetz zur Ergänzung steuerlicher Vorschriften (StEG-Aufstockungsgesetz) nach dem Stand vom 18. Mai 1956;

Richtlinien für die Gewährung von Steuererleichterungen im Zuge des Wiederaufbaues nach dem Stand vom 18. Mai 1956;

Steuerveranlagung 1956 im Saarland, Gesetz Nr. 584 über steuerliche Massnahmen im Saarland vom 12. Juni 1957;

Stichwortverzeichnis zu den 1956 im Saarland geltenden Steuergesetzen, Verordnungen und Richtlinien.

GREAT BRITAIN

Messrs. CHAS. H. TOLLEY & Co., 15, High Street, Croydon, Surrey, have published the following new editions (compiled by *Kenneth Mines and L. E. Feaver*):

Tolley's Income Tax Chart-Manual 1957-58, 42nd edition, 126 pp.

This manual is published annually as soon as practicable after the issue of the Finance Act for the year. Each year it is revised throughout and contains (besides all Statutory alterations), legal decisions, and concessions, alterations in official practice, etc. The book is indexed and cross-referenced for rapid consultation.

Tolley's Synopsis of Profits Tax. 21st edition, 1957-58. 23 pp. This fully detailed Synopsis incorporates the whole of the statutory provisions. It is revised to date, including the alterations made by the Finance Act, 1957, notes of Extra-Statutory Concessions and decisions in the Courts to June, 1957.

Tolley's Synopsis of Excess Profits Levy, 30 pp.

This booklet covers all aspects of this tax, including the various bases of standard profits and running adjustments thereto, computation of profits, director's remuneration, deficiencies, groups of companies, and the closing down provisions.

Tolley's Synopsis of Estate Duty, 1957 edition, 44 pp.

This Synopsis covers in concise but comprehensive form every aspect of this subject, including the important alterations re gifts inter vivos made by the Finance Act, 1957, with appropriate references to leading High Court decisions.

Tolley's Income Tax Tables for 1957-58.

Six different tables for grossing, deductions, etc., covering up to £10,000 (each 1d. to £1 and each £1 to £1,000), showing also calculations for the full range of the reduced rates relief.

Tolley's Income Taxes in the Channel Islands and Isle of Man, 8th Edition (1957) 22 pp.

This is a complete summary of the tax laws of Jersey, Guernsey (including Alderney and Herm) and the Isle of Man. It incorporates all changes made by the 1957 Laws and Resolutions.

RONALD STAPLES: *"Taxation" Manual.* 8th edition. *Amendments-August, 1957.* Taxation Publishing Company, 98 Park Street, London, WI, 10 pp.
This is an addendum to the Taxation Manual, a review of which was published in "Bulletin" Vol. XI page 36. By means of loose leaves various parts of the book are brought up-to-date.

ROGER N. CARTER: *Guide to 17th income-tax practice* for the use of taxpayers and accountants. Edition by Herbert Edwards and Alan M. Edwards. edition. Gee & Co (Publishers), 27-28 Basinghall Street, London, EC2, 1953, 962 pp.
This book contains a summary of the various Enactments relating to Income-Tax, with instructions for the preparation of returns for assessment and accounts in support of appeals, and for claiming allowances, reliefs, etc. It contains also a concise popular digest of the principal legal decisions in the courts. In the preparation of this edition, special attention has been given to the treatment of the important subjects of Double Taxation and Unilateral Reliefs and to allowances for capital expenditure.

Sir THOMAS B. ROBSON: *Holding companies and their subsidiaries. Consolidated and other group accounts.* Principles and procedure. Gee & Company (Publishers) Ltd., 27-28 Basinghall Street, London EC2, 1956, 154 pp.
The expansion in the use of consolidated and other forms of group accounts has led to an increased appreciation of the difficulties which arise in their preparation. This book deals with the problems which arise in the work of consolidating the accounts of a group of companies and indicates the lines along which those responsible should proceed. A working illustration of a relatively simple hypothetical group is included in the appendix so that readers may follow the procedure step by step.

R. GLYNNE WILLIAMS: *Income tax, Sur-tax & Profits tax.* 23rd edition. Cassell & Company, 37-38 Andrew's Hill, London, E.C. 4, 1957, 389 pp. With supplement: Finance Act, 1957.
This is a work meant for students which will enable them to obtain a sound understanding of the law and practice relating to Income Tax, Sur-Tax and Profits Tax. The major principles of the subject and their practical application have been dealt with in a way which should enable the reader to pass on with little difficulty to more advanced treatises. A thorough understanding of the subject will be facilitated by the worked examples which have been incorporated in the text.

R. GLYNNE WILLIAMS: *Elements of taxation.* Fifth edition. Cassell & Company, 37-38 Andrew's Hill, London, E.C. 4, 1955, 160 pp.
This is an introduction to the basic principles of the law and practice of Income Tax and Sur-Tax. It explains the known difficulties that arise in connection with this subject. Examples are used freely and are designed so as to draw attention to points of doubt and to the correct application of the law relating to Income Tax and Sur-Tax. The legal phraseology of the Income Tax Statutes has been avoided and the Statutes are interpreted in clear and simple language.

HERBERT WEISE: *Die Steuern im Vereinigten Konigreich unter Berücksichtigung der Entwicklung seit dem ersten Weltkrieg.* Kieler Studien no. 41. Institut für Weltwirtschaft an der Universität Kiel, Mecklenburger Str. 2-4, Kiel-Wik, 1957, 360 S.
In the same series (no. 27) edited by the "Institut für Weltwirtschaft an der Universität Kiel", Dr. Weise, a few years ago, wrote an outstanding work about the British income tax („Das britische Einkommensteuerrecht in wirtschaftlicher Sicht", review in „Bulletin" Vol. VIII, p. 294).

In his new study, Dr. Weise has broadened the basis of his research, he surveys the whole british system of taxation. The approach has not been altered: Dr. Weise gives a brief description of the most relevant features of the system and discusses the economic consequences and significance of this study: clarity, a thorough command of the British tax laws, the knowledge of a huge amount of relevant scientific writings.

The author often refers to the recently issued report of the Royal Commission on the Taxation of Profits and Income (1953-55), thus placing his study in the very centre of the actual tax-debate in Great Britain.

A great number of charts and statistics are added to this study, which belongs undoubtedly to the best written on the subject.

S. Plasschaert, Dr. jur.

Taxation in the proposed European Free Trade Area.

Federation of British Industries, 21, Tothill Street, London S.W.1, 1957, 156 pp.

This comparative study deals with the tax systems of Austria, Belgium, Denmark, Finland, France, Federal Republic of Germany, Italy, the Netherlands, Norway, Sweden, and Switzerland.

Luxembourg has been excluded because a radical alteration in that country's tax system is anticipated in the near future.

The accounts are preceded by a commentary in which some of the differences and resemblances are highlighted.

The report rightly points out that the tax structure is a significant factor in the determination of the tax burden and it also gives some guidance as to the extent to which taxation may influence the conduct of business and the degree to which this is a conscious attempt by Governments to steer industrial and commercial activity in one direction or another by fiscal policy.

The report should be of particular benefit to companies particularly if there is a possibility of setting up a branch abroad.

The present survey shows the difficulties of making comparisons in the field of taxation: in various respects it contains some more or less important errors; moreover tax law changes so quickly that the booklet was no longer quite up-to-date when published. Apart from these critical remarks it will render useful services to those interested in foreign tax systems.

INDIA

Income-Tax for the Layman. 4th edition. The Central Board of Revenue, Government of India, Delhi, 1956, 151 pp.

This book explains briefly and in simply language the basic features of Income-tax levy in India for the benefit of the ordinary tax payer who has neither the time nor the facility for studying the legislation on the subject. Technical terms have been avoided as far as possible, but where there use was unavoidable they have been explained with suitable illustrations. The fourth edition of this useful booklet incorporates the various changes in law introduced by the Finance Act of 1956.

Estate duty for the Layman. The Central Board of Revenue, Government of India, Delhi, 1954, 144 pp.

This companion volume to the *Income-tax for the Layman* explains in brief and simple language the general provisions of the Estate Duty Act. An endeavour has been made to acquaint the layman with his rights, duties and obligations under this piece of legislation. Technical details have been avoided as far as possible.

V. S. SUNDARAM: *The Law* of *Income-Tax in India.* Seventh edition. The Madras Law Journal Office, Madras, 1954, 1544 pp.

This is a detailed commentary on the Indian Income-Tax Act XI of 1922 as amended. The large number of rulings of courts since the last edition, together with the extensive changes in the Statute have necessarily led to the extensive revision of the book which has been brought up to date. Extracts from the Indian States Finance Enquiry Committee Report have been given in the Appendix, as they throw light on transitional problems which arise out of the financial integration of these States with the Union. As in the earlier editions, notes have been given on Finance Acts where necessary. Considerations of a general character have been included in the introduction.

ISRAEL

The System of Taxation in Israel. Published by the Ministry of Finance, Jerusalem, 1957, 36 pp.

This booklet gives a short, non-technical survey of Israel's tax laws. In order to give a comprehensive picture of Israel taxes, a chapter on taxes levied by local authorities has been included. Also included are certain compulsory payments which technically are not taxes but compulsory dues, such as payments on account of National Insurance and the Levy for the Compensation of War damages. In an appendix a short practical guide for immigrants, temporary residents and tourists coming to Israel has been added. As changes occur in the tax laws, further editions of this booklet will be published.

ITALY

SOCIETA PER LO STUDIO DEI PROBLEMI FISCALE, Sezione Italiana dell' International Fiscal Association, Piazza Venezia II, Roma.

Natura ed effetti economici di un' imposta sulle società. Dott. A. Giuffrè, Milano, 1955, 358 pp.

Diese, in Buchform herausgegebenen Referate von drei Hochschullehrern enthalten eine Behandlung der "imposta sulle società" Prof. Celestion Arena bespricht u.a. den Hintergrund dieser Steuer. Er berücksichtigt auch die Steuererhebung von Aktiengesellschaften im Ausland.

Behandelt werden ferner die wirtschaftlichen und technischen Aspekte dieser Steuer. Das Buch enthält auszerdem eine bibliographische Übersicht, während im zweiten Teil ein Bericht über die Bemerkungen verschiedener Redner anläszlich der Referaten aufgenommen wurde.

LUIGI NAPOLITANO: *La imposta sulle società.* Commenti sistematici delle nuove leggi finanziarie, diretti dal Prof. Benvenuto Griziotti.
Dott. A. Giuffré, Editore, Milano, 1955, 455 pp.

The author gives us with this book an extensive guide to the "imposta sulla società" (Corporation income tax) in Italy. The foreign joint stock company is discussed especially in § 3. The "Imposta sulle Obligazioni" which has been levied on the issue of bonds and similar securities since January 1st 1954 is discussed in chapter VII. The text of the "imposta sulle società" and the ministerial circulars relevant to it have been included at the end of the book. A book that should be in the offices of all Joint Stock Companies that have dealings with Italy.

OSVALDO POLI: *Imposta sulle società.* Il Diritto Tributario, Serie I, Volume XVII. Cedam, Casa Editrice Dott. Antonio Milani, Via Jappellî 5, Padova, 1955, 171 pp.

In diesem Buch erhalten wir einen Überblick über die „imposta sulle società" und die „imposta sulle obligazioni" mit ergänzenden Kammerakten und Richtlinien der Direktorat'general der direkten Steuern. Im dritten Teil

kommen einige Änderungen zur sprache, die sich seit dem Gesetz auf die „imposta sulle società" mit Bezug auf die indirekten Steuern ergeben haben.

Archivio Finanziario edited by EMANUELE MORSELLI, Volume VI. - edizioni C.E.D.A.M. Via Japelli 5, Padova, 1957, 702 pp.

Since 1950 every year a volume has appeared in this interesting "*Archivio*" edited by Emanuele MORSELLI, professor at the University of Palermo. This series is an important source of information for those interested in taxation and public finance. Every year it contains a number of original articles, a survey of new financial literature (books, reviews and announcements of articles in Italian, French, English, German, Spanish and Portuguese periodicals) Italian tax cases and Italian tax legislation.

Le Maggiori Imprese Italiane.

Rivista Internationale di scienze Economiche e Commerciali, Anno IV (1957) N.I. Cedam, Casa Editrice Dott. Antonio Milani, Via Jappelli 5, Padova, 1957, 55 pp.

In dieser Ausgabe wird auf italienisch, spanish, englisch, französisch und deutsch eine Übersicht der grószten italienischen Unternehmen gegeben. Auf eine Einleitung folgen eine Anzahl von „Statistiken" die nach Gewerbezweigen gegliedert sind.

Imposta sulle società e sulle obbligazioni.

L. DI G. PIROLA, 16, Via Cavallotti, Milano, 1956, 98 pp.

Das Werk enthält den vollständigen Wortlaut des Gesetzes vom 6. August 1954, Nr. 603, durch das die „imposte sulle società" eingesetzt wurde. Es liegen auch ministrielle Richtlinien vor, die einen erläuterenden Text zum Gesetz bieten.

FRANCESCO MARTINENGHI: *L'imposta di richezza mobile.* Manuale pratico. Quarta edizione.L. di G. Pirola, Via Cavallotti 16, Milano, 1956, 328 pp.

This book contains a number of chapters which explain the Italian income tax. The author has included (in this publication) the latest alterations brought about by the Act of January 5th, 1956, No. 1. These changes refer mostly to the administrative fiscal measures such as collection, assessment, fine-regulations, etc.

The different categories of income are discussed extensively. Special attention is paid to the prevention of double taxation (Chapter XI). A book we can strongly recommend to all those concerned with Italian tax problems.

JAPAN

Outline of National Tax in Japan 1957. Ministry of Finance, Taxation Bureau, Tokio, 1957, 75 pp.

This publication is a brief guidebook concerning Japanese national tax (excluding customs duty) in force as of October 1, 1957. The present tax system of Japan is classified into four groups — i.e. taxes on income, on property, on consumption and on transfer of goods. These taxes are concisely discussed, while in the appendices, besides charts and statistics, a survey of the taxation on aliens and foreign corporations is given.

LUXEMBOURG

Holding Companies in the Grand-Duchy of Luxembourg.

Banque Centrale, 26, Avenue de la Liberté, Luxembourg, 20 pp.

This brochure contains a survey of the advantages, the legal status and the

expenses for the incorporation of a Luxembourg Holding Company. The booklet is also available in the German language.

MOROCCO

ANDRÉ THRIOREAU: *Code Fiscal.* Edité par Fidutec (Fiduciaire Marocaine d'Editions Techniques), 81, rue Colbert, Casablanca.

Nous avous reçu les expéditions trimestrielles No. 19, Mai 1957, et No. 20, Octobre 1957 contenant des feuillets de mise à jour de cet ouvrage dont nous avons publié un compte rendu dans le „Bulletin" 1957, No. 1, page 37.

NETHERLANDS

Beknopte bibliographie van het belastingwezen (internationaal)

Succinct bibliography of tax publications (international). Prepared by the International Bureau of Fiscal Documentation on behalf of the "Association for Fiscal Science", 1956, 99 pp.

Publications of the Association for Fiscal Science, Nr. 91.

The present bibliography has been drawn up on behalf of the Netherlands Association for Fiscal Science, a national organisation devoted to the promotion of the study of fiscal law in the Netherlands, known for its very important series of publications, many of which deal with the fundamental principles of taxations. The purpose of the underlying publication is to give a survey of the tax literature in a number of countries from all parts of the world. In composing it, the Bureau has not tried to attain completeness, but rather to restrict itself to the most important works available from the different countries.

W. P. VAN SIKKELERUS: *Inleiding tot het Nederlands Belastingrecht.* J. Noorduyn en Zoon, Gorinchem, 1953, 144 pp.

This survey of the Dutch tax system is not a commentary on certain acts, but gives a review of the Dutch tax law as a whole. The book has been divided into two parts entitled

I. Theory of taxes (3 chapters) and
II. Tax law (8 chapters). The material in these parts has been treated systematically.

Erfpacht en erfpachtsvoorwaarden - Praeadviezen voor de Algemene Vergadering van de Broederschap der Candidaat-Notarissen op 21 juni 1957 door Mr. W. B. Plantenga raadheer in het Gerechtshof te Amsterdam en Mr. W. C. Treurniet notaris te Rotterdam.

(Erbpacht und Erbpacht-Bedingungen - Gutachten für die Hauptversammlung der „Broederschap der Candidaat-Notarissen)

Zwei eingehende Studien (insgesamt 210 Seiten) über das in den Niederlanden sehr verbreitete Erbpachtrecht, bei dem für längere Zeit ein dingliches Recht auf unbewegliches Gut gewährt wird. Das Gebrauchsrecht gehört dem Erbpächter - der Eigentümer erhält eine jährliche Entschädigung. Einige Städte stellen auf diese Weise Baugelände zur Verfügung. Die städtische Erbpacht wird ins besondere von dem zweiten Gutachter behandelt. Es gibt auch steuerrechtliche Fragen, diese jedoch nehmen eine untergeordnete Stelle ein.

H. SCHOLTENS: *Heffing van inkomstenbelasting bij overlijden.* Dissertation - Rotterdam, 1957, 104 S.

Am 27. Juni 1957 hatte Herr Hendrik Scholtens an der „Economische Hogeschool" promoviert. Promotor war Prof. Dr. B. Schendstok. Die Einkommensteuer hat zusammen mit den verrechenbaren Steuern nach dem

Haushaltplan 1956 einen Ertrag von rund 2 Milliarden Gulden, der den Ertrag der Umsatzsteuer mit einem geschätzten Ertrag von 1200 Millionen weit übersteigt. Die schwere Belastung auf die Einkünfte führt zu einer immer weiter gehenden Verfeinerung der Steuererhebung. Der Verfasser hat insbesondere das Urteil des „Hoge Raad", nach dem die fiskalische Bilanz der Erben sich nicht an die des Erblassers anzuschliessen brauchte, im Auge. Der Gesetzgeber hat das Loch zugestopft, aber es wurde für den Verfasser ein Anlass eine Untersuchung nach dem System der niederländischen Einkommensteuer vorzunehmen. Nachdem er diese Steuer mit einigen ausländischen Einkommensteuern verglichen hatte, zog er einige allgemeine Schlussfolgerungen. Die Lösung wie sie in Belgien gefunden wurde, wo Liquidationsgewinne und Gewinne beim Hinscheiden des Erblassers nicht besteuert werden, hat für ihn den Vorzug. Nach Ansicht des Verfassers sind die Bewegungsgründe, die zu dem neuen niederländischen System geführt haben, nicht nur im amtlichen Perfektionismus, sondern auch in der späteren Auffassung der Steuererhebung, bei der andere Ziele als die Erwerbung von Einkünften ins Auge gefasst wurden, zu suchen. Er weist auf den niedrigen Satz hin, mit dem die obenerwähnten Vorteile besteuert werden.

C. VAN SOEST and A. MEERING: *Leidraad bij de Belastingstudie*. Volume I. *Supplement 1*. S. Gouda Quint. D. Brouwer and Son. Uitgevers in het Huis de Crabbe, 1957.
This is the *first supplement* to this loose-leaf work on Dutch taxation, a review of which has been published in Bulletin, Volume XI p. 229.

P. KARMELK: *Loonbelasting*, edited by P. Bogaards. 5th edition, *Supplement 4*, November 27th, 1957. J. Noorduyn & Zoon N.V. — Gorinchem, Netherlands. De Belastingwetgeving Serie D.B. No. 11.

H. J. HOFSTRA: *Invordering*. (Collection). 4th edition, edited by A. C. den Dulk ec. drs. and W. P. ERASMUS. *Supplement 3*, Dec. 7, 1957. De Belastingwetgeving Serie D.B. No. 3.
J. Noorduyn en Zoon N.V. — Gorinchem — Netherlands.

H. W. VERMEULEN and H. G. M. WARDENIER: *Vrijstellingen en teruggaaf van invoerrecht*. N. Samson N.V. — Publisher — Alphen aan den Rijn, Netherlands.
Supplement, 1957.

Prof. Dr. M. J. H. SMEETS and J. H. MEIHUIZEN a.o.: *Beknopte Belastinggids* (Concise tax guide). 10th edition. 1st-3rd supplements. L. J. Veen's Uitgeversmaatschappij, Amsterdam, 1957.
These supplements to this looseleaf handbook about the Dutch tax system contain a number of alterations and additions. A review of the main work has been published in „Bulletin", Volume XI, number 1, page 39/40.

J. C. DE WAARD, J. TIGGELMAN and R. M. SMITS: *Omzetbelasting*. (Sales tax). Fiscale handleiding voor de practijk. Vuga-boekerij. G. W. van der Wiel & Co., Rijnstraat 72, Arnhem.
Supplements 19-22 of this practical handbook have appeared. A review of the main work has been published in "Bulletin" 1957, no. 2/3, page 151.

A. M. DIJK, G. JANSEN, J. C. SCHROOT, F. VERSTEGEN: *De gemeentelijke belastingen*. (Municipal taxes). *18th-19th supplement*. Vuga-boekerij, G. W. van der Wiel × Co., Rijnstraat, Arnhem, Netherlands.
A review on this loose-leaf work in two volumes about the municipal taxes in the Netherlands has been published in „Bulletin", Volume XI, 1957, page 147/148.

FED losbladig fiscaal weekblad. (loose-leaf tax weekly). Uitgeverij FED. Roemer Visscherstraat 29, Amsterdam-West I.

Nos. 590-601 of the 17th volume of this weekly, which contains tax articles, discussions of case law and resolutions, and answers to questions as regards Dutch tax problems, have appeared.

H. A. GOHRES und L. J. M. DE JONGE: *De belastingprocedure.* Wet administratieve rechtspraak in belastingzaken. Verlag F.E.D., Amsterdam, 1957, 172 S.

Dieses Buch (172 Seiten) ist Nr. 2 der steuerrechtlichen Studienreihe des Verlags. Es handelt von dem Steuerverfahren, das in den Niederlanden am 1. März 1957, völlig geändert wurde. Vor diesem Datum standen auf fiskalischem Gebiete viele gerichtliche Instanzen neben einander: Provinzialausschuss für die Grundsteuer; Landgericht für die Erbschaft-, Grunderwerb- und Stempelabgaben; Berufungsrat für die direkten Steuern; Tarifkommission für Zölle, Verbrauchsteuer und Umsatzsteuer. Das neue Gesetz hat die Tarifkommission nicht aufgehoben, hat jedoch die Rechtsprechung in bezug auf alle anderen Steuern den Gerichtshöfen unterstellt. Der ganze Verlauf wird in kurzen Kapiteln behandelt: die verschiedenen Arten von Veranlagungen, Beschwerdeschrift usw. Und dann zu II die Berufung bei dem Gerichtshof mit vielen Hinweisen über die Behandlung, den Ausspruch und schliesslich die Berufung beim „Hoge Raad". Der letzte Abschnitt behandelt die Differenzen zwischen der Prozedur bei den Berufungsräten und dem neuen Gesetz. Eine Anzahl Beilagen und ein ausführliches Sachregister schliessen die Arbeit ab.

Dr. W. H. VAN DER BERGE, H. A. M. VAN DEN DRIES and Prof. Dr. B. SCHENDSTOK: *Belastingberichten.* N. Samsom N.V. — Publisher — Alphen aan den Rijn, Netherlands.

Supplements 1957, nos. 30-39 to this loose-leaf handbook of the Dutch tax system have been published.

W. E. C. DE GROOT: *Nederlandse Belastingwetten.*

N. Samsom N.V. — Publisher — Alphen aan den Rijn, Netherlands.

The five volumes of this loose-leaf system on Dutch taxation contain the texts of the Dutch tax acts.

The *nos. 124-129 of the supplements,* which keep these volumes up-to-date, have been published.

VAN STEENBERGEN-SCHUTTEVAER: *De Zegelwet 1917.* (Stamp duty act 1917. 7th edition. Edited by *G. Laeijendecker.*. N. Samsom N.V. — Publisher — Alphen aan den Rijn, Netherlands.

The 11th and 12th supplement to this handbook on stamp duties in the Netherlands have been published. They contain a number of new pages which have to be substituted for the old ones and a supplement to the alphabetical index.

H. W. VERMEULEN and H. G. M. WARDENIER: *Teruggaaf van omzetbelasting bij uitvoer.* Volume I and II. N. Samsom N.V. — Publisher — Alphen aan den Rijn, Netherlands.

Supplements 13-17 to these loose-leaf volumes have been published.

Mr. C. P. TUK: *Omzetbelasting.* (Sales Tax). 6th edition. *Supplement 4.* J. Noorduyn en Zoon N.V. — Publishers — Gorinchem, Netherlands. De Belastingwetgeving Serie I. & A. No. 11.

A review of this loose-leaf work on sales taxation in the Netherlands has been published in "Bulletin", 1957, no. 2/3, page 149. *Supplement 4,* which has now been published, brings this useful book up-to-date again.

P. KARMELK: *Tabakswet.* (Tobacco act) 4th edition. *Supplement 2.* De Belastingwetgeving Serie I. & A. No. 3.
J. Noorduyn en Zoon N.V. — Publishers — Gorinchem, Netherlands.

P. KARMELK: *Besluit op de Vennootschapsbelasting 1942.*
4th edition. *Supplement 3.* J. Noorduyn en Zoon N.V. — Publishers — Gorinchem, Netherlands, De Belastingwetgeving Serie D. B. No. 13.

DR. H. F. A. VÖLLMAR, J. BOXEM and B. J. UDINK: *Vennootschappen, verenigingen en stichtingen* — civielrechtelijke en fiscaalrechtelijke handleiding voor de practijk — Band B. N.V. Uitgeversmaatschappij AE. E. Kluwer, Deventer, Netherlands.
Supplement 2 and 3 — V.V.S. *Mededelingen* No. 1.
This supplement contains another addition to the part of this looseleaf work that deals with the "Foundation". Moreover the publisher has added the first number of "V.V.S. Mededelingen", a periodical which is meant to keep the reader informed about modifications before a new supplement is issued. (Other reviews of this work appeared in "Bulletin" 1957, nr. 1, p. 37 and nr. 2/3, p. 147).

A. C. J. NOUWENS: *Beschouwingen ten aanzien van de overdracht van belastingen* (Betrachtungen in bezug auf die Steuerüberwälzung). H. E. Stenfert Kroese, Leiden 1956, 138 S.
Dissertation "Katholiek Economische Hogeschool" in Tilburg, verteidigt am 25. Oktober 1956. Diese Dissertation, bei der Prof. Dr. M. J. H. Smeets als Promotor auftrat, handelt über eine Frage über die in den Niederlanden sehr wenig geschrieben wurde. Es ist wichtig, da nunmehr die Steuerbelastung so schwer ist, zu prüfen in wieweit diese das wirtschaftliche Leben beeinflusst. Ausserdem kommt die Frage hinzu, dass der Steuerapparat von der Behörde angewandt wird zur Erzielung einer gewünschten Entwicklung des wirtschaftlichen Lebens. In drei Kapiteln wird das Stoffgebiet behandelt:
I. Problemstellung und Besprechung einiger Begriffe;
II. Überwälzung der die Selbstkosten erhöhenden Steuern;
III. Steuern vom Einkommen und Vermögen. Die beiden letzten Kapitel werden mit einer Schlussbetrachtung abgeschlossen. Dieser entlehnen wir einen Satz: „Während die den selbstkostenpreis erhöhenden Steuern die stehenden Tendenzen zur Abwehr von Vergeutungen versterken, kann von den Einkommensteuern gerade das Gegenteil erwartet werden, da diese letzteren Steuern die Prämie auf ein zweckmässiges Produzieren schwächen"

Dr. H. L. DROST: *Als vader en zoon in het bedrijf samenwerken.* Een juridisch-fiscale en bedrijfseconomische beschouwing. Uitgeverij FED, Roemer Visscherstraat, Amsterdam, 1957, 46 Seiten.
Ein Lebensbild wird dem Leser hier geboten. Als Lehrling kommt der Sohn in den Betrieb des Vaters; nach einiger Zeit wird er Firmant und schliesslich kommt die Zeit heran, da er den Betrieb vom Vater übernimmt. Hoffen wir, dass dann das selbe geschehen sich wiederholt. Oder sollte dann längst das Geschäft zu einer Aktiengesellschaft umgewandelt worden sein? Im juristisch-steuerrechtlichen Abschnitt werden vielerlei Fragen behandelt: gibt es im Anfangsstadium ein Arbeitsabkommen? Bald erreicht man die Grenze der bürgerlichen Gesellschaft oder Firma, die Überschreitung derselben macht Schwierigkeiten: Neubewertung, Übertragungsgewinn. Und beim Ausscheiden des Vaters stösst man wieder auf andere Schwierigkeiten im Zusammenhang mit geheimen Rücklagen, Goodwill usw. Noch viele Probleme kommen zur Sprache, auch im wirtschaftlichen Abschnitt, so dass man überzeugt sein kann, dass diese kurzgefasste kleinere Arbeit Inhaltsreich ist.

V

AUSTRALIA — FEDERAL TAX CONFERENCE

PROPOSALS TO TREASURER

Following the 1957 Annual Conference of the Federated Taxpayers' Associations of Australia, the Federal President, Mr. Sholto Douglas, conveyed to the Commonwealth Treasurer, Sir Arthur Fadden, the resolutions and submissions of the Conference.

Mr Douglas said:—As Chairman, I have the honour to submit to you resolutions passed unanimously by the Annual Conference of the Federated Taxpayers' Associations of Australia, held in Adelaide, April 29 to May 2.

As usual, this Conference was preceded by lengthy research and discussion on the part of the respective State Taxpayers' Associations. I believe that the resolutions and opinions herewith express in temperate and reasoned form constructive proposals relating to the present state of the economy and of the laws imposing taxation.

I think I am correct in saying that the dominant theme of this Conference was the necessity, as delegates saw it, of your Government and of the State Governments instituting more vigorous steps to reduce the level of public expenditure.

Over the last 12 months the threat of uncontrolled inflation has been arrested, largely by the relative stability introduced into the wage structur, the continuation of good seasons and the influx of substantial overseas capital. However, the level of public spending still constitutes, we consider, a force generating inflationary trends.

While denying that your Government first decides on the quantum of expenditure considered necessary and then levies sufficient taxation to meet this expenditure, you have, on other occasions, criticised our submissions for failing to suggest positive ways and means of reducing expenditure. As you said in reply to our submissions arising from ou 1955 Annual Conference—"it would have been helpful if the Conference had indicated the expenditure to be curtailed to the extent necessary to enable taxation relief to be given".

If, by this, you mean that we should take the detailed items of expenditure set out in the Annual Estimates submitted to Parliament and point to this and that specific item as being capable of reduction, I think you will agree that such procedure is impossible on the part of any individual or non-Government organisation.

At the same time the careful examination we have given to the Reports of the Parliamentary Public Accounts Committee, the Auditor-General's Reports and instances of specific waste, inefficiency and duplication quoted in Parliamentary Debates and in the Press, leaves us convinced that there is room to effect substantial economies in public expenditure.

Furthermore, we consider it economically undesirable for such a high proportion of capital works and services to be financed from current taxation revenue, either directly in the case of Commonwealth Works or indirectly by using consolidated revenue surpluses to underwrite the loan requirements of the States. The latter creates the quixotic position of your Government

lending to the States at interest, monies raised from the Australian taxpayer for current revenue commitments.

Specifically the Conference suggests that the Government should set up a commission on the lines of the Hoover Commission in U.S.A. to speedily and rigorously investigate economies in all Government Departments. Such a Commission which has had such startling results in U.S.A. would be ancillary to and not overlapping with the work of the Parliamentary Public Accounts Committee.

Secondly, we consider that steps should be taken to restore confidence in and make more attractive investment in Commonwealth Loans so that capital works and services may be financed from this source and not from current taxation revenue.

Thirdly, the quantum of expenditure on certain functions of Government should be reexamined in the light of prevailing economic conditions. If the threat of inflation is aggravated by too extensive expenditure on migration and national development, a dampening down of these desirable activities may well be in the best economic interests of the nation.

In the following paragraphs I quote such resolutions of Conference as were directed to your Government, adding thereto brief comments or explanations as may be of assistance. The papers presented to and a report of the proceedings of this Conference are being printed and as soon as available, copies will be supplied to you.

Pay roll tax

Resolution: *That in the opinion of this Conference the most urgent and immediately useful Government action to combat inflation would be the abolition of Pay Roll Tax.*

Delegates were unanimous that Pay Roll Tax should be abolished this year. The view was held that Pay Roll Tax was provoking cost inflation to an extent far greater than the revenue produced to the Government; added materially to the cost of living, the cost of transport facilities and the capital cost of public works; placed the exporter at a cost disadvantage in world markets and from the Commonwealth Government's own point of view, added to Commonwealth expenditure and depleted income tax revenue.

Companies

Conference resolved: *The Federation considers that the present system of taxing both company profits and dividends without rebate is unjust, economically unsound and is productive of innumerable anomalies.*

The income tax law should be so framed that on a given quantum of income the same tax should be payable whether a business is conducted by a sole trader, a partnership, a private company or a public company.

The anomalous tax discrimination between share capital and interest bearing capital should be removed.

Delegates considered that the economic gap between current demand and current resources could best be bridged by conceding some fiscal encouragement to companies and shareholder investors. It is unnecessary to remind you that Australia is now the only English speaking country which assesses shareholders on dividends without any allowance for the taxes paid by the company.

The deductibility of interest paid on debentures, secured and unsecured notes, etc., compared with the non-deductibility of dividends paid on preference and equity share capital, is encouraging many companies to raise their capital requirements by the issue of interest bearing securities. This is considered to be an undesirable trend which could in times of recession, render company structure unstable.

Private companies

Conference resolved: *For purposes of calculating the retention allowances, all income other than dividends from other private companies, should be treated as income on which the step retention allowances are calculated.*

With the present procedure of granting retention allowances of from 25 per cent. to 50 per cent. on trading profits and 10 per cent. only on investment income other than dividends from other private companies, there is an undesirable discouragement to a private company investing surplus funds outside its own business. As the retention allowances are framed so as to equate somewhat the comparative incidence of tax on private companies and partnerships (see Report of the Commonwealth Committee on Taxation of December 12, 1950) the retention allowances should, we submit, extend uniformly to all classes of income excepting, for obvious reasons, dividends from other private companies.

When the full proceedings of the Conference are available, the attention of your advisers is invited to a paper submitted by Mr. Ross Drew (Vice-President of New South Wales Taxpayers' Association) which includes a careful analysis of the comparative burden of tax on large and small private companies in relation to similar incomes derived by partnerships and sole traders. The conclusion reached by the author is that taxes on private companies are unfairly weighted against shareholders on lower incomes.

The opinion of delegates was that this position might well be rectified by increasing the retention allowances on the lower grouping of private company profits by possibly allowing a retention allowance of 100 per cent. on the first £1,000 and thereafter following the existing scale of allowances to £5,000 and upwards.

Conference resolved: *The definition of the "prescribed period"—Section* 103(1) *of the Assessment Act—should be extended to a minimum period of* 30 *days after the date of issue of an assessment or an amendment of an assessment where the date of issue of such assessment or amendment is not earlier by* 30 *days than the end of the prescribed period, provided that in the case of an amendment the additional income for distribution should be limited to the increased distributable income.*

The prescribed period for the distribution of a dividend under Division 7 of the Assessment Act expires 10 months after the close of the year of income. Not infrequently the company's assessment of primary tax has not at that stage issued or, if issued, may be subject to an undertermined objection or appeal. Until the taxable income of the year is finally determined a company cannot be certain of the sum necessary to distribute to avoid undistributed profits tax. It is accordingly suggested that the prescribed period be extended to expire 30 days after finalisation of the year's primary assessment.

Superannuation for Self-employed

Conference resolved: *That the Government be again requested to amend the Income Tax Law to provide self-employed persons with the same opportunities for securing retirement benefits as those available to employed persons who are members of superannuation funds established by employers.*

This motion is a substantial reiteration of a resolution passed by the 1956 Conference and previously conveyed to you. Conference, however, felt fully justified in re-submitting the matter for your consideration.

Since the last Conference, full details of the amendments contained in the United Kingdom on this subject have become available and additionally, our organisation has made considerable research into this subject and has studied in particular the efforts being made in U.S.A. and Canada to evolve a Tax Code which will give the selfemployed taxpayer an opportunity to provide for his old age and the care of his dependants during the years of retirement and on death.

The results of our research indicate that in each country there is a complete unanimity on the desirability of so amending the income tax code that the same tax concessions are available to employed and selfemployed taxpayers.

It is pointed out that the present Commonwealth Income Tax Law favours the employed taxpayer. Firstly, the employed taxpayer is entitled to a tax deduction of £300 p.a. for payments of life asurance premiums, contributions to superannuation funds, etc. Secondly, the employer may deduct contributions to a superannuation fund 5 per cent. of each employee's up to £200 p.a. per person or 5 per cent. of each employee's annual remuneration, whichever is the greater. The amounts so set aside are not, at that stage, taxable in the employee's hands. Thirdly, the employer can pay a lump sum to the employee on his retirement or death; the employer is entitled to deduct the payment and the employee or his legal representative will be taxed on 5 per cent. only of the amount received.

By comparison, the selfemployed—who is really both employer and employee in one—is entitled only to the general tax deduction of life assurance premiums, etc., up to £300 p.a.

Depreciation

Conference resolved: *That the Conference urges the Commonwealth Government to adopt, without delay, the remainder of the recommendations of the Hulme Committee on Rates of Depreciation.*

Conference appreciated the fact that in your 1956 Budget effect was given to some of the Committee's recommendations in the matter of the deduction of costs of patents, copyrights, etc., a deduction for the costs of roads and bridges giving access to timber stands and a setoff of depreciation recouped in insurance recoveries against the cost of replacements or against other assets subject to depreciation.

Conference recalled that in your 1955 Budget Speech you commended the Committee for "A Most Able Report" but said that in the light of the state of the then economy, the Government had decided to defer any action thereon for the time being.

Conference felt that the economic conditions operating in 1955 no longer applied with the same force.

However, Conference felt that if the Government were still unable to adopt in full the remainder of the Committee's recommendations, it could be suggested that prior consideration be given to firstly, that rates of depreciation allowed under the "diminishing value method" be increased by 50 per cent. and secondly, that depreciation be allowed on buildings used by the taxpayer in the production of assessable income. In regard to the latter, it was felt that even if a purely nominal rate of depreciation were allowed, it would be useful to have this important principle enacted in the Income Tax legislation.

Patents

Conference resolved: *That Division 10B of Part III of the Income Tax and Social Services Contribution Assessment Act should be amended to ensure a deduction for patent fees paid outside Australia where such fees are incurred for the purposes of producing income assessable in Australia.*

Amendments made by Act No. 101 of 1956 grant a deduction of patent fees paid in Australia, but apparently no deduction would be allowed in respect of fees paid outside Australia.

It was reported to Conference that one Australian firm had spent hundreds of thousands of pounds on research and development. Some of its inventions have been patented in countries outside Australia at heavy cost and it is hoped that heavy income would flow to Australia from sales in those other countries.

It would appear that under the law as it stands, such patent fees would not be deductible.

Rights of Appeal

Conference resolved: *This Conference views with concern the growing power of the Executive Government against the ordinary citizen and deplores any suggestion that the right of appeal by the taxpayer against dicisions of the Commissioner of Taxation be restricted or that any disputes between that official and the taxpayer be decided otherwise than in accordance with the rule of law.*

This resolution was passed after delegates from all States had given careful consideration to views expressed by the Commissioner of Taxation in an address to an assembly of accountants in Canberra last year.

While we recognise that the Commissioner was not expressing Government policy and while we further appreciate the scholarly and analytical approach made to the problem of tax avoidance, we nevertheless feel compelled to express the strongest opposition to one of the specific recommendations suggested by the Commissioner, namely, that "Boards of Review in Australia should be required and empowered to deal with all disputes between the Commissioner of Taxation and taxpayers as to liability, in accordance with the spirit of legislation rather than the letter of the law, that direct appeals to the Courts by either party be prohibited, that appeals from decisions of the Board be permissible only after leave has been obtained from a Court upon production of evidence that a comparative injustice is likely to result from the decision".

Long Service Leave

Conference resolved: *That the Government be asked to amend the Income Tax Assessment Act to allow deductions to an employer for Sick and Holiday Pay and Long Service Leave in process of accrual.*

This resolution arises from the Judgment of the High Court in the Appeal of Federal Commissioner of Taxation v. James Flood Pty. Ltd. (5 A.I.T.R. 579). This decision relating to the right of an employer to deduct accrued Sick and Holiday Pay obligations provides an instance where the determination of income for purposes of income tax departs radically from recognised accounting principles.

Delegates felt that tax legislation which adopts accountancy principles to include in income the proceeds of sales before they are collected from debtors and stock on hand before it is converted into money should not flout the same accountancy principles to deny the deduction of a legitimate accruing expense because the money has not been paid out.

An amendment of the Act on the lines indicated would, of course, have no material effect in revenue. The issue is simply the choice between allowing a business deduction in the year in which the liability accrues or in the year in which payment is made.

Dental Expenses

Conference resolved: *This Conference requests the Federal Government to bring down legislation to remove the limitation placed on the allowance of dental expenses.*

Conference felt that the peculiar and to delegates, the quite meaningless distinction made in Section 82F. between dental expenses (limited to £30) and other medical expenses should be removed and that dental expenses within the general limitation on all medical expenses should be allowed as a concessional deduction.

Education Expenses

Conference resolved: *That the provisions of Section 82J of the Assessment*

Act should be extended to apply to expenses incurred in the education of any person less than 25 years of age and that the maximum deduction be increased to a figure commensurate with present-day costs.

Conference considered that the present limitation of this Section to a child or dependant of a taxpayer under 21 years of age should be extended firstly to lift the admissable age to not more than 25 years of age and secondly that the allowance should be extended to educational expenses paid by the taxpayer himself, by the Trustees of a deceased estate or by other relatives.

It is noted that a consequential amendment would be necessary to Section 95 of the Assessment Act if educational expenses paid by a Trustee were to be included.

Development of Northern Australia

Conference resolved: *That this Conference requests the Federal Government to bring down legislation to grant the following income tax concessions to "Northern Australia" (as defined):*

(a) The whole region to be completely free of income tax for all wage and salary earners;

(b) All business enterprises of whatever nature in "Northern Australia" whether the owners be resident or not, to have 60 per cent. of their net income free of income tax with the remaining 40 per cent. also free if reinvested in Northern Australia.

(c) This freedom of tax to be for a period of not less than 20 years.

It is suggested that "Northern Australia" should include all that territory north of latitude 26 degrees in Western Australia, the whole of the Northern Territory and an area in Queensland to be defined—tentatively it is suggested that it be a division running from Haddon Corner (being the north-eastern corner of the South Australian boundary with Queensland) to Cape Melville on the north-east coast of Queensland.

A map showing the contemplated area is attached to these submissions.

This resolution was passed after Conference had had the privilege of hearing a striking paper from Mr. R. L. V. Ross, F.C.A. (Aust.), Vice-President of the Taxpayers' Association of Western Australia, in which the author pointed out that the development of this area was of vital national importance to every citizen of Australia, facing as it does on South-East Asia with its overcrowded population of over 78 million people against which the population of our northern area is a mere 43 thousand.

Delegates recognised that whatever attractions there might be for a family to live in the North, there are far greater attractions in the South—better schooling, better medical and dental facilities, better food, better climate, cheaper costs, more facilities generally and normally greater business opportunities. It was felt that only by offering a sufficiently worthwhile inducement would people be encouraged to live there. This inducement must be so overwhelmingly in favour of the North that people will be willing to endure the adverse climate, its isolation and its lack of amenities and comforts and, at the same time, risk the investment of their capital.

Sales Tax

Conference resolved: *That this Conference considers that the cost of collecting and recording sales tax imposes an unreasonable burden on the commercial community and requests the Government to review the legislation with the object of simplification.*

Delegates suggested that the burden on commerce could be lightened if the present five rates of tax were reduced to two—a luxury rate and a standard rate—the latter to be the lowest compatible with revenue requirements; if the exemption schedule were broadened to more general terms and, as far as possible, conditional exemptions replaced by outright exemptions.

Royal Commission

Conference resolved: *That this Conference again requests the Commonwealth Government to appoint a Royal Commission to enquire into all aspects of Australian Taxation.*

Conference makes no apology for resubmitting this resolution as the subject is still regarded by our movement as being of the highest importance. Not since 1936 has the Commonwealth Income Tax Law been thoroughly overhauled.

After 20 years of patching up according to ever-changing economic conditions, it is high time to provide fresh legislation based on the primary consideration of ability to pay. In doing so, one could expect the elimination of needlessly involved sections and sub-sections, paragraphs and provisos which cause extreme and unnecessary difficulties in ascertaining the meaning of the Income Tax Law. We consider that it is not unreasonable for the taxpayer to expect a straightforward, logical and coordinated set of provisions which, though essentially technical at times, are clear and understandable to a person of average intelligence.

As indicated in the opening of this letter, we will let you have printed copies of papers of proceedings in amplified support of the several propositions put forward herein.

In the meantime, I express the earnest hope that the Government will see fit to give effect, wherever possible, to our recommendations recognising that they are the expression of views not only on our own part but on the part of a wide and representative cross-section of the taxpaying public of Australia.

Treasurer's Reply

In replying to these representations Sir Arthur Fadden said:—"I may say that the Government has received representations from many sources covering some hundreds of proposals for the removal of taxation and the granting of taxation concessions of various kinds. As I have stated publicly, the implementation of all these proposals would involve an annual cost to revenue of some £570m.—more than half the present Commonwealth revenue collections.

"Each of these proposals will need to be examined against the background of the Commonwealth's revenue needs and the state of the national economy and your Association may be assured that its proposals will be given due weight in the course of this review prior to the presentation of the forthcoming Budget."

Source: *The Taxpayers Bulletin*, August-September 1957.

AUSTRALIA — COMMONWEALTH TAXATION
SUMMARY OF CHANGES PROPOSED IN 1957-58 BUDGET

The Commonwealth Treasurer, Sir Arthur Fadden, delivered his Budget Speech on 3rd September, 1957. Taxation reductions of a stated annual value of £56,850,000 were forecast.

The following summary is based on information contained in the Budget papers and supplementary information obtained in Canberra. Further details will be available after the enabling legislation is introduced into Parliament.

Scope of Reductions

The following concessions are proposed:

Income Tax:

The concessional deductions for all dependents are increased by £13.

Parents-in-law and adopted children will be treated as admissible dependants.

The income levels up to which the age allowances apply are increased.

The scope of institutions to which gifts are deductible is widened.

Rates of Company Tax are reduced by 6d. in the pound.

Allowances for depreciation are liberalised.

Pay Roll Tax:

Exemption from Pay Roll Tax to be raised from £6,240 to £10,400.

Sales Tax:

Additional exemptions are granted and rates of tax reduced on specified items.

Estate Duty:

Relief is to be granted where property becomes liable for Estate Duty on two or more occasions within a period of five years.

Property passing to the National Trust, public libraries, hospitals conducted by non-profit organisations and the Australian Council for Educational Research will be exempt.

The statutory exemption, where property passes to widow, widower, children or grandchildren will extend to property passing to adopted children and other children towards whom the deceased had the legal obligations of parenthood.

Increased Charges.

It is proposed to impose a tax of 1/- per gallon on automotive diesel oil and 6½d. per gallon on aviation kerosene. It is also proposed to increase air navigation charges by 10%.

Commencement

Variations of Sales Tax operate (except where noted) from 9 a.m., Wednesday, 4th September, 1957.

The reduced rates of Company Tax will apply in assessments based on the income year ended 30th June, 1957 (or substituted accounting period).

The measures relating to depreciation allowances will apply to the income year 1957/58.

Other income tax amendments will apply in the first instance to the income of the current year, *i.e.*, the year ending 30th June, 1958. However, in the case of salary and wage earners the increased dependant allowances will be reflected in reduced tax instalments expected to be operative on or about 1st November, 1957.

The higher exemption for Pay Roll Tax will operate in respect of salaries and wages payable on and from 1st September, 1957.

The Estate Duty concessions will apply to estates of persons dying on and after the date upon which the enabling legislation receives assent.

Rates of Company Tax

The following rates of income tax apply to company profits of the income year ended 30th June, 1957 (or substituted accounting period):—

Public Companies:
6/6 in £ on £5,000.
7/6 in £ on balance.

Private Companies:
4/6 in £ £5,000.
6/6 in £ on balance.
Undistributed Profits tax: 10/- in £.

Non-Resident Public Companies:
5/6 in £ on income from dividends up to £5,000.
6/6 in £ difference between £5,000 and income from dividends (if any).
7/6 in £ on balance of taxable income.

Co-operative & Non-Profit Companies:
5/6 in £ on £5,000.
7/6 in £ on balance.

Mutual Life Assurance Companies:
4/6 in £ on £5,000.
6/6 in £ on balance.
(Special rates are enacted for companies deriving partly mutual income.)

Interest paid to Absentees:
7/6 in £.

Friendly Society Dispensaries:
5/6 in £ on total income.

Income Tax—Dependants' Allowances

Subject to the existing conditions as to residence, separate income, etc., the following amounts will be deductible in Returns of Income for the year ending 30th June, 1958, and for the purpose of computing tax instalment deductions from salaries and wages payable after 1st November, 1957.

	£
Spouse (*i.e.*, wife or husband of taxpayer)	143
1 Child under 16 years of age	91
Other children under 16 years of age (each dependant)	65
Parents and parents-in-law	143
Invalid relative (each dependant)	91
Student children, 16-21 years (each dependant)	91
Daughter-housekeeper	143
Housekeeper caring for children	143

Income Tax—Age Allowances

Under the present law no tax is payable by a single person who is a resident of Australia and qualified by age (men, 65 years, and women, 60 years) if his or her net income does not exceed £390. In the case of married couples,

both qualified by residence and age, no tax is payable if their combined net incomes do not exceed £780.

The exemption limits will be increased in respect of the year 1957-58 by £20 to £410 in the case of single persons and by £39 to £819 in the case of married couples.

Details of marginal relief where the net income exceeds these figures will be available when the enabling legislation is introduced.

Income Tax—Gifts

In addition to the institutions and charities prescribed by Section 78(1) (a) of the Income Tax Assessment Act, gifts made on and after 1st July, 1957, to the following will be allowable deductions:—

The National Trust of New South Wales,
The National Trust of Victoria,
The National Trust of South Australia,
The Sydney Opera House Appeal Fund,
The Sydney Myer Music Bowl,
The Australian Industrial Design Council,
Public Libraries and Art Galleries.

Income Tax—depreciation

Under Section 56 of the Income Tax Assessment Act depreciation is calculated either on the diminishing cost basis or the prime cost basis. The diminishing cost basis operates automatically unless the taxpayer exercises an option in manner and time prescribed. The same rates of depreciation apply under each alternative.

Adopting a recommendation of the Commonwealth Committee on Rates of Depreciation, it is proposed to increase by 50% the depreciation rates applied to the diminishing cost method.

Under Section 59 of the Income Tax Assessment Act a balancing adjustment is made when plant, subject to depreciation, is sold. If the sale price does not reach the written-down value, a deduction of the difference is allowed. On the other hand, if the sale price is more than the written-down value, the excess depreciation is brought back into assessable income and subjected to taxation in the year of sale. Consequently, amounts allowed as depreciation in a number of years sometimes become taxable in one year and at rates greater than those obtaining when the deductions were allowed.

It is proposed that, instead of being taxed on any surplus as at present, the taxpayer may elect to reduce the value of other plant by the amount of the surplus.

These amendments will apply in the first instance to the income of the year ending 30th June, 1958.

Income Tax—Dividends to non-residents

Under Section 44 of the Income Tax Assessment Act a non-resident of Australia is assessable (subject to the Australia-United Kingdom Tax Treaty and the Australia-U.S.A. Tax Treaty) on dividends paid by a Company "to the extent to which they are paid out of profits derived by it from sources in Australia".

Unlike the assessment of income tax on interest and royalties paid to a non-resident, an Australian Company is not obligated to deduct tax at source. Tax is assessed by normal assessment and difficulties are frequently encountered — firstly in determining the proportion of dividends assessable and secondly in enforcing payment.

The Treasurer stated that the Government had under consideration the adoption of a withholding system but added—"any system that may be adopted will not operate before 1st July, 1958".

Pay Roll Tax

At present employers paying wages at a rate in excess of £120 per week are liable for Pay Roll Tax at 2½% of the amount in excess of the statutory exemption of £6,240 per annum.

The statutory exemption is to be raised to £10,400 as from 1st September, 1957.

From that date only employers paying wages at a rate in excess of £200 per week will be liable.

The monthly exemption for September, 1957, and thereafter will be £866/13/4.

For purposes of the annual adjustment of tax—see Section 16 of Pay Roll Tax Assessment Act—the exemption will be:

For Financial Year 1956-57	. . . . .	£6,240
Year 1957-58	. . . . .	£9,706
Year 1958-59 later	. . . . .	£10,400

It is proposed that a measure of relief be granted where the value of property becomes liable for Federal Estate Duty on two or more occasions within a period of five years.

For this purpose, the value of the estate subject to duty on the first and second succession and the amount of duty involved in each assessment will be ascertained. Relief will be based on the lower of the two duties.

If the second succession occurs within one year after the first, 50% of the duty will be rebated; if within two years, a rebate of 40%; if within three years, 30%; if within four years, 20% and if within five years 10%

It is proposed to extend Section 8(5) of the Estate Duty Assessment Act to exempt from duty property passing to the National Trust in each of the States of New South Wales, Victoria and South Australia, public libraries, hospitals conducted by non-profit organisations and the Australian Council for Educational Research.

It is proposed to extend Section 18A. to provide that the statutory exemption will extend to property passing to "adopted children and other children towards whom the deceased had all legal obligations of parenthood".

The amendments will apply to estates of persons dying on and after the date the enabling legislation receives assent.

Sales Tax

The general rate of 12½% and the special rates of 16-2/3%, 25% and 30% remain unchanged.

Furniture and household equipment as listed below, previously taxed at 10%, are reduced to 8-1/3%.

Domestic knitting machines, hitherto taxed at 12½%, are reduced to 8-1/3%.

Bags, cases, travel goods, etc., hitherto taxed at 25% are reduced to 12½%.

New exemptions as listed are granted.

Except where otherwise indicated, the variations apply as from 9 a.m. on Wednesday, 4th September, 1957.

New exemptions

Small Manufacturers:

Goods manufactured by a person who satisfies the Commissioner of Taxation that the amount of Sales Tax which, but for this provision, would be payable by him is not, or would not, be in excess of fifty pounds per annum.

NOTE:—Under a similar provision previously in operation exemption was allowable if the tax payable did not exceed five pounds per annum.

Foodstuffs and beverages:

Foodstuffs put up for carriage as emergency rations on life-boats or rafts as required by any law of the Commonwealth or of a State or Territory of the Commonwealth.

Non-alcoholic carbonated beverages containing not less than five per centum by volume of—

juices of Australian fruits;

a mixture of concentrates of juices of Australian fruits and water, being a mixture of a strength not less than the natural strength of the juices; or juices of Australian fruits and a mixture of concentrates of juices of Australian fruits and water, being a mixture of a strength not less than the natural strength of the juices.

Imported cheese. (Note:—Australian cheese is already exempt.)

Animal oils put up for use for culinary purposes.

Parts and fittings for bottles, jars, boxes, cases and crates for use in marketing non-alcoholic beverages.

Fire-fighting:

Fire-fighting equipment and fire-protection apparatus, being goods of a kind used exclusively or primarily and principally in preventing or combating fire.

Parts and accessories for; and materials for use in the repair or maintenance of, goods covered by the next preceding provision.

Chemicals and other preparations for use in fire-fighting appliances.

Gases:

Oxygen, acetylene, hydrogen, nitrogen, argon and any mixtures of those gases; dissolved acetylene, liquid oxygen and liquid nitrogen; ethylene gas for the treatment of fruit.

Cylinders (and parts, materials and accessories therefore), of the kind used in the marketing of gases for industrial, medical or domestic use, being portable cylinders in which the gases are delivered to consumers.

Shipping:

Equipment (being machines, implements or apparatus) for use on ships and other vessels (not being ships or vessels used exclusively or principally for the purposes of pleasure, sport or recreation, either by the owners or by other persons) but not including—

(a) furniture or other goods of a kind ordinarily used for household purposes, (being goods specified in Statement "A");
(b) goods for use in, or in connection with, the preparation or consumption of foodstuffs or beverages;
(c) goods for use for the comfort, entertainment or recreation of the crew or passengers; or
(d) equipment for use for cleaning or polishing or of a kind ordinarily used for domestic purposes.

Parts for and materials for use in the construction or repair of, so as to form part of, goods covered by the next preceding provision.

Servicing businesses:

Machinery, implements, apparatus (and parts therefor) and materials (other than road vehicles of the kinds ordinarily used for the transport of persons or the delivery of goods, towing trucks or salvage vehicles) for use exclusively or primarily and principally, for business or industrial purposes, in servicing, repairing or reconditioning—

(i) ships, boats and other vessels;
(ii) railway rolling stock; or
(iii) parts of any goods specified in sub-paragraphs (i) nd (ii),

but not including goods which become part of the goods serviced, repaired or reconditioned.

Cleansing materials:

Goods of the following kinds for sale for cleaning purposes, viz.:

(a) sponges, including synthetic sponges;
(b) goods consisting wholly of synthetic absorbent material;
(c) engine cleaning cotton waste.

Primary industries:

Hexadecanol and other preparations or materials put up for sale for use in the reduction of evaporation of water in reservoirs, dams, channels or streams, and equipment, and parts therefor, for use in the application of these preparations or materials.

Acetylene gas generators for use in agricultural industry and trolleys for use with those goods.

Packaging materials:

Single-faced corrugated fibre board of a kind used to wrap up and secure goods for marketing or delivery.

Steel strapping of a kind used to secure goods for marketing or delivery, and seals for use with that strapping.

Corner brackets for use with wire strapping of a kind used to secure goods for marketing or delivery.

Sundries:

Appliances or equipment for filtering or sterilizing water, being goods of a kind installed as fixtures.

Artificial flowers, fruits, vegetables, leaves, berries and grains of a kind used exclusively or primarily and principally as parts of clothes for human wear.

Calcium carbide.

Clinker and ashes.

Electrical safety devices for the protection of consumers being goods of a kind used exclusively or primarily and principally in connection with fixed electrical installations in consumers' premises.

Goods for official use, and not for sale, by the Government of another country.

Iron or steel wire of gauge 19 or lighter. (Note:—iron or steel wire of gauges 6 to 18 is already exempt.)

The exemption relating to goods imported bona fide as passengers' baggage, which previously was restricted to baggage which accompanied the passenger, is being extended to cover unaccompanied baggage covered by Item 409 (B) in the Customs Tariff.

Certain other minor amendments relating to exemptions, which are not listed in this statement, are of a drafting nature only, to clarify the meaning of provisions already in force or to omit redundant provisions.

Back Dated Exemptions

The following exemptions apply as from the dates quoted:

Goods, the produce of Cocos (Keeling) Islands, being goods of the same class or kind as goods upon the sale value of which, if produced or manufactured in Australia, sales tax is not payable.

(Operative on and from 23rd November, 1955.)

Imported catalogues, price lists and printed advertising matter, being goods which are not designed to advertise the sale or hire of goods by, or the services of, any person in Australia and which are covered by Item 338(D) in the Customs Tariff.

(Operative on and from 1st November, 1956.)

Imported samples covered by Item 404 in the Customs Tariff, being samples which, in the opinion of the Minister, are of negligible value and which are to be used for promotion orders for the importation of goods of the kind represented by the samples.

(Operative on and from 1st November, 1956.)

Imported exposed or developed films, suitable for use only with home cinematographs, being films covered by Item 320 (C) (2) (a) (1) or Item 449 (A) (2) in the Customs Tariff.

(Operative on and from the 14th October, 1955.)

Goods imported for repair or alteration and intended to be returned to the country whence imported, being goods covered by Item 400(B) in the Customs Tariff.

(Operative on and from 1st November, 1956.)

Goods for use in replacing free of charge any defective part of other goods, if—

(a) the cost of the goods so used in replacement is recouped in the prices for which—
  (i) those other goods and goods of the same kind as those other goods, or
  (ii) goods of the same kind as those used in replacement,

are sold by wholesale; or

(b) the defective part replaced will, after repair, be used in replacing free of charge another defective part, or will be used in, wrought into or attached to goods to be manufactured.

(Operative on and from 4th September, 1954.)

Goods for use in the repair of, so as to form part of, the defective part first mentioned in the next preceding provision if either of the conditions expressed in paragraph (b) of that provision are satisfied.

(Operative on and from 4th September, 1954)

Cathode ray tubes (picture tubes) as used in television receiving sets, being cathode ray tubes covered by Item 181(A) (3) of the Customs Tariff or by Item 21 of the Excise Tariff.

(Operative on and from 31st August, 1956).

Provision is also being made to exclude, from the taxable sale value of television sets or other goods, the value of cathode ray tubes incorporated therein.

Goods reduced from 10% to 8-1/3%

Goods (not being goods covered by an item in the Second Schedule to this Act) of a kind ordinarily used for household purposes, namely:—

(a) furniture, but not including pictures, picture frames, statuary, sculptures, plaques, medallions, medals, inlays, mosaics, tapestries, cameos or representations of mottoes, proverbs or verses;
(b) crockery and articles of a material other than earthenware used for purposes similar to the purposes for which crockery is used;
(c) glassware;
(d) cutlery and cutlery sharpeners;
(e) refrigerators, ice chests and other appliances used for the cooling or freezing of food;
(f) washing machines, wringers and other appliances used for or in connection with laundering;
(g) vacuum cleaners, carpet sweepers, floor polishers and other appliances for use for cleaning purposes;
(h) radiators and other room heaters, portable grillers, portable stoves, portable cookers, toasters, mixing machines, immersion heaters, hot water jugs and kettles, percolators and other appliances, whether operated by electricity or by gas, kerosene or other fuel, for use for room heating or for culinary purposes;
(i) kitchen utensils and hardware;
(j) brooms, mops, dusters, brushes, buckets, dippers, basins and garbage cans;
(k) fruit bottling outfits and fruit preserving bottles and jars;
(l) floor coverings and bath and door mats;

(m) blinds;
(n) mattresses, pillows, other bedding and cushions.
(o) sewing machines; and
(p) appliances and fittings used for or in connection with electric, gas or other lighting.

Parts, fittings, accessories and containers for the above-mentioned goods.

Goods reduced from 12½% to 8-1/3%

Domestic knitting machines.

Goods reduced from 25% to 12½%

Travelling bags, brief bags, kit bags exceeding eighteen inches in length, gladstone bags, book-makers' bags, hat boxes, trunks, suitcases, attaché cases exceeding eighteen inches in length, writing or letter cases, music cases, sporting cases or bags, regalia cases, lunch cases exceeding twelve inches in length, hat cases, satchels, grips, sewing bags or cases, sleeping valises or bags, but not including school bags or cases.

Note:—Kit bags not exceeding eighteen inches in length, attaché cases not exceeding eighteen inches in length, lunch cases not exceeding twelve inches in length, and school bags and cases are already taxable at the rate of 12½%.

Handbags, evening bags, purses, shopping bags (but not including shipping bags made of paper, string or plastic cord), knitting bags, money belts, wallets, pouches, beach bags, cosmeticbags and cosmetic holdalls.

Note:—Shipping bags made of paper, string or plastic cord are already taxable at the rate of 12½%.

Baskets and hampers of a kind used for private, personal, domestic or office purposes, made of cane, wicker, seagrass, metal, wood, fibre or any other material (but not including bassinettes and other sleeping baskets for babies), picnic hampers, picnic baskets, picnic cases and picnic bags.

Note:—Bassinettes and other sleeping baskets for babies remain exempt as hitherto.

Canberra.
4th September, 1957.

JOHN McKELLAR WHITE,
Research Director.

Source: *Memorandum from the Federated Taxpayers' Associations of Australia*

IATA FINANCIAL COMMITTEE

The following is a summary of the Report which was prepared by the Financial Committee, and which was presented to the Annual General Meeting by Mr. A. V. Leslie, Vice-President—Finance and Treasurer of Trans World Airlines, New York City:

General Considerations

Faced with the problems of re-equipping for a jet age, the airlines have directed their joint financial activities toward reducing and restricting the mounting tide of operating costs in air transport.

During the past year, the airlines of IATA have been called on to meet the rising costs or the threat of increased charges in virtually every category of their operating budgets—airport landing fees, passenger service charges, air navigation charges, turnover and other taxes. They have, as well, had to wrestle with such internal problems as interline accounting and currency exchanges.

Taxation

In taxation matters the Committee expressed its concern over the amount and extent of taxation on the gross receipts of the airlines. Through the IATA Taxation Sub-Committee, and in co-operation with the International Chamber of Commerce and the International Chamber of Shipping, the airlines have given their support to a resolution recommending the elimination of this form of taxation. These efforts have the support of the International Civil Aviation Organization, but they have borne little fruit to date.

On the other hand, the airlines have secured the agreement of the Government of France to exempt carriers from payment of a recent levy on cargo, the report stated. However, it expressed anxiety over the imposition by Austria of turnover taxes on international passenger traffic.

The report stressed that IATA's efforts in this regard are not set up to avoid taxation as such, but to seek fair and equitable means of dealing with various taxation problems and to ensure that their incidence is nondiscriminatory.

Airport Charges

The Committee also emphasized its concern over the trend toward increasing airport charges asserting that these charges, if continued, should have a serious effect on the already parlous financial status of the airlines. Increases in the scale of landing and other airport fees have ranged from 20 to 75 per cent over the past year.

Similar anxiety was expressed at the possibility of certain governments imposing passenger service charges at airports.

The Committee reported that technical and financial experts in both IATA and ICAO are studying the implications of charges for international route air navigation facilities.

Source: *The Journal of Air Law and Commerce*, Summer 1957.

I

OVERSEAS TRADE CORPORATIONS

by

A. DALE, F.A.C.C.A.

The United Kingdom Finance Act 1957 implements, with some refinements and omissions, the recommendation regarding Overseas Trade Corporations made by the Majority of the Royal Commission on the Taxation of Profits and Income. This ingenious and imaginative conception has attracted much interest in other countries and the purpose of this article is to explain the developments which led up to the proposals and to describe the main features of the scheme.

Basic Principles of United Kingdom tax law

It is necessary first to explain some of the basic principles underlying the United Kingdom tax system, and the most important of these is the twofold claim that tax should be charged on—

(a) all income arising in the United Kingdom no matter to whom it accrues, and
(b) all income, wherever arising, that accrues to a resident of the United Kingdom.

A company which is not resident in the UnitedKingdom pays tax, therefore, only on income arising within the country, whereas a resident company pays tax on all its income whether it arises within the country or abroad.

Residence of Companies

"Residence" is an artificial concept to apply to a company, and as the Income Tax Acts contain no definition it is necessary to fall back for guidance upon a series of decisions in the Law Courts. The Courts have held that a company resides where "it keeps house" or "does its real business", and that this is where its "central manage-

ment and control" are exercised. For United Kingdom tax purposes, therefore—

(1) A company can be registered in the United Kingdom and comply with the essential formalities such as the filing of accounts without being resident.
(2) A company registered abroad whose directors meet and exercise control in the United Kingdom is resident even if all its trading operations are carried on abroad.
(3) A subsidiary of a company which is resident in the United Kingdom is not itself resident if its directors exercise control abroad.

The position is still not fully clear where the central management and control is exercised partly in the United Kingdom and partly abroad, and it may become necessary to deal with this by statutory provision.

Ordinary Residence

The interest on certain British Government securities is exempt from tax while the securities are in the beneficial ownership of a person not ordinarily resident in the United Kingdom. So far as a company is concerned there is no distinction between Residence and Ordinary Residence.

Domicile

Persons who, though resident in the United Kingdom are not domiciled there, are assessed in respect of income which arises abroad on the basis of remittances made to the United Kingdom. A company's domicile is where it is incorporated. It must be borne in mind here that the trading profits of a resident company will probably be deemed to arise in the United Kingdom, and the remittance basis could apply only to overseas investment income.

Trading Income of Non-Resident Companies

The question as to whether the trading income of a non-resident company arises in the United Kingdom or elsewhere depends broadly on whether the company is trading *with* the United Kingdom or is carrying on a trade *within* the United Kingdom. There are numerous Court rulings on this subject but it may be said that the "ratio

decidenci" has invariably been "were the contracts made or the services rendered in the United Kingdom?" If so, a trade is being carried on within the United Kingdom and liability to tax is attracted. If, for example, a Dutch steamship company ran ships between the Netherlands and the United Kingdom and freights were arranged by an agent resident in the United Kingdom, the Dutch company would be exercising a trade in that country since contracts would be made there. On the other hand, if a Dutch merchant appointed an English firm his sole representative in the United Kingdom, orders were obtained by the firm but were transmitted for acceptance or refusal to the foreign principal to whom payments were made, a trade would not be carried on within the United Kingdom.

Double Taxation Treaties

The provisions of the United Kingdom tax acts may be modified by bilateral double taxation treaties negotiated with other countries. Such treaties usually provide, for example, that a company resident in the foreign country is liable to tax in the United Kingdom in respect of trading income only if there is a permanent establishment in the United Kingdom, and that the profits assessable are those attributable to the permanent establishment. It is also normally that where profits are taxable in both countries, the country of residence will grant credit against its taxes for taxes paid on the same profits in the country of origin of the profits.

Unilateral Double Taxation Relief

Since 1950/51 the United Kingdom has granted relief unilaterally in cases where double taxation has not been relieved, or not fully relieved, by means of bilateral treaties.

At first this relief was limited, broadly, to three-quarters of the overseas tax in the case of Commonwealth countries and to one-half of the overseas tax in other cases. Since 1953/54, however, these restrictions have not applied and the effect of the relief now in most cases is to grant the same credit for overseas taxes charged on overseas income as would have been available had a treaty in the usual form been entered into with the country concerned.

Tax Rates

At present companies pay—
Income Tax at 8/6d in the £ (i.e. 42½%)
Profits Tax at 3% on undistributed profits and at 30% on distributed profits.
Any double taxation relief due is normally allowed first against Profits Tax.

Imperfections of this System

Representations were made to the Royal Commission that the system outlined above was unsatisfactory for the following reasons:—

(1) The double taxation relief credits available under the treaty and unilateral provisions do not entirely eliminate double taxation, e.g. where the overseas tax is not similar to United Kingdom Income Tax or Profits Tax and a deduction from taxable profits is allowed instead of a credit against the tax chargeable.

(2) The charge of a supplementary tax in the United Kingdom in addition to the overseas tax frustrates the accumulation of funds for maintenance and expansion and leaves United Kingdom enterprises at a competitive disadvantage as compared with local and other foreign enterprises which pay the overseas tax only. It has also led to discrimination against British enterprises by foreign governments on the grounds that some proposed development could best be carried out by an enterprise subjected to a less heavy tax burden.

(3) In recent years the supplementary United Kingdom tax charge has caused irritation in overseas countries, especially in the Commonwealth, who have found that the effect of their forbearance in maintaining low rates or in granting reliefs to pioneer industries has often been merely to increase the tax receipts of the United Kingdom treasury.

(4) It is becoming more and more essential in view of rising nationalistic feeling in overseas countries that enterprises should be free to decide the method of doing business, the form of incorporation and the manner of cooperating with local interests without having to take account of a United Kingdom tax system which taxes some forms of organisation more heavily than others.

The claim was therefore made that the United Kingdom should accept the principle that the country in which income arose had not only the prior right but the sole right to tax that income, and a supplementary charge should not be imposed in the country of residence.

Royal Commission Recommendations

This claim was not admitted but the Majority of the Royal Commission recommended that a special category of United Kingdom company to be known as an Overseas Trade Corporation (OTC) should be recognised. Such companies would be exempt from Income Tax until their profits were distributed, when tax less the appropriate double taxation relief would be payable. Profits Tax would continue to be assessed but it would in most cases be covered by double taxation relief due.

It was envisaged that a company managed and controlled in the United Kingdom but carrying on business abroad would qualify as an OTC, as would a United Kingdom principal company with subsidiaries carrying on business abroad, whether or not the latter were managed and controlled in the United Kingdom. These are clear-cut cases presenting no difficult problems since the income is clearly derived from overseas sources.

The cases which did present a problem were those where goods were manufactured in the United Kingdom and sold abroad. The Royal Commission proposed that the OTC provisions should apply to export merchants or agents dealing with United Kingdom manufacturers on a normal commercial basis and also to subsidiary companies formed by manufacturers to handle export sales. In these latter cases the Commission recognised that it would be difficult to ensure that the transactions between principal and subsidiary were carried out on an arms-length basis so that the profits of the subsidiary were not artificially inflated.

The Legislation

In the Finance Act, 1957, an OTC is defined as a company resident in the United Kingdom which —

(a) is carrying on a trade outside the United Kingdom, or

(b) is a principal company not itself carrying on a trade but having a subsidiary company which is an OTC and which is carrying on a trade outside the United Kingdom, and
(c) is not subject to any of the disqualifications listed below.

But a principal company cannot be an OTC under (b) if it has a subsidiary company resident in the United Kingdom which is not an OTC.

A company is deemed to be a subsidiary of another company if more than one-half of its ordinary share capital is owned, directly or indirectly, by that other company.

The disqualifications are as follows:—

(1) The company's activities in the United Kingdom, leaving out of account the central management and control of its trade, must not by themselves amount to the exercise of a trade, but a company producing commodities overseas of a kind bought and sold by agents or brokers in a recognised market in the United Kingdom may still effect sales in that manner.

(2) A company which purchases goods exported or to be exported from the United Kingdom for sale overseas shall not qualify if —

(a) delivery of the goods is taken in the United Kingdom otherwise than on board a ship or aircraft in which they are exported,

or

(b) the seller does not bear the whole of the insurance, commission and other charges and expenses incidental to the delivery of the goods on board,

or

(c) the company provides any services in respect of, or (apart from paying the purchase price) incurs any charges for insuring, preserving, warehousing, transporting or otherwise dealing with, the goods while they are in the United Kingdom.

The object of this provision is to ensure that the United Kingdom cannot be accused of subsidising exports by means of this scheme.

(3) The company's trade must not consist of or comprise banking, the lending of money or the provision of the capital or credit facilities required for entering into hire-purchase agreements with the public, dealing in securities, insurance, shipping or air transport.

(4) The trade must not be one where the trading receipts wholly or mainly consist of payments which are either—

(a) payments for the services of individuals who are ordinarily resident in the United Kingdom, being services of a kind ordinarily performed by individuals in the course of a profession or vocation,

or

(b) payments in respect of, or of copyright in, any literary, dramatic, musical or artistic work the author of which is ordinarily resident in the United Kingdom.

(5) The company should not receive in respect of the use of "property" (including rights), wherever situate, owned by it or at its disposal, payments from some other person who is carrying on a trade wholly or partly within the United Kingdom and who may deduct those payments in computing the profits or gains or losses of that trade. This shall not apply, however, to payments which constitute investment income of the recipient company, and, if a company so elects, any such payment shall be treated as investment income.

(6) The profits arising from the whole of the trade carried on by the company must be chargeable in an overseas country to some tax similar in character to income tax or profits tax in the United Kingdom, or would be chargeable in one ore more overseas country to tax of a character and scope corresponding in all respects to income tax if in every country outside the United Kingdom such a tax were charged on the profits arising from any trade exercised within the country by either a resident or a non-resident.

(7) The company must not be carrying on a trade in the Republic of Ireland.

No option was given at first to decide whether they wished to be OTCs or not, and in certain cases, this could be disadvantageous. For example, a United Kingdom comapny operating abroad might have losses or depreciation allowances to be carried forward in respect of which it could not obtain relief if it were an OTC. As the provisions were intended to grant relief and not to impose an additional charge an amendment was introduced which permits companies which have never been OTCs to elect not to qualify. In addition, companies which have qualified as OTCs may apply for a direction that they should not qualify in future, and this will be granted provided certain revenue-guarding provisions are satisfied. A company may revoke an election or have a direction withdrawn with effect from 6th April in any year.

Comparison with Royal Commission Proposals

The recommendation that a company should no longer be subject to tax on all its profits merely because its management and control is in the United Kingdom has been implemented but the other recommendations have been adopted only in a limited form. Whereas, for example, the Royal Commission proposed that a parent company with subsidiaries carrying on business abroad should be included, the Act extends relief only to United Kingdom parent companies with subsidiaries *resident in the United Kingdom* carrying on business abroad. Strong representations have been made and continue to be made, in Parliament and outside, concerning this defect in the legislation. It has been pointed out that the former practice of a company operating a business overseas through a board of directors sitting in London is now obsolete. Modern trading conditions and national susceptibilities require that a subsidiary should be formed under the laws of the overseas country and that it should be managed and controlled there. Indeed in some cases it is illegal to carry on business in any other way. A United Kingdom parent company which desires to reinvest dividends received from a foreign controlled subsidiary trading overseas in another such subsidiary should be able to do so without having the amount available for reinvestment reduced by a United Kingdom tax charge, but it will not be able to do so unless this defect is removed.

As regards the export of goods manufactured in the United Kingdom, the Act is quite reasonable. An exporting company resident in the United Kingdom can qualify if its trade is carried on outside of the United Kingdom, if it complies with the rules laid down regarding liability to tax overseas. The aim is that exemption should be granted in respect of profits arising from genuine trading within an overseas country.

Detailed Provisions of the Act

Income Tax

An OTC's business is treated as if it were carried on outside the United Kingdom by a non-resident, and consequently the trading income is exempt from tax. Any investment income received is not exempt.

When dividends are paid by the OTC out of exempt trading income the company has to pay tax on an amount representing the amount paid to the shareholders grossed up at the standard rate of income tax for the year of assessment in which the dividend is paid. Double taxation relief is allowed as appropriate.

In order to determine the extent to which a dividend is paid out of exempt trading income it is necessary first to relate the dividend to an accounting period or to accounting periods and then to determine whether it was paid out of trading income of those periods.

Dividends and Accounting Periods

A dividend which is expressed to be paid for a period and is declared not more than twelve months after the end of that period is related in the first instance to that period. Other dividends are related in the first instance to the last period for which accounts were made up and ending before the date of payment of the dividend.

If the amount of a dividend, grossed up as explained above, exceeds the amount of income of the period to which it is in the first instance related which remains undistributed, the excess is related in the next instance to the previous period, and so on.

Dividends and Trading Income

If the income of a period consists wholly of exempt trading in-

come the position is clear, but where there is other income, dividends are regarded as having been paid proportionately out of each type of income.

Deduction of tax from dividends

OTCs are entitled to deduct tax from dividends paid at the standard rate for the year of assessment in which payment takes place. Shareholders resident in the United Kingdom who are entitled to repayment of tax (e.g. on account of personal allowances etc.) will be repaid, however, only at the net rate of tax paid by the company (i.e. the standard rate less the double taxation relief rate).

Non-resident shareholders may also claim repayment in respect of all dividends received from OTC's, again at the net rate of tax paid by the company. It is hoped that this will encourage a flow of overseas capital into these companies.

Profits Tax

OTCs are also exempt from Profits Tax in respect of their trading income but any shareholders who are subject to Profits Tax must include dividends received from OTCs in their taxable profits and may claim double tax relief for overseas tax paid by the OTCs on profits out of which the dividends were paid.

In this case, the Act is an improvement on the Royal Commission recommendation in two respects: —

(a) by granting exemption where shareholders are not subject to Profits Tax, e.g. because they are not companies or are non-resident;
(b) by deferring the payment of Profits Tax until dividends are paid to shareholders who are chargeable to that tax.

Miscellaneous Provisions

The full OTC legislation comprises fourteen Sections and five Schedules, and it is possible in the space available to mention briefly only the more important of the miscellaneous provisions.

(1) A company's status is determined annually for each year ending 5th April, and a company which has been in existence and resi-

dent in the United Kingdom throughout a year qualifies only if all the conditions are satisfied throughout the year. This rule is modified in the case of companies which have been in existence or have not been resident in the United Kingdom for a full year.

(2) If a company would qualify as an OTC but for some event over which it had no control or some act done by it inadvertently, and obtained no material advantage therefrom, then that event or act may be disregarded.

(3) The Royal Commission's point regarding artificial transactions between United Kingdom manufacturers and exporters has been met by giving the authorities power to adjust profits (whether or not the parties are associated) to the amounts they would have been if the transactions had been carried out on a normal commercial basis.

(4) In order to prevent avoidance of tax by the making of grants or loans instead of the payment of dividends it is provided that in certain circumstances grants or loans to associated persons, or made by director-controlled companies, may be treated as if they were dividends. It is also provided that where a company capitalises profits and then reduces its capital, or vice versa, the amount applied in reducing the capital may be treated as a dividend.

(5) Other provisions deal with the position where an OTC winds up, ceases to trade or ceases to be an OTC.

How OTCs fit into the United Kingdom tax system

The positions for United Kingdom tax purposes of different forms of organisation may now be considered.

(1) A company which is managed and controlled in the United Kingdom, but which does not qualify as an OTC, is resident and is taxable on all its profits no matter where they arise.

(2) A company which is managed and controlled in the United Kingdom having a subsidiary company which is managed and controlled elsewhere is taxable only on dividends received from the subsidiary. The subsidiary itself is non-resident and is not taxable in respect of overseas income.

(3) A company which is managed and controlled in the United Kingdom and which qualifies as an OTC is exempt from Income Tax and Profits Tax as has been explained above but has to pay Income Tax on the gross amount of any dividends paid.

(4) A company not itself carrying on a trade which is managed and controlled in the United Kingdom and has a subsidiary company which is also managed and controlled in the United Kingdom and which qualifies as an OTC may itself qualify as an OTC and is not subject to tax on any dividends received from the subsidiary. Repayment may, therefore, be claimed in respect of any tax deducted by the subsidiary on payment of the dividends. If the parent company declares a dividend Income Tax is payable on the gross amount paid.

It may be asked why a company should retain its United Kingdom residence status or form a subsidiary which is an OTC when it might instead transfer its management and control abroad or form a subsidiary which is managed and controlled abroad. There may be a number of reasons for this—

(i) A company resident in the United Kingdom cannot, without Treasury consent, cease to be resident or transfer its trade or business, or any part of its trade or business, to a non-resident.

(ii) There may be commercial or political reasons for preferring to trade through a company managed and controlled in the United Kingdom rather than overseas.

(iii) The overseas business may be carried on in a number of countries, in none of which is it large enough to warrant the formation of a local company. In this case an OTC could be formed to carry on all the activities.

Conclusion

The OTC scheme is a constructive and practical compromise. It is an attempt to reconcile the views of those who believe that overseas income should be given special consideration and those who believe that it should be taxed in exactly the same way as any other income.

Different countries have approached the problem and tried to

solve it in different ways. It is the subject of debate wherever businessmen and tax administrators meet to consider common problems. The controversy is closely connected with the relationship between the highly industrialised nations and those which, in varying degrees, are less highly developed.

Considerable progress has in fact been made since countries claimed the right to tax all income accruing to residents, without taking any account of taxes paid overseas on that income. It is now generally accepted internationally that income should bear in total no more than the higher of the taxes of the two countries concerned, and that the prior claim to tax lies with the country within whose jurisdiction the income arises. Perhaps we shall see within the next decade the acceptance of the principle that such countries have not only the prior right but the sole right to tax the income.

II

SURVEYS OF TAX LEGISLATION
APERCUS DE LEGISLATION FISCALE

AUSTRIA

Period from January 1st, until February 28th, 1958

General

Bundesgesetz vom 12. Dezember 1957, betreffend das Bundesfinanzgesetz für das Jahr 1958. BGBl. für die Rep. Oesterreich, 2.1.1958, p. 1.

Finanzausgleichsnovelle 1958, B.G. Bl. f. die Rep. Oesterreich,

BELGIUM

Period from January 1st, until February 28th, 1958

Impôts sur les revenus

Arrêté royal du 4.11.57 modifiant l'arrêté royal du 22.9.1937, d'exécution des lois coordonnées relatives aux impôts sur les revenus. Mon. Belge 16.1. 1958, p. 321 et 8.2.1958, p. 773.

Taxes assimilées au timbre

Arrêté royal du 8. 1958 modifiant l'arrêté royal du 11.3.1953 majorant le taux de la taxe de transmission à l'importation. Mon. Belge, 12.1.1958 p. 224.

Douanes et accises

Arrêté royal du 31.1.58 relatif au tarif des droits d'entrée. Mon. Belge 8.2.58, p. 776.

Arrêté ministériel du 27.1.58 modifiant le tableau des bandelettes fiscales pour tabacs. Mon. Belge 1.2.1958, p. 621.

Matières diverses

Arrêté royal du 13.1.58 modifiant l'arrêté royal du 15.3.1940 concernant la taxe de circulation sur les véhicules automobiles. Mon.Belge 2.2. 1958 p. 637.

FRANCE

Period from January 1st, until February 28th, 1958

Conventions

Décret no. 58-140 du 11.2.58 portant publication de la convention franco-américaine du 22.6.56 complétant les conventions du 26.7.1939 et du 18.10. 1946 tendant à éviter les doubles impositions, modifiées et complétées par le protocole du 17.5.1948. J.O. 14.2.58, p. 1636.

Loi no. 58-184 du 21.2.58 autorisant le Président de la République à ratifier la convention signée à Paris, le 8.2.57, entre la France et le Danemark, en vue d'éviter les doubles impositions en matière d'impôts sur les revenus et sur la fortune et de régler certaines questions en matière fiscale. J.O. 22.2.58, p. 1924.

Impôts sur les revenus

Décret no. 58-99 du 31.1.58 portant abrogation de l'article 109 de l'annexe III du code général des impôts. J.O. 6.2.58, p. 1388.

Chiffre d'affaires

Loi no. 58-107 du 7.2.58 relevant les chiffres d'affaires limites fixés aux articles 50 et 53 du code général des impôts. J.O. 8.2.58, p. 1443.

Décret no. 58-130 du 10.2.58 modifiant et complétant les dispositions du décret no. 57-911 du 10.8.57 J.O. 12.2.58 p. 1579

Décret no. 58-131 du 10.2.58 relatif à l'application des taux majorés des taxes sur le chiffre d'affaires. J.O. 12.2.58, p. 1579.

Taxes assimilées au timbre

Loi no. 58-75 du 31.1.58 tendant à appliquer le demi-tarif du droit de timbre de dimension aux actes rédigés sur une seule face de paper. J.O. 1.2.1958, p. 1155.

Taxes de consommation

Arrêté du 5.2.58 relatif aux conditions d'application aux stocks de gasoil dédouanés des modifications du taux de la taxe intérieure de consommation prévues par le décret no. 57-1317 du 27.12.57, J.O. 8.2.58, p. 1454.

Droits de douane

Arrêté du 31 décembre 1957 portant fixation pour l'année 1958 du contingent et des conditions d'importation en suspension du droit de douane de certaines graisses et huiles de baleine. J.O. 1.1.1958, p. 107.

Arrêté du 31 décembre 1957 portant fixation pour le premier semestre 1958 du contingent et des conditions d'importation en suspension du droit de douane d'importation de la dolomie fritée (no. 25-18 Ab du tarif des droits de douanes d'importation). J.O. 1.1.1958, p. 108.

Arrêté du 31 décembre 1957 portant fixation pour le premier semestre 1958 du contingent et des conditions d'importation en exonération du droit de douane du fil machine d'un diamètre compris entre 4,5 mm et 5,5 mm et ayant une teneur en carbone comprise entre 0,62 p. 100 et 0,74 p. 100 (ex. no. 73-15 A IV B 1 du tarif douanier). J.O. 1.1.1958, p. 109.

Décret no. 57-1316 portant modification du tarif des droits de douane d'importation (rectificatif) J.O. 4.1.1958, p. 176.

Décret no. 58-12 du 11.1.1958 portant rétablissement de la perception des droits de douane d'importation applicables à certaines tôles dites „magnétiques". J.O. 12.1.1958, p. 501.

Décret no. 58-13 du 11.1.1958 portant suspension provisoire de la perception du droit de douane d'importation sur certains produits. J.O. 12.1.1958, p. 501.

Décret no. 58-49 du 23.1.58 portant suspension des droits de douane d'importation sur les pommes de terre autres que de semence, à l'exception des primeurs, J.O. 24.1.58, p, 868.

Décret no. 58-88 du 3.2.58 portant modification du tarif des droits de douane d'importation en ce qui concerne certains produits sidérurgiques. J.O. 3/4.2.1958, p. 1322.

Décret no. 58-89 du 3.2.58 autorisant la perception de droits de douane compensateurs sur certains produits sidérurgiques non originaires mais en provenance d'un Etat membre de la Communauté européene du charbon et de l'acier. J.O. 3/4.2.1958, p. 1325.

Décret no. 58-110 du 7.2.58 portant modification du tarif des droits de douane d'importation. J.O.8.2.58, p. 1453.

Décret no. 58-123 du 10.2.58 portant suspension provisoire du droits de douane d'importation applicable à certains poissons de mer importés en Algérie. J.O.10/11.2.58, p. 1545.

Décret no. 58-159 du 19.2.58 portant rétablissement de la perception du droit de douane d'importation sur certaines catégories d'hélicoptères. J.O. 20.2.58, p. 1861.

Décret no. 58-173 du 20.2.58 portant suspension provisoire de la perception du droit de douane d'importation applicable à l'oxyde de germanium (no. 28-28 II du tarif douanier). J.O. 21.2.58, p. 1897.

Matières diverses

Décret du 8.1.1958 approuvant la délibération no. 28/57 du 21.6.1957 du conseil général des territoires des îles Saint-Pierre et Miquelon modifiant l'arrêté du 22.8.1945 créant divers impôts sur le revenu. J.O. 9.1.1958, p. 343.

Loi no. 58-162 du 20.2.58 exonérant certaines institutions de prévoyance de la taxe unique sur les conventions d'assurances. J.O. 21.2.58, p. 1891.

GERMANY

Period from January 1st, until February 28th, 1958

Income tax

2. Verordnung vom 7.2.58 zur Änderung der Einkommensteuer-Durchführungsverordnung. BGBl. I, 11.2.58, p. 70.

Equalization of burden law

Erste Verordnung vom 30.12.57 zur Änderung der 13. Durchführungsverordnung über Ausgleichsabgaben nach dem Lastenausgleichsgesetz, BStBl. I, 30.1.58, p. 22.

Customs

20.12.57 - Verordnung über die vertragsmässige Zollbehandlung als Saatgut anerkannter Kartoffeln (Nr. 07.01 Abs. F des Zolltarifs). BGBl I, 4.1.1958, p. 1.

20.12.58 - Verordnung über die vertragsmässige Zollbehandlung von Gemüsesamen (Nr. 12.03 des Zolltarifs). BGBl. I, 4.1.1958 p. 2.

2.1.58 - Verordnung zur Anpassung von Verbrauchsteuergesetzen und von Durchführungsverordnungen zu Verbrauchsteuergesetzen an den Zolltarif 1958. BGBl. I 4.1.1958, p. 3.

16. Verordnung vom 18.1.58 über Zolltarifänderungen zur Durchführung des Gemeinsamen Marktes der Europäischen Gemeinschaft für Kohle und Stahl (Überleitung in den Deutschen Zolltarif 1958). BGBl., I, 27.1.58, p. 66.

17. Verordnung vom 10.2.58 über Zolltarifänderungen zur Durchführung des Gemeinsamen Marktes der Europäischen Gemeinschaft für Kohle und Stahl (Harmonisierte Eisen- und Stahlzölle). BGBl. I, 14.2.58, p. 85.

LUXEMBOURG

Period from January 1st, until February 28th 1958

Droits de douane

Arrêté ministériel du 10.2.8 relatif au tarif des droits d'entrée. Mémorial du G-D de L. 18.2.1958. No. 9. p. 1291.

The NETHERLANDS

Period from January 1st, until February 28th, 1958

Income tax

Act of 6.2.58: Temporary extension of the period during which no investment allowance is granted and temporary extension of the initial depreciation allowances. Stbl. Nr. 56.

Property tax

Act of 6.2.58: Temporary increase of property tax. Stbl. Nr. 57.

Turnover tax

Decree of the Minister of Finance of 29.1.58: Exemption from import duties and turnover tax for goods of educational, scientific or cultural character. Ned. Stscrt. 30.1.58, p. 9.

Royal decree of 4.2.58 amending the Royal decree of 21.12.1954 re merchandizes for which the turnover tax for import is increased. Stbl. Nr. 51.

Act of 6.2.58 for temporary increase of turnover tax on some goods. Stbl. Nr. 52.

Royal Decree of 6.2.58: determining the time of the coming into force of aforementioned Act (Stbl. Nr. 52) for temporary increase of turnover tax for some goods. Stbl. Nr. 53.

Decree of the Minister of Finance of 7.2.58: Amending the regulations concerning refund of turnover tax. Ned. Stscrt. 7.2.58, p. 11.

Decree of the Minister of Finance of 7.2.58: Transitional regulation re turnover tax February 1958. Ned. Stscrt. 7.2.58, p. 11.

Decrees of the Minister of Finance of the 3.2.58 and 28.2.58 supplementing the decree of 1957 concerning turnover tax on tyres. Ned. Stscrt. 5.2.58 & 28.2.58, p. 2 & p. 14.

Royal decree of 6.2.58: amending the regulations for turnover tax 1954. (Stbl. 560) Stbl. Nr. 54.

Excise duties

Royal decree of 6.2.58 amending the royal decree of 16.3.1922 to carry out some provisions of the tobacco Act. Stbl. Nr. 55.

Customs

Royal decrees of 4.2.58 containing some modifications as regards import duties in connection with the carrying out of the Agreement concerning the establishment of the European Community for Coal and Steel. Stbl. Nr. 49 & 50.

General

Act of 12.2.58 re temporary provisions in the field of taxation to facilitate recapitalization of profits. Stbl. Nr. 75.

CANADA

Canada plunged into deficit financing when Mr Donald Fleming, the Finance Minister, announced assorted and limited tax cuts some days ago. He put the cost at $ 26 million in the fiscal year to March 31st next.

For the next full year these modest tax reductions will cost $ 178 million. At the same time, Mr. Fleming estimated the cost of increased Government expenditure at $ 210 million for the present fiscal year.

The figure includes extra pensions and relief payments which are in effect only from November 1st or for five months of the present fiscal year. They will cost nearly $ 510 million in the coming full year.

Mr. Fleming was thus able to announce that he expects to end the present fiscal year with a surplus of $ 80 million, but the outlook for his first full annual budget next spring points incontrovertibly to a deficit.

Limited tax reductions, possibly at a cost of less than $ 200 million in the full year, were unexpectedly spread rather thinly over both personal and corporate income taxes.

Personal income tax will be reduced only by increasing the allowances claimable for dependants from $ 150 to $ 250 per year. Even this will cost $ 60 million in a full year. But the public had half expected tax-free allowances above the present level of $ 1,000 for unmarried people and $ 2,000 for married couples.

The reduction in the corporate income tax is designed primarily to benefit small companies which pay only 20 % on their taxable income instead of 47 %. The limit for the 20 % rate used to be $ 20.000. It has now been raised to $ 25,000. This also brings a small advantage to bigger companies since they benefit from the low rate on the first $ 25,000 of taxable income, thus reducing income tax by $ 1,350.

Source: *Taxation*, December 21st., 1957

FRANCE

Rétablissement de l'équilibre financier

La loi tendant au rétablissement économique et social et qui fut publiée au Journal Officiel du 14 décembre 1957, comprend les impôts suivants:

Prélèvement temporaire de 20 p. 100 sur les suppléments de bénéfices

1. — Les entreprises industrielles et commerciales et les sociétés sont soumises à cet impôt.

2. — Ce prélèvement est non déductible pour l'établissement de la taxe proportionnelle, ou de l'impôt sur les sociétés.

3. — Les suppléments de bénéfices soumis à ce prélèvement temporaire de 20 % sont déterminés par la comparaison des deux termes suivants:

a. Le bénéfice net total de l'exercice ou des exercices clos en 1957, avant déduction de l'impôt sur le revenu (ou de l'impôt sur les sociétés, et avant déduction du versement exceptionnel de 2 % sur les réserves loi du 20 aout 1956, et décret d'application du 20 mars 1957);

b. Au choix des entreprises:
soit, la MOYENNE DES BENEFICES NETS des deux meilleurs des exercices clos entre le 1er janvier 1950 et le 31 décembre 1956;
soit le BENEFICE NET de l'exercice clos en 1956;
soit une somme représentant l'INTERET DE 6% DES CAPITAUX INVESTIS, augmentée, s'il y a lieu, de la rémunération normale du travail de l'exploitant.

Rappelons qu'un prélèvement temporaire de 20% a dèjà été perçu sur les suppléments de bénéfices de 1956 (loi du 2 août 1956, décret d'application du 20 mars 1957). Mais les suppléments de bénéfices étaient calculés par rapport a une autre période de référence.

Le prélèvement sera porté à 45%, en ce qui concerne:

1. — Les banques, les établissements financiers et les organismes publics et semi-publics de crédit, pour la partie de leurs bénéfices résultant de la hausse du faux de l'escompte (décision du 11 avril 1957).

Ce sera aux banques de prouver que telle partie de leurs suppléments de bénéfices ne résulte pas du rélèvement de ce faux.

2. — Les entreprises effectuant des fournitures militaires ou travaillant pour la défense nationale en ce qui concerne la partie, évaluée le cas échéant forfaitairement, des marchés passés par ces entreprises afférente à des besoins exceptionnels créés par les opérations de pacification en Algérie.

Versement de 2 p. 100 sur les réserves des sociétés.

Les personnes morales passibles de l'impôt sur les sociétés sont assujetties à un versement égal à 2% du montant de leurs réserves autres que les réserves légales et les réserves de réévaluation, le montant de ce versement étant imputable, le cas échéant, sur le droit d'enregistrement exigible lors de l'incorporation au capital desdites réserves.

Rappelons que les sociétés ont déjà été soumises en 1957 à un tel versement de 2% sur leurs réserves.

Pénalisation des non-rapatriements de devises.

Les détenteurs de tous avoirs, devises, ou créances sur l'étranger qui n'avaient pas rapatriés, à la date du 10 août 1957, leurs devises dans le délai prevu par la réglementation des changes, n'ont pas droit au versement de 20% sur les exportations.

Les bénéficiaires devront reverser ces 20%, s'ils les ont déjà perçus, et ils pourront, en outre, être condamnés à des pénalités pour le retard apporté à la vente de leurs devises.

Des arrêtés ultérieurs détermineront les modalités d'application de ce texte.

Augmentation de la T.V.A.

Le gouvernement aura le droit, par décret, de porter le taux de la T.V.A. à 27,5% et le taux de la taxe sur des prestations de services à 15,5%.

La T.V.A. et la T.P.S. seront ainsi majorées pour les articles et les services qui ont déjà fait l'objet d'une mesure analogue le 1er août dernier (appareils électro-ménagers, scooters, radio et télévision, salon de coiffure, etc.).

Les ventes faites par les artisans fiscaux sont soumises, au lieu et place de la taxe sur la valeur ajoutée au taux majoré et en addition à la taxe locale sur le chiffre d'affaires, à la taxe sur les prestations de service au taux maximum de 7,5%.

Toutefois, dans ce dernier cas, le montant de la taxe acquittée ne pourra en aucun cas être supérieur, compte tenu du supplément de taxe sur la valeur ajoutée déjà acquitté sur les matières premières, au montant de la majoration, de la taxe sur la valeur ajoutée et de la taxe sur les prestations de ser-

vices acquittée du fait de la vente de produits similaires par les entreprises soumises au régime général de la taxe sur la valeur ajoutée et de la taxe sur les prestations de services.

Des allégements de la charge supplémentaire résultant de la majoration de la T.V.A. et de la T.P.S. pourront être accordés compte tenu des résultats obtenus en matière d'exportation vers l'étranger.

Majoration de 10 p. 100 des droits de timbre.

Cette mesure sera prise par décret. Le gouvernement aura le droit d' « arrondir », dans la limite du quart de cette majoration les tarifs actuels.

Imposition de certaines dépenses somptuaires.

Le gouvernement instituera par décret, après consultation des organisations professionnelles, un régime forfaitaire de détermination, du montant des frais et charges admis en déduction pour le calcul du bénéfice net. Il sera tenu compte de la nature de l'activité de l'entreprise et de la proportion de ses ventes à l'exportation.

Le gouvernement pourra, le cas échéant, exclure entièrement de cette déduction certaines dépenses ou charges de caractère somptuaire.

La décote sur stocks.

Le même *J.O.* du 14 décembre publie un décret concernant le nouveau régime de la décote. Nous avons, par avance, donné l'analyse de ce texte dans notre numéro précédent (« *Vie Francaise* », du *13 décembre, page économique*).

Les autres dispositions de la loi.

La loi sur le rétablissement de l'équilibre économique et financier comprend un certain nombre d'autres dispositions de caractère non fiscal. Les plus importantes sont les deux suivantes:

1. — VERS UNE SIMPLIFICATION DES FORMALITES IMPOSEES AUX EXPORTATEURS.

Le gouvernement pourra, par décret pris avant le 30 juin 1958, réorganiser les services du commerce extérieur et simplifier les formalités imposées aux exportateurs.

2. — REPRESSION DES HAUSSES ILLICITES DE PRIX.

Le gouvernement pourra prendre des décrets pour réprimer les hausses illicites de prix. Ces textes pourront donner au procureur de la République, lorsque l'infraction revétira un caractère de gravité, le pouvoir d'ordonner la fermeture immédiate des établissements du délinquant ou de la personne physique ou morale pour le compte de laquelle le délit a été commis, sous condition que la décision soit soumise dans un délai de deux jours au tribunal qui l'infirmera ou la maintiendra provisoirement jusqu'au prononcé du jugement sans que la durée de la fermeture puisse dépasser trois mois.

La décision du tribunal ne sera pas susceptible d'opposition; elle pourra être attaquée par la voie de l'appel, dans les cinq jours du prononcé de la décision.

La cour statuera dans le délai d'un mois de l'appel.

En cas de pourvoi en cassation, ce pourvoi ne sera pas suspensif.

Source: *La Vie Francaise*, December 20th, 1957

Accelerated depreciation in favour of exporting industries.

Article 39-1-20 of the Code Général des Impôts grants a special deduction to the depreciation of fixed assets in case an enterprise regularly producing goods in France intended for sale abroad. Corresponding with this legal pro-

vision a Ministerial rule of October 26th, 1957 states that under certain circumstances and conditions an accelerated depreciation will be allowed on behalf of such enterprises. The conditions to be complied with are:

1. the enterprise concerned must be an industrial enterprise, i.e. an enterprise which either manufactures in the proper sense of the word (such as mines, textile mills, chemical works, engineering works, distilleries) or transforms products into other products (such as printings, clothing industries, public works).
2. the enterprise concerned must be in possession of the "exporters licence" as granted by a special commission.

If an industrial enterprise combines its activities with commercial transactions the accelerated depreciation will be granted only in case the turnover from industrial activities is at least 50 % of the total turnover.

Fiscal assets

Subjects of the accelerated depreciation are fixed assets, such as buildings, machinery, equipment, in fact all the assets which are normally the subject of depreciation.

Computation of the amount of the accelerated depreciation

The normal annual depreciation shall be increased by the same percentage but in the proportion which the export turnover bears to the total turnover. The accelerated depreciation shall be applied separately to any depreciable asset.

Example.

Company X, an industrial enterprise, having fulfilled the two conditions as mentioned above, has a total turnover (before taxes) of 250 million Francs. The export turnover amounts to 100 million Francs. The normal annual depreciation amounts to 10 million Francs. The accelerated depreciation is computed as follows:

$$\frac{10 \text{ mill. Fr.} \times 100 \text{ mill. Fr.}}{250 \text{ mill. Fr.}} = 4 \text{ mill. Francs.}$$

Administrative requirements

If an enterprise has closed the financial year and made use of the accelerated depreciation on its fiscal assets it must report to the Tax Authorities the methods of computation of this depreciation together with a justification of the right of using the accelerated depreciation, as granted by Ministerial Rule.

Enterprises may make use of the accelerated depreciation in the financial year ending after the date of their application for an "exporters' licence".

A reasonable elasticity has been introduced by the Tax Administration as regards the enforcement of the enacted rulings concerning the permission to apply depreciation.

WESTERN GERMANY

Proposals for a tax reform

The Federal Government of Western Germany has introduced a Bill-dated February 6th, 1958 — Parliament in order to alter the taxes (Steueränderungsgesetz 1958).

The tax reform embraces a large part of German taxation law.

The most important proposals are:

1. A new provision for the levying of income tax on married persons, as

the Bundesverfassungsgericht (Supreme Court) held that it is contrary to the Constitution to add the income of husband and wife for taxation purposes.

This Bill introduces the so-called "splitting"-system. That means that the income of husband and wife will be added in the first place and then the sum total will be halved afterwards. The tax table will be applied to this result and finally the tax amount, which has been found in this way is to be doubled again. The "splitting"-system is also applicable if the wife has no income of her own.I t will be clear that this system grants a progression benefit. The Bill does not render it possible to be assessed separately as in the case of the U.S. tax system, which has embodied the "splitting"-system for a considerable time.

2. The tax free minimum will be raised to 1680 DM (single) and 3360 DM (married).

3. A proportional tax rate of 20 % will be applicable to single persons whose incomes do not exceed 8000 DM and married persons who do not receive more than 16.000 DM. The maximum marginal rate of tax will be lowered to 53 % (now: 55 %).

4. Child deductions will be given as follows:
for the first child 900 DM (now: 720 DM)
for the second child 1680 DM (now: 1440 DM)
for the other children 1800 DM each child (now 1440 DM).

5. An old-age relief of 360 DM has been proposed for taxpayers who are seventy years of age and older.

6. The wage tax will be the final tax if the other income from employment does not exceed 800 DM (now: 600 DM) a year and the total income does not exceed 16.000 DM a year.

7. Taxpayers who receive income from movable capital such as dividends, interest, etc. may deduct an amount fixed by law as costs, without obligation to furnish proof that the costs are actually incurred. This fixed amount is 150 DM for single persons and 300 DM for married persons.

8. The tax facilities for house construction will be somewhat restricted as from January 1st., 1959.

9. The so-called degressive depreciation (that means depreciation calculated on the book value) will be restricted by law, i.e. a provision will be introduced which limits the depreciation to 2.5 times the amount of straight-line depreciation with a maximum of 25 %. It is allowed to change from the degressive system of depreciation to the straight line method.

The meaning of this restriction of degressive depreciation is to restrict the self financing of businesses.

10. The evaluation freedom of imported goods will be restricted.

11. The measures to stimulate saving will be altered, in particular facilities will be granted for saving in the form of life-insurance or in favour of building houses.

12. The fixed amount of the "Sonderausgaben" (personal expenses such as life-assurance permiums, alimony, etc.) which may be deducted without rendering proof that the expenses are actually incurred, will be raised from 624 DM to 638 DM.

13. The rate of the Corporation Profits Tax for distributed profits will be lowered to 11 % (now: 30 %); the general rate will be raised from 45 % to 47 %. The "Notopfer Berlin" will be maintained for juridical persons. The so-called "Umsatzsteuer" (rate 15 %) which is levied under certain circumstances will be raised to 36 % to off set for a part the lowering of the rate for distributed profits from 30 % to 11 %.

14. As regards the Property Tax some measures will be taken which are meant to stimulate the formation of property.

15. The rate of the Gesellschaftsteuer will be lowered from 3 % to 1,5 %,

the „Wertpapiersteuer" will be lowered from 30 Pf. per 10 DM to 15 Pf. per 10 DM when acquiring rights in a foreign joint stock company.

The alterations will come into force generally as from January 1st., 1958.

It is thought that the new acts will be published in June of this year.

From "Bundesrat-Drucksache, zu 41/58" appears that more tax revisions are anticipated; among other things those revisions will concern the evaluation taxes for landed property, the "Gewerbesteuer" and the "Umsatzsteuer".

INDIA

New Taxes

In the course of 1958 two taxes will take effect in India, which are of great interest both in practial as well as in theoretical respect.

a) *Wealth tax*

The Wealth Tax will be levied on the *net* wealth of individuals, Hindu undivided families and companies. Exempt are residential houses, household utensils, articles intended for personal use, implements and tools for professional use etc. The rates differ for individuals, Hindu undivided families and companies. For individuals the first 2 lakks of net wealth are exempt from the Wealth Tax, for Hindu undivided families the first 4 lakks of net wealth and for companies the first 5 lakks of net wealth.

b) *Expenditure tax*

The Expenditure Tax shall be charged on expenditure incurred by an individual or a Hindu undivided family in the previous year. No tax shall be charged if the income of the assessee during the previous year reduced by the amount of taxes, does not exceed Rs 36.000.

NETHERLANDS

Investment allowance

The investment allowance which has been suspended as from November 6th, 1956 will continue to be suspended during 1958. Only for international shipping and international air transport has the investment allowance been revived, because of international competition in this field (Act of February 8th, 1958, Stbl. 56).

Accelerated depreciation

The accelerated depreciation (initial allowance) of one-third of the costprice which had to be spread over at least 4 years and which would have been discontinued as from January 1st., 1958 has been maintained for the year 1958; the Minister has been empowered to limit the amounts of the accelerated depreciation to 5% of the costprice per annum, which means that in such a case the amounts have to be spread over at least 7 years (Act of February 8th, 1958, Stbl. 56).

Property tax

The rate of the Property Tax will be increased temporarily from *f* 2.50 for each *f* 500.— of taxable property to *f* 3.— for each *f* 500.— of taxable property. (Act of February 6th, 1958, Stbl. 57).

Sales tax

For a number of goods the rates of the sales tax have been increased as from February 10th, 1958.

PERU

Proposed increase of tax rates

The Ministry of Finance has presented to the Chamber of Deputies six Bills by which new taxes and increase of the existing ones are to be effected: These are in short:

1. From 15% to 20% increase of the rate of complementary tax on dividends from bearer shares; from 13% to 18% of the rate of the same tax on dividends for nominate shares belonging to non-residents, as well as on income from liberal professions, remuneration of services, interests, and letting of property, collected by individuals or corporate bodies established abroad; and from 13% to 14% the rate of the same tax on profits which foreign enterprises obtain from Peruvian sources.

2. Income from land leases derived by real estate businesses as far as these are not subject to land tax, are to be taxed with the profit and excess profits tax on industrial and commercial enterprises. This means that the tax on such incomes will no longer amount to 7% but to 37%, provided the extraordinary profit does not exceed one million S/. and upto 42% in case it exceeds this amount.

3. Creation of a stamp tax on bank overdrafts in current account at 4% at the moment at which the overdraft is authorized, and of 2%/ on three monthly balances.

4. Creation of an excise duty of S/. 1.50 per gallon of fuel-oil.

5. Increase of tax for alcohol as follows: sugar cane alcohol to S/. 6.00 per liter; drinkable rums by S/. 2.50 per liter volume; beers to S/. 10.00 per liter volume; and licors imported to S/. 6,00 per liter volume.

6. Increase of rates for customs purposes for stamped paper, for the following values

Per sheet of paper
0.50 to 1.00
1.00 to 3.00
2.00 to 4.00
3.00 to 6.00
6.00 of 10.00

7. Increase in the scale for tax on foreigners, the maximum rate being at present S/. 100.00 if the income exceeds S/. 2.000.00 and is increased until S/. 1.000.00 if the income exceeds S/. 5.000.00.

The revenue of the new taxes and the increase of the existing ones will be employed in some cases to increase the ordinary expenses of the domestic budget, and in other cases to cover specific expenses such as the payment of the state quota for social security and the loan service of the International Bank of Reconstruction, for roads.

As the Chamber has already stated on previous occasions, our opinion is contrary to the increase of the actual taxes, because this represents another burden on the already heavy charges which rest on the economic activities, and also because of the repercussion on the cost of living. There is no doubt about the unfavourable repercussion because of the levies on bank overdrafts, on fuel-oil and on alcohols, not only on the cost of the merchandises but also on the general cost of living.

As regards the increase of the flat rate of the complementary tax, which is based on the necessity to harmonize the magnitude of the fiscal exigencies with that of the complementary tax at progressive rate, we believe it just to revise the progressive scale, which rates are not in relation with the actual value of our money, reaching 30% for income exceeding 100.000 Soles, which is desproportionate, especially for income from labour. This rate had been established when S/. 100.00 had a purchase power equal to S/. 350.00 now.

Besides, the revenue to be obtained from the increase, is insignificant in com parison to the total budget, and, on the other hand, the economic and cyclical repercussions may be considerable.

The Bill providing for changes of the complementary tax, considers a moderate increase in the rate of the profits of foreign companies, in accordance with the policy to stimulate the investment of foreign capital in this country. However, it does not contemplate the same treatment for dividends on nominative shares of persons residing abroad, in case of a similar situation, because in this case the foreign company is not established as a branch but as a Peruvian incorporated company, and the income of the invested foreign capital is being distributed as dividends; as regards this income proceeding from foreign investments in the country, an increase of only 1 % should also have been considered in the same way as the profits of foreign branches.

We mention specially the change in taxes to which the Bill submits the income proceeding from rents by real estate businesses, which represents, as stated previously, a heavy tax charge: This proposed modification would represent another deviation from the system of Law Nr. 7904, which is to charge with schedular taxes each category of income, without taking into account the circumstances of the person who receives it. Apart from this, when contemplating the proposed modification, the legislation which has frozen the rents, should be borne in mind, for this situation would be aggravated through a tax increase on rents, which may amount to 600 %.

It should also be taken into account that such a new levy would discourage the investments in inmovables, which have increased considerably in the last years, and which help to solve the housing problem.

Source: *Boletín Semanal de la Camara de Comercio de Lima*, October 9th, 1957

PORTUGAL

Tax concessions

Bonds issued in Portugal by foreign concerns holding concessions to operate in this country, will in future, at the discretion of the Minister of Finance, be subjected to the same tax regulations as bonds issued by domestic concerns, provided that the foreign bonds are intended to raise funds for the development of the foreign company's business in Portugal.

This tax relief is announced in a decree issued by the Ministry of Finance.

Source: *Taxation*, November 2nd., 1957.

SPAIN

Taxation

A new law of 26th December 1957 modifies the existing law of 16th December 1954. The tax free limit on earned income (Tariff I) is raised from 12,000 pesetas to 18,000 pesetas and the tax rates previously applied to a sliding scale of income are replaced by a fixed rate of 15 %. This fixed rate, however, is applicable only to the net taxable income, which, up to an annual income of 60,000 pesetas when the full amount is taxable, is a growing proportion of the total income, in accordance with the new sliding scale. The result of the new system is that in addition to the benefits obtained through the increase of the tax free limit, there are small reductions in some of the new tax groups. The rate of tax on dividends (Tariff II) is also increased in higher ranges, while the tax on capital (Tariff III) is now a fixed rate of 30 % and not, as before, based on a progressive scale. The tax on unearned income remains the same for incomes up to 2. m. pesetas per annum but after this group the new scale is extended up to a maximum of 44 % for incomes of 6m. pesetas or more. The modifications were due to become effective from 1st January 1958.

Source: *Bank of London & South America Ltd.*, January 18th, 1958

U.S.A.

Institute Tax Recommendations

One-third of the recommendations made by the American Institute's committee on federal taxation (see *Bulletin* Vol. XI p. 15) have been followed by the Treasury in the tax regulations made final so far.

The federal tax committee has been commenting to the Treasury on proposed regulations issued under the 1954 code. Another 211 recommendations made by the committee relate to regulations which are still under consideration.

Most of the Treasury's regulations-writing program is now completed, but in a few areas regulations have not yet been proposed. Among the regulations still to be proposed are: carry-overs in corporate reorganizations, inventories, installment method of accounting, and various procedural provisions.

Source: *The Journal of Accountancy*, December 1957.

III

BELGIQUE

Bénéfices qu'une société étrangère retire d'établissements situés en Belgique

(Cour d'Appel de Bruxelles, 20 juin 1956)

Taxe professionnelle. — Matière imposable. - Société étrangère. - Bénéfices retirés d'établissements situés en Belgique. - Société belge consignataire d'une société étrangère. - Détenant des marchandises en dépot. - Tenant un livre spécial d'entrées et de sorties concernant ces marchandises. - Exposant certains frais pour compte de la société étrangère et expédiant au client les marchandises vendues par celle-ci. - Faisant subir à ces marchandises des manipulations diverses. - Bénéfices retirés des ces opérations par la société étrangère. - Taxables.

Lorsqu'il est constant qu'une société établie à Bruxelles est consignataire d'une société étrangère, qu'elle détient effectivement des marchandises en dépôt appartenant à la dite société étrangère, qu'elle tient, en ce qui concerne ces marchandises en dépot, un livre spécial d'entrées et de sorties, qu'elle expose certains frais pour compte de la déposante et que les marchandises vendues sont expédiées aux clients par les soins de la dépositaire après avoir subi des manipulations diverses, il apparait que la société dépositaire constitue en Belgique un établissement de la société étrangère qui est dès lors redevable de la taxe professionnelle.

Vu la décision rendue le 23 juillet 1952 par le Directeur des contributions directes à Bruxelles (1re direction) notifiée à la société requérante par pli recommandé à la poste le même jour;

Vu le recours régulièrement déposé au greffe de cette Cour le 25 aout 1952, en même temps que l'original de sa dénonciation au Directeur précité;

Vu les conclusions des parties;

Attendu que le recours concerne les cotisations à la taxe professionnelle et à la contribution nationale de crise établies à charge de la société requérante par le 1er bureau des contributions de Bruxelles, sous les articles 11.021 et 11.002 du rôle de l'exercise 1939, par rappels de droits de 1937 et 1938;

Attendu que la société requérante n'a pas souscrit de déclaration aux impôts pour l'exercice 1937; que les cotisations relatives à cet exercice ont été établies d'office, après consultation de la Commission fiscale;

Attendu que les cotisations concernant l'exercice 1938 proviennent d'une procédure de redressement régulièrement suivie de part et d'autre;

I. — *Quant à la forclusion des cotisations de l'exercice 1937*:

Attendu que les cotisations litigieuses ont été enrôlées le 11 décembre 1939; qu'à ce moment n'était pas encore écoulé le délai extraordinaire de cotisation de 3 ans (le plus favorable à la requérante) prévu par l'article 74 des lois coordonnées relatives aux impôts sur les revenus dont pouvait se prévaloir l'Administration puisqu'il s'agissait d'une taxation d'office;

Attendu que le fait que ces cotisations ont été établies après annulation des cotisations originaires par une décision du 12 septembre 1939 est sans aucune pertinence, puisqu'en fait le délai légal accordé par l'article 74 des lois coordonnées a été respecté par l'Administration;

Attendu que les cotisations relatives à l'exercice 1937 ne sont donc pas entachées de forclusion;

II. — *Quant à la recevabilité de la taxe professionelle*:

Attendu que la société requérante prétend n'être pas redevable de la taxe professionnelle pour la raison qu'étant société étrangère, elle ne possède pas en Belgique un établissement quelconque;

Attendu qu'il résulte du rapport de l'inspecteur chargé d'instruire la réclamation, qu'il a été constaté antérieurement, lors de l'examen d'une réclamation du 13 décembre 1934, que la société en nom collectif «.....» établie à Bruxelles est consignataire de la société requérante, ce qui implique l'existence d'un dépôt en Belgique; qu'il a été également constaté que la dite société «.....» détient effectivement des marchandises en dépôt appartenant à la société requérante; qu'elle tient, en ce qui concerne ces marchandises en dépôt, un livre spécial d'entrées et sorties; qu'elle expose certains frais pour compte de la déposante et que les marchandises vendues sont expédiées aux clients par les soins de la dépositaire;

Attendu qu'aucun élément du dossier n'établit que la situation ci-avant exposée, aurait été différente au cours des années 1936 et 1937;

Attendu qu'il résulte d'une déclaration de la société (pièce 34) que les marchandises ne sont vendues en Belgique qu'après y avoir subi des manipulations diverses (finissage, tenture, apprêt, etc....);

Attendu que le détail des frais occasionnées par ces travaux figure à la pièce 8 du dossier;

Attendu que pour prendre en considération ces frais exposés par la société .....» pour compte de la requérante, l'Administration de l'enregistrement a admis, pour le calcul de la taxe de transmission forfaitaire à l'importation, une déduction de 40% sur le prix de vente moyen des marchandises;

Attendu que de l'ensemble de ces considerations, il apparaît que la société en nom collectif «.....» constituait, en Belgique, un établissement de la requérante, capable d'engager celle-ci, notamment en faisant effectuer, pour elle, des travaux de teinture et de finissage des tissus importés;

Attendue que devant cette situation de fait, il est sans pertinence que la société «.....» ait été, d'autre part, négociante autonome achetant à d'autres firmes des marchandises qu'elle vendait en Belgique; qu'en effet, la nature juridique des relations commerciales existant entre cette société et la société requérante n'est pas nécessairement identique à celle qui caractérise ses rapports commerciaux avec d'autres firmes;

Attendu que de la combinaison des articles 25, 1° - 27, §§ 1er et 4 et 70, § 2, des lois coordonnées (coordination par l'arrêté royal du 12 septembre 1936), il résulte que la taxe professionnelle atteint les bénéfices des exploitations industrielles, commerciales ou agricoles quelconques; que les bénéfices de ces exploitations sont ceux qui résultent de toutes les opérations traitées par leurs établissments ou à l'entremise de ceux-ci et que sont soumises à la taxe les sociétés étrangères ayant en Belgique un ou plusieurs établissements quelconques, tels que sièges d'opération, succursales ou agences;

Attendu qu'en reprenant sans réserves les mots « un ou plusieurs établissements quelconques tels que sièges d'opérations, succursales ou agences », « opérations traitées par leurs établissements ou à l'entremise de ceux-ci » qui figuraient déjà dans la loi du 29 mars 1906 modifiant la législation sur le droit de patente des sociétés par actions et dans celle du 1er septembre 1913 établissant une taxe sur les revenus ou bénéfices réalisés dans les sociétés par actions, le législateur de 1919 a montré qu'il continuait à leur donner le même sens que celui qu'ils avaient dans les législations antérieures (Cassation, 31 octobre 1932, J. des Trib. col. 669);

Attendu que la société requérante est donc redevable de la taxe professionnelle — et dès lors de la contribution nationale de crise perçue sur la même base — en vertu des articles 25, § 1er, 1° et 27 §§ 1er et 4 des lois coordonnées par l'arrêté royal du 12 septembre 1936, pour l'exercice 1937 et à fortiori pour l'exercice 1938 en raison des mêmes dispositions et de celles de l'article 5 § 2 de la loi du 28 juillet 1938;

Attendu que la société requérante prétend que les bénéfices imposables doivent être diminués de la part proportionnelle aux opérations réalisées en Belgique, des appointements et intérêts payés par elle en Angleterre;

Attendu qu'en vertu de l'article 27, § 4, des lois coordonnées, en ce qui concerne les étrangers opérant en Belgique, sont seules admises en déduction, à titre de frais généraux ou de frais d'administration, les dépenses de l'espèce faites dans leurs établissements belges au siège desquels doit être tenue une comptabilité spéciale de ces opérations;

Attendu que la preuve — qui ne pourrait résulter que de cette comptabilité spéciale (Feye, op. cit. no 198) — n'est ni rapportée ni offerte de ce que les appointements et intérêts litigieux constituent des dépenses effectuées dans l'établissement belge de la société; qu'ils n'ont d'ailleurs pas été soumis en Belgique au régime fiscal qui leur est propre;

Attendu que ce grief n'est donc pas fondé;

Par ces motifs, la Cour,

Statuant contradictoirement, après avoir entendu en audience publique le rapport de Monsieur le Conseiller Mahaux et l'avis conforme de Monsieur l'Avocat Général Gevers;

Reçoit le recours; le déclare non fondé; en déboute la société requérante et la condamne aux dépens.

11e Ch. A, - *Prés.*: M. Drapier. - *Rapp.*: M. Mahaux. - *Min. publ.*: M. Gevers, Avocat Général.

Source: *La Revue Fiscale,* Jan.-Février 1957.

Ruhegehälter, die aus einer inländischen öffentlichen Kasse an einen in Grossbritannien wohnhaften und nur die britische Staatsangehörigkeit besitzenden Empfänger gezahlt werden, unterliegen der Besteuerung durch die Bundesrepublik.

EStG § 1 Abs. 2, § 49 Ziff. 4; Doppelbesteuerungsabkommen zwischen der Bundesrepublik Deutschland und dem Vereinigten Königreich von Grossbritanien und Nordirland vom 18. August 1954 Art. IX und X.

Urteil v. 8. November 1957 VI 124/57 U
BUNDESFINANZHOFS
(BStBl 1958 III S. 17)

Der Beschwerdegegner (Bg.) ist emeritierter ordentlicher Professor einer inländischen Universität. Im Jahre 1939 war er nach Grossbritannien ausgewandert. Nachdem ihm die deutsche Staatsangehörigkeit aberkannt worden war, hatte er im Jahre 1948 die britische Staatsangehörigkeit erworben. Seit 1955 besitzt er wieder die deutsche Staatsangehörigkeit. Im März 1956 ist er nach Deutschland zurückgekehrt. Auf Grund der Wiedergutmachungsgesetzgebung erhält der Bg. Emeritenbezüge. Die Bezüge werden von der Universität gezahlt.

Strittig ist, ob die dem Bg. für die Zeit von 1. Januar 1953 bis zum 31. Juli 1955 gewährten Bezüge, die sowohl in Grossbritannien als auch in Deutschland besteuert worden sind, der deutschen Einkommensbesteuerung unterliegen. Der Bg. ist der Auffassung, dass ihre Besteuerung nach dem Abkommen vom 18. August 1954 zwischen der Bundesrepublik Deutschland und dem Vereinigten Königreich von Grossbritannien und Nordirland zur Vermeidung der Doppelbesteuerung und zur Verhinderung der Steuerverkürzung bei den Steuern vom Einkommen — im folgenden kurz Doppelbesteuerungsabkommen genannt — (vgl. auch das Gesetz vom 4. Mai 1955, Bundesgesetzblatt — BGBl — 1955 II S. 611) allein dem Vereinigten Königreich zugewiesen sei.

Der Antrag des Bg., ihm die zu Unrecht einbehaltene Lohnsteuer und Abgabe Notopfer Berlin zu erstatten, wurde vom Finanzamt abgelehnt. Die Sprungberufung hatte Erfolg. Nach der Auffassung des Finanzgerichts hätten die Bezüge in der Bundesrepublik nich besteuert werden dürfen. Die Bezüge fielen als Ruhegehälter aus einer öffentlichen Kasse unter die Regelung des Art. IX des Doppelbesteuerungsabkommen.. Nach dieser Regelung sei zwar die Besteuerung derartiger Ruhegehälter grundsätzlich dem Ursprungsstaat, also dem Staat zugeteilt, in dem sich der Sitz der öffentlichen Kasse befinde. Von dieser Zuteilung seien Ruhegehälter aber dann ausgenommen, wenn der Empfänger, wie es bei dem Bg. zu der massgebenden Zeit der Fall gewesen sei, in dem anderen Staat gewohnt und nur dessen Staatsangehörigkeit besessen habe. Folge man dem Wortlaut des Art. X; so gelte dessen Regelung, nach der die Besteuerung von Ruhegehältern aus Privatkassen dem Wohnsitzstaat zugewiesen sei, zwar nicht für die dem Bg. gewährten Ruhegehälter, weil diese von einer öffentlichen Kasse gezahlt worden seien. Der sich dann ergebende

Schluss, dass die dem Bg. gewährten Bezüge sowohl im Wohnsitzstaat als auch im Ursprungsstaat besteuert werden könnten, widerspreche aber dem Sinn und Zweck der in den Art. IX un dX getroffenen Regelung, nach der die Besteuerung von Rühegehältern in beiden Staaten vermieden und nur dem einen oder dem anderen Staat zugeteilt werden solle. Unter diesen Umständen müsse Art. X so ausgelegt werden, dass mit dem in ihm enthaltenen Hinweis auf die in Art. IX behandelten Ruhegehälter aus öffentlichen Kassen nur die Ruhegehälter gemeint und von der Regelung des Art. X ausgenommen seien, deren Besteuerung nach Art. IX dem Ursprungsstaat zustehe. Da dies für die dem Bg. gewährten Bezüge nicht zutrefffe, sei ihre Besteuerung gemäss Art. X allein dem Wohnsitzstaat, also dem Vereinigten Königreich zugeteilt.

Mit seiner Rechtsbeschwerde wehrt sich der Vorsteher des Finanzamts gegen die Anerkennung des Erstattungsanspruchs. Er ist der Auffassung, dass Art. IX die Besteuerung für alle Ruhegehälter aus öffentlichen Kassen regele, also auch für diejenigen, deren Besteuerung nicht dem Ursprungsstaat zugeteilt sei, und dass diese Regelung nicht aus der Regelung des Art. X ergänzt werden könne, die nur für andere Ruhegehälter gelte.

Der Bundesminister der Finanzen, der dem Verfahren beigetreten ist, teilt die Auffassung des Vorstehers des Finanzamts. Er führt aus:

Artikel IX des Doppelbesteuerungsabkommens mit Grossbritannien regelt abschliessend die Zuteilung des Besteuerungsrechts für Bezüge aus öffentlichen Kassen. Entsprechend der internationalen Doppelbesteuerungspraxis wird das Besteuerungsrecht für diese Bezüge grundsätzlich dem Quellenstaat zugeteilt, das heisst dem Staat, in dem die zahlende öffentliche Kasse ihren Sitz hat. Der Wohnsitzstaat verzichtet auf die Besteuerung dieser Bezüge, es sei denn, dass der Empfänger ein Staatsangehöriger des Wohnsitzstaates ist, ohne zugleich Staatsangehöriger des Quellenstaates zu sein. Liegt der Ausnahmefall vor, dass der Empfänger der Bezüge ein Staatsangehöriger des Wohnsitzstaates ist, so soll nach dem Willen der Vertragsparteien auch der Wohnsitzstaat ein Besteurungsrecht haben. Dadurch kann sich eine Doppelbesteuerung ergeben, weil sowohl der Quellenstaat als auch der Wohnsitzstaat durch Artikel IX ein Besteuerungsrecht erhalten.

Diese Doppelbesteuerung wird nun durch Artikel XVI des Abkommens in der Weise beseitigt, dass Grossbritannien, wenn es Wohnsitzstaat ist, nach Artikel XVI Abs. 2 in Verbindung mit Absatz 1 die deutsche Quellensteuer auf die englische Steuer für diese Bezüge anrechnet. Die Bundesrepublik lässt, wenn sie Wohnsitzstaat ist, diese Einkünfte nach Artikel XVI Abs. 3 steuerfrei, macht also von dem ihr nach Artikel IX zugewiesenen Besteuerungsrecht praktisch keinen Gebrauch. Damit ist eine auf Grund des Artikels IX mögliche Doppelbesteuerung beseitigt, so dass für eine Auslegung gegen den Wortlaut des Abkommens kein Raum ist.

In dem vorliegenden Fall haben also beide Vertragsstaaten das Besteuerungsrecht für die von der Universitätskasse an den Steuerpflichtigen gezahlten Emeritenbezüge. Grossbritannien muss die deutsche Lohnsteuer auf die englische Steuer für diese Bezüge anrechnen.

Der Bg. vertritt demgegenüber den Standpunkt, dass die Ausführungen des Finanzgerichts richtig seien. Es entspreche dem Sinn und Zweck des Doppelbesteuerungsabkommens, eine Besteuerung in beiden Staaten zu vermeiden. Um dies zu erreichen, bediene sich das Doppelbesteuerungsabkommen in erster Linie der Zuteilungsmethode, indem es die Besteuerung entweder dem Ursprungsstaat — so in Art. IX — oder dem Wohnsitzstaat — so in Art. X — zuteile und dadurch den jeweils anderen Staat ausschliesse. Die Auffassung, dass Ruhegehälter, wie die in Streitfall gegebenen, als einzige von der Zuteilung an einen bestimmten Staat ausgenommen seien, werde dem Sinn und Zweck der in den Art. IX und X getroffenen Regelung nicht gerecht. Mit dem Finanzgericht müsse Art. X so ausgelegt werden, dass von der in ihm ausgesprochenen Zutielung an den Wohnsitzstaat nur diejenigen Ruhe-

gehälter aus öffentlichen Kassen ausgenommen seien, deren Besteuerung nach Art. IX dem Ursprungsstaat zugeteilt worden sei. Das bedeute aber für den Streitfall, dass die Besteuerung der dem Bg. gewährten Bezüge allein dem Verenigten Königreich zugestanden habe.

Die Rechtsbeschwerde ist begründet.

Der Senat tritt den Ausführungen des Bundesministers der Finanzen bei. Nach ihrem Inhalt regeln Art. IX und Art. X des Doppelbesteuerungsabkommens zwei veschiedene Gebiete, nämlich Ruhegehälter aus Privatdienst und Bezüge aus öffentlichen Kassen. Aus dem in Art. X enthaltenen Klammersatz „mit Ausnahme von Ruhegehältern der in Art. IX Abs. 1 bezeichneten Art" geht mit Deutlichkeit hervor, dass die unter Art. IX Abs. 1 fallenden Bezüge von der in Art. X getroffenen Regelung nicht erfasst werden sollen. Die dem Bg. gewährten Bezüge fallen aber, wie auch das Finanzgericht zutreffend festgestellt hat, als Bezüge aus öffentlichen Kassen unter die Regelung des Art. IX Abs. 1, wenngleich sie nach dem zweiten Halbsatz dieser Bestimmung von der Zuteilung an den Ursprungsstaat ausgenommen sind, weil der Bg. als Empfänger in dem anderen Staat gewohnt und nur dessen Staatsangehörigkeit besessen hat. Die auch vom Finanzgericht erkannte Folge, dass Bezüge, die wie im Streitfall aus der öffentlichen Kasse des einen Staates an einen in dem anderen Staat wohnhaften und nur dessen Staatsangehörigkeit besitzenden Empfänger gezahlt werden, weder dem einen noch dem anderen Staat zugeteilt sind und also grundsätzlich in beiden Staaten der Besteuerung unterliegen, kann im Gegensatz zu der Auffassung des Finanzgerichts und des Bg. auch nicht als sinnwidrig angesehen werden. Wie aus der von dem Finanzamt sowohl als auch von dem Bundesminister der Finanzen angeführten Regelung des Art. XVI, der als „Generalklausel" bezeichneten Vorschrift, und den in dieser erwähnten Beispielen hervorgeht, hat das Doppelbesteuerungsabkommen keinesfalls jede Art von Einkünften eindeutig nur dem einen oder dem anderen Staat zuteilen wollen. Bei dem klaren Wortlaut der Art. IX und X, der unübersehbaren Herausnahme der unter den zweiten Halbsatz von Art. IX Abs. 1 fallenden Ruhegehälter aus der Zuteilung an den Ursprungsstaat und der vorhaltlosen Herausnahme der Ruhegehälter der in Art. IX Abs. 1 bezeichneten Art aus der Regelung des Art. X besteht kein Grund für die Annahme, dass die durch Herausnahme der unter den zweiten Halbsatz von Art. IX Abs. 1 fallenden Bezüge eingetretene Steuerbarkeit in beiden Staaten übersehen und demnach ungestellt sei. Fällen dieser Art zu begegnen, wenn auch in anderer Art als durch Zuteilung an den einen oder den andern Staat, ist der Sinn der „Generalklausel" des Art. XVI. Nach Art. XVI Abs. 2 erfolgt die „Befreiung von der Doppelbesteuerung" in Fällen, in denen wie im Streitfall Einkommen aus Quellen innerhalb der Bundesrepublik in dieser besteuert worden ist, durch Anrechnung dieser Steuer „im Rahmen der Rechtsvorschriften des Vereinigten Königreichs über die Anrechnung der in einem ausserhalb des Vereinigten Königsreichs liegenden Gebiete zu zahlenden Steuer auf die Steuer des Vereinigten Königreichs"; die Erfassung in der Bundesrepublik bleibt durch diese Regelung unberührt.

Das angefochtene Urteil is danach wegen Rechtsirrtums aufzuheben. Die Sache ist spruchreif. Die Sprungberufung des Bg. gegen den seinen Erstattungsantrag ablehnenden Bescheid ist als unbegründet zurückzuweisen.

IV

REVIEWS - COMPTES RENDUS

AUSTRIA

Dr. Ernst Strack. *Das Umsatzsteuerrecht in Theorie und Praxis.* 2. Aufl. Wirtschaftsverlag Dr. Anton Orac, Graben 17, Wien I. Loseblattausgabe.

Über die Zielsetzung dieses Werkes orientiert die Besprechung im Bulletin Band XI, S. 121/122. Jetzt ist die 2. Auflage erschienen die auch durch Nachträge ergänzt und der jeweiligen Gesetzgebung Rechtsprechung und Verwaltungsübung anpegasst werden soll.

Der 1. und 2. Nachtrag von Oktober 1956 und April 1957 sind bereits erschienen.

Dr. jur. Viktor Zimmer: *Das Kraftfahrzeug im österreichischen Steuerrecht.* Veröffentlichung des Österreichischen Automobil-, Motorrad- und Touring-Clubs (OAMTC). Verlag Ed. Hölzel, Wien, 1957, 90 S.

In dieser Broschüre werden die steuerlichen Auswirkungen der Haltung eines Kraftwagens auf die Einkommensteuer, Lohnsteuer und Umsatzsteuer geschildert. Den Hauptteil des Büchleins bildet die Darstellung des im Betriebsvermögen stehenden Kraftfahrzeuges. Der Schriftsteller hat es so geschrieben, dass ihn auch der Laie verstehen kann.

BELGIUM

G. Wilmotte et L. Brismee: *Les Taxes sur les Transmissions Commerciales.* Tableaux-Régimes et Répertoire Alphabétique des Marchandises. de Roodebeeklaan 281, Brussel, 1957.

Cet ouvrage constitue un instrument d'usage pratique dont la première partie contient un exposé brossé à grands traits des principes dégagés de la législation. Elle fournit, sous des rubriques classées par ordre alphabétique, les notions et règles générales indispensables et des précisions qui trouveraient difficilement leur place ailleurs. La deuxième partie se compose d'une série de tableaux synoptiques. Chacun donne le régime d'un groupe de marchandises, en procédant par classification systématique des hypothèses et par éliminations successives. La troisième partie est une liste alphabétique des marchandises. Elle mentionne pour chaque produit l'article du Code ou de Règlement général qui cite ou vise ce produit.

Institut Belge de Finances Publiques: *Histoire des finances publiques en Belgique.* Tome deuxième, 1954. Tome troisième 1955. Establissements Emile Bruylant, Rue de la Régence 67, Bruxelles, 491 + 469 pp.

The first part of this extensive work appeared in 1950 and was reviewed in Bull. Vol. VIII, p. 89-91. The origin and the scope of this work has been explained therein. The second part with an introduction by Prof. Jean van Houtte, President of the "Institut Belge de Finances Publiques", contains a description of financing and liquidation of the first world war and the development between the two wars. Further important considerations are given concerning revenue and expenditures during the period 1919-1939.

A consideration of the state budget closes this period. This is followed by a description of the war finances and the regulations made in London. The

third part contains the financial management of public institutions. There are considerations about activity and statues and about the history of the National Bank and other Belgian financial institutes. The financing of Belgian railways, telegraph and telephone are treated and much attention is paid to provincial and municipal finances and the public finances of the Belgian Congo. An extensive treatment of public finance after 1945 concludes this third part. Many authors have collaborated, but the unity of the work has not been impaired.

BENELUX

JAMES E. MEADE: *Negotiations for Benelux: An annotated chronicle 1943-1956.* International Finance Section, Department of Economics and Sociology, Princeton University, Princeton, New Jersey, 1957, 89 pp.

This is the sixth number in the series called *Princeton Studies in International Finance.* It contains a catalogue of the negotiations which have taken place between the Dutch, Belgian, and Luxembourg governments between 1943 and 1956.

CANADA

MALCOLM G. TAYLOR: *Financial aspects of Health Insurance.* Canadian Tax Papers No. 12. Canadian Tax Foundation, 154 University Avenue, Toronto 1, 1957, 102 pp.

In this study Dr. Taylor, who is recognized as one of the chief authorities in Canada on this subject, gives an analysis of the financial aspects of existing governmental health schemes and makes some limited forecast of the financial implications of possible future measures.

FRANCE

A.N.S.A.: *La règlementation des changes, devises et valeurs mobilières étrangères — avoirs à l'étranger — avoirs étrangers en France.* 51, rue Pierre-Charron, Paris (8e), 1957, Nr. 110. 84 pp.

This book does not deal with tax matters. However, it is important to draw the attention of our readers to this book because almost every foreigner who has to do with French taxes comes into contact with currency regulations.

Alger

LOUIS BROËT: *Régime fiscal comparé des sociétés en Algérie et dans la Metropole.* A.N.S.A., Section Algérienne, 18-24 avenue Claude-Debussy, Alger, 1957, 43 pp.

The author "Commissaire de Sociétés agrée près les Cours d'Appel d'Algérie et d'Aix-en-Provence", delivered a speech on February 3rd., 1957, which has appeared as a separate publication. In the foreword the remark is made that the conclusions are those of the author and not of the A.N.S.A. This publication of barely 50 pages contains a host of data. The tariffs are given in an appendix. After a few general considerations the registration duties are dealt with as far as they apply to the corporations, subsequently the direct taxes and the "impôt sur le revenu des valeurs mobilières". The tax systems valid in Algeria and the Metropole are compared in the conclusion.

GERMANY

KARL PETER: *Handbuch der Steuertarife,* Verlag Neue Wirtschaftsbriefe, (21b) Herne/Westf., Friedrichstr. 16-20. Loseblatt-Ausgabe.

Das *Handbuch der Steuertarife* enthält eine Zusammenstellung der gebräuchlichsten Tabellen und Steuersätze mit zahlreichen Anmerkungen und praktischen Hinweisen. Die Loseblattausgabe mit neutraler Facheinteilung

erlaubt dem Leser, das Handbuch seinen Wünschen entsprechend zu gestalten. Ein ausführliches Inhalts- und Stichwortverzeichnis erleichtert das Nachschlagen.

HERBERT TROOST: *Gemeinsamer Markt und Verbrauchssteuern.* Das Schicksal der Bierbesteuerung im Deutschen Zollverein. Finanzwissenschaftliche Forschungsarbeiten, Neue Folge Heft 15, herausgegeben von *Prof. Dr. G. Schmölders*, Universität, Köln. Duncker & Humblot, Berlin, 1957, 102 S.

Die vorliegende Arbeit zeigt auf Grund einer im Finanzwissenschaftlichen Forschungsinstitut durchgeführten Untersuchung am Beispiel der Bierbesteuerung die bei der Schaffung eines gemeinsamen europäischen Marktes auftauchenden steuerlichen Probleme, insbesondere die zweckmässigste Behandlung der verschiedenen nationalen Verbrauchsteuern. Die verschiedenen Möglichkeiten eines Steuerbelastungsausgleichs zwischen den integrierten Staaten werden dabei im einzelnen untersucht.

ADOLF SCHÄFER: *Testament und Erbe.* Praktische Fragen des Erbrechts und der Erbschaftsteuer. 7. Auflage. Titz Verlag, Beckerstrasse 3, Berlin-Friedenau, 1957, 88 S.

Dieser Schrift gibt in leichtfasslicher Form eine Übersicht über das geltende Erbrecht und Erbschaftsteuerrecht. Die Darstellung lässt erbrechtliche Sondervorschriften, wie z.B. Partikularrecht, unberücksichtigt. Im Anhang sind die Steuererklärungen aufgenommen.

GERHARD WACKE: *Staatsrechtliche Prüfung der Zusatzsteuer.* Kritische Untersuchung zu § 8 UStG. Der Rechts- und Steuerdienst, Kölner Schriftenreihe zeitnaher rechtswissenschaftlicher Abhandlungen, Sonderheft. Verlag Dr. Otto Schmidt, Köln, 1957, 80 S.

Die Rechtsgültigkeit der Bestimmungen über die zusätzliche Umsatzsteuer ist seit langem bestritten. Eine endgültige gerichtliche Klärung der Meinungsverschiedenheiten ist bisher nicht erfolgt. Der Verfasser dieses Buches setzt sich eingehend mit der Frage dieser Zulässigkeit auseinander und kommt zu dem Ergebnis der verfassungsrechtlichen Unzulässigkeit der gesetzlichen Bestimmungen über die Hersteller-Zusatzsteuer. Die Abhandlung ist von der steuerlichen und verfassungsrechtlichen Seite aus durch die kritische Untersuchung über den § 8 des UStG hochinteressant..

HERWARTH WESTERFELHANS: *Verdeckte Gewinnausschüttung als steuerrechtliches und betriebswirtschaftliches Problem.* Verlagsbuchhandlung des Instituts der Wirtschaftsprüfer Gm. b. H. Düsseldorf 1956, 272 S.

Das Studium des Gesellschaftsrechts und des Steuerrechts sind eng mit einander verknüpft. Verfasser hat diese Angelegenheit in seiner Dissertation (1951) auf dem Gebiete der verdeckten Gewinnauschüttungen untersucht und hat diese Studie nunmehr zu einem ausführlichen Werk (272 S) umgearbeitet. Es ist ein heikles Thema, oft bedarf es eines Fingerspitzengefühls um einen richtigen Einblick zu bekommen! Die Hauptgruppen werden einzeln behandelt (S 45-141); manche Gegenstände kommen zur Sprache: u.a. Kapitaländerungen und die zahlreichen Formen unter denen die verdeckten Ausschüttungen vorkommen. Ein sehr ausführliches deutsches Quellenverzeichnis und ein Sachregister beschliessen das Buch.

Probleme des Rechnungswesens in internationaler Betrachtung. Verlagsbuchhandlung des Instituts der Wirtschaftsprüfer, Düsseldorf, 1957, 229 Seiten.

Dieser Bericht über den zweiten Kongress der Union Européenne des Experts Comptables Economiques et Financiers der vom 12. bis 16. September 1955 in Brüssel stattfand enthält die Berichten, Diskussionsbeiträge und Resolutionen der ständigen Fachkommissionen der U.E.C.

25 Jahre Wirtschaftsprüfung. Vorträge über aktuelle Wirtschaftsfragen. Verlagsbuchhandlung des Instituts der Wirtschaftsprüfer, Düsseldorf, 1957, 324 Seiten.

Dieses Buch enthält die Ansprachen und Fachreferate anlässlich der Jubiläumsveranstaltungen des Instituts der Wirtschaftsprüfer am 1., 2. und 3. Oktober 1956 in Düsseldorf. Einige Vorträge waren: Ausgewählte Fragen der Ertrags- und Einkommensbesteuerung. Ein kritischer Vergleich deutscher und amerikanischer Regelungen, von Dr. Josef ESSER; Betriebliche Preispolitik und Konjunktur, von Dr. Kurt PENTZLIN; Die Abhängigkeit der betrieblichen Gewinnerzielung vom volkswirtschaftlichen Investitionsvolumen, von Dr. Paul BINDER.

Dr. THEODOR HERRMANN: *Das Finanzamt als Organismus.* Verlagsbuchhandlung des Instituts der Wirtschaftprüfer, Cecilienalle 36, Düsseldorf, 1955, 179 S.

Dieses Buch behandelt in 4 Hauptteilen die Aufgaben des Finanzamtes, seine Stellung innerhalb der staatlichen und gesellschaftlichen Ordnung, seinen inneren Dienstbetrieb und sein Verhältnis zum Steuerpflichtigen. Der Verfasser nimmt zu den strukturellen und funktionellen Problemen des heutigen Finanzamts in sachlicher Weise Stellung. Das Erscheinen dieses Werkes, das die Gesetzesgebundenheit des Finanzamtes in überzeugender Weise mit dem Gebot der Menschlichkeit im Verkehr zwischen Steuerverwaltung und Staatsbürger in Einklang bringt, ist begrüssenswert.

Dr. KURT POST: *Die Unterschlagung im Betrieb und ihre Bekämpfung.* Verlagsbuchhandlung des Instituts der Wirtschaftsprüfer, Düsseldorf, 1955, 171 Seiten.

Die vorliegende Arbeit behandelt das für jeden Betrieb wichtige Problem der Sicherungsmassnahmen gegen die Unterschlagungsgefahr. An Hand reichhaltigen Materials aus Prüfungsberichten, Gutachten und sonst nicht zugänglichen Akten werden Einzelheiten der Unterschlagungsfälle besprochen und zahlreiche Anregungen für ihre Aufdeckung und für Sicherungsmassnahmen gegeben.

RUDOLF HARMENING: *Lastenausgleich. Kommentar. 13. Lieferung:* 1004 Seiten. Preis DM 28.—. *Grundwerk,* 2. Auflage: 4 Bände (1.-13. Lieferung), 6700 Seiten. Verlag C. H. Beck, München und Berlin.

Die 8. LAG-Novelle hat so zahlreiche Neuregelungen gebracht, dass eine gründliche Überarbeitung des Werkes notwendig wurde. Mit der 13. Lieferung wird zunächst der erste Teil der Neubearbeitung vorgelegt, dem die 14. Lieferung mit der Bearbeitung der restlichen Vorschriften des LAG sowie der Vorschriften des Feststellungs-, Währungsausgleichs- und Altsparergesetzes folgen wird.

Die amtlichen AfA. Tabellen des Bundesministers der Finanzen. Ausgabe 1957. Verlag der Steuertarife P. Wachsmann KG, Margarethenstrasse 28, (22a) M. Gladbach (Rhld).

Diese amtlichen AfA-Tabellen bringt der Verlag der Steuertarife als Fortsetzung der „Steuerlichen Abschreibungen" in der bewährten Taschenform.

Die Steuertarife sämtlicher Steuergesetze. 12. Auflage (einschl. 10. Ergänzungslieferung). *Stand: 1. November 1957.* Verlag der Steuertarife P. Wachsmann, M. Gladbach.

Die Steuertarife sämtlicher Steuergesetze. (Ostzone) 11. Auflage (einschl. 22. Ergänzungslieferung. *Stand Juli 1957.* Verlag der Steuertarife P. Wachsmann, Potsdam.

Dieses Führer durch das gesamte Steuerrecht mit über 75 Steuertabellen ab Währungsreform ist eine wertvolle Hilfe. Beim selben Verlag sind auch die Tarife der Ostzone erschienen.

Deutsche Steuergesetze. Rote Textsammlung mit Verweisungen. Loseblattausgabe. *Ergänzungslieferung Dezember 1957.* 204 Seiten. In Schutzhülle DM 2.80. *Hauptband,* 13. Auflage, ergänzt bis Dezember 1957: 2140 Seiten Taschenformat. Verlag C. H. Beck München und Berlin.

Die neue Lieferung bringt neben anderen Vorschriften die Neufassung des ESTG vom 13.11.1957, das Umwandlungssteuergesetz und das Gesetz über Massnahmen auf dem Gebiete der Finanzgerichtsbarkeit.

OTTO LENZ: *Handelsgesetzbuch,* nebst Einführungsgesetz, 15. neubearbeitete Auflage, bearbeitet von Dr. WOLFGANG HILDEBRANDT. Verlag Franz Vahlen, Malvenstrasse 12, Berlin-Lichterfelde-West, 1954, 271 S.

In übersichtlicher Bearbeitung enthält dieses Buch den vollständigen Wortlaut des HGB unter Berücksichtigung aller Änderungen, die das HGB inzwischen erfahren hat, so insbesondere die Bestimmungen über die Kaufmannseigenschaft der Handwerker und das neue wichtige Handelsvertreterrecht. Neben der Einleitung und dem ausführlichen Sachregister tragen vor allem die zahlreichen Anmerkungen und Verweisungen auf abändernde und ergänzende Gesetze wesentlich zur schnellen Unterrichtung über Einzelfragen bei.

JAKOB THEIS, Oberregierungsrat: *Die Ehegattensteuer.* Praktischer Führer durch die Übergangsregelung zur Ehegattenbesteuerung. 2. Auflage. Verlag Dr. Otto Schmidt Kg, Köln, 1957, 55 Seiten.

Gegenstand dieser Broschüre ist die Übergangsregelung der Ehegattenbesteuerung wie sie sich aus dem Gesetz zur Änderung steuerrechtlicher Vorschriften für die Jahre 1949 bis 1957 ergibt. Nachdem das BVG durch Beschluss v. 17.1.1957 § 26 EinkStG 1951 für nichtig erklärt hatte, weil diese Bestimmung mit § 6 GG unvereinbar sei, hat der Gesetzgeber zunächst eine Übergangslösung geschaffen und dem nächsten Bundestag die endgültige Lösung überlassen. Der Schwerpunkt der Übergangsregelung liegt bei der Veranlagung für 1956 und 1957.

Der im Fachschrifttum bestens bekannte Autor, dessen „Praktischer Führer durch das Steuerrecht" (7. Auflage) zu den massgeblichen Werken der Steuerliteratur gehört und in „Bulletin" Bd. XI, S. 306 besprochen ist, versteht es, auch in der vorliegenden Schrift dem Leser in allgemein verständlicher Art durch die praktisch brauchbare Systematik die Materie nahe zu bringen. Er führt den Leser heran an die Fragen und Probleme, die sich aus der vom Bundestag verabschiedeten Übergangsregelung zur Ehegattenbesteuerung ergeben.

WULLE: In der Reihe *Steuer-Kommentare von Beamten des Bundesfinanzministeriums* sind erschienen: *Umsatzsteuergesetz und Umsatzsteuer-Durchführungsbestimmungen* in den am 26. Oktober 1957 gültigen Fassungen. Industrie-Verlag Carlheinz Gehlsen, vorm. Spaeth & Linde, Industriestrasse 63, Heidelberg, 1957, 100 S.

Alle Änderungen und Ergänzungen im UStG sind in dem vorliegenden Werk berücksichtigt. Ausserdem hat der Bearbeiter die einzelnen Vorschriften des Gesetzes und der Durchführungsbestimmungen mit kurzen Anmerkungen versehen, in denen insbesondere auf den jeweiligen zeitlichen Gesetzesbereich, die wichtigsten Erlasse des BFM sowie auf die grundsätzlichen Entscheidungen des Bundesfinanzhofes hingewiesen wird. Diese Neuerscheinung erleichtert jedem Geschäftsmann, den Steuersachbearbeitern

im Betrieb, den Steuerberatern und den Beamten des Finanzamtes die Arbeit. Das Werk spricht also einen breiten Interessentenkreis an.

GÖRBING *Lohnsteuer-Ergänzungsrichtlinien 1957* und *Verordnung zur Durchführung des Gesetzes über Bergmannsprämien*, Industrie-Verlag Carlheinz Gehlsen GmbH. vorm. Spaeth & Linde, Heidelberg, Industriestr. 63, 1957, 68S.

Die bisher gültigen Lohnsteuer-Richtlinien 1955 wurden durch die am 2.7.57 verkündeten Ergänzungsrichtlinien an das geltende Einkommensteuerrecht angepasst. Zum Teil entscheidende Änderungen und Ergänzungen wurden in 51 Punkten rückwirkend ab 1. Januar 1957 vorgenommen. Sie bringen u.a. die Erhöhung der Reisekostenpauschalen, Erhöhung der steuerfreien Beträge für Verpflegung im Betrieb und bei doppelter Haushaltsführung, Angleichung der Bestimmungen über die Steuerbegünstigung bei Kapitalansammlungsverträgen und über die Anerkennung aussergewöhnlicher Belastungen. Die Ergänzungsrichtlinien werden von dem zuständigen Referenten im Bundesfinanzministerium eingehend erläutert.

SENFTLEBEN & KRAUSE-KÄRSTEN: *Die amtlichen AfA-Tabellen* mit Erläuterungen nebst einem Auszug aus dem Systematischen Verzeichnis der Arbeitsstätten. 140 Seiten, Industrie-Verlag Carlheinz Gehlsen GmbH. vorm Spaeth & Linde, Industriestrasse 63, Heidelberg.

Dieses Werk enthält ergänzend zu den Tabellen eine fundierte Erläuterung durch die zuständigen Referenten des Bundesfinanzministeriums. Zunächst liegen die Tabellen für 50 Wirtschaftszweige vor. Weitere Tabellen sollen folgen, die in Form von Ergänzungslieferungen nach Fertigstellung angeboten werden. Für Unternehmen der Wirtschaft, steuerberatenden Berufe und Finanzbehörden werden die amtlichen AfA-Tabellen als unentbehrliche Richtlinien bei der Bilanzerstellung begrüsst. Das für Jahre brauchbare Werk ist als ein Beitrag zur Beseitigung der Unsicherheit auf dem Gebiet des Steuerrechts zu bewerten.

KARL SPRESNY: *Praktischer Steuerratgeber für Handel, Handwerk und freie Berufe*, mit einem Verzeichnis abzugsfähiger Betriebsausgaben. 6. Aufl. R. Boorberg Verlag, Reinsburgstrasse 122, Stuttgart W., 1956, 116 Seiten.

Dieser Steuerratgeber behandelt die Rechte und Pflichten des Steuerzahlers, Buchführungspflicht und ordnungsmässige Buchführung, Umsatzsteuer und Gewerbesteuer, Einkommensteuer und Vermögensteuer. Einkommensteuertabelle und ein Verzeichnis abzugsfähiger Betriebsausgaben sind beigefügt. Randhinweise auf jeder Seite und ein Stichwortverzeichnis erleichtern das Auffinden bestimmter Stellen. Das Werk, in dem die wichtigsten Steuerarten vereinigt sind, ist zugleich ein Leitfaden durch das heutige Steuerrecht, ein Nachschlagewerk für die tägliche Praxis und ein Hilfsmittel für die abzugebenden Steuererklärungen.

DR. WALTER ECKHARDT: *Grenzen und Zulässigkeit der Hersteller. Zusatzumsatzsteuer*. Carl Heymans Verlag K.G., Postschliessfach 357, Köln, 1957, 66 S.

Als Heft I in der Dritten Folge der Schriftenreihe zur betrieblichen Steuerlehre — Unternehmung und Steuer — erschien ein Heft, das die Grenzen und die Zulässigkeit der Hersteller-Zusatzumsatzsteuer untersucht. Was ist die Hersteller-Zusatzumsatzsteuer? Der Finanz-Minister ist auf Grund des Paragraphen 8 des UstG ermächtigt Massnahmen zum Ausgleich der verschiedenen Umsatzsteuerbelastung der einstufigen und der mehrstufigen Unternehmen zu treffen. Als im Jahre 1951 der allgemeine Steuersatz auf 4 % erhöht wurde, machte die Bundesregierung von dieser Ermächti-

gung Gebrauch und ein neuer Steuertatbestand entstand; § 58 Abs. 1 Umsatzsteuer Durchführungsbestimmung 1951 umreiszt diesen mit folgenden Worten:

Die Lieferungen von Gegenständen im Einzelhandel durch einen Unternehmer, der die Gegenstände hergestellt hat (Hersteller) unterliegt einer Zusatzsteuer. Die Hersteller-Zusatzumsatzsteuer war geboren.

In dem vorliegenden Heft wird ausführlich nach der Literatur in bezug auf diesen neuen Steuertatbestand verwiesen.

Dr. O. FRIEDLI: *Die Warenumsatzbesteuerung in der Schweiz.* Institut „Finanzen und Steuern". Markt 14, Bonn a/Rhein, 1956, Heft 39, 71 S.

Dr. Friedli, Abteilungschef bei der Eidgenössischen Steuerverwaltung zu Bern, hielt auf der Mitgliederversammlung des Instituts „Finanzen und Steuern" einen Vortrag über die schweizeriche Umsatzsteuer. Dieser Vortrag liegt nunmehr als ausgearbeitete Schrift vor. Die schweizer Umsatzsteuer ist eine Einphasensteuer (Grossistensteuer). In West-Europa gibt es fast keine Einphasensteuer. Die Gestaltung dieser Steuer ist im Vergleich zu dieser in anderen westeuropäischen Ländern sehr einfach. Es ist dem Verfasser gelungen in einer knappen Darstellung die wesentlichen Einzelheiten zu geben.

Dipl-Kfm. Dr. HERMANN RÖCHLING: *Die Organtheorie im System der kumulativen Umsatzsteuer*: Duncker & Humblot, Berlin, 1957, 158 S. (Finanzwissenschaftliche Forschungsarbeiten, Neue Folge, Heft 14. Herausgegeben von Prof. Dr. G. Schmölders, Universität, Köln)

Die Organlehre hat sich durch die Rechtsprechung des Reichsfinanzhofs seit Mitte der zwanziger Jahre entwickelt. Es handelt sich um eine Organgesellschaft, wenn diese finanziell, wirtschaftlich und organisatorisch in ein anderes Unternehmen eingegliedert ist. Das Kontrollratgesetz Nr. 15 setzte die Organlehre praktisch ausser Kraft, es sei denn dass die Organschaft weiter gelten konnte wenn der beherrschende Unternehmer eine natürliche Einzelperson oder eine Körperschaft des öffentlichen Rechts ist.

Dieses Buch bietet eine hervorragende juristische Klärung; dagegen, wie der Verfasser selbst hervorhebt, keine neuen finanzwissenschaftlichen Gesichtspunkte. Wir können unseren Lesern diese Arbeit warm empfehlen, insbesondere da jetzt in der Bundesrepublik die Organlehre für die Umsatzsteuer wieder vollkommen anerkannt worden ist.

WILHELM HARTZ und JOSEF OVER: *ABC-Führer Lohnsteuer.* 3. Auflage. Loseblattausgabe zum gesamten Lohnsteuerrecht mit amtlichem Wortlaut und ausführlichen Erläuterungen. Fachverlag für Wirtschafts- und Steuerrecht Schäffer & Co., Häckländerstrasse 33, Stuttgart.

Die Teillieferung 22 enthält den vollständigen Neudruck der Lohnsteuer-Richtlinien in der Fassung von 1957. Ausserdem enthält die Lieferung den ersten Teil der erforderlich gewordenen Anpassungen des Stichwortteils an die neuen Lohnsteuer-Richtlinien und an die inzwischen ergangene Rechtsprechung. Die Rechtsänderungen aus dem „Gesetz zur Änderung steuerlicher Vorschriften" vom 26. Juli 1957 wurden ebenfalls berücksichtigt.

Die Lieferung 23 enthält im Stichwortteil die restlichen Anpassungen an die Rechtsänderungen, die sich aus den Lohnsteuer-Ergänzungsrichtlinien 1957, aus der inzwischen ergangenen Rechtsprechung und aus dem Änderungsgesetz vom 26. Juli 1957 ergeben. U.a. sind die folgenden wichtigen Stichworte ergänzt worden: Ehefrau, Haftung für Lohnsteuer, Lohnsteuer-Jahresausgleich, Reisekosten, Sachbezüge, Sonderausgaben, Steuerkarte und Wohnungsbau-Prämiensparen.

Dr. HEINZ HALLER: *Finanzpolitik*. Grundlagen und Hauptprobleme. J. C. B. Mohr (Paul Siebeck), Tübingen, 1957, 326 Seiten.

Ein ausführliches Werk, in dem nach kurzer Einführung die Probleme gestellt werden die Begriffe geklärt und sowohl die theoretische wie die praktische Seite behandelt wird. Eine Diskussion mit anderen Verfassern wird möglichst umgangen. Jedoch wurde auf die Literaturnachweise grosse Sorgfalt verwandt. Dieselben sind in Fussnoten und am Schluss jedes Kapitels aufgenommen (auch nicht deutsche Literatur). Nam- und Sachregister erleichtern das Auffinden der betreffenden Stoffgebiete. In der Einleitung wird die zu behandelnden Stoffgebiete begrenzt und die Einstellung älterer und jüngerer Verfasser erwähnt.

Das erste Kapitel erörtert die öffentliche Finanzwirtschaft, in dem viele Gegenstände u.a. die Uberwalzung berücksichtigt werden. Im zweiten Kapitel handelt es sich von den Zielsetzungen der Finanzpolitik, während im ausführlichen dritten Kapitel die Hauptprobleme der Finanzpolitik zur sprache kommen: z.B. Haushaltsplan, Staatsschulden, Einkommensverteilung, Finanzausgleich, usw. Im vierten Kapitel wird die Finanzpolitik in weiteren wirtschaftlichen Zusammenhang betrachtet. Am Schluss folgen noch einige allgemeine Bemerkungen.

KREKELER: *Bewertungsgesetz* vom 16. Oktober 1934 unter Berücksichtigung der Änderungen durch die Gesetze vom 1. Dezember 1936, vom 16. Januar 1952 umd vom 26. Juli 1957 mit Durchführungsverordnung. 6. völlig neubearbeitete Auflage. Erläutert von Dr. Martin Uhlich, Dr. Rudolf Rössler und Dr. Max Troll. Verlag Franz Vahlen, Willdenowstrasse 6, Berlin-Lichterfelde West, 1958, 672 S.

Die Bearbeiter haben das Bestreben gehabt, an dem, was sich bei Krekeler bewährt hat, festzuhalten. Die Fülle des angefallenen Stoffes an Erfahrungen, Rechtsprechung und Schrifttum hat mit sich gebracht, dass manche Teile dieses Werkes erheblich umgearbeitet werden mussten. Manches ist auch ausführlicher als früher behandelt worden. Die Einleitung ist zu einer Darstellung der geschichtlichen Entwicklung und einem Überblick über die Tragweite des Gesetzes umgestaltet worden. Die geschichtliche Entwicklung ist auch bei den einzelnen Vorschriften erörtert worden. Ein zusammenhängender Abdruck des Gesetzestextes in seiner jetzt geltenden Fassung ist vorangestellt worden. Das Buch wird in weiten Kreisen der Verwaltung und Wirtschaft ein brauchbares und zuverlässiges Hilfsmittel für alle Bewertungsfragen sein.

GERMANY (Eastern Zone)

DAS ABGABENRECHT: 5 Bände. Eine Loseblattsammlung des geltenden Abgabenrechts. Herausgegeben im Auftrage des Ministeriums der Finanzen der Deutschen Demokratischen Republik, Abgabenverwaltung. VEB Deutscher Zentralverlag, Berlin.

In diesen Bänden sind die einzelnen Verordnungen, Durchführungsbestimmungen und die Anweisungen enthaltenden Rechtsnormen systematisch zusammengefasst. Das Werk gliedert sich in die folgenden Teilen: A. Besteuerung der volkseigenen Wirtschaft; B. Besteuerung der Genossenschaften; C. Besteuerung der Lohnempfänger und der freischaffenden Intelligenz; D. Besteuerung der einfachen Warenproduzente; E. Besteuerung der privaten Wirtschaft; F. Verbrauchsteuern; G. Haushaltsaufschläge; H. Organisation und operative Methoden der Abgabenverwaltung; J. Ermittlung und Festsetzung der Abgaben; Nachprüfungsverfahren; K. Abgabenstrafrecht; Anhang: Die Pflichtbeiträge zur Sozialversicherung und ihr Einzug.

Durch Ergänzungslieferungen wird jeweils der neuste Stand der Rechtsentwicklung vermittelt.

GREAT BRITAIN

C. N. BEATTIE: *The Elements of Estate Duty*. Second edition. Butterworth & Co. (Publishers) Ltd., 88 Kingsway, London, W.C. 2 1957, 190 pp.

This comprehensive book approaches the subject in a very practical way, making it an outstanding work which will be welcomed by lawyers, estate agents, students and others who need a clear guide to the elements of estate duty.

During the five years since the first edition of this book was published in 1952, the changes in the law have been extensive, particularly in the fields of gifts *inter vivos* (e.g. s. 38 of the Finance Act, 1957, which puts and end to the device popularly known as "the disappearing trick") and life policies of assurance. These changes have all been incorporated in the second edition, but without extending the length of the book.

Sir EDWARD R. HARRISON: *A digest and index of iax cases*. Being a judicial dictionary of tax law. 6th edition. *Cumulative supplement (1955)*. Her Majesty's Stationery Office, London, 1956, 306 pp.

The cases indexed in this *Supplement,* which incorporates the whole of the existing Supplement issued in 1954, are those contained in the following reports of Tax Cases, viz.: Volume XXIX, Parts VI-X, Volumes XXX-XXXV.

DAVID R. STANFORD: *Overseas Trade Corporations*. The "British Tax Review" Guides, Number 1. Sweet & Maxwell Ltd., 2 & 3 Chancery Lane, London, W.C. 2, 1958, 339 pp.

This book describes each of the sections and Schedules of the Finance Act, 1957, dealing with overseas trade corporations in detail. Further those aspects of company taxations which are directly or indirectly affected are explained briefly and a short summary of the law of double taxation is included. The Appendices contain the text of the legislation creating overseas trade corporations and also the text of a selection of legislation to which reference is necessary for full comprehension of the former.

NETHERLANDS

P. H. THEMMEN: *Registratiewet 1917* — (Registration Duty Act) — 2nd. Edit. J. Noorduijn & Zoon N.V. — Gorinchem, Netherlands 1957, 350 pp.

The French Registration Duty Act of 22nd Frimaire VII remained valid in the Netherlands until 1917, in spite of the many drastic changes in it. Then came the act that is now still in force and which has been changed repeatedly. The commentary has been written by Mr. Themmen who, as tax inspector is familiar with the application of tax law and as a lecturer of the State University at Groningen with the theory. The 2nd. edition of this commentary has now been published. Each clause of the Act is explained separately in the loose-leaf book. This tax has been greatly simplified, as compared with former times, but the fact that for a concise commentary 350 pages are needed shows that there still are many questions in this domain. Especially as regards the taxation of limited liability companies and similar bodies there are problems with which foreigners may have to deal.

A. BLOM: *I Algemene inleiding tot het belastingrecht - II. Uiteenzetting over de vennootschapsbelasting. Deel 7 van de Fiscale Studieserie* — Uitgeverij FED, Amsterdam, 1957.

The volumes of this fiscal study series have thé common characteristics of being concise in form, having been written by experts and being easily readable. They are meant for practical men of affairs and for students.

After a short summary of Dutch taxation law this volume no. 7 contains a treatment of the corporation income tax. Because this tax absorbs 45 % of the business profits the contents of this booklet are worthy of attention.

F. KUIPERS - G. A. KIEFT and D. DE BAAN — *Belastingrechtspraak* — (Tax law cases) Taylor, Efficiency-Bureau voor administratieve organisatie, Nijmegen. (Loose-leaf edition).

In this book the material has been treated systematically. The work is published in loose-leaf form in view of the resolutions and case law to be expected in the future. Also explanatory notes will be added. An extensive index increases the practical utility of this work.

Rapport van de Commissie tot bestudering van de juridische en economische aspecten van de voorrechten van de fiscus — N. Samson N.V. — Alphen aan de Rijn, Netherlands, 1956, 116 pp. (Geschriften van de (Nederlandse) Vereniging voor Belastingwetenschap, Nr. 92).

This report was discussed in a general meeting of the (Netherlands) Association for Fiscal Science. The chairman was Miss M. A. Suyling LL. D.

A very regrettable event took place during the sessions, the secretary T.C. Gaanderse Esq died.

The extensive report (116 pp) deserves attention not only because the subject, the fiscal privileges, it is extremely complicated, but also because the attendant drawbacks for the entire credit system are very great. The first part of the work gave a picture of the existing situation. That was far from simple, for the mutual relationship as regards privileges in civil law are also often uncertain. Much attention has been given to the legal basis of the tax privileges and the economic background. The relationship between the tax authorities and the different creditors have been treated extensively. The drawbacks and wishes have been examined from several angles. The conclusions at the end of the report have been formulated clearly.

Prof. H. J. HELLEMA — *Fiscale problemen bij de groei van de onderneming* — Uitgeverij FED, Amsterdam, 1957, 48 pp.

The President of the Board of Directors of the International Bureau of Fiscal Documentation Prof. H. J. Hellema delivered a speech about fiscal problems during the growth of the enterprise at the Taxadviser's day organized bij the Netherlands Federation of Tax Consultants.

Partners in the debate were A. J. van Soest, Prof. H. Schuttevaêr and Prof. Dr. B. Schendstock, who were answered by the speaker. Many questions crop up about this subject, especially during a period of rapid decline of monetary value. The speaker had to restrict himself to essentials and mentioned the most important occurrences during the normal development of an enterprise which is begun as a private enterprise changed into a private company later on and after a period of years is converted into a joint stock company.

Amongst other subjects a consideration of German case law followed. It is not possible to mention all the subjects discussed by the speaker and during the debate. May it suffice that we draw the reader's attention to the rich contents of this booklet.

NORWAY

JACOB JARØY: *Skattelov Samling 1955* — loose-leaf — Baugeidsgt. 16, Skien, Norway.

This loose-leaf system of Norwegian tax acts has already been concisely announced in "Bulletin 1957, no. 2/3, p. 152. We now want to review its contents more elaborately. The Norwegian tax system is based on the system of self declaration. Every taxpayer has the duty to submit a statement about his income and property every year. All taxes are imposed by the central government, i.e. the Norwegian Parliament. Bases of the present tax system are the two tax acts: for the rural districts and for the urban districts res-

pectively. They were enacted in 1911. After these two came a long series of amendments and alterations. There is an income tax (inntektsskatt) and a property tax (formnesskatt) in Norway. Both are levied for the state and the municipalities. The maximum tax that may be levied is 80 % of the income of the taxpayer. In Jarøy's book all details and legal measures concerning these taxes can be found. Because of its loose-leaf character subscribers are kept up-to-date with changes and amendments. A valuable addition to the library of international tax consultants. We just received Supplement Nr. 6 to this work.

PAKISTAN

The CENTRAL BOARD OF REVENUE of the Government of Pakistan has issued the following tax publications:

1. *Income tax manual, Part I. Income-Tax Act, 1922.* Fourth edition. Corrected up to the 31st May, 1957. 173 pages.

This book contains the text of the Act: Charge of income-tax; Income-tax authorities; Appellate tribunal; Taxable income; Liability in special cases; Special privisions relating to certain cases of shipping; Special provisions relating to avoidance of lia bility to income-tax and super-tax; Recovery of tax and penalties; Refunds; Offences and penalties; Super-tax; etc.

2. *Income-tax manual, Part II and III.* Revised edition. Corrected up to the 31st October, 1955. 273 pages.

Part II of the Manual contains the statutory rules, orders and exemptions. Part III contains notes on the Income-tax Act, 1922.

3. *Estate Duty Act, 1950.* 84 pages.

In this publication the text of the Act, Rules and Notifications corrected up to the 31st December, 1956 can be found.

4. *The Sales Tax Act, 1951.* 50 pages.

The brochure contains the text of the Act and Rules, with explanatory note and appendices showing exemptions and rates of tax notified under the Act.

5. *Brochure on Taxation of Income and concessions to industries in Pakistan.* Karachi, 1955, 11 pp.

This brochure has been prepared with a view to giving information to industries in foreign countries regarding Pakistan's tax laws and the concessions available to industries. This subject is both comprehensive and complex and the brochure thus contains only a broad outline of the scheme of taxation.

6. *All-Pakistan Income-tax Reports & Returns and Income-Tax Revenue statistics* including Profits Tax & Business Profits tax statements for the years 1950-51, 1952-53, 1953-54.

These reports are published every year by the Statistical Office of the Central Board of Revenues.

PANAMA

Panama's Advantages for industry, trade, commerce.

The Industrial Development Center of the Institute for Economic Development, Panama, 1957, 39 pp.

The following topics are discussed in this study: Investment climate, Tax and other advantages, Re-export from Panama, Targets for development, General and economic information.

PUERTO RICO

Report on Finances and Economy of Puerto Rico 1957.

Department of the Treasury, Office of Economic and Financial Research, San Juan, 1957, 24 pp.

Puerto Rico's economy made substantial forward strides in the fiscal year 1957. This report illustrates the advances in economic progress, private financial activity, public finance, and gives an outlook for 1958.

MILTON C. TAYLOR: *Industrial tax-exemption in Puerto Rico*. The University of Wisconsin Press, 430 Sterling Court, Madison 6, Wisconsin, 1957, 172 pp.

This is a case study in the use of tax subsidies for industrializing underdeveloped areas. Because of Puerto Rico's unique economic and geographical situation, it has provided a new basis for testing a subsidy which has long been suspect among economists. Industrial tax exemption has been given most of the credit on the Island of Puerto Rico for an industrial revolution in the past ten years. On the other hand, this subsidy often has been viewed by public finance agents as ineffective. How tax exemption can be maligned in public finance literature and yet at the same time receive congenial public support and public favour is the subject of this study. Some of the important findings of the author are: Subsidies should be selective and flexible in order that the minimum amount is given to obtain the desired objective; There is a presumption in favour of temporary subsidies; Direct subsidies are generally preferable to indirect; Subsidies should be chosen in such a way that they do not derogate from the ultimate realization of gains by the whole of the population.

SARAWAK

T. H. SILCOCK: *Fiscal survey report of Sarawak*. Printed at the Sarawak Government Printing Office, Kuching, 1956, 83 pp.

Professor Silcock gives in this report a general survey of the financial system of Sarawak in relation to its economy and the approved Development Plan. After the introduction a brief outline of the economy of the country is given. In the following chapters the revenue and expenditure, their fluctuations and trends are considered. In the last three chapters Professor Silcock sets out his recommendations relating to the ordinary revenue and expenditure, to development and concerning the relations between Central Government and Local Government.

SWITZERLAND

DIE PRAXIS DER BUNDESSTEUERN. Verlag für Recht und Gesellschaft, Bundesstrasse 15, Bâle.

Ire partie, *Die Wehrsteuer*, par A. Pestalozzi-Henggeler, *8e supplément*, 1957

IIIe partie, *Das interkantonale Doppelbesteuerungsrecht* (La double imposition intercantonale) par Kurt Locher, *3e supplément*, 1957.

Ces suppléments mettent à jour l'excellent recueil de jurisprudence que nous avons signalé à nos lecteurs dans le „Bulletin" 1957, p. 155.

OSKAR BOSSHARDT: *Die neue zürcherische Einkommens- und Vermögenssteuer*. Orell Füssli Verlag, Zürich, 310 S.

Das Buch ist nicht nur eine Einführung in die Steuerrechtsbegriffe, sondern dient dem Praktiker dank der Hinweise auf die Praxis der Oberrekurskommission und des Bundesgerichts sowie dank der Hinweise auf die Spezialliteratur auch als Handbuch. Die Präjudizienzitate und Literaturhinweise sind für den Praktiker bei der Bearbeitung von Einzelfragen wertvolle Hilfe. Das Buch ist auch insofern auf die Bedürfnisse der Praxis ausgerichtet, als es jene Fragen ausführlicher behandelt, die häufig streitig werden. Die strenge Systematik und das Register erleichtern die Benützung.

KURT AMONN: *Der Eigenverbrauch in der eidgenössischen Warenumsatzsteuer*. Abhandlungen zum schweizerischen Recht, Neue Folge, Heft 328. Verlag Stämpfli & Cie., Hallerstrasse 7, Bern, 1957, 109 S.

Die eidgenössische Warenumsatzsteuer ist die grösste Einnahmequelle des Bundes. Ausgehend von der wirtschaftlichen und rechtlichen Natur der Warenumsatzsteuer, wird im ersten Teil der Arbeit die Funktion und die praktische Bedeutung des Eigenverbrauchs im Warenumsatzsteuersystem dargelegt. Auf dieser Grundlage werden im zweiten Teil der Eigenverbrauchstatbestand und die Voraussetzungen der Steuerbarkeit behandelt. Der dritte Teil handelt von der Steuerberechnung (Bemessungsgrundlage und Steuermass).

Die Arbeit ist vor allem für die Praxis geschrieben. Eine Fülle von konkreten Beispielen und die vollständige und kritische Verarbeitung aller einschlägigen Entscheidungen des Bundesgerichts sowie der wichtigeren Verwaltungsentscheide erleichtert es dem Praktiker, sich zurechtzufinden. Auch dem wissenschaftlich interessierten Leser mag diese Abhandlung mancherlei Anregung bieten.

RUDOLF KELLERHALS: *Handkommentar zum revidierten Bernischen Steuergesetz*. Verlag Herbert Land & Cie. — Münzgraben, Amthausgasse, Bern 1957, 207 S.

Der Handkommentar zum bernischen Steuergesetz ist ein Werk für die Praxis. Eine Stellungnahme zu wissenschaftlichen Fragen war auf dem knappen Raum der zur Verfügung stand, nicht möglich. Der Autor, Rechtsanwalt, Präsident der kantonalen Rekurskommission, hat die Gerichtspraxis im Text soweit berücksichtigt als ihm für die Bedürfnisse der Benutzer notwendig erschien. Der Kommentar schliesst sich jedem einzelnen Artikel des Gesetzes an. Im Anhang I sind die Weisungen betr. die Abschreibungen usw., die der Regierungsrat am 11. Dezember 1956 für die Periode 1957/58 erlassen hat, abgedruckt. Anhang II enthält die Regeln über die Doppelbesteuerung und über den Finanzausgleich zwischen Kanton und Gemeinden. Ein ausführliches Sachregister erleichtert das Auffinden.

KANTON ST. GALLEN — *Bereinigte Gesetzessammlung* — Im Auftrage des Regierungsrates herausgegeben von der Staatskanzlei St. Gallen, 1956. 5. Bände.

Die bereinigte Gesetzessammlung ist eine neue Gesamtausgabe der kantonalen Gesetzgebung in 5 Bände mit Registerband. Als massgebende Grundlage für die technische Bereinigung dienten die in der alten und neuen Folge der Gesetzessammlung veröffentlichten Texte. Die Gliederung der Sammlung ist nach dem vorhandenen Stoff und den praktischen Bedürfnissen der Benützer ausgerichtet. Den Benützern sollen auch die vielen erklärenden und erläuternden Fussnoten dienen. Im Gegensatz zu den „Rechtsbüchern" anderer Kantone hat man von Hinweisen auf die Auslegung der Rechtssätze durch Gerichte und Verwaltungsbehörden abgesehen.

Ein systematischen und ein alphabetisches Register erleichtern das Auffinden jeder erwünschten Stelle.

EIDGENÖSSISCHE STEUERVERWALTUNG — *Die Steuern der Schweiz* (*Les impôts de la Suisse*) I. Teil — 19. Nachtrag 1957; II. Teil — 17. Nachtrag 1957; III. Teil — 16. Nachtrag 1957. Verlag für Recht und Gesellschaft, Bundesstrasse 15, Basel.

Über Zielsetzung und Aufbau dieses vorzüglichen Werkes orientiert die Besprechung im Bulletin, Bd. XI S.154 — Nachtrag 19 zum I. Teil bringt in den allgemeinen Übersichten die jährlichen Steuersätze 1957 der Kantone und Gemeinden und verschiedene Änderungen in der kantonalen Gesetzgebung. Nachtrag 17 des II. Teils gibt ebenfalls eine Übersicht über die Steuersätze 1957 der Kantone und Gemeinden; ferner orientiert er über die Neuerungen im Kanton Waadtland. Nachtrag 16 des III. Teils bringt auch Änderungen im Kanton Waadtland.

TUNIS

LA FIDUCIAIRE FISCOMPTOR, 7, Rue Amilcar, Tunis.

Les circulaires suivantes ont paru:

Circ. No. 349 du 13/8/57: Fond spécial du Trésor
Quittances d'acomptes provisionnels
Les éléments de train de vie

Circ. No. 350 du 29/8/57: Confiscation des biens mal acquis
Quinzaine de l'armée

TURKEY

CAHIT KAYRA: *A Guide to the Turkish system of taxation*. Published by the Union of Chambers of Commerce, industry and commodity exchanges of Turkey, Ankara, 1956, 75 pp.

The Union of Chambers of Commerce, industry and commodity exchanges of Turkey has undertaken the task of encouraging and promoting the investment of foreign capital in Turkey. It is natural that potential investors in Turkey should wish to receive reliable information as regards legislation having a direct bearing on their respective enterprises. Therefore the Union submits to the use of potential foreign investors the present Taxation Guide. The Union's Financial Counsellor, Mr. Cahit Kayra, has in the present document methodically compiled Turkey's financial legislation in which potential foreign investors are most interested. It is a source of reference which will answer the investor's principal questions with regard to his tax obligations and will help him to grasp clearly Turkey's taxation laws.

VENEZUELA

JULIO CESAR ACOSTA: *El proyectista y el legislador en la Reforma del Código de Comercio en el año 1955*. Imprenta Nacional, Caracas, 1956, 190 pp.

This is a compilation with commentary of the debates in congress, documents of the Chamber of Commerce, case law, all about the reform of the "Código de Comercio" of Venezuela.

LUIS LORETO and RENE LEPERVANCHE PARPARCEN: *A Statement of the Laws of Venezuela in matters affecting business*. Second edition. Pan American Union. Legal Division, Department of International Law, Washington 6 D.C., 1956, 217 pp.

This is one of a series of studies edited and published by the Legal Division of the Pan American Union, for the purpose of providing businessmen, lawyers, and other interested persons with a summary of the basic legislation in force in each Latin American Republic. Emphasis is given to laws and regulations pertaining to commercial matters. The general accuracy of the text is ensured by the fact that it is based upon information supplied by competent practicing lawyers in the country concerned.

The present volume on Venezuela is a revised edition of one published in 1949. The information has been not only brought up to date but has been considerably amplified. A supplement will be issued to this work when a sufficient number of important changes are noted. The book contains a chapter of 17 pages on taxation.

D. F. GERSTEL: *Internationale Steuern* herausgegeben von Dr. Hans Eiche. 7. Lieferung: *Venezuela*. Titz Verlag, Berlin, 1957, 40 S.

In dieser Schrift werden die venezolanischen Steuern wie Einkommensteuer, Gewerbesteuer, Stempelsteuer, Erbschaftsteuer und die Verbrauchsteuern dargestellt, wobei besonders ausführlich die Besteuerung der gewerblichen Tätigkeit behandelt wird. Die Publikation „Venezuela" ist wie die

bisher erschienenen Schriften dieser Serie: Bundesrepublik Deutschland, Schweiz, Canada, USA, Südafrikanische Union und Brasilien eine begrüssenswerte Information bei Investitionsvorhaben in den einzelnen Ländern.

U.S.A.

J. K. LASSER'S *Standard Handbook of Business Tax Techniques*. Prepared by J. K. Lasser Tax Institute, Sydney Prerau, Director. McGraw-Hill Book Company, Inc., 95 Farringdon Street, London EC4, 1957.

From this practical guide-book the businessman gets an understanding of the implications of the tax laws. With many examples to show practical applications, the book deals with the tax in relation to dividends, rent, royalties, compensation, advertising, research, and development costs, buying or selling a business, the family-owned business. Each topic is covered in two ways, with descriptive material, and with an example containing practical information. The book assumes that the reader has no knowledge of taxes; all tax terms are explained as they come up. All in all, the book is a clear and practical treatment of a complex problem, that affects every businessman's daily operations.

STUDY OF INTER-LATIN-AMERICAN TRADE.
(Prepared by the Secretariat of the Economic Commission for Latin-America). United Nations, Department of Economic Affairs, New York, 1957, 313 pp.

In this publication the outstanding characteristics of Latin America's foreign trade are described as well as the aims and methods of inter-Latin-American trade policy.

How to get maximum deductions for travel and entertainment expenses. 1957 edition. 18 pp.
Federal Tax Report Bulletin, Vol. XXXVIII, No. 42. Section 1. Prentice-Hall, Englewood Cliffs, New Jersey.

This brochure is part of a series of important tax savings now occupying the attention of business executives.

PRENTICE-HALL: *Federal Excess Profits Tax* under sections 430-474 of the Internal Revenue Code of 1939, as added by the Excess Profits Tax Act of 1950, and amended by the Revenue Act of 1951 and Public Law 125, July 16, 1953. With a Supplement on World War II Excess Profits Tax. Prentice-Hall, Inc., Englewood Cliffs, New Jersey, 1954.

This bound volume is part of the Prentice-Hall Federal Tax Service (review in "Bulletin" Volume XI p. 157) and contains the excess profits tax material that was formerly in Volume 3-A under the tab card "45,000 — Excess Profits Tax — 1950 Act", revised to August, 1954. It will be kept up to date by publishing any further decisions, rulings, and amendments of regulations for filing under the above mentioned tab card and cross referencing them to the appropriate paragraphs in this volume.

PRENTICE-HALL: *Federal Tax Report Bulletin*. Published by Prentice-Hall Inc., Englewood Cliffs, New Yersey.

The Bulletins Vol. XXXVIII, Nos. 31-37 which keep the eight volumes of *Prentice-Hall Federal Taxes* up-to-date have been published. A review of this tax-guide has been published in "Bulletin", 1957, nr. 2/3, page 157.

E. R. BARLOW and IRA T. WENDER: *Foreign investment and taxation*. Prentice-Hall, Englewood Cliffs, N. J., 1955, 481 pp.

This volume is a result of research conducted by the Harvard Law School.

International Program in Taxation. It represents the research activity and conclusions respecting the role of the United States tax laws in the area of direct corporate foreign investment. Three main aspects are considered: the impact of the existing tax laws on foreign investment decisions; an analysis of changes in the tax laws which have elsewhere been suggested to provide tax incentives to foreign investment; and a suggested proposal for United States tax deferral respecting income from foreign investment through the establishment of a new classification, that of Foreign Business Corporations.

The consideration of these matters is preceded by an intensive analysis of the extent and character of the existing direct foreign investment by United States corporations.

Senior tax moves for the man who runs a company.
Prentice-Hall, Englewood Cliffs, New Yersey, 1957, 32 pp.

This booklet discusses a group of tax arrangements important for company executives and owners.

NATIONAL TOBACCO TAX ASSOCIATION: *Comparative Tobacco Tax Collections,* Per Capita Tobacco Tax Collections, Per Capita Cigarette Consumption, by states for 1956. Federation of Tax Administrators, 1313 East 60th Street, Chicago 37, Illinois, 1957, 12 pp.

These tables contain data on calendar 1956 state tobacco tax collections as related to population and tax rates. The basic revenue figures used, net after discounts, are derived from reports by state tax departments to *Tax Administrators News*. The federal revenue figures are the totals reported by the Internal Revenue Service for calendar year 1956.

ALAN J. B. ARONSOHN: *Partnerships.* Practical Law Institute, 20 Vesey Street, New York 7, N.Y., 1957, 106 pp.
Series: Fundamentals of Federal Taxation, Robert ANTHOINE, Executive Editor.

In general the taxable income of a partnership is computed in the same manner as in the case of an individual, and any special tax characteristic (e.g., capital gain, tax-exempt interest, dividends, of any of the items of partnership income or deduction continues when such items are included in the individual partner's tax return. In the chapters of this book the various tax aspects of partnerships are discussed, i.a., Computation of taxable income, Contributions to partnerships, Distributions of unrealized receivables or inventory, Termination of a partnership, The successor partner, Retirement or death of a partner, Family partnerships, Relative tax advantages of corporations and partnerships.

WILLIAM D. ROSS: *Louisiana's industrial tax exemption program:* Division of Research, College of Commerce, Louisiana State University, Baton Rouge, Louisiana, 1953, 87 pp.

The industrial property tax exemption will, under special circumstances, serve as the deciding influence upon the decisions of management to develop and to locate a new enterprise in a particular state. In such a case, the added employment, income, business activity, and the new tax base thereby created in the community where the plant is located and in the State may well offset the direct and indirect costs of the exemption. The results of this study indicate that exemptions cannot be so selectively employed, and that the cost in terms of lost revenue entailed in the granting of exemptions to all firms is great in proportion to results.

Tax planning under the new regulations: 14 analyses showing how to minimize taxes today. Published for the Texas Society of Certified Public Accoun-

tants by The Journal of Taxation, Inc., 147 East 50th Street, New York 22, 1957, 194 pp.

A new attractive looking book lies before us. It has been issued by the publishers of the Journal of Taxation in New York. This book deals especially with the problems of taxsaving in the sphere of the corporation and the partnership, two forms of industrial and commercial structure which created and will continue to create many problems to the taxpayer and his adviser. Moreover, the readers will find some new information about the real-estate planning and the use of trusts in avoiding tax burden on transfer of assets.

Corporation and partnership open the way to new aspects on liquidation, creation, depletion and collapse, every chapter on these subjects written by a different author.

There are fourteen excellent analytical exposes on tax planning. We enumerate the titles of some of the interesting subjects, contained in this volume, which were originally the text of papers prepared for the Third Annual Institute on Taxation, conducted by the Texas Society of Certified Accountants and with the cooperation of The University of Houston.

- Outline of tax problems in collapsible corporations and certain other liquidations.
- How to transfer net operating losses, other carry-overs, to acquiring corporations.
- Planning real estate operations under the 1954 Code to avoid tax problems.
- The use of life insurance and annuities in tax planning.

A most recommendable volume.

HARRY GRAHAM BALTER: *Tax Fraud: What the practitioner needs to know to protect his client.* No. 3 in the series "Practitioners" Guide to Current Tax Problems published by The Journal of Taxation Inc., 147 East 50th Street, New York 22. 96 pp.

This monograph gives the lawyer and accountant the current picture on tax fraud and negligence prosecution. Fraud or negligence can arise in any practice at any time. Immediate correct action is required by the lawyer or accountant to protect his client. This book is a guide to that action, for those not expert in fraud and negligence. Material in this monograph is drawn from that published in The Journal of Taxation during the past two years. For this period The Journal of Taxation has followed new developments in fraud and negligence, reporting and analyzing the most significant of this material. The Editors have selected from these important tax events the material which bears on the present state of fraud and negligence prosecution, edited it, combined discussion with related new decisions, and published it in one handy volume. They have made it easy for the practitioner to get a complete, broad, and authoritative picture of how fraud works today. Mr. Balter, a member of the Bar practicing in Los Angeles, is Editor of the Tax Fraud and Negligence Department of The Journal of Taxation and also author of the book, "Fraud Under Federal Tax Law".

F. JOHN SHANNON: *The conflict between law and administrative practice in valuation of property for taxation in Kentucky.* Bulletin of the Bureau of Business Research, College of Commerce, Nr. 31. University of Kentucky, Lexington, 1957, 112 pp.

The author, Assistant Professor of Political Science at Creighton University, analyses in his dissertation the assessment processes in Kentucky during the period since 1891. Major attention is focused on the political obstacles to full value assessment.

ERWIN N. GRISWOLD: *Cases and materials on Federal taxation.* Fourth edition. The Foundation Press, Brooklyn, 1955, 1030 pp.

This volume contains a very important compilation of case law in the field of incomes taxes, estate and gift taxes and miscellaneous taxes. Comment has been added to the cases. This work is indispensable for students, but is also extremely useful for those foreign tax specialists who have to deal with United States tax law without having, however, the necessary material on case law at their disposal. Thus, this work is of a high scientific value while it serves practical purposes as well.

CHARLES B. BAYLY, JR. — a) *Minimizing taxes on professional income* (Internal Revenue Code § 107) with 1954-1955 cumulative supplement b) *Tax manual for divorce and separation,* with 1954-1955 cumulative supplement. Newkirk Associates Inc., Albany, New York.

The author of these two books is a member of the New York, Connecticut and Ohio Bars. In the first book an extensive treatment is given of the possibility offered by § 107 of the Internal Revenue Code of 1939 to spread the often strongly variable professional incomes over a long period in order to avoid the progression for high incomes.

In the second book are discussed the many tax problems occurring after a divorce and in the case when the spouses are "legally separated", which cannot be rendered in one word owing to the divergent laws of the different American states. Attention is paid in this book to trusts and to Estate and Gift tax.

HORACE J. DEPODWIN: *Discharging Business Tax Liabilities.* Rutgers University Press, New Brunswick, New Jersey, 1956, 167 pp.

Beginning with a history of Federal internal revenue payments made by business firms from 1861 to the present, Dr. DePodwin, Assistant Professor of Economics at Rutgers University, goes on to examine the significance of the different ways of handling tax liabilities. He traces the contributions of economists to this area of public finance theory and demonstrates the pressures exerted on the working capital position of firms by the need to discharge tax payment in a particular way.

Financing Highways. Symposium conducted by the Tax Institute, November 8-9, 1956, Princeton. Tax Institute, Inc., Princeton, 1957, 217 pp.

In the next 13 years $50 billion will be spent on roads and streets unde; the Federal Aid Highway Act of 1956. In this symposium volume the Tax Institute explores the impact of this vast new program.
Primary consideration is given in Part One to the role of an adequate highway system in the national economy. The reapportionment of fiscal responsibility and the impact of the new program on state and local governments are discussed in Part Two. Part Three is devoted to the role of highway user revenues in financing the program. The problems arising out of specific taxes are the subject of Part Four. Part Five examines ways of expediting the highway program.

ROY A. FOULKE: *Practical Financial Statement Analysis.* McGraw-Hill Book Company, Inc., 95 Farringdon Street, London EC4, 1957, 712 pp.

The author gives a description of the technique used in analyzing what is behind the figures of four financial statements: the balance sheet, the income statement, the reconciliation of surplus, and the source and application of funds statement. The author describes the theory behind the technique and includes ratio standards as a basis for comparison determined from the yearly study of the financial statements of over 10,000 business corporations. The material is presented in an orderly manner: background information in the first three chapters, detailed classification of balance sheet items in the next

chapter, a chapter on the analysis of small businesses, ten chapters on the internal analysis of balance sheets and operating figures, two chapters on comparative analysis, five chapters on the analysis of income statements, one chapter on the analysis of surplus accounts, and a final chapter on evolution in accounting theory and practice.

V

CANADA — HOW THE FEDERAL TAX DEPARTMENT OPERATES

H. F. HERBERT

Most Canadian accountants, whether in public practice, business, or industry, have more than a passing familiarity with income tax matters through their activities on behalf of their clients and employers. Probably, however, they have a good deal scanter knowledge of the administrative machinery of the Taxation Division of the Federal Government.

Organization

Not a complex organization, the Division consists of only two levels: the management and policymaking level at head office and the operating level at the 29 districts. It has been designed and operates as a highly decentralized organization with the direct line of authority running from the Deputy Minister and his assistant to the district directors. All possible autonomy is given to district offices to decide income tax and succession duty cases in their respective areas, and it is believed that this approach is most satisfactory to taxpayers, despite some problems of uniformity. Certainly it permits the heavy volume of annual returns to be disposed of more efficiently than would be the case if each one had to be referred to a central office.

Students of organization might question the very wide span of control from the Deputy Minister to his 29 district directors. However, the lines have been tightened by delegating some management control from the Deputy to the heads of certain head office branches, by establishing a system of internal reporting and review, and by continuous audit of all phases of district activity by the head office inspection branch.

The internal structure of both levels of the Division's organization is quite uncomplicated. Head office has five branches, each headed by a director. The legal branch acts as legal adviser to the Division and deals with its responsibilities under the law pertaining to appeals, pension funds, and charitable organizations. The assessments branch develops broad assessing programs and policies for district application, handles complex technical cases referred to it by the districts, and endeavours, by a system of reporting, review, and visitation, to secure uniform application of the tax law throughout the country. The administrative services branch is responsible for the efficient conduct of all matters concerning personnel, collections, accounting, filing, and the procurement of forms, supplies, equipment and premises. The inspection branch periodically audits all phases of the Division's activities and reports its findings directly to the Deputy Minister. The planning and development branch is a methods group whose activities are directed to making improvements in procedures and equipment with a view to increased economy of effort and efficiency of result.

Districts are also organized on straightforward lines. Each office is headed by a director whose function is primarily managerial in character. Assisting him are three senior officials, a chief assessor who supervises all types of assessing and investigation work, a supervisor of administration who has

charge of accounting, collections, files, and all internal housekeeping, and a personnel officer who assists the director in relation to all matters affecting staff and organization.

Workload

By any standards the Taxation Division operates a large-scale business. Collections exceed $2·½ billion annually. This represents about 54% of the total government revenue and 59% of the tax revenue. Of the income tax portion, individuals pay something over one half, and corporations the balance. The normal annual collections from succession duties are about $65 million. Returns are received from about 5 million individuals and 72,000 corporations. Instalment accounts are maintained for some 127,000 taxpayers and ledger accounts for 210,000 employers. In 1955, cases for collection action totalled almost 700,000. To carry out its responsibilities the Division employs 6,300 regular personnel in its 30 locations. Cash costs of operation run at about $25 million a year, or roughly 1% of collections. As against this cost using the fiscal year 1955-56 as an example, the additions to declared tax resulting from assessing activity exceeded $89 million. Some idea of how the workload factor is developing may be gained from the following:

Year	*Returns Filed*	*Staff Employed*
1937	490,000	1,214
1947	3,570,000	7,430
1956	5,090,000	6,289

The Work Cycle

The Division's work cycle in any calendar year begins much earlier than the following April 30 so familiar to taxpayers and their accountants. Throughout the year, for instance, advance tax payments from instalment payers and tax deduction remittances from employers are received and recorded. Payroll auditors are in the field to ensure compliance with the law as it governs deductions at the source. Current returns from persons leaving the country or filed on behalf of deceased persons are being dealt with. Eearly in August the Forms Committee at head office sits to prepare the forms for the current year. Each district submits a report and recommendations to the committee on its experience with the previous year's from. Error statistics are studied to see what can be eliminated or reduced by forms modification. Amendments to the law which affect forms are analyzed. Concurrently, other officials at head office are reviewing the procedures for processing the forms to be dealt with and each district makes a report and recommendations on this subject. When the best possible forms have been devised and estimates of probable consumption prepared, the machinery for ordering and distributing them is set in motion. At the same time the procedures manuals are revised and distributed.

By early fall a start is made, too on preparing the radio and television publicity campaign, or the "File Early" campaign as it is better known in the Division, which will run the following March and April.

In December of the calendar year the district offices start the planning necessary for dealing with the approaching intake of returns. Supervisory staff are selected; estimates are made of intake and of staff requirements for coping with the intake. Rosters are prepared for manning information counters and temporary information offices in centres not served by a district office; and space and equipment are allocated. These few sentences only sketch in rough outline the amount of planning effort required for the filing season, particularly in the larger districts. Meanwhile another branch of

government, the Treasury Office, is gearing itself to process over $2^3/_4$ million applications for refund cheques.

With the release of forms to the public early in January, a trickle of filing commences which rises to a full flood by mid-March, then ebbs somewhat, and rises again to a peak by April 30. In February the recruitment and training of temporary employees begins, many of the ex-staff members. They are used mainly for clerical duties and for the examination of wage returns. Permanent employees are used in supervisory positions and in the processing of the more complex returns, especially those of self-employed or corporate taxpayers.

All returns are examined. For most, one look suffices. Others, particularly those based on financial records, may be earmarked for closer scrutiny and possibly an examination of records at the earliest opportunity. Some returns which are incomplete or require clarification of some point are temporarily "snagged", the taxpayers are asked for what is required, and the returns finalized. After this first examination all returns go through a "T67A" process in which a form is raised for each. These pre-numbered, carbonloaded, continuous strip forms serve several purposes. For all returns they provide the assessment notice required by law. For refunds they provide the applications to Treasury for the issuance of cheques. For taxpayers with balances to pay they provide a request for payment, a ledger account, and a first collection reminder. In addition, other copies of the form are vouchers supporting necessary internal accounting and providing the basis for statistical sampling.

The end of May sees the "mass" of the intake disposed of. The temporary employees are released and the operating segments of the district office swing into their pre-planned programs of activity for the remainder of the cycle. The volume of accounts for collection is at its peak. These accounts are subjected to the various processes of collection by means of a continuous cyclical review. The finalized returns from the T67A process have gone to the taxroll section which files them and then commences its work program of detecting nonfilers and matching information received from employers and others to that reported by taxpayers.

The assessments branch, which has been heavily involved in the T67TA process, now swings fully back to its main program of examining returns and records. Some of these examinations are done on a 'desk audit" basis. If the taxpayer is brought into the picture it will likely be by letter or by telephone to clarify a point. Other returns are examined on a "field audit" basis. Here the assessor goes to the taxpayer's place of business and often examines records.

Uniformity

The Division does all in its power to achieve uniformity of tax application across Canada. The problems involved will be apparent to anyone who considers that a very detailed statute must be applied to a diversity of business activity across a very wide area. To gain uniformity, the Division relies on several means of control:

1. *Manuals* — Carefully prepared policy and operating manuals are kept up-to-date for the training and guidance of all personnel engaged in enforcement and administration activities.
2. *District checking staff* — Selected assessors regularly check the completed work of all other assessors for accuracy and uniformity within the district.
3. *Head office-review staff* — To achieve uniformity between districts, groups of experienced assessors are continually checking district work either by direct visit or by examination at headquartes of district office assessments. In addition, these head office personnel are consulted by the districts in difficult and complex cases.

4. *Inspection staff* — An inspection staff, responsible to the Deputy Minister, periodically examines all phases of each district's activities to ensure that laid-down procedures and policies are being effectively carried out.

Enforcement

Income taxpayers in Canada file under a system of self-assessment. In other words, they themselves state what earnings they receive and what taxes they have to pay. If all of this could be correctly accomplished in 100% of cases, the Division's role in the scheme of things could be restricted to supplying forms and information and receiving money. For several reasons, however, the Division must undertake programs of enforcement in the following three distinct fields:

1. *Taxroll field* — Some people do not file voluntarily.
2. *Assessing field* — Some returns are incorrect because of mathematical error, misinterpretation of the law, avoidance schemes and deliberate evasion.
3. *Collection field* — Some people are temporarily unable to pay taxes due or will not do so without compulsion.

In the taxroll field the enforcement effort is carried on by the taxroll sections of the district office administration branches. In addition to storing files and producing them for various purposes on requisition, they also perform a revenue-producing function. It commences immediately after the main intake of returns at April 30 has been processed and filed. A wide variety of methods is employed to detect non-filers, including checks to different kinds of directories, information reported by employers, debtors, and dividend payers, municipal records, registries, and so on. The door-to-door canvass has been employed effectively on occasion. The steps to obtain returns from involuntary filers are the request, the demand, and the court action. In the fiscal year ended March 31, 1956, these activities produced additional returns which on assessment yielded over $\$7^1/_2$ million in tax revenue.

It is in the assessing field that the most important of the Division's enforcement work is carried on. The aim of this work is simply to bring about maximum compliance with the tax law. The direct work is of course done by the districts along broad program and policy lines laid down by headquarters. Under the district director the chief officer responsible for assessing enforcement work is the chief assessor. Under him will be several assessing sections, the number depending upon the size of the district, a checking section, a succession duties section and a special investigation section. Sections are further broken down into groups, the number again depending upon district size. In addition, each district assessments branch has a clerical and typing unit.

As was previously mentioned, a "first look" is given returns during the T67A program. This suffices to correct mathematical errors or those due to misinterpretation of the law covering dependants, medical expense claims, and so on. The more serious kinds of tax misstatement, however, are only found by a more intensive scrutiny of returns and underlying statements and records than the "first look" technique will permit. It is in the "second look" that the main effort of assessing personnel, and especially of those trained in accountancy and special investigation methods, is employed. This type of work requires careful and intensive advance planning and programming if the most effective use is to be made of the districts' limited numbers of technical personnel.

The Division considers it an essential part of its enforcement activity to detect and punish tax evaders. Regrettably, a percentage of taxpayers cheat and thus pose a threat to their fellow citizens generally and the soundness of

tax system in particular. The detection of tax fraud is not easy and requires the use of techniques often quite different from those of ordinary assessing. Here we are in the field of criminal law with its principle of proof beyond a shadow of a doubt. The Division is always concerned with the damage possible to an honest man's credit and reputation which can result from a misdirected and clumsy investigation. Nevertheless it has been found that seemingly insignificant indications of fraud, when probed to the bottom often lead to disclosures of extensive tax evasion.

The enforcement effort carried out in the collection field needs little explanation. It is trite to say that all the intensive taxroll and assessment effort would be of little avail if the resulting taxes assessed were not collected. Collection work is done by the accounts sections of district administration branches. It carries on steadily through the year, the peak load being received just after the April 30 filing date.

Legislation

A word should be said about the Division's role in shaping the tax law. Tax legislation is, of course, the responsibility of the Minister of Finance. The Division is asked to advise on the administrative feasibility of tax proposals. In addition, it advises the Minister of Finance of instances where the law is not operating as intended or where certain taxpayers have been able to avoid their share of the tax burden without breaking the law itself. This advisory role is in keeping with the aim already discussed whereby the Division strives for uniformity of tax application among all taxpayers.

Accounting

The Division's internal accounting system is not complex. Accounts are maintained in each district for employers who deduct tax at source, for taxpayers who make instalment payments and for those who owe assessed tax. For tax deductions, the periodic remittances from employers are credited to their tax deduction accounts. After February 28 following a calendar year a debit is posted to each such account from the employer's T4 summary return. This debit either clears the account or leaves a balance which must be immediately reconciled. Instalment payments from individual and corporate taxpayers are credited to their accounts. Debits representing assessed tax are posted after the pertinent return has been assessed. A remaining debit balance becomes subject to collection action. A credit balance is cleared by a requisition to Treasury for refund. Accounts are opened for only a small percentage of wage returns. These are cases where the deduction at source has not satisfied the full tax and the balance is not remitted on filing.

Each district office maintains a general ledger consisting mainly of control accounts for the subsidiary employers' and taxpayers' accounts, revenue accounts, and head office account.

Filing

Taxpayers' returns are stored in folders in 4-drawer file cabinets. They are maintained in straight alphabetical order, a system which has been found most satisfactory after many experiments with numeric, alpha-numeric, and library-bureau methods of indexing. A system of charge-out of requisitioned returns is maintained for file-control purposes.

Conclusion

This outline of the administration of the Taxation Division has been confined to fundamentals and is meagre of detail. A static picture could not be painted in any event. The Division, like most large Canadian business

organizations today, is constantly reviewing and revising its procedures in the light of changing requirements. It must suffice to say that there is a continuing effort to maximize the efficiency of operations so that the very least part of the tax dollar collected is used up by the collection process itself.

Source: The Canadian Chartered Accountant, April 1957.

OESTERREICH
STEUERERMÄSZIGUNG = STEUERERHÖHUNG

Alle bisherigen Ermäszigungen brachten den Steuerträgern der Einkommensteuer samt allen Nebenabgaben keine echte Steuerermäszigung sondern nur eine annähernde Angleichung der Steuertabelle an die Wertverhältnisse im Zeitpunkt des Inkrafttretens der vorher gültigen Tabelle. Verfolgt man nun die steuerliche Belastung eines mittleren, wertgesicherten Einkommens während der letzten zehn Jahre, so stellt sich heraus, dasz dieses Einkommen trotz aller vorgeblichen „Steuerermäszigungen" prozentual nicht niedriger, sondern höher besteuert wird und wurde, als dies für 1946 der Fall war.

Dieser Betrachtung liegt ein durch den Baukostenindex wertgesichertes Einkommen zugrunde, das bis zum Jahre 1957 nominell auf $35.000.— angewachsen ist. Aus der Darstellung der wertmäszigen Entwicklung dieses Einkommens springt noch viel eher das Verhältnis zwischen Geld und dessen Wert ins Auge.

Einem Einkommen für 1957 von	S. 35.000,—
entspricht ein solches für 1955 von	S. 30.700,—
Für 1953 macht das Einkommen	S. 27.150,—
aus und beträgt für 1950 nur mehr nominell	S. 19.300,—

Wird nun von diesem Einkommen die Einkommensteuer nach der Steuergruppe III/1 berechtnet, ergibt sich eine steuerliche Belastung, die für die letzten Jahre näher beleuchtet werden soll. Die angeführten Prozentsätze gelten nur für dieses Wertgesicherte Einkommen bei St.Gr.III/1. Im allgemeinen kann aber behauptet werden, dasz ein in der Kaufkraft gleichbleibendes mittleres Einkommen, das nur nominell einem gewissen Index folgend sich erhöhte, prozentuell härter getroffen wird, weil rechnerisch auch vom Realeinkommen weniger überig bleibt, als "Früher". Dies alles, obwohl bisher die Steuer "ermäszigt" wurde. In ziffern:

Die steuerliche Belastung dieses wertgesicherten Einkommens betrug im Jahre 1948 10,99% und ist bis zum Jahre 1952 auf 16,23% angestiegen. Auch für den Zeitraum 1955 bis 1957 zeigt sich eine ähnliche Entwicklung.

Während durch die Einkommensteuertabelle für 1955 ursprünglich eine steuerliche Belastung dieses wertgesichterten, mittleren Einkommens 1955 mit 9,73%
eine solche von 10,71%
eingetreten. Für 1956 ist die Belastung dieses Einkommens auf 11,7%
angestiegen, während unter Berücksichtigung der bis jetzt bekannten. Indexentwicklung für 1957 12,53%
anfallen werden und unter Bedachtnahme auf die durchsch. Preisentwicklung der letzten Jahre für 1958 eine solche von 13,39%
erreicht werden würde.

Daraus ergibt sich, dasz die steuerliche Belastung eines mittleren, wertgesicherten Einkommens ($35.000.—, Wert 1957)

für 1955 um	10,1 %	über der geplanten lag,
von 1955 auf 1956 um	20,24%	gestiegen ist,
von 1955 auf 1957 um	28,78%	steigen wird und
von 1955 auf 1958 um	37,63%	steigen würde.

Um nun für 1958 jene steuerliche Belastung zu erreichen, wie sie für 1955 nach der Tabelle vorgesehen war, müszte in der zu schaffenden Einkommen- und Lohnsteuertabellen für 1958 bei den mittleren Einkommen eine lineare Herabsetzung der Steuersätze eingebaut werden, die mindestens 25-30% (bei S 35.000.—, Wert 1957, sind es mindestens 27.35%) betragen müszte. Erst wenn die Herabsetzung der Tabelle mehr als die angeführten Prozentsätze ausmacht, kann von einer echten Steuerermäszigung gesprochen werden „Ermäszigungen" bis zu diesem Prozentsatz stellen nur die beiläufige Wiederherstellung eines alten Zustandes dar, wodurch lediglich die in der Steuertabelle eingebaute Progression ausgeschaltet werden soll. Durch die kontinuierliche Geldentwertung die in durchschnitt der letzten drei Jahre nach dem Baukostenindex 7,28% betragen hat, schlittert jedes Einkommen infolge der Anwendung einer unveränderten Tabelle in die Progression hinein. Die Folge ist eine vom Gesetzgeber nicht gewollte, überhöhte Besteuerung der Einkommen.

Zwölf Jahre nach dem Krieg wird ein mittleres Einkommen von 35.000.— S. (Wert 1957) einer steuerlichen Belastung unterworpen, die um 23,79% über das eines kaufkraftgleichen Einkommens des Jahres 1946 liegt. Dabei ist zu berücksichtigen, dasz seiner Zeit die Einkommensteuer mit einem „Kriegszuschlag" belastet war, für dessen Einhebung, — unter welchem Namen auch immer — heute keine Wirtschaftliche Berechtigung mehr gegeben erscheint[1]).

Sollte die geplante Änderung der Einkommen und Lohnsteuertabelle zum 1.1.1958 gegenüber der Tabelle für 1955 eine Berichtigung nach unten von weiniger als 27,35% bringen, so müszte man die Offenheit aufbringen, diese Berichtigung unter dem Titel „Annähernde Angleichung der Einkommensteuertabelle an die Wertverhaltnisse 1955" dem Gesetzgeber vorzulegen. Von einer „Steuerermäszigung" zu sprechen, kommt der Vorspiegelung falscher Tatsachen gleich, weil der Steuerträger für sein Einkommen nach der „Ermäszigung" prozentmäszig mehr Steuern zu zahlen hat, als dies bei der ersten Anwendung der vorher gültigen Tabelle der Fall war.

Auf die Verhältnisse der letzten Jahre zugeschnitten, ging bisher die paradoxe Gleichung auf,

„Steuerermäszigung = Steuererhöhung".

Es scheint sich bei uns die Gepflogenheit eingebürgert zu haben, die nachhinkenden und unzureichenden Berichtigungen der Einkommensteuertabelle aus rein optischen Gründen als „Steuerermäszigungen" zu bezeichnen, obwohl auf lange Sicht gesehen, dem Steuerpflichtigen mehr genommen als gegeben wird. Der Staat ermäszigt also nicht die Einkommensteuer, sondern das Einkommen durch eine höhere Steuer.

Die Red.: Im Zeichen einer neuerlichen Titular-Steuerermäszigung sind die obigen Zeilen aktuell. Darüber, dasz die ebenso titularen Gesetzgeber natürlich nur das „beschlieszen" werden, was schon „auskoaliert" (kein Druckfehler etwa für auskalkuliert) ist, sind wir uns natürlich vollkommen klar. Dennoch erscheint es uns nützlich, zu dokumentieren: Wir und mit uns eine sehr grosze Menge können uns nicht entschlieszen, eine längst fällige Korrektur der ESt-Tabelle wirklich als ESt-Ermäszigung zu bezeichnen und anzuerkennen, blosz deswegen, weil sie als Ermäszigung im Regierungsprogramm enthalten war und daher „erfüllt" werden musz.

Dr. jur. Hanspaul Cammerlander

Source: *„Observer" Steuerdienst,* 10, Nov., 1957

---

[1]) Es sei denn, dasz wir jetzt im kalten Krieg leben, daher auch der Zuschlag auf kaltem Weg auferlegt wird. Anm. d. Red.

NEW ZEALAND
TAX RATES AND TAX YIELDS

When does a higher scale of income tax rates produce a lower yield than that obtained under a lower scale? As the question implies, there are factors, termed special exemptions, which operate to reduce the weight of the impact. These controlling factors may operate freely or within restricted limits, and the resultant tax may then be increased by a super tax or decreased by a rebate. The effect of a super tax or a rebate is to convert the basic rates into nominal rates. Nominal rates cannot fairly be compared with true basic rates unless due allowance is made for super tax or rebate.

Therefore, a proper conclusion cannot be drawn from a comparison of tax scales operating under different tax structures without taking into account all the factors likely to influence the final result—the tax payable.

This is an indispensable test because the exemptions applying to the higher tax scale may be so much more liberal than those applying to the lower tax scale as to show a lower tax yield.

Actual examples are more convincing than hypothetical instances, and for our purpose we take the income years 1938-39 and 1956-57.
The former year is selected because it was the year immediately preceding the outbreak of war, when taxation was functioning normally under the Labour Government and when it could be expected that the comparison would be disadvantageous to a post-war year in which some of the financial year in which some of the financial burdens created by the war were still being carried. The results should prove illuminating, as the picture presented is quite different from what might have been expected.

The personal and family exemptions operating in 1938-39 were: personal exemption £200, reduced from £210 in the previous year, and the wife and child exemptions each £50. The basic rates (increased by 4d. in the £) commenced at 2/- in the £ increased by 1/100th of a 1d. for each additional £ of taxable income. There was no super tax or rebate.

The exemptions applying to the 1956-57 incomes are: personal exemption £375, wife exemption £125, and child exemption £75. The basic rates commence at 3/- in the £, increasing by 3d. for each additional £100 until a maximum of 12/- is reached. A tax rebate provides for a reduction of 25 per cent. with an upper limit of £75. Parenthetically, the personal exemption remained uniform at £200 throughout the Labour Government's term of office from 1939. The wife exemption was increased to £100 and the child exemption to £65, but each was limited to a tax deduction of £26. When the National Government was returned in 1949, these exemptions were subsequently increased to their present levels and the limitations removed.

Although the tax rates in force on the 1938-39 incomes are lower than the tax rates applying to the 1956-57 incomes, the tax yields from 1956-57 incomes in the middle and lower income groups, because of the provision of more liberal exemptions, plus rebate, will be appreciably lower than the yields from similar incomes of the earlier period.

However, instead of comparing tax yields, we have adopted, in the tables below, a comparison of effective rates, which were obtained by dividing the tax payable by the assessable income.

Two significant facts emerging from the tables are:

(1) Taking single taxpayers, we find that the effective rate on a 1938-39 income is approximately the same as for a 1956-57 income increased by £300. For the three classes of married taxpayers, the increase is approximately £400.

(2) The effective rates applicable to single taxpayers in 1956-57 are, in the great majority of cases, lower than those which applied to corresponding 1938-39 incomes of married persons.

It is obviously fallacious to condemn out of hand a tax scale because it is higher than another. Factual deductions can only be made from a comparison of tax yields or effective rates. The critic who would attempt a final conclusion from a comparison of basic rates must beware of booby traps.

Single Taxpayer

Salary or Wages	Effective Rate 1939	Effective Rate 1957
£	s. d.	s. d.
375	1 0	—
500	1 4.2	0 6.8
600	1 6.7	0 10.7
700	1 8.7	1 1.7
800	1 10.5	1 4.3
900	2 0	1 6.6
1000	2 1.6	1 8.6
1100	2 3	1 10.5
1300	2 5.6	2 1.8
1500	2 8	2 4.9
1800	2 11.6	2 11.2

Married—1 Child

£	s. d.	s. d.
500	0 10.4	—
600	1 1.5	0 1.1
700	1 4	0 4.9
800	1 6.1	0 8.0
900	1 8	0 10.7
1000	1 9.7	1 1.5
1100	1 11.3	1 3.2
1300	2 2.2	1 7
1500	2 4.8	1 10.4
1800	2 8.5	2 3.7

Married Taxpayer

Salary or Wages	Effective Rate 1939	Effective Rate 1957
£	s. d.	s. d.
375	0 8.4	—
500	1 1.2	—
600	1 4	0 5.4
700	1 6.3	0 8
800	1 8.3	0 10.9
900	1 10	1 1.5
1000	1 11.6	1 3.7
1100	1 1.1	1 5.8
1300	2 3.9	1 9.5
1500	2 6.4	2 1
1800	2 10	2 6.4

Married—2 Children

£	s. d.	s. d.
500	0 7.6	—
600	0 11	—
700	1 1.7	0 1.9
800	1 4	0 5.2
900	1 6	0 8
1000	1 7.8	0 10.5
1100	1 9.5	1 0.7
1300	2 0.5	1 4.6
1500	2 3.2	1 8.1
1800	2 7	2 1.1

Source: The N.Z. Economist and Taxpayer, September 26, 1957.

Editor's Note: The above comparison is very interesting. It is for this reason it is being reproduced in the *Bulletin*. Similar comparisons are invited from other countries.

It should be observed that, as far as can be seen, the factor of decrease in currency value (purchasing power) has not been taken into account. See in this respect the article on Austrian Tax Law reproduced on page . . .

I

AU SUJET DE LA DECISION ANTICIPEE EN MATIERE D'IMPOTS

par

C. O. Sandström, Stockholm

Avant-propos

Dans la discussion qui s'est engagée au XIe congrès de l'International Fiscal Association à Vienne du 16 au 20 septembre 1957, sur la question des garanties juridiques du contribuable à l'égard du fisc, une place prépondérante a été faite à l'étude des moyens d'établir un droit général accordant aux contribuables, suivant le modèle suédois, le bénéfice de la décision anticipée en matière d'impôts. Conformément au désir qu'a spécialement exprimé le congrès, il est donné ici un exposé du système suédois.[1])

Les dispositions relatives à la décision anticipée ont été adoptées en 1951 et devaient entrer en vigueur à partir du 1er juillet de la même année. En même temps était créé un nouvel organe auquel était confiée la charge de prendre les décisions anticipées; cet organe de l'Etat fut le Comité National des impôts.

La nouvelle législation se fondait sur un projet présenté en décembre 1949, projet qu'avait élaboré une commission désignée deux ans plus tôt. Mais l'idée d'accorder aux contribuables la décision anticipée en matière d'impôts et d'instituer à cet effet un comité national des impôts avait déjà fait l'objet de discussions pendant plusieurs années.

Lorsque cette charge fut confiée au comité, dès le début on se rendit compte que les contribuables auraient un grand avantage à

---

1) Dans sa réunion du 12 avril, le Comité Scientifique Permanent de L'IFA nous a demandé de procéder à la publication de ce rapport. Conformément à la mission dont l'avait chargé le Congrès de Vienne, le Comité Scientifique donnera son avis, lors du prochain congrès, sur la possibilité qu'il y aurait ou non d'étendre l'application d'un système analogue dans d'autres pays.

pouvoir être renseignés à l'avance sur les conséquences fiscales que pourrait entraîner une opération financière projetée. Mais on se rendit bien compte aussi des graves difficultés qu'il s'agirait de surmonter lorsqu'il faudrait donner une forme à l'organisation prévue. Ces difficultés étaient les conflits d'intérêts qui pouvaient surgir entre les tribunaux traitant des questions d'impôts et l'organe qui avait à prendre les décisions anticipées. Au cours des travaux de législation, il fallait donc considérer le fait que les décisions anticipées, pour être vraiment utiles aux contribuables, devaient porter en elles-mêmes l'effet obligatoire et ne pas exercer seulement leur action en vertu de l'autorité dont l'organe en question pourrait être investi. L'exposé suivant montre comment on a tâché d'éviter, dans la législation suédoise, le danger de conflits auquel il a été fait allusion.

Organisation et fonctions du Comité National des impôts

Il est une chose très importante et c'est naturellement la façon suivant laquelle est constitué l'organe qui doit prendre les décisions anticipées et la situation de cet organe par rapport aux autres autorités qui peuvent être chargées des impositions auxquelles se rapportent les décisions anticipées.

Avant que nous nous occupions ici plus en détail de l'organisation du Comité National des impôts, nous devons faire observer que le travail législatif qui fut remis à la commission de l'année 1947 ne comprenait pas seulement la question des décisions anticipées. En effet, ce travail avait aussi en vue la création d'un organe central qui devait être chargé de donner aux impositions un caractère homogène et uniforme. Depuis longtemps du reste, s'était fait vivement sentir la nécessité d'établir une certaine coordination des travaux des autorités plus ou moins locales du fisc. La mission de la commission consistait donc à résoudre deux problèmes différents. Lorsque fut donnée cette mission, on fit ressortir qu'il n'existait aucun rapport absolu entre ces deux problèmes. Mais on déclara en même temps que ces deux questions étaient toutefois si proches l'une de l'autre qu'elles devaient être étudiées et examinées ensemble. Il s'ensuivit que le Comité National des impôts — le nouvel organe — fut chargé non seulement des décisions anticipées mais aussi de la fonction susmentionnée d'uniformisation de l'imposition. Le Comité

reçut encore d'autres fonctions, par exemple celle de donner son avis sur les questions législatives et celle de faire savoir les modifications qu'il serait bon d'apporter aux lois dans le domaine de ses activités.

Dans cet exposé qui traite avant tout de la décision anticipée, il n'est évidemment pas nécessaire de s'arrêter plus longtemps aux autres aspects susvisés de l'activité du Comité National des impôts. Cela a cependant son intérêt de constater que l'on n'a pas trouvé inopportun d'attribuer à cet organe les différentes sortes de fonctions mentionnées ci-dessus. En réalité, on peut dire que ces fonctions se complètent. Si les décisions anticipées marquent une activité qui vient en aide aux contribuables, l'activité qui tend à établir l'uniformité des impositions a en vue l'assistance aux autorités fiscales. Pour éviter un malentendu il faut faire ressortir que le Comité, dans ce dernier genre d'activité, n'est en rien autorité fiscale. En effet l'activité du Comité se manifeste principalement sous forme de conseils et d'avis, de rédaction de formules et fiches uniformes, d'appropriation de moyens de contrôle qui sont centralisés et peuvent être mis à la disposition des autorités fiscales locales pour l'exercice du contrôle des impositions. Tout cela vise à assurer des impositions plus égales et plus uniformes dans tout le pays. Cette activité n'empiète pas sur la situation depuis longtemps indépendante des autorités fiscales. En somme, toute l'activité du Comité National des impôts peut être considérée comme service de renseignements pour les contribuables aussi bien que pour le fisc. Mais la différence principale réside dans le fait que les conseils et avis donnés aux autorités fiscales ne lient pas ces autorités — le Comité n'agit ici qu'en vertu de l'autorité dont il est investi — tandis que les décisions anticipées prises à l'égard des contribuables lient en principe les autorités fiscales. En réalité, les autorités fiscales prennent pour guide, on peut le présumer, les avis du Comité National dans leur activité à l'égard des impositions. Ladite organisation qui a pour but de diriger le travail d'imposition porte, telle qu'elle est, la marque des conditions particulières à la Suède, entre autres, la situation indépendante des autorités fiscales, et il y a bien peu de raisons de copier cette branche de l'activité du Comité dans d'autres pays où l'administration fiscale — comme les autres administration — se trouve sous l'influence plus ou moins étroite de la direction

ministérielle ou de toute autre forme de centralisation, circonstances inconnues en Suède. Il y a pourtant lieu de faire ressortir que le Comité National suédois, par les doubles fonctions qu'il a de se mettre à la disposition et des contribuables et des autorités fiscales, a certes obtenu une situation bien plus prépondérante et plus importante que s'il ne lui avait été confié que les décisions anticipées.

Après cette digression, nous revenons à la question de l'organisation du Comité National des impôts.

Lorsque fut discutée la forme que devait revêtir cette organisation, on eut à faire un choix: créer une nouvelle administration de l'Etat sur le modèle traditionnel ou constituer un comité qui serait composé de représentants de différents groupes d'intérêts communs, et auquel serait adjointe une chancellerie. Comme l'on ne voulait pas donner une importance capitale aux points de vue fiscaux et que l'on voulait plutôt, d'une façon générale, diriger ses efforts vers une solution d'équité sur le plan matériel, en tirant profit des expériences de technique fiscale et de celles des citoyens dans leur ensemble, on choisit la dernière proposition de l'alternative précédente.

Le Comité National des impôts se compose d'un président et en outre de six membres qui sont nommés pour une période de quatre ans. Un des membres sera vice-président pour être à même de remplacer le président lorsque celui-ci ne pourra pas remplir ses fonctions.

En ce qui concerne les capacités requises pour appartenir au Comité, il faut que le président soit juriste; le vice-président et deux autres membres devront aussi être juristes ou avoir passé un examen à l'Ecole des hautes études commerciales. Les dits membres doivent en outre avoir acquis de l'expérience dans les travaux judiciaires ou dans l'activité administrative. Les autres membres devront être choisis de façon que les groupes de connaissances se rapportant aux différentes branches des activités à fin de profit y soient représentés.

Pour chacun des membres qui doivent être juristes ou avoir passé un examen à l'Ecole de hautes études commerciales un suppléant doit être désigné et pour les autres membres des suppléants au nombre de six. Ce qui a été dit auparavant sur les capacités requises pour les membres s'applique aussi aux suppléants.

Pour mettre en lumière la composition du Comité National telle qu'elle est à l'heure actuelle, on peut apporter les précisions suivantes sur ses membres.

Le président est chef d'une administration centrale qui n'a du reste aucun rapport avec les questions d'impôts. Sa fonction de président du Comité a donc le caractère de charge spéciale. Il faut toutefois mentionner qu'en qualité d'ancien chef de la section juridique du ministère des finances il a acquis une grande expérience dans le travail législatif en matière d'impôts, expérience qu'il peut mettre au service du Comité.

Le vice-président est conseiller à la Cour des Comptes qui fonctionne en qualité de Cour d'appel en matière d'impôts et il représente donc aussi l'expérience de droit fiscal.

Deux membres sont chefs d'administration fiscale dans différents districts du pays et représentent par conséquent les points de vue du fisc.

Enfin les trois autres membres représentent les intérêts de l'industrie. L'un d'eux est chef de la section des impôts d'un grand établissement agricole, l'autre est expert en matière d'impôts dans un établissement industriel et le troisième chef d'entreprise.

De la même façon, les suppléants représentent différentes expériences et différents intérêts.

Les membres du Comité et leurs suppléants sont nommés par le gouvernement. Cette nomination peut être révoquée n'importe quand. Si un membre ou un suppléant sort de charge, une autre personne devra être nommée à sa place pour la période de temps qui reste à courir. Un suppléant peut être convoqué par le président pour prendre part aux délibérations du Comité même si le membre titulaire n'a pas d'empêchement.

Pour décision valable du Comité, il faut que soient présents au moins six membres ou suppléants convoqués à la place des membres. Si une question, au sujet de laquelle règne divergence d'opinions, doit être mise aux voix, il y aura scrutin public et l'opinion soutenue par la majorité prévaudra ou, dans les cas d'égalité de voix, la voix du président sera prépondérante.

Aux séances du Comité, procès-verbal sera dressé par le chef de la chancellerie du Comité et ce procès-verbal sera vérifié par le prési-

dent. Tout membre du Comité ainsi que le chef de la chancellerie peuvent faire porter leur avis au procès-verbal.

Les séances ne sont pas publiques, elles ont lieu à huis clos. Mais le président a la faculté de convoquer aux séances experts ou autres personnes, si les circonstances spéciales l'exigent.

Les membres et les suppléants sont soumis à l'obligation du silence en ce qui concerne les délibérations au sein du Comité. Ils peuvent aussi encourir des peines pour fautes ou inadvertances dans le service.

De la décision anticipée

Passons ensuite aux règles qui sont appliquées aux décisions anticipées. Les dispositions relatives au droit d'obtenir, du Comité National des impôts, décision anticipée en matière d'impôt se trouvent dans une ordonnance spéciale de 1er juillet 1951 (Recueil des lois et ordonnances suédoises no 442/1951).

Ce comité ne prend de décisions anticipées que lorsqu'il s'agit des impôts directs ordinaires du système fiscal, c'est-à-dire impôts de l'Etat et des communes sur le revenu, et de certains impôts complémentaires se rapportant aux impôts sur le revenu ainsi que de l'impôt de l'Etat sur le capital. Décision anticipée peut aussi être prise dans les questions d'imposition d'immeubles mais ne peut l'être dans les questions qui n'ont en vue que l'évaluation de la valeur d'un immeuble. Tous les autres impôts sont par conséquent hors de la sphère des décisions anticipées. A cette catégorie appartiennent les autres impôts directs de nature spéciale ou provisoire et tous les impôts indirects.

La décision anticipée n'est prise que sur demande du contribuable même. Une association d'entreprises industrielles ou une association pour d'autres intérêts communs qui veut avoir décision anticipée sur une question d'impôt concernant ses membres ne peut donc faire une demande à ce sujet au nom de l'association. De même, un employeur, par exemple, ne peut demander une décision anticipée lorsqu'il s'agit de l'imposition de l'un de ses employés. Si d'autres personnes que les contribuables avaient droit à la décision anticipée, ces décisions prendraient plutôt un caractère d'activité législative. Et cette conséquence serait en opposition avec les efforts de la législation qui veut, autant que possible, éviter les conflits de

compétence entre le Comité National des impôts et les cours de taxations, cours que ne peuvent lier les décisions anticipées.

La demande de décision anticipée doit être faite par écrit au Comité National et ne doit pas être preséntée plus tard que le dernier jour fixé pour la remise de la déclaration qui servira de base à l'impôt dont il s'agit. Il peut être mentionné que la déclaration pour imposition du revenu doit, en général, être remise au plus tard le 15 février de l'année au cours de laquelle l'impôt est fixé; la plupart des personnes civiles et autres commerçants, soumis à l'obligation de la tenue de livres de comptes, qui établissent leur bilan après le 31 octobre sont toutefois autorisés à remettre leurs déclarations au plus tard le 31 mars de l'année, au cours de laquelle l'impôt est fixé. Grâce à cette limitation de temps pour la remise de la demande, la décision anticipée, selon toute vraisemblance, peut déjà être prise en considération lors de l'établissement de l'impôt en première instance. Au cas où la décision anticipée n'aurait pu être prise avant que la dite instance ait terminé son travail, le contribuable peut, en interjetant appel devant l'instance supérieure, mettre en suspens son imposition pour modifications éventuelles.

Si le Comité National des impôts ne repousse pas immédiatement la demande — et il ressort de ce qui suit que le Comité a toute liberté à cet égard — il faut que le directeur des impôts intéressé soit consulté pour avis à émettre sur cette demande. Dans le cas ou une demande a rapport à une question d'intérêt spécial pour une commune, on peut aussi donner à cette commune l'occasion d'émettre son avis sur la dite demande.

Suivant le projet présenté par la commission de l'année 1947, les formes que le Comité National des impôts avait à observer dans l'examen des causes ne devaient présenter aucun caractère de procès. Le Comité ne devait pas, conformément à cette opinion, présider à un procès proprement dit. C'était au contribuable qu'il appartenait d'invoquer immédiatement dans sa demande toutes les circonstances qui touchaient à la question à résoudre. Si les renseignements fournis ne suffisaient pas, le Comité devait procurer au demandeur l'occasion de les compléter au risque de voir sa demande repoussée.

Au cours de l'élaboration du projet de loi, le ministre des finances avança toutefois une opinion autre que celle de la commission

concernant le caractère de la procédure à suivre. A son avis, il était, contrairement à ce qui vient d'être dit, essentiel que les formes à adopter pussent présenter, dans une certaine mesure, le caractère d'un procès. A cet égard, il fallait, d'après le ministre, tenir compte du fait que la décision anticipée du Comité ne pouvait comporter qu'une simple estimation anticipée en matière d'impôts portant sur une situation qui se présenterait dans l'avenir. Il n'a pas été accordé au Comité, d'autre part, un droit de libre disposition, en dehors des lois fiscales en vigueur, sur les revendications de l'Etat et des communes découlant des impôts. Ce mode de procéder peut être considéré comme produisant l'effet de retirer du domaine ordinaire des procès une question spéciale, et l'activité du Comité National des impôts se manifestant dans les décisions anticipées devrait en principe être assimilée à l'activité judiciaire des tribunaux. Cette opinion avait, selon le ministre, eu pour conséquence que celui-ci préconisait à l'encontre de la commission, une solution, d'après laquelle une demande faite pour obtenir une décision anticipée devrait, au cas ou le Comité n'aurait pas l'intention de la repousser, être officiellement notifiée au directeur des impôts compétent. C'est sous cette forme que furent rédigées les dites dispositions.

Pour le traitement préparatoire d'une demande en décision anticipée, il est prescrit du reste que le chef de la chancellerie du Comité National des impôts sera tenu d'attirer l'attention du contribuable sur l'enquête supplémentaire qui est exigée pour que le Comité puisse prendre décision. Une demande ne peut par conséquent pas être repoussée parce que le contribuable a donné par ignorance des renseignements incomplets. Le Comité peut aussi, s'il le juge opportun, prendre des renseignements complémentaires auprès des autorités de l'Etat ou à d'autres sources. L'exposé des causes en vue de décisions anticipées est fait devant le Comité par le chef de la chancellerie ou par celui que le président aura désigneé. Cet exposé a pour base un aide-mémoire qui contient tous les faits de la cause et qui a été préablement envoyé aux membres du Comité.

La procédure du Comité National des impôts est donc en général procédure par écrit mais le Comité peut, s'il le juge bon, procurer au contribuable ou au représentant du fisc l'occasion de donner verbalement des renseignements au Comité.

Le contribuable n'a pas un droit absolu à la décision anticipée.

Le droit à la décision anticipée dépend en effet entièrement du Comité National des impôts qui établit dans chaque cas si les conditions pour obtention de ce droit sont remplies. Le Comité a toute liberté d'en juger. L'ordonnance indique, il est vrai, quelles sont les conditions nécessaires pour qu'une décision anticipée puisse être prise. Il n'y a, comme cet exposé le montrera plus loin, qu'une seule condition générale qui ait été posée. Mais dans les cas mêmes où cette condition est remplie, le Comité a cependant le droit de repousser la demande qu'a faite le contribuable pour obtenir une décision anticipée. Il peut y avoir différentes sortes de causes à ce refus. Par exemple, si l'acte, objet de la demande en décision anticipée, est déjà accompli, il n'y a en général aucune raison de prendre une décision anticipée. Le contribuable devra dans ce cas attendre, comme il est d'usage, que le travail d'imposition soit terminé et pourra ensuite éventuellement interjeter appel devant les instances ordinaires qui traitent des questions d'impôts. Nous allons de suite revenir un peu plus loin à ce dernier motif de refus. Le Comité peut en outre repousser une demande en décision anticipée s'il y a lieu de soupçonner abus du droit de consultation. Car il ne faut pas que le contribuable se sert du moyen d'obtenir une décision anticipée seulement pour obtenir des renseignements sur la façon la plus avantageuse, du point de vue fiscal, d'effectuer une opération financière ou de trouver des échappatoires aux lois fiscales. Mais même si une demande en décision anticipée est de nature à remplir un but légitime, le Comité doit pouvoir la repousser si, malgré ordre formel de compléter les renseignements donnés, ces renseignements ne sont pas encore suffisants pour permettre au Comité de prendre une décision anticipée.

Si le Comité National procède à l'examen d'une demande, il décidera dans la mesure qui semblera opportune comment devra être résolue la question dont il a été saisi.

En ce qui concerne les conditions pour obtenir une décision anticipée, le terme «décision anticipée» montre déjà par lui-même qu'en principe la décision anticipée doit se rapporter à un acte projeté, que ce soit une opération commerciale, un placement de fonds ou toute autre mesure envisagée. Si l'acte dont les conséquences fiscales sont en question est déjà accompli, le contribuable ne peut naturellement plus éviter lesdites conséquences. Au cas ou le

contribuable ne serait pas satisfait de l'opinion que les autorités fiscales ont exprimée au sujet de son impôt, il doit, en cette occurence, recourir à la voie ordinaire des instances en matière d'impôts. Une décision anticipée donnerait ici au contribuable la possibilité de négliger l'ordre établi pour l'emploi de ces instances.

Afin de donner un exemple de cas où un fait consommé a été jugé de nature à exclure le droit à la décision anticipée, on peut mentionner ce qui suit. Une société avait en 1955 touché une indemnité. Cette société demanda en 1956 qu'une décision anticipée lui fît savoir si elle était imposable en raison de cette indemnité et appuya sur le fait que la société attachait de l'importance à cette décision attendu qu'elle se trouvait en liquidation, liquidation qui ne pouvait être réglée avant que décision définitive eût été prise dans la question des impôts. Le Comité National fit savoir par sa décision qu'il y avait obligation de payer l'impôt dans le cas présent. Appel de cette décision ayant été interjeté par cette société devant la Cour Suprême administrative, cette Cour déclara que la société n'avait pu avancer aucune considération de nature à justifier une décision anticipée et annula pour cette raison la décision anticipée qui avait fait l'objet de l'interjection d'appel. Ce qui motiva cette annulation, c'est sans doute le fait que la société avait déjà touché l'indemnité en question.

Même si un fait consommé de nature fiscale enlève normalement au contribuable le droit d'obtenir une décision anticipée, il ne faut pas en tirer la conclusion que la décision anticipée serait dans un cas semblable exclue quelles que fussent les circonstances. Il ressort en effet des précédents en la matière que décision anticipée peut être accordée à titre exceptionnel quand le fait dont les conséquences fiscales sont en question est déjà accompli, il est vrai, mais que ces conséquences peuvent à leur tour exercer une influence décisive sur un autre acte envisagé qui a de l'importane pour le contribuable. Et voici un exemple. Un contribuable avait remis une demande afin de savoir si la somme qu'il devait recevoir pour cession du droit de location en ce qui concerne les locaux d'une entreprise desquelles il avait disposé serait considérée comme revenu pour lequel il aurait à payer un impôt. Dans ce cas, décision anticipée fut prise bien que cette cession eût déjà été faite avant que la demande eût été remise. Le contribuable avait en effet déclaré, qu'au cas où il

aurait à payer l'impôt pour la somme touchée, il avait l'intention de prendre une assurance pour pension de retraite avec prime à acquitter en une fois. Les dispositions qu'il comptait prendre dépendaient donc de la décision anticipée. La preuve que le législateur avait, dans une certaine mesure, envisagé l'éventualité de décision anticipée alors même qu'il s'agissait des conséquences fiscales d'un acte déjà accompli réside dans le fait que la demande en décision anticipée peut être présentée à une date aussi tardive que le dernier jour où doit être remise la déclaration relative aux impôts. Et il faut observer que la déclaration est faite l'année civile durant laquelle est fixé l'impôt, c'est-à-dire, l'année qui suit celle qui a donné au contribuable les revenus, assiette de l'impôt qu'il a à payer. En résumé, le principe en vigueur est que la decision anticipée doit exercer son action sur un acte projeté, important pour le contribuable, mais pas nécessairement sur l'acte projeté dont les conséquences fiscales sont examinées. Mais il faut remarquer que les avis sont partagés sur la question de savoir si un acte projeté, autre que celui dont les conséquences fiscales sont examinées, doit pouvoir servir de base pour établir l'importance de la décision anticipée à prendre.

En sus de ce que peut comporter, comme il vient d'être dit plus haut, l'expression décision anticipée, il n'a été posé qu'une seule condition pour obtenir une décision anticipée: cette décision doit être d'une importance considérable pour le contribuable. On a jugé en raison des différentes circonstances qui peuvent se présenter dans les cas particuliers qu'il n'était ni possible ni opportun de préciser plus nettement les cas dans lesquels la décision anticipée pouvait être obtenue.

Quel sens peut-on donner à la condition exigée, exprimée dans l'expression «importance considérable»? Tout d'abord, il faut naturellement supposer que la demande en décision anticipée se rapporte à un cas présent réel. Il ne peut en effet être question de se servir de la décision anticipée pour obtenir des réponses à des problèmes purement théoriques, quels qu'intéressants qu'ils poussent être en eux-mêmes. Mais, avant tout, la condition susmentionnée signifie que l'objet de la demande doit être un impôt dont le montant soit suffisant pour que la décision anticipée puisse être considérée comme d'une importance considerable à l'égard du contribuable. Il

va de soi qu'il ne peut s'agir de bagatelles. De plus, il faut évidemment, à l'examen de la cause, tenir compte des conditions de revenu et de fortune dans chaque cas particulier. L'impôt éventuel peut faire peser une lourde charge pécuniaire sur un contribuable mais ne pas avoir le même effet sur un autre.

Attendu qu'il a été établi que la possibilité d'obtenir une décision anticipée ne dépendrait pas de la qualité materielle de la question fiscale, il s'ensuit que les questions à traiter peuvent être aussi bien questions d'appréciation que questions purement juridiques. Etant donné que la décision anticipée du Comité National des impôts pouvait aussi comprendre des questions de cette dernière catégorie, la commission se demanda si le champ d'application de cette institution ne pourrait pas être élargi de façon que décision anticipée fût prise pour donner une solution rapide à des questions actuelles de droit d'une portée plus générale[1]). La commission ayant toutefois adopté l'opinion, d'après laquelle le Comitè National n'aurait pas le droit, dans son autre activité, dont il a été parlé plus haut, de donner avec effet obligatoire pour les autorités fiscales des indications concernant l'application des ordonnances fiscales, l'élargissement envisagé du champ d'action de la décision anticipée aurait pour conséquence qu'il donnerait la possibilité d'atteindre ce résultat par une voie détournée. C'est pourquoi on déclara qu'une décision anticipée, même sur une question de droit, ne devait être formulée que de façon à ne produire effet obligatoire qu'à l'égard du contribuable que visait la décision. Par rapport à l'impôt grevant d'autres contribuables, une décision anticipée de ce genre n'avait que la valeur de préjugé. La commission ajouta que si une décision anticipée était portée devant la Cour Suprême administrative par interjection d'appel, cette décision acquerrait sans doute une importance plus grande pou application future que si appel n'avait pas été interjeté mais il n'y avait là aucune raison, d'après la commission, de porter, sur une plus vaste échelle, des causes se ce genre devant la Cour Suprême. L'effet d'un décret de la Cour en tant que préjugé n'était en effet pas illimité non plus.

(à suivre)

---

[1]) Il faut mentionner que la procédure ordinaire relative aux impots est en Suède assez lente actuellement par suite d'l'accumulation des causes d'impots dans les différentes instances. Voir le rapport des congrès par l'auteur (Cahiers de Droit Fiscal International Vol. XXXIV, page 179).

II

SURVEYS OF TAX LEGISLATION
APERCUS DE LEGISLATION FISCALE

AUSTRIA — *Period from March 1st, until April 30th, 1958*

Turnover taxes

Verordnung des Bundesministeriums für Finanzen vom 26.3.58, womit die Verordnung des Bundesministeriums für Finanzen vom 6.9.57, BGBl. Nr.204, abgeändert wird. BGBl. Oesterr. 2.4.58, p. 629.

Customs

Bundesgesetz vom 5.3.58, womit das Bundesgesetz vom 8.7.53, BGBl. Nr. 112, über vorläufige Massnahmen auf dem Gebiete der Zölle abgeändert wird. Amtsblatt 1.4.58, p. 205.

Bundesgesetz vom 12.3.58 über die Einführung eines neuen Zolltarifes (Zolltarifgesetz 1958). BGBl. Oester. 14.4.58, p. 631.

BELGIUM — *Period from March 1st, until April 30th, 1858*

Conventions

Accord entre la Belgique et l'Union de l'Afrique du Sud, tendant à éviter la double imposition des revenus des entreprises de navigation aérienne et maritime, conclu par échange de lettres, datées à Cape-Town le 11.6.57. Entrée en vigueur. Mon. Belge 30/31.3.58, p. 2392.

Loi du 28.2.58 portant approbation de la Convention entre la Belgique et la Suède, tendant à éviter les doubles impositions et à régler certaines autres questions en matière d'impôts sur les successions et du Protocole, signé à Stockholm, le 18.1.56. Mon. Belge 5.4.58, p. 2546.

Taxes assimilées au timbre

Arrêté royal du 5.3.58 modifiant le Code et le Règlement général sur les taxes assimilées au timbre. Mon. Belge 8.3.58, p. 1610.

Arrêté royal du 6.3.58 modifiant l'arrêté royal du 11.3.1953 majorant le taux de la taxe de transmission à l'importation. Mon. Belge 8.3.58, p. 1611.

Arrêté royal du 23.4.58 modifiant le Code et le Règlement général sur les taxes assimilées au timbre. Mon. Belge 28/29.4.58, p. 3254.

Droits d'accise

Arrêté ministériel du 15.4.58 modifiant le règlement établi par l'arrêté ministériel du 22.1.48 pour la perception du droit d'accise sur les tabacs fabriqués. Mon. Belg. 20.4.58, p. 2942.

Droits de douane

Arrêté ministériel du 28.3.58 réglant l'application des franchises en matière de droits d'entrée. Mon. Belge 30/31.3.58, p. 2375

Arrêté ministériel du 22.4.58 relatif au tarif des droits d'entrée. Mon. Belge 24.4.58, p. 3078.

FRANCE *Period from March 1st, until April 30th, 1958*

Généralités

Loi de finances pour 1958 (2e partie — Moyens dès services et dispositions speciales) (Dispositions relatives aux services militaires) (No. 58-335 du 29.3.58) Loi de finances pour 1958 (2e partie — Moyens des services et dispositions speciales) (Dispositions relatives aux investissements) (No. 58-336 du 29.3.58) J.O. 31.3.58, p. 3166 + p. 3169.

Décret no. 58-455 du 28.4.58 pris pour l'application du § 2-A de l'article unique de la loi no. 57-1263 du 13.12.57 instituant pour 1958 un prélèvement temporaire sur les suppléments de bénéfices des entreprises industrielles et commerciales et des sociétés. J.O. 28/29.4.58, p. 4199 et rectificatif J.O. 30.4.58, p. 4238.

Impôts sur les revenus

Décret no. 58-268 du 17.3.58 fixant les indices applicables pour l'évaluation fiscale des stocks. J.O. 18.3.58, p. 2646.

Chiffre d'affaires

Loi no. 58-233 du 7.3.58 exonérant des taxes sur le chiffre d'affaires les prêts consentis par les sociétés d'assurances et de capitalisation aux collectivités locales ainsi qu'aux organismes d'habitations à loyer modéré. J.O. 8.3.58, p. 2351.

Taxes de consommation

Décret no. 58-230 du 6.3.58 modifiant les taux et conditions d'application du dégrèvement de la taxe intérieure de consommation en ce qui concerne les carburants utilisés par l'aviation civile. J.O. 7.3.58, p. 2323.

Droits d'accise

Décret no. 58-334 du 26.3.58 relatif au régime fiscal de certains produits ou services d'utilisation courante. J.O. 30.3.58, p. 3114.

Droits de douanes

Décret no. 58-297 du 21.3.58 portant suspension provisoire de la perception du droit de douane d'importation applicable aux oranges. J.O. 22.3.58, p. 2784.

Matières diverses

Loi no. 58-217 du 3.3.58 relative à l'assiette des impôts directs et taxes assimilées en Algérie. J.O. 3/4.3.58, p. 2230.

Arrêté du 20.3.58 fixant les modalités d'application de l'art. 876 du Code Général des impôts. J.O. 24/25.3.58, p. 2890.

Arrêté du 26.3.58 fixant le taux de la redevance sur les alcools libres prévue à l'article 382 du code général des impôts. J.O. 30.3.58, p. 3116.

Loi no. 58-354 du 5.4.58 relative au régime fiscal d'un emprunt du Trésor à émettre en 1958. J.O. 6.4.58, p. 3358.

GERMANY *Period from March 1st, until April 30th, 1958*

Income tax

2. Verordnung vom 26.3.58 zur Änderung und Ergänzung der Lohnsteuer-Durchführungsverordnung 1955. BGBl. I, 1.4.58, p. 157.

Verordnung vom 26.3.58 zur Änderung und Ergänzung der Verordnung über die Lohnsteuer-Jahresausgleich und den Notopfer-Jahresausgleich. BGBl. I, 1.4.58, p. 192.

Neufassung vom 26.3.58 der Verordnung über den Lohnsteuer-Jahresausgleich. BGBl. I, 1.4.58, p. 196.

Equalization of burden law

21. Durchführungsverordnung vom 1.4.58 über Ausgleichsabgaben nach dem Lastenausgleichgesetz. BGBl. I, 3.4.58, p. 208.

Turnover tax

Entscheidung vom 18.3.58 des Bundesverfassungsgerichts zu § 8 und § 18 Abs. 1 Nr. 1 des Umsatzsteuergesetzes. BGBl. I, 27.3.58, p. 154.

Entscheidung vom 18.3.58 des Bundesverfassungsgerichts zu § 18 Abs. 1 Nr. 2 des Umsatzsteuergesetzes. BGBl. I, 27.3.58, p. 154.

Neunte Verordnung vom 22.3.58 zur Änderung der Durchführungsbestimmungen zum Umsatzsteuergesetz. BGBl. I, 3.4.58, p. 206.

Customs

Mineralölzoll-Vergütungsordnung 1958 vom 12.3.58. BGBl. I, 15.3.58, p. 133.

Erste Verordnung vom 21.3.58 zur Änderung der Erläuterungen zum Deutschen Zolltarif 1958. BGBl. I, 27.3.58 p. 143

Verordnung vom 15.3.58 zur Änderung der Allgemeinen Zollordnung und der Tara-Ordnung. BGBl. I, 27.3.58, p. 146.

2. Verordnung vom 10.4.58 zur Änderung des Deutschen Zolltarifs 1958 (Montafoner Braunvieh usw.) BGBl., I, 17.4.58, p. 214.

LUXEMBOURG *Period from March 1st, until April 30th, 1958*

Droits de douanes

Arrêté ministériel du 31.3.58, concernant l'application des franchises en matière de droits d'entrée. Mémorial de Grand-Duché de L. 10.4.58, p. 442.

NETHERLANDS

Income tax

Ministerial decree 12.3.1958, nr. 116: modifying the decree of 13.3.1954 nr. 85 limiting the possibilities of initial allowances. Ned. Stcrt. 14.3.58, p. 9.

Turnover tax

Ministerial decree 26.4.1958 nr. D8/2395: modifying the resolution turnover tax 1954. Ned. Stcrt. 28.4.58, p. 2.

Customs

Ministerial decree 28.3.1958 nr. D/8/1926: modifying the decree concerning exemptions from the tariff decree 1947. Ned. Stcrt. 31.3.58, p. 5.

Ministerial decree 26.4.1958 nr. D8/2420: modifying the decree „preferences-tariff decree". Ned. Stcrt. 28.4.58, p. 2

AUSTRALIA

Tax agreement with Canada

It is reported that a Double Taxation Agreement has been signed by the Commonwealth Treasurer, Sir Arthur Fadden, during his recent visit to Canada.

The Agreement will be submitted to the Australian Parliament for ratification in due course. It is expected that the Agreement will apply to income of the current year.

This is the third Agreement of the kind entered into by Australia, the other two being with the United States and the United Kingdom.

Besides providing a basis for the avoidance of double tax on incomes, the Agreements contribute to the flow of overseas development capital into Australia. Source: *The Taxpayers' Bulletin* – November, 1957

Royalties to English companies

Section 256(1) of the Income Tax Assessment Act provides –

Every person who is liable to pay money as or by way of royalty to a non-resident shall, before making any payment to or on behalf of that resident, furnish to the Commissioner a statement of the amount of royalty due to the non-resident whether such royalty became due either before or after the passing of this Act, and ascertain from the Commissioner the amount, if any, to be retained in respect of tax due, or which may become due, by the non-resident.

However, the provisions of Article VII of the Australian-U.K. Tax Treaty have the effect that a company resident in the United Kingdom will not be liable for Australian tax on royalties derived from an Australian company providing –

(a) The English company is not engaged in trade or business in Australia through a "permanent establishment" situated therein, or
(b) The royalty does not exceed the amount which represents a fair and reasonable consideration for the rights for which the royalty is paid.
(c) The English company is liable for United Kingdom tax thereon.

To obtain the benefits of this exemption, it is necessary for the Australian Taxing Authorities to be supplied with a certificate from the Department of Inland Revenue that the subject royalties are included in the United Kingdom Tax computations and chargeable to United Kingdom Tax. This certificate is entitled a "D.T.I." form which will be supplied by Inland Revenue directly to the Australian authorites on application being made by the English recipient.

Until this certification is obtained, an Australian company paying such royalties should comply with the provisions of Section 256.

Source: *The Taxpayers Bulletin* – November, 1957

BRAZIL

Taxes to finance specific projects

A survey published by *O Estado de Sâo Paulo* points out that the Federal Government's ambitious economic plans have led to a multiplication of

special taxes to finance specific projects. Last year, according to the General Accounting office, this type of revenue represented no less than 20% of the total Federal revenue. The total of such taxes for special purposes reached Cr$17,253m. distributed, among other purposes, to the Merchant Marine, Social Welfare, Marine Fund, Air Fund, the BNDE and *Petrobrás*.

The taxes include the surcharges for anti-drought works, for the Amazon Development Plan, for the Sao Francisco Valley scheme, and for social welfare; the extra levies on Customs duties, motor vehicles, beverages, remittances abroad, consumption of electricity; education and health contributions; and additional income tax.

Source: *Bank of London & South America Ltd.*, March 29, 1958

CANADA

Revised depletion regulations

Part XII of the Canadian Income Tax Regulations, concerning *deductions in respect of oil wells, gas wells and certain mines*, has been amended. The new text, substantially changed, was published in the Canada Gazette of January 8, 1958 (Part II, p. 45) and is made applicable retroactively to 1956 and subsequent years. The text of the New Regulations is present in the Bureau's Library. Photocopies may be ordered.

It proposes an estate tax which does not depend upon the degree of consanguinity between a man and his heirs, nor upon the value of property passing to each heir. It is also, to the extent possible, a simplification and improvement on the old statute as to language and form. The form of the new Bill is closely modelled on that of the *Income Tax Act*. There is a distinct parallel between the progression from aggregate net value to aggregate taxable value and the progression from income in its general term to the refined product of taxable income under the *Income Tax Act*. This progression is achieved by a systematic arrangement of the articles which are grouped in Parts. Part I deals with the estates of persons domiciled in Canada at their death while Part II deals with the estates of persons domiciled outside of Canada. Part III provides for the administration of the Act.

Under Part I, the Bill deals with the property that goes to make up an estate – its valuation, its situs, the rates of tax imposed upon it and the persons from whom such tax is exigible in the prime instance or in the alternative.

Source: *The Canada Tax Service*, February 20, 1958

COLOMBIA

Income tax rules amended

The Colombian Government has issued a decree setting forth miscellaneous amendments to its tax regulations.

Beginning with the tax year 1957 deductions are authorized for personal medical and educational income tax payments (article 25). These include all payment to doctors and dentists and up to 200 pesos a year per person for payments to hospitals and clinics, and tuition payments of up to 500 pesos a year per person to Colombian schools for primary, secondary, technical, or commercial education.

Penalties for incorrect tax returns are limited to 100 percent of the amount due for the year covered.

Provision is made for administrative decisions in tax appeal cases by district tax administration or collection offices, instead of by the Department of Revenue and National Taxes in Bogota, Decisions of district tax officials, however, may be appealed to the central tax authority.

Parties involved in unsettled tax disputes for the years 1954 and 1955 are granted permission to settle them by paying the average of the amount

claimed by the tax authorities and that calculated by the taxpayer provided the difference between the amounts is less than 50,000 pesos. These provisions were made to clear up a large backlog of unsettled tax disputes dating back to 1953.

A novel provision authorizes a special review of the tax problems of persons able to establish that they were subject to discrimination by the tax authorities before the fall of the Rojas regime.

The new amendments were issued as decree No. 341 on December 10, 1957, and become effective upon publication in the Diario Oficial on December 19.

Source: *Foreign Commerce Weekly*, February 17, 1958

Surtax on Income Revised

The one-time Colombian surtax on excess profits established on June 17, 1957, has been abolished, and in its stead, is provided a similar one-time tax calculated as a percentage of the conventional excess profits tax assessed according to article 13 of law 78 of 1935.

The new surtax amounts to 50 percent of the sum payable as excess profits tax of 1957. Taxpayers 75 percent or more of whose patrimony is devoted to agriculture or stockraising and industries the prices of whose goods and services are directly fixed by the Government shall be exempt from the surtax. The new tax was established, by decree no. 391 of December 19, 1957 because the tax established in June by decree 108 was too complex to administer.

Source: *Foreign Commerce Weekly*, February 10th, 1958

Foreign exchange profit

The Supreme Court of Canada has now confirmed the decision of the Exchequer Court in Tip Top Tailors Ltd. v. M.N.R. (57 DTC 1232), ruling that a foreign exchange profit made by the appellant on a deliberately run overdraft in England was taxable income. This decision finally establishes that profit made on working capital used in the course of the taxpayer's business – as distinct from profit made on fixed or investment capital – is taxable income.

Source: *Canadian Tax Journal*, Jan-Feb., 1958

Tax policy

A change in taxation announced by the Canadian Government will result in a slight reduction in income taxes after January 1, 1958, a cut from 47 per cent to 20 per cent in corporation taxes on profits of between $20,000 and $25,000, some tax reductions for corporations with profits of more than $25,000, and a reduction from 10 per cent to 7½ per cent in the excise tax on motorcars, effective December 7. The cost of the tax reductions for a full fiscal year is estimated at $781 million. Although government expenditures this year have been increased considerably over those in the original budget, the Government forecasts a surplus of $106 million for the current fiscal year ending March 31, 1958.

Source: *International Financial News Survey*, December 20, 1957

New Estate Tax Bill – Closer integration of the Federal Tax System

The probable shape of the new estate tax law has at last appeared through the mists of rumour. Although it will be of great interest to all professional men, executors and administrators from a purely estate tax point of view, it is also of more than passing interest against the background of the Federal taxing system and the *Income Tax Act* in particular. Apart from the fact that

---

[0]) For different argumentation as regards proposed changes in the Swedish Death Duties System, see infra page 149.

it is an estate tax levy instead of the old familiar succession duty, it marks a long step toward a general overall integration of the Federal tax system. Its format, its terminology, and the approach to the subject bear the stamp of draftsmen who have toiled with the wording of the Dominion *Income Tax Act* rather than those confined to wills, estates, trusts and other impedimenta of fiscal death in this country. It is necessary, therefore, to give attention to the Bill from an income tax and estate planning point of view since income tax gift tax and estate taxation are inexorably drawing together. No taxpayer who has managed to survive the rigours of the *Income Tax Act* and amass even a modest fortune can consider his duty to his prospective heirs complete unless he has equipped himself with a reasonable estate plan so as to keep his estate taxes to a legal minimum. No estate plan should ignore either income tax, gift tax or the duties upon the estate itself and the laws which give rise to them.

The purpose of the new Bill as well as its basic premise of estate taxation was stated by the Minister of Finance in the House of Commons on January 8th as follows:

> 'That it is expedient to introduce a measure to replace the present *Dominion Succession Duty Aact,* to provide that the tax on property passing or deemed to pass, on death, be computed by reference to the property comprising the estate of the deceased rather than the property contained in the bequests from an estate to the beneficiaries; and also to consolidate, revise and simplify those provisions of the present Act that continue to be appropriate."

The new Bill makes it clear that the two main objects have been achieved.

INDIA

Double taxation conventions

A three-man mission has been in India from West Germany to negotiate an agreement with the Government of India for the avoidance of double taxation. Similar negotiations are pending with the United States, Sweden and Switzerland, and a mission from the United Kingdom is expected. The fact that the absence of such agreements has stood in the way of foreign investments in India was emphasized during the recent tour abroad of Mr. T. T. Krishnamachari, who was until recently the Finance Minister.

Under existing practise India has been acting on the principle that the country in which profits were earned would retain the taxes on them.

Negotiations with the U.S. will commence, probably in Washington, soon after aidemémoires have been received and studied.

Source: *Taxation,* January 3rd,. 1958

Indian Budget proposals

The new tax proposals presented together with the budget for 1958-59 are expected to yield Rs 58 million ($ 12.2 million). A tax on gifts in excess of Rs 10,000 per annum is calculated to yield Rs 30 million, the rate of tax ranging from 4 per cent to 40 percent on gifts of Rs 5 million and over. Provision is made for certain exemptions, including charitable gifts. The exemption limit in regard to estate duty is to be lowered from Rs 100,000 to Rs 50;000. The budget also provides for an increase in the excise duty on cement (to yield Rs 22 million), and adjustments in the excise duty on cloth. In regard to income tax, the rate of supertax payable by certain companies on dividends in excess of 18% of capital is to be reduced from 30% to 20%. The proposal is made to increase the rate of development rebate for ships from 25% to 40%, and to exempt foreign nationals residing in India from payment of the wealth tax on their foreign assets.

Source: *International Financial News Survey,* March 14, 1958

NIGERIA

Company tax reduced

The Nigerian Finance Minister proposes reducing the company tax from 9s to 8s in the £ "as an earnest token of our determination to do all in our power to attract the investment which we so badly need".

Announcing this in his Budget speech to the House of Representatives recently, the Minister, Chief F. Okotie-Eboh, said no other major changes in taxation policy were proposed pending the report of the Fiscal Commission.

Source: *Taxation*, March 8, 1958

PAKISTAN

Heavier tax burden an upper-income classes

The import duty on cars and spares is to be increased by 100% under the budget announced last week. Import taxes will also be increased on clothes, woollen materials, hardware, electrical and other instruments, chinaware and porcelain, and some plastic goods.

Mr. Syed Amjad Ali, Finance Minister, presenting the 1958-59 Budget, said new taxes to be introduced were designed to put the burden mainly on the well-to-do section of the population. A 12½ per cent tax will be levied on bonus shares; profits tax will continue and will not be allowed as a deduction for income tax purposes.

Revenue for the coming year was estimated at Rsl, 437 million (£108 million) and expenditure at Rsl, 433 million.

Source: *Taxation*, March 8, 1958

PERU

Taxes on residents modified

A new Bill modifying residence taxes levied on foreigners living in Peru has been sent to Congress by the new Minister of Finance. The scale starts at 100 soles per annum for incomes between 6,000 and 12,000 soles and rises to a maximum of 600 soles on all incomes exceeding 36,000 soles.

The Senate approved on 29th January the Bill increasing the present postal rates. The increased revenue will be used partly to increase the salaries of postal employees sand the balance to improve installations and telegraphic equipment.

Source: *Bank of London & South America Ltd.*, 1st March 1958

PHILIPPINES

Tax measures proposed

The Philippine Government budget for the year beginning July 1, 1958 submitted by President Garcia to the Philippine Congress on February 11 calls for record expenditures of 1.347 million pesos (1 peso = US $ 0.50).

In addition to intensification of efforts to collect taxes, the President recommended enactment of tax measures which would bring in additional revenue. They include increases in personal and corporate income tax rates, increased income tax on nonresident aliens not engaged in trade or business in the Philippines, increased liquor and cigarette taxes, a tax on importers' dollar allocations, withdrawal of tax exemptions under Republic Act 901 for "new and necessary" industries, elimination of all exemptions from the special import tax, and repeal of the 500-peso duty exemption provided for returning residents in Section 105 (i) of the Tariff and Customs Code. The President also asked for a tax amnesty law to encourage the settlement of overdue taxes. Implementation of these recommendations, however, will depend on the Philippine Congress, some members of which are strongly opposed to higher or new taxes.

Source: *Foreign Commerce Weekly*, March 24, 1958

SCANDINAVIA

Nordic Customs Union

The meeting of the Nordic Council which was to discuss a report on a proposal to establish a Nordic customs union is expected to be postponed until October 1958. Before taking any stand on the Nordic scheme, the Economic Committee of the Council wants to wait until the results of OEEC deliberations on the wider European Free Trade Area project become clearer. In the meantime, the relationships between the Free Trade Area project and Northern economic cooperation will be examined further by a committee of the Council.

Source: *International Financial News Survey*, Jan. 10th '58

SERAWAK

Measures to encourage the establishment of industries

In order to further the establishment of industries, Serawak decided to grant attractive conditiones to "pioneer industries". "Pioneer industries" are all those industries which offer fair development possibilities, but which at the beginning may not prove profitable. Goods, services and technical implements may be imported duty free for a period of 5 years, further special facilities will be granted in connection with income tax, also an accelerated depreciation allowance on capital investments over a period of 5-8 years will be granted.

Details of these conditions are to be found in the Pioneer Industries (Encouragement) Ordinance, which came into force during September 1957 with the aim to hasten the economic development of Serawak. The Development Finance Corporation Act, coming into force at the same time, foresees for the establishment of an organization controlled by the authorities the possibility to grand credits, should this be possible and prove desirable; such measures will no doubt encourage and favour investment of national as well as foreign investors. Furthermore a new Land Code came into force, which provides for the obtention of building ground, the letting and use thereof.

Source: *Economische Voorlichting*, January 31, 1958

SWEDEN

Revision of Death Duty Legistation [1])

The Swedish tax burden on legacies is twofold. First an Estate Duty is to be paid, calculated on the estate as a whole and based on a progressive scale. Then each recipient has to pay individually an Inheritance Duty likewise calculated according to a progressive scale. Ever since its introduction in 1947, Estate Duty has been criticised on the grounds that it penalises family businesses and large families. The question of amending the legislation was recently investigated by a Royal Commission. The Commission recommends that Estate Duty should be abolished and that Inheritance Duty should at the same time be incorporated into a new tax, viz: Legacy Tax.

It is considered that the new tax will be more directly proportional to the recipient's ability to pay. The Commission was unanimous on this point but, as regards the question of compensation to the State for a loss in income of some Kr. 30 million at present yielded by Estate Duty, opinion was divided. The majority of the members wish to make the new Legacy Tax sufficiently high to provide the State with an income of about Kr. 75 million per annum, i.e. the sum at present yielded by Estate Duty and Inheritance Duty taken

---

[1]) For different argumentation as regards proseded changes in the Canadian State Duty Act, see supra page 145.

together. A minority proposal was that the State should receive either only partial, or even no compensation at all for loss of income arising from the abolition of Estate Duty.

Source: *Monthly Economic Review.* Jan. 1958

U.S.A.

Withholding of Tax on Non-Resident Aliens

Revenue Ruling 58-34, Internal Revenue Bulletin, 1958)

A state-chartered savings and loan association, controlled by its stockholders and "borrower members" and whose investment certificate holders are not members of the association, is a person carrying on the banking business within the meaning of section 1441 of the Internal Revenue Code of 1954. Amounts paid on the investment certificates owned by nonresident alien individuals not engaged in trade or business in the United States constitute interest on deposits with persons carrying on the banking business and, therefore, are not subject to the withholding of tax under section 1441 of the Code.

Sect. 1441: (a) all persons . . . . in whatever capacity acting, having the control, receipt, custody etc. of any of the items of income specified in subsection (b) . . . . of any non-resident alien invidual . . . . . shall deduct and withhold from such items a tax equal to 30% thereof.

(b) The items of income referred to in subsection (a) are interest . . . . dividends, rent, salaries, wages, premiums, annuities, compensations . . . . etc. etc. or other fixed or determinable annual or periodical gains, profits and income.

Source: *Internal Revenue Bulletin,* February 3, 1958

III

FRANCE - ENTREPRISE EXPLOITANT DES ETABLISSEMENTS À L'ETRANGER ET AYANT SON SIEGE SOCIAL EN FRANCE

Conseil d'Etat. — 6 décembre 1957. — Requête no 30.650. — Section du Contentieux. — 7e soussection.

Bénéfices industriels et commerciaux. — Définition du bénéfice industriel et commercial. — Condition de territorialité de bénéfice. — Entreprise exploitant des établissements a l'étranger et ayant son siège social en France. — Gestion, en France, d'un portefeuille de devises et de valeurs mobilières. — Activité non imposable en France.

Considérant qu'en vertu des articles 2 et 3 du Code général des Impôts directs, les sociétés par actions sont, quel que soit leur objet, passibles de l'impôt sur les bénéfices industriels et commerciaux à raison des bénéfices réalisés dans les entreprises qu'elle exploitent en France:

Considérant qu'il résulte de l'instruction que la société . . . ., qui a pour objet le transport des marchandises sur le Danube mais dont le siège est à . . . ., a, par l'intermédiaire dudit siège social, réalisé au cours des années 1942 à 1945 des profits résultant de la gestion d'un portefeuille de devises et de valeurs mobilières; que, cependant, le portefeuille dont s'agit n'était composé que d'un certain montant de devises étrangères provenant du rapatriement au siège social de revenus précédemment réalisés à l'étranger, de bons du Trésor réalisables à court terme et présentant ainsi le caractère d'un simple emploi de trésorerie et d'actions d'une société de transports dont l'activité s'exerçait dans un pays riverain du Danube, et d'ailleurs reconnues par l'administration elle-même comme improductives de revenus: que dans les conditions de l'espèce, la société . . . . ne saurait être regardée comme ayant exercé simultanément en France une activité distincte dont les profits puissent constituer, au sens de l'article 2 susmentionné du Code général des Impôts directs, des bénéfices réalisés dans une entreprise exploitée en France; que dès lors le Sectétaire d'Etat au Budget n'est pas fondé à soutenir que la société dont s'agit était redevable, à raison de ces bénéfices, de l'impôt sur les bénéfices industriels et commerciaux;

Décide: (Rejet — Remboursement des frais de timbre).

Pour une entreprise qui exploite des établissements à l'étranger, la gestion en France d'un portefeuille de valeurs mobilières ne constitue une activité commerciale distincte, la rendant passible de l'impôt en France, que sous des conditions dont les conclusions, ci-dessous reproduites, de M. le Commissaire du Gouvernement Poussière, marquent les limites.

La société . . . est une société d'économie mixte dont l'objet était d'exploiter une flotte fluviale sur le Danube. Son siège social, à Paris, centralise la comptabilité des opérations extérieures.

La condition de territorialité n'était pas remplie pour l'application de l'impôt sur les bénéfices industriels et commerciaux visant les bénéfices des entreprises exploitées en France.

La société est-elle néanmoins imposable en France à raison d'une activité commerciale distincte?

L'Administration retient le fait que la société gère en France un portefeuille de valeurs mobilières acquises au moyen des bénéfices réalisés à

l'étranger. Cet investissement ne saurait être regardé comme le prolongement de l'activité à l'étranger: il amorce et représente un nouveau cycle d'opérations différent du premier au même titre que si l'entreprise avait acheté en France un autre fonds de commerce.

Dans ces conditions, la société serait imposable à l'impôt sur les bénéfices industriels et commerciaux à raison de l'ensemble des revenus de son patrimoine en France, composé de trois éléments: un immeuble de rapport, le portefeuille de valeurs mobilières et les plus-values constatées sur les devises provenant les opérations faites à l'étranger.

A l'appui de l'imposition, l'Administration fait état de certaines de vos décisions concernant des entreprises exerçant une double activité: d'une part, elles exploitent des établissements à l'étranger; d'autre part, elles réalisent des profits à l'aide d'opérations sur valeurs mobilières en France (20 *juin* 1953, *no* 77693 : *R. O.* n. 282. — 21 *déc.* 1953, *no* 14622 : *R.O.*, p. 396. — 13 *juil.* 1954, *no* 32284).

Cependant, cette jurisprudence a ses limites.

En premier lieu, elle ne paraît viser que les profits résultant d'opérations sur titres — par opposition aux revenus résultant de la simple gestion du portefeuille dans lequel l'entreprise aurait placé ses revenus de l'étranger.

Cette importante nuance est exprimée dans une décision du 31 mai 1937 (*no* 55308 : *R.O.*, *p.* 328) dont les termes demeurent valables, la législation n'ayant pas varié quant à la condition de territorialité.

Vos décisions plus récentes apportent des précisions qui sont dans le même sens. Vous notez que l'entreprise a «réalisé d'importants profits au moyen d'achats et de ventes répétés de valeurs mobilières» (20 juin 1953 *précité*) ou encore vous relevez des «opérations faites habituellement» (21 déc. 1953 *précité*). Rien de tel en l'espèce. Les rapports de l'Administration font ressortir que le portefeuille de la société s'est composé uniquement de Bons du Trésor jusqu'à 1941.

Après cette date, la portefeuille a compris en outre des actions de la société franco- . . . .de . . . pratiquement improductives de revenus.

C'est cependant sur la possession de ces titres, et l'éventualité de revenus à provenir d'eux, que l'Administration a cru pouvoir se fonder pour qualifier de commerciale l'activité exercée en France.

Cette prétention apparaît d'ores et déjà insoutenable.

Une seconde limite de la jurisprudence invoquée se trouve dans une réserve que contiennent la plupart de vos decisions en cette matière.

Vous avez noté que «le produit de ces opérations n'était nullement destiné à faire face aux besoins de l'exploitation à l'étranger» (20 juin 1953, *précité*) ou encore vous avez relevé aue «le portefeuille n'est pas affecté en tout ou en partie à l'exploitation de l établissement tunisien» (21 déc. 1953, *précité*).

Plus récemment, vous avez fait une application positive de cette réserve, dans une affaire ou l'entreprise avait vendu des titres (reçus de l'étranger) en vue de se procurer les fonds nécessaires pour participer à une augmentation de capital de cette société étrangère dont elle était actionnaire (8e *sous-sect.*, 11 *mai* 1956, *no* 30948 : *B.O.C.D.* 1956, *p.* 429).

Ainsi, Messieurs, les circonstances dans lesquelles la société gère son portefeuille de valeurs mobilières conduisent à décider qu'elle n'exerce pas de ce fait une activité commerciale la rendant passible en France de l'impôt.

Or c'était là le seul fondement de la position administrative.

M. le Commissaire du Gouvernement, ayant constaté que la possession d'un immeuble de rapport et celle de devises ne constituent pas une activité commerciale conclut:

En définitive, la société, n'exerçant pas d'activité commerciale en France, n'y est pas imposable. Le recours doit être rejeté.

Source: *Droit Fiscal*, February, 7, 1958

Taxe de facture sur les contracts d'entreprise. — Mandataires commerciaux. — Personnes effectuant en Belgique des opérations de mandat pour le compte d'une maison étrangère. — Mandataires de maisons néerlandaises. — Taxe non due.

La Convention entre la Belgique et les Pays-Bas, relative à l'application de la législation des deux pays en ce qui concerne les assurances sociales, approuvée par la loi du 2 juin 1949 (Moniteur belge *du* 10 *août* 1949), *soumet à la législation belge les ressortissants belges travaillant en Belgique, en qualité d'employés, pour des firmes néerlandaises.*

L'administration admet que la taxe établie par l'article 75^2 *du Code des taxes assimilées au timbre n'est pas due pour les personnes qui, effectuant en Belgique des opérations de mandat pour le compte d'une maison néerlandaise, sont soumises, en vertu de la dite convention, à l'application des lois sociales belges.*

Décision du 31 aout 1957.

Observations. — En vertu de l'article 75^2, § 1er, alinéa 2, du Code des taxes, est considérée comme rentrant dans la catégorie des mandataires dont les opérations sont soumises à la taxe de 5 p. c., toute personne qui effectue en Belgique, à un titre quelconque, des opérations pour le compte d'une maison étrangère.

Malgré les termes généraux de cette disposition, l'administration a toutefois déjà admis:

1° que l'article 75^2 du Code ne vise pas les personnes dont la fonction n'est pas la prospection de la clientèle (*Rép. prat. du droit belge*, v° Timbre (Taxes assimilées au), no 1046);

2° que cet article ne doit pas être mis en oeuvre lorsque la maison étrangère a un siège en Belgique et que les agents effectuant des opérations de mandat sont considérés comme de simples, préposés tant pour l'impôt sur les revenus qu'au point de vue des lois sociales (décision du 18 avril 1956, *Rec. Gén.*, no 19794).

Il résulte de la décision rapportée que la taxe établie par l'article 75^2 du Code ne doit pas non plus être payée lorsque la maison étrangère n'ayant pas de siège en Belgique, les personnes qui effectuent dans le pays des opérations de mandat, y sont néanmoins soumises à l'application des lois sociales.

Taxe de facture sur les contrats d'entreprise. — Etranger. — Prestations à l'étranger. — Bureau de placemant.

La taxe prévue par l'article 75^2 *du Code des taxes assimilées au timbre est due pour les prestations que l'exploitant d'un bureau de placement fournit en Belgique elle n'est pas due pour celles qu'il fournit à l'étranger.*

Pour déterminer si la fourniture des prestations se fait en Belgique ou à l'étranger, c'est le lieu d'établissement de la personne que le bureau de placement met en rapport avec le débiteur de la commission qu'il faut considérer. Si cette personne est établie en Belgique, la taxe est due: sinon, elle n'est pasdue.

Décision du 17 septembre 1957.

Observations. — Les personnes qui exploitent des bureaux de placement sont des agents d'affaires (*Les Novelles*, Droit commercial, t. Ier, Des Commerçants, no 207), mais elles agissent en fait comme des courtiers.

Le critérium à adopter pour déterminer si les prestations fournies par l'exploitant du bureau de placement sont livrées en Belgique ou à l'étranger, consiste donc à rechercher si la personne qu'il met en rapport avec le débiteur de la commission est établie en Belgique ou à l'étranger. Si cette personne est établie dans le pays, la taxe est due: sinon, elle ne l'est pas. (Comp. *Rép. prat. du droit belge,* v° Timbre (Taxes assimilées au), n° 1072.).

Source: *Recueil Général de l'enregistrement et du Notariat,* mars 1958

Taxe mobilière. — Taux réduit pour revenus de dépôts par des personnes sans domicile, résidence ou établissement dans le pays. — Déposant propriétaire des locaux de l'entreprise belge et possédant 99 pour cent des parts. — Indifférence. — Application du taux réduit.

(Cass., 11 juin 1957 - en cause S.P.R.L. Ateliers Disery c. Etat belge.)

En vertu de l'article 34, paragraphe 1er, 5°, littera b, des lois coordonnées, la taxe mobilière est réduite à 5 pour cent sur les revenus des sommes d'argent déposées en Belgique par des personnes physiques ou morale n'y ayant in domicile, ni résidence, ni établissement.

Une société de personnes à responsabilité limitée avait payé des intérêts à une de ses associées n'ayant en Belgique ni domicile ni résidence.

La Cour d'appel de Liège avait refusé le bénéfice de cette disposition sur la simple constatation que l'associée en question était propriétaire des bureaux et ateliers et possédait 199/200 du capital social; elle en déduisait l'existence d'un «établissement» en Belgique.

La Cour suprême décide que ces circonstances sont inopérantes et elle casse l'arrêt.

Sauf à démontrer qu'il y a simulation rendant la société fictive il y a lieu de respecter la fiction légale de la société, être juridique distinct (L. C., art. 35, § 4).

D'autre part, les travaux préparatoires de la loi du 13 juillet 1930 démontrent que la disposition de l'article 34, § 1er, 5°, littera b des lois coordonnées s'applique également aux «belges expatriés» pour les engager à laisser leur capitaux dans les pays (suppression du mot «étrangers»).

Source: *Repertoire Fiscale,* Nov.-Déc. 1957

JURISPRUDENCE EGYPTIENNE

Cour d'appel d'Alexandrie — 29 mei 1955 — Impôts. — Domicile. Définition en droit international privé, en droit civil égyptien et en législation fiscale.

On entend par domicile, en droit international privé, le territoire de l'Etat où réside une personne d'une manière continue et avec l'intention d'y demeurer. Il se compose donc de deux éléments, le premier matériel, c'est le fait de résider, le second moral, c'est l'intention d'y demeurer comportant, en cas de départ, l'intention de retour (revertendi animus). On n'est pas d'accord sur la loi applicable pour la détermination du domicile; toutefois, l'opinion prédominante est celle du tribunal saisi, soit, en Egypte, le droit Egyptien. Or, le droit civil égyptien (qui constitue le droit commun) définit le domicile dans son art. 40: «le lieu où la personne réside d'une manière habituelle». Le fait de s'établir dans le pays constitue l'un des éléments constitutifs du domicile comme il est dit dans la note explicative de ce code.

Par le fait de s'établir, il ne faut pas entendre le fait d'y résider sans interruption, mais bien le fait d'y demeurer d'une manière continue réalisant la condition de l'habitude, lors même que la dite résidence comporterait des in-

tervalles d'absence plus ou moins longs. De même, la loi fiscale n. 14 de 1939 qui est une loi spéciale, a adopté dans son article 4e une conception similaire du domicile pusqu'il est dit «les étrangers domiciliés ou résidant habituellement en Egypte». Enfin, la loi n: 99 de 1949 établissent un impôt général sur le revenu prévoit dans son article 2me que l'étranger est censé résider en Egypte:

1) s'il prend la république d'Egypte pour lieu de son séjour principal;
2) si ses intérêts principaux se trouvent dans le dit Etat.

Du 19 mai 1955. MM. Ahmed El Garem, Hamed Gue'eissa et Hassan Mohamed. Aff. 162/9. Bulletin Officiel des Tribunaux, Vol. 55, no. 55.

Source: *La Gazette Fiscale Commerciale et Industrielle*, Déc. 1957

IV

REVIEWS - COMPTES RENDUS

BELGIUM

Les Codes Larcier en cinq tomes publiés sous la direction juridique de JOSEPH GUISSART et JULES CLOSON avec la collaboration de Charles Goossens et Paul Schetter. *Tome IV Droit Fiscal, Complément* 1957. Maison Ferdinand Larcier, S.A. 39, Rue des Minimes, Bruxelles, 1958, 92 pp.

Dans le présent *Complément* se trouvent groupées, dans un ordre semblable à celui qui a été adopté dans les tomes, toutes les dispositions législatives destinées à la mise à jour de l'édition 1953 (compte rendu dans le «Bulletin» Tome XI, p. 302), d'après les textes publiés ou «Moniteur» jusqu'au 1er janvier 1958. Toutes les modifications intervenues depuis l'édition 1953 sont fusionnées avec les précédents, de sorte qu'il suffit au lecteur, qui consulte le texte de l'édition de s'en référer en même temps au dernier Complément paru pour avoir aussitôt connaissance du dernier état de la legislation.

Recueil de Projets et de Formulaires pour causes fiscales rédigé par J. CAUWENBERGH et A. VAN DER LEEST. Documentation juridique et fiscale, 343 Avenue des Pagodes, Bruxelles II.

De nombreuses professions libérales disposent depuis longtemps déjà, d'éditions convenables, comportant des séries de formulaires efficaces pour leurs opérations professionnelles. Toute initiative semblable faisait, jusqu'à présent, défaut pour les experts comptables et les juristes fiscaux. Les auteurs presentent dans cet premier essai quelques simples textes et exemples à l'intention des practiciens et des étudiants. Ils leur soumettent également quelques suggestions concernant un contrat professionnel.

Jurisprudence Fiscale et Sociale. Documentation juridique et Fiscale A. van der Leest, 343, Avenue des Pagodes, Bruxelles II.

Le *Ier supplément 1958* consiste de 13 fiches, numérotées de 1 à 13 comme premier supplément à la Jurisprudence Fiscale et Sociale et 1e *2nd supplément* de 13 fiches, numérotées de 14 à 26 comme premier et second supplément à la Jurisprudence Fiscale et Sociale.

VIKTOR PAUWELS: *Le nouveau Code des Impôts sur les Revenus*. Les Editions Excelsior, Bvd. de Smet de Naeyerlaan 255, Bruxelles.

Quelques feuillets ont paru contenant des modifications aux textes legaux et un complément de commentaires qui mettent à jour ce livre, un compte-rendu duquel a été publié dans le «Bulletin» Tome XII, p. 33.

A. TIBERGHIEN: *Handboek voor fiscaal recht*. Instituut voor Financie en Belastingwezen, Josef II Straat 153, Brussel. *Addenda 1956 en 1957*.

The Institute for Finance and Taxation at Brussels has published the Supplements 1956 and 1957 to its *Handbook for Fiscal Law*, which is an excellent handbook on the Belgian tax system.

EDGARD SCHREUDER: *Les impôts sur les revenus*. Précis de législation et de jurisprudence - Etablissements Emile Bruylant, Rue de la Régence 67, Bruxelles 1957, 514 pp.

The author, professor at the Université Libre, Bruxelles, has greatly enriched Belgian tax literature with this work. The many cases, alterations of the law and treaties make it difficult in Belgium just like in other countries to remain "up-to-date". A systematic treatment of these problems will be welcomed by many. In the introduction general subjects are treated further the taxes of provinces and municipalities.

Book I "Bases of taxation" occupies the greatest part of the book and is clearly and systematically classified.

The treaties concluded by Belgium are also discussed.

Book II contains formal law and case law.

EDOUARD THIRY: *Les impôts sur la circulation juridique des biens*. Bruxelles 1957, 232 pp.

This is the fourth edition of a course given for the "Chambre Belge des comptables". The first edition appeared in 1943 and was announced in Bulletin, Vol. I, p. 277. The book contains a concise but clear survey of the many Belgian taxes on transfers and services rendered preceded by a few general remarks.

Death duties, registration and stamp duties are discussed; the many "taxes assimilées au timbre occupy an important place.

Recueil des Lois Fiscales. Sous la surveillance de Frans Amerijckx, Professeur ordinaire à l'Université de Gand. *26e complément*. Documentation juridique et fiscale A .van der Leest, 343, Avenue des Pagodes, Bruxelles II.

Le *26e complément* de cet ouvre sur feuillets mobiles est paru. Un compte rendu du chef d'ouvre est paru dans le Bulletin Tome XII, page. 32-33.

BELGIAN CONGO

Investments in the Belgian Congo and Ruanda-Urundi. Prospects and Regulations. The Belgian Congo and Ruanda-Urundi Information and Public Relations Office, 5, rue du Trône, Brussels, 111 pp.

The principal part of this work deals with the conditions and formalities to which investments in the Belgian Congo are subject. Care has been exercised to furnish practical data essential to those who contemplate investing their capital in the Belgian Congo.

BRAZIL

JAIME PERICLES and TITO REZENDE: *Consolidaçao das Leis do Impôsto do Sêlo*. Decreto N.o. 32.392, de 9-3-53. 2.a ediçao, muito ampliada. Vol. XXV da Biblioteca da "Revista Fiscal e de Legislaçao de Fazenda". Revista Fiscal e de Legislaçao de Fazenda, Avenida Graça Aranha, 19-10. andar, Grupo 1.004, Rio de Janeiro, 1957, 195 pp.

This is the second edition of Volume XXV of the Library of the "Revista Fiscal e de Legislaçao de Fazenda" containing the consolidated stamp duty acts. Besides the texts of the acts the authors, directors of this Brazilian tax review, have included 369 explanatory notes and an extensive alphabetical index.

TITO REZENDE e JAIME PERICLES: *Consolidaçao das Leis do Impôsto de Consumo*. Decreto n. 26. 149, de 5 de janeiro de 1949, 3.ª ediçao, muito ampliada. Voll. XXIII da Biblioteca da "Revista Fiscal e de Legislaçao de Fazenda". Revista Fiscal e de Legislaçao de Fazenda, Aveñida Graça Aranha, 19-10º. andar, Grup 1.004, Rio de Janeiro, 1954, 392 pp.

This third edition of Volume XXIII of the Library of the Revista Fiscal e de Legislaçao de Fazenda" contains the consolidated Acts of the Sales Tax.

Besides the texts of the Acts the authors have included the explanatory circulars, models of forms, a complete alphabetical index and more than 700 explanatory notes.

CANADA

JOHN G. MCDONALD: *Canadian Income Tax. Eight (Cumulative) Supplement.* Butterworth & Co. (Canada) Ltd., 1367 Danforth Avenue, Toronto, 1958.

This *supplement* incorporates all current amendments to the statute law and brings the case law up to date to January 15, 1958. All the statutory amendments and judicial decisions are fully integrated with the text of the book itself. Further supplements will be cumulative and will replace those which prededed them. A review of the main work has been published in "Bulletin" Vol. XI, page 23.

CUBA

Investment in Cuba. By the U.S. Department of Commerce, Sinclair Weeks, Secretary, Bureau of Foreign Commerce, Loring K. Macy, Director. For sale by the Superintendent of Documents, U.S. Government Printing Office, Washington 25, D.C. 1956, 200 pp. Price $1.25.

Part 1 of this handbook gives an overall view of the Cuban economy and the outlook and climate for private investment. Part 2 covers the economy of the country in sufficient detail to permit determination of the areas in which there would appear to be opportunities for new or expanded productive activities. Part 3 presents digests of Cuban business, tax, and labor laws. Part 4 contains basic data on the market and a description of the distribution areas in the country.

FEDERATION OF RHODESIA - NYASALAND

Investment in Federation of Rhodesia and Nyasaland. By the U.S. Department of Commerce, Bureau of Foreign Commerce. For sale by the Superintendent of Documents, U.S. Government Printing Office, Washington 25, D.C., 1956, 158 pp. Price $1.75

This is one of a series of handbooks designed to bring together in convenient form basic information useful to prospective investors as well as foreign traders. It is planned to keep the basic information contained in this handbook up to date through the World Trade Information Service, issued in four parts.

FRANCE

JEAN-PATRICE SENN: *Les sociétés d'investissement en droit français et comparé.* Librairie Générale de Droit et de Jurisprudence, 20, rue Soufflot, Paris 1958, 294 pp.

This thesis constitutes Volume VII of the "Bibliothèque de Droit Privé" under the direction of Professor Henry Solus. The investment companies began to develop in France about 1930 in imitation of the Anglo-American countries. In the introduction of this extensive work the nature and the advantages of these companies is explained, a classification is given and the different types are considered. The book is divided into two parts: 1. les sociétés françaises d'investissement et les fonds de placement à capital fixe; 2. les fonds de placement à capital variable et le problème de leur dévéloppement en France. Many subjects are treated, viz. the judicial and the fiscal side; the legal provisions in America and the European countries, the "trust" etc. An extensive bibliography finishes the work.

Codes Annotés d'Impôts et Sociétés publiés sous la direction de M. RENE LOTTE. Les Editions d'Impôts et Sociétés, 23 Rue Chauchat, Paris-9e.

The following supplements to these excellent volumes on the French tax system have appeared: *Bulletin No. 10*, September 1957, containing new pages for Volume III, *Bulletin No. 11*, October 1957, consisting of new pages for Volume V and *Bulletin No. 12* which brings Volume I of Collection B entitled "Traité de la Patente" up to date. Reviews of these books were published in "Bulletin" Vol. XI, p. 126 and 332.

Feuillets de Documentation Pratique de l'Enregistrement. Publiés par les Editions Francis Lefebvre, 15, rue Viète, Paris (17e). Première année, No. 1, Décembre 1957.

Le présent envoi de feuillets de mise à jour est le premier effectué depuis la parution de la nouvelle Documentation pratique de l'Enregistrement. Cet envoi contient le nouveau Tableau des tarifs des droits de timbre et des feuillets supplémentaires de mise à jour pour l'ensemble des divisions de la collection.

Conventions conclues entre la France et des pays étrangers en vue d'éviter les doubles impositions en matière d'impôt sur les revenus. Ministère des Finances, Direction Générale des Impôts, Contributions Directes, Paris.

Le présent recueil contient le texte des Conventions que la France a conclues avec les pays étrangers en vue d'éviter les doubles impositions et d'établir des règles d'assistance administrative réciproque en matière d'impôts sur les revenus. Chaque Convention est suivie, le cas échéant, du Protocole y annexé ainsi que, s'il y a lieu, du texte des lettres échangées entre les deux Gouvernements intéressés en vue de préciser certains points d'interprétation ou d'application de la Convention elle-même.

Feuillets de Documentation Pratique des Taxes sur le Chiffre d'Affaires. Publication périodique paraissant tous les trois mois éditée par Les Editions Francis Lefebvre, 15, rue Viète, Paris (17e).

Ont paru les envois *No. 3*, Septembre 1957 et *No. 4*, Décembre 1957. L'envoi No. 3 contient un tableau des produits agricoles avec le régime applicable à chacun d'eux, la refonte de la série Exonérations et la mise à jour des séries: Taxe sur la valeur ajoutée et Taxe sur les prestations de services avec une documentation complète sur le régime des taux majorés.

MARCEL LE BRIS: *Professions et taxes sur le chiffre d'affaires.* Les Editions Impôts et Sociétés, 23, rue Chauchat, Paris-9e.

The *first supplement* to this practical handbook has appeared. A review of this loose-leaf work was published in "Bulletin" Vol. XII, p. 36.

RAYMOND PIGEON: *Questions d'intérêt pratique.* En vente chez l'auteur 57, Avenue Michel-Bizot, Paris (XIIe), 1958, 141 pp. Prix 700 frs.

Sous le titre «Questions d'intérêt pratique», quatre sujets ont été réunis: *Les frais de representation, de voyage ou de mission devant l'Impôt.* Après avoir rappelé les principes de droit commun applicables en matière fiscale à la déduction des frais de cette nature, cette étude reprend ensuite les dispositions de la loi du 7 février 1953 qui a interdit le cumul des indemnités forfaitaires et des remboursements de frais et a renforcé et complété le régime des déclarations.

La situation du conjoint salarie en matière fiscale et sociale. Les charges fiscales et sociales sont évaluées, ce qui permet de déterminer s'il faut ou non revendiquer le bénéfice de ce régime.

Le cas du conjoint de l'associé d'une société est également évoqué.

La deduction fiscale des dons et subventions. Différents régimes existent ou ont existé. Ils sont passés en revue avec indication des solutions intervenues (jurisprudence ou doctrine administrative). La situation au regard de la surtaxe progressive (contribuables non commerçants) est examinée.

Le regime fiscal des pensions de retraite servies par une entreprise à ses anciens collaborateurs.

Cette monographie a été couronnée par l'Association Internationale de Droit fiscal (Prix Mitchel B. Carroll - Congrès de Cologne). Elle expose les principes applicables en matière de déduction soit de primes versées par une entreprise à une compagnie d'assurances en vue de constituer des pensions de retraite à son personnel, soit de pensions directement allouées par l'entreprise.

Chacun des sujets traités composant cet ouvrage reprend, sous une forme pratique n'excluant pas la critique, les solutions adoptées soit par la jurisprudence, soit par l'Administration, ce qui permet de connaître «l'état actuel» de la question.

FRANCE D'OUTRE-MER

Problèmes d'Outre-Mer. Revue juridique, fiscale, sociale, économique, comptable. Société des Editions Juridiques Lefebvre, 48 Rue Cardinet, Paris XVIIe.

Le Centre d'Etude des Problèmes d'Outre-Mer sous la direction de MM. Roger et Jacques Lefebvre, directeurs du Bureau d'Etudes Fiscales Francis Lefebvre, qui fonctionne dans le cadre du Bureau d'Etudes Fiscales Francis Lefebvre vient de publier une périodique nouvelle conçue dans un esprit essentiellement pratique et entitulée *Problèmes d'Outre-Mer*. Elle est destinée à faciliter la solution des problèmes de plus en plus nombreux soulevés dans les pays d'Outre-Mer par la fiscalité, la législation des sociétés, le droit social, les questions de loyers, de propriété industrielle et commerciale, etc.

Institut d'Emission de l'Afrique Occidentale francaise et du Togo: *Rapport d'Activité 1er Octobre 1955 - 31 Décembre 1956*. 128, rue de Faubourg-Saint-Honoré, Paris (8e).

Ce *Rapport d'Activité* consiste de quatre parties: Création de l'Institut et Organisation de ses services; Caractères généraux de l'économie Ouest africaine et évolution de la conjoncture économique en 1955-1956; l'Evolution de la monnaie et du crédit en Afrique Occidentale française et au Togo et l'Action de l'Institut d'Emission du 1er Octobre 1955 au 31 Décembre 1956; Les résultats financiers des opérations de l'Institut au cours de l'exercice 1955-1956.

GERMANY

Jakob Theis: *Praktischer Führer durch das Steuerrecht*. Verlag Dr. Otto Schmidt, Köln.

Die klare, allgemein verständliche Darstellung, die mit vielen praktischen Beispielen das gesamte Steuerrecht behandelt, hat dieses Werk zu einem wertvollen Nachschlagewerk für den täglichen Gebrauch in der Praxis aller steuerberatenden und wirtschaftsprüfenden Berufe werden lassen.

Die *15. Ers. - und Erg.-Lfg. = Lieferung 23*, Februar 1958 ist erschienen.

Dr. Dr. Walter Hubschmann, Prof. Dr. Dr. Rolf Grabower, Ernst Beck, Dr. Hugo von Wallis und Dr. Otfried Schwarz: *Kommentar zum Umsatzsteuergesetz*. Verlag Dr. Otto Schmidt, Köln.

In diesem Loseblattwerk auf dem Gebiete des Umsatzsteuer wird nicht

nur die Rechtsprechung, sondern werden auch wichtige Verwaltungsanweisungen bei der Erläuterung berücksichtigt.
Es ist erschienen die *Lieferung 9*, Februar 1958.

Die Steuertarife sämtlicher Steuergesetze. 12 Auflage (einschl. 11. Ergänzungslieferung). *Stand: 1. Januar 1958.* Verlag der Steuertarife P. Wachsmann KG, Margarethenstr. 28, (22a) M. Gladbach (Rhld.).

Die Steuer- und Umrechnungskurse ab Währungsreform. Verlag der Steuertarife P. Wachsmann KG, M. Gladbach.

Diese Ausgabe enthält die Steuer- und Umrechnungskurse ab Währungsreform zusammengestellt aus einer Vielzahl von Veröffentlichungen. Für die steuerbearbeitenden Berufe wird die Ausgabe eine wesentliche Erleichterung bei ihrer immer komplizierter werdenden Arbeit sein. Soweit wesentliche Änderungen von Steuerkursen infolge Einspruches eintreten, können diese durch Änderungsblätter leicht ersetzt werden.

Tabellen zur Abgrenzung der Gewerbesteuer in der Steuerbilanz. Verlag der Steuertarife P. Wachsmann KG, M. Gladbach.

Diese Tabellen bieten die Möglichkeit, die Abgrenzung der Gewerbesteuer in der Steuerbilanz mit einem Mindestaufwand an Zeit und Arbeit vorzunehmen. Infolge ihrer Übersichtlichkeit und Einfachkeit in der Handhabung geben sie eine grosse Sicherheit und Genauigkeit der Resultate. Die Tabellen sind aufgebaut einmal nach den Gewerbeerträgen zum anderen nach den Messzahlen.

Schnellkartei des deutschen Rechts. Verlag Dr. Otto Schmidt, Köln.

Die „Schnellkartei" enthält die vollständigen amtlichen Texte nach dem neuesten Stand einschliesslich der Durchführungsverordnungen und zugehörigen Nebengesetze. Erschienen sind die Lieferungen:
Reihe III, Lieferung 78, Nov. 1957, zu den Bänden 11 bis 13.
Reihe III, Lieferung 80, Jan. 1958, zu den Bänden 11 bis 13.
Reihe III, Lieferung 81, Feb. 1958, zu den Bänden 10 bis 13.
Inhalt: Steuerkurswerte 1957, Körperschaftsteuergesetz 1957, Gewerbesteuergesetz 1957, Änderungen de AStO, u.a. 20. Abgaben DV-LA, u.a.

Steuerrechtsprechung in Karteiform. Höchstgerichtliche Entscheidungen in Steuersachen. Mrozek-Kartei. *73. Lieferung,* Januar 1958, *74. Lieferung,* Februar 1958, Lieferung, März 1958.
Verlag Dr. Otto Schmidt KG, Köln.

Dr. jur. Reinhard Kapp: *Das Erbschaftsteuergesetz.* 3. Auflage. Industrie- und Handelsverlag Walter Dorn G.m.b.H., Bremen-Horn.

Die Vorzüge und das Ziel dieses Werkes wurden in der Besprechung im „Bulletin" Band XI, S. 136 gewürdigt. Die 8. Ergänzungslieferung bringt jetzt neue Blätter zum Auswechseln.

Erich Preiser: *Bildung und Verteilung des Volkseinkommens.* VandenHoeck und Ruprecht, Göttingen, 1957, 351 pp.

This extensive work contains – as the author announces in his preface – a number of lectures delivered during the period 1941-1955 which are reprinted here for the greatest part unaltered. They deal with the formation and growth of national income and its distribution. Moreover some questions of economic policy are dealt with. Fiscal problems have not been treated, but for the background of these problems the considerations under discussion find interest among the readers of the Bulletin.

WILHELM GERLOFF und FRITZ NEUMARK: *Handbuch der Finanzwissenschaft.* Zweite vollig neubearbeitete Auflage. 25. Lfg. (Band III Bogen 26-30) J. C. B. Mohr (Paul Siebeck), Tübingen 1957, 79 S.

Diese neue Lieferung (Seite 401-480) enthält den Schluss des in den Lieferungen 23/24 begonnenen Aufsatzes von *Kaemmel*, und *Lowell C. Harris*, Das Finanz- und Steuersystem der Vereinigten Staaten von Amerika *Hanya Ito*, Staatshaushalt und Finanzsystem Japans, *R. C. Gates*, Staatshaushalt und Finanzsystem Australiens und Neuseelands. sowie den Anfang des Aufsatzes von *J. Harvey Perry*, Staatshaushalt und Finanzsystem Kanadas. All diese Länder sind nach einem einheitlichen Plan behandelt worden; die Verfasser konnten jedoch im übrigen eigene Wege gehen. Beispielsweise findet man im Hinblick auf ein Land weitgehendere Betrachtungen über ein gewisses Thema als im Hinblick auf ein anderes.

Die Verhältnisse weichen in derartig verschiedenen Ländern stark von einander ab. Immer wieder kommen wichtige Daten u.a. über Haushaltsplan, Ausgaben, Einkünfte öffentliche Schulden usw.

GREAT BRITAIN

D. C. POTTER and H. H. MONROE: *Tax planning with precedents*, 2nd edition. Sweet & Maxwell, Chancery Lane 3, London, 1956, 411 pp.

This second edition does not simply reflect the changes in the law that have taken place in the two years since the first edition was published, but fresh matter has been added and various parts have been rewritten and amended. In consequence the book has grown by more than a hundred pages, and there are more than eighty additional decisions listed in the tables of cases. Among the topics which are now dealt with for the first time, or are dealt with more fully than in the first edition, are the following: valuation of gifts and settled funds for estate duty purposes, the family company in relation to estate duty, the valuation of shares, applications to the court to assist in the variation of settlements, superannuation funds and pensions under the Finance Act. 1956.

ROBERT DYMOND and REGINALD K. JOHNS: *The Death Duties. Second (Cumulative) supplement* to the 12th edition. The Solicitors' Law Stationery Society, Ltd., Oyez House, Breams Buildings, Fetter Lane, London, E.C. 4, 1957, 122 pp.

This *Second Cumulative Supplement* contains further changes in the law which have taken place since the appearance of the First Supplement in 1956. The Finance Act of 1957 contains two Death Duty clauses and one of these is an array of eighteen subsections on the ascertainment of the dutiable property under gifts inter vivos and releases of limited interests. A further Double Taxation Agreement, with Pakistan, is discussed and all relevant judicial decisions are noted and examined.

C. A. GUNSTON and C. M. CORNER: *Glossary of German financial and economic terms.* English Universities Press Ltd., St. Paul's House, Warwick Square, London, E.C. 4, 122 pp.

This Glossary is a useful supplement to existing German-English dictionaries. The radical changes that have taken place in Western Germany in public finance, banking, industry and trade have resulted in a marked evolution of the technical vocabulary peculiar to those spheres of activity. Mr. C. A. Gunston has established the exact English equivalents of many new German terms that have come into current use, and he is now making this material available in the form of a Glossary that has been ably and carefully edited by Mr. C. M. Corner.

JOHN F. DUE: *Sales Taxation.* Routledge & Kegan Paul Ltd., Broadway House, 68-74 Carter Lane, London E.C. 4, 1957, 396 pp.

This study evaluates the role of the Sales Tax in the modern tax system, and examines the major forms of the tax, including the British Purchase Tax, in the light of the experience of various countries. The sales tax structures of the countries of western Europe, Australia and New Zealand, Canada, and the States of the United States are examined in detail, while those of other countries receive a briefer survey. Stress is placed upon the relative merits of the various forms as revealed by an examination of experience with them. Attention is also given to various problems common to all forms of sales taxes. The question of the distribution of the tax burden is likewise reviewed.

R. H. WILLIAMS: *The Electronic Office.* Second edition. Gee and Company (Publishers) Ltd., 27-28 Basinghall Street, London, EC2, 1958, 80 pp.

This is an easily understood introduction to the use of computers in the office. The book is written by one who knows from first-hand experience how much, even in this scientific age, everyday office work depends upon the use of expediency.

HENRY E. SMITH: *Hanson's Death Duties.* 10th edition. *Second cumulative supplement* (to January 1, 1958). Sweet & Maxwell, 2 & 3 Chancery Lane, London WC2, 94 pp.

A review of *Hanson's Death Duties* has been published in "Bulletin" Vol. XI, p. 47/48. This second cumulative supplement states the law as at January 1, 1958. Its chief interest lies in the notes on section 38 of the Finance Act, 1957, which introduced substantial changes in the law relating to duty in respect of gifts and dealings with limited interests.

"Current Law" Income Tax Acts Service (CLITAS). Sweet & Maxwell, 2-3-Chancery Lane, London, W.C.2.

Release 41, Dec. 17, 1957, of this loose leaf work, a review of which has been published in "Bulletin" Vol. XI, p. 145, brings to subscribers notice of a proposed increase in the income limit for dependent relative allowance,

Release 42, Dec. 18, 1957, reflects the changes introduced by the Finance Act, 1957.

Release 43, Fev. 1958. With this release subscribers to the Complete Service are issued with a new blue binder which will in future contain the whole of the Profits Tax section.

Release 44, March 29, 1958, brings the index, table of statutes and table of cases for the Income Tax and Surtax sections up-to-date to the end of 1957.

Release 45, April 17, 1958. *Budget Release.* On April 15th the Chancellor of the Exchequer presented his annual Budget to Parliament. Release 45 brings to subscribers a full report of the Budget Resolutions so far as they affect these volumes. Each Budget Resolution is set out in full. The commentary presents in clear, concise language what is the effect of the Resolution. Cross-references are given to the various sections of the Income Tax Acts affected.

INDONESIA

Investment in Indonesia. U.S. Department of Commerce, Bureau of Foreign Commerce. For sale by the Superintendent of Documents, U.S. Government Printing Office, Washington 25, D.C., 1956, 155 pp. Price $1.25.

This handbook, designed primarily to serve the needs of potential investors, is one in a series issued by the U.S. Department of Commerce. It brings together in a single publication basic economic and commercial information on

Indonesia. It is planned to keep the basic information contained in this handbook up to date through the World Trade Information Service issued in four parts by the U.S. Department of Commerce.

ITALY

Avv. Dz. Agostino Toso: *I Sindaci delle Società par azioni a responsabilità limitata e cooperative*. Funzioni contabili, amministrative, legali e fiscali. Con amplia raccolta di giurisprudenza. Nuove Edizioni Giuridiche, Piazza S. Pantaleo 3, Roma, 1957, 375 pp.

This publication constitutes a handbook for those who occupy a leading position in companies. In the first two parts of the book commercial and legal problems are dealt with, while in the third part attention is given to tax problems.

Documenti della Organizzazione Europea. Cedam, Padova, 1955, 602 pp.

This book contains a compilation of treaties and statutory regulations concerning the European cooperation in all its aspects. The compilation contains a.o. the Benelux treaties, Council of Europe, European Community for Coal and Steel, etc.

Costantino de Bono: *L'imposta sulle Successioni e l'imposta sull'asse globale ereditario netto*. Seconda edizione riveduta ed aggiornata. Casa Editrice Dott. A. Giuffrè, Via Solferino 19, Milano, 1955, 409 pp.

This is the second edition of this handbook which gives a complete commentary on the Italian death duties.

The book is divided into numbered paragraphs. At the end the tariffs are mentioned and an extensive index is added.

La distinzione tra imposte dirette e indirette. (Uno studio di storia delle dottrine finanziarie) – Quaderni dell'Associazione fra le Società Italiane per Azioni, Roma 1957, 215 pp.

As indicated in the sub-title the author has written a study on the difference between direct and indirect taxation. He goes back to the classical economists: Adam Smith, Picardo and Stuart Mill.

L'imposta sulle Società. (documenti e scritti vari) Quaderni dell'Associazione fra le Società Italiane per Azioni, Roma 1954, 797 pp.

This book contains a survey of the remarks made in Parliament and outside on the occasion of the introduction of a tax on companies. Besides the many official documents are also included the Bill and the Act.

Prof. Avv. Gustavo Ingrosso: *Diritto Finanziario*. Seconda edizione ricevuta ed aggiornata, con la legge 5.1.1956 n.l, sulla perequazione tributaria. Casa Editrice Dott. Eugenio Jovene, Napoli 1956.

In this extensive handbook the author discusses the problems relating to public finance and the resultant system of taxation. The book has been conveniently arranged in numbered paragraphs and at the end the "legge sulla perequazione tributaria" has been added as an appendix.

Prof. Rag. Francesco Martinenghi: *Imposta complementare*. Manuale pratico – Casa Editrice L. di G. Pirola, Via Cavalotti 16, Milano 1955, 117 pp.

This publication contains a concise, practical treatment of the supplementary income tax as applicable in Italy. The subjects are ordered systematically and numbered consecutively. The complete tariff has been included. The restitution of tax in case of drying up of the source from which taxes originate is dealth with in chapter XI.

Commento alla nuova legge sulla perequazione tributaria (L. 5.1.1956 n.l.) Supplemento speciale al no. 1 (1956) della Rivista di Diritto Finanziario e Scienza della Finanze – Casa Editrice Dott. A. Guiffrè, Via Solferino 19, Milano 1956, 166 pp.

Several authors have treated in a number of chapters different subjects of the Collection Act 1956. The most important paragraphs of the Act are discussed extensively in this book. At the end the complete text of the Act has been added.

AVV. GINO AVEZZA: *Legge sulla imposta di registro* R.D. 30 (dicembre 1923, n. 3269) coordinata con le modificazione successive, con le disposizioni portanti essenzioni a privilegi e con le norme principali dei regolamenti e delle istruzioni ministeriali. 4a. edizione riveduta ed aggiornata al 1.10.1954 – Casa Editrice L. di G. Pirola, Via Cavallotti 16, Milano, 1955, 234 pp.

This publication contains the complete registration duty act brought up to date until October 1st, 1954. The author has abstained from interpretation of the act as this book is meant to be an objective presentation of the present registration law.

JAPAN

Investment in Japan. By the U.S. Department of Commerce, Bureau of Foreign Commerce. For sale by the Superintendent of Documents, U.S. Government Printing Office, Washington 25, D.C. 1956, 150 pp. Price $1.00

This volume describes factors which the businessman will wish to consider in evaluating Japan as a field for investment and trade. Partial or full texts of pertinent Japanese laws and regulations are included.

MEXICO

World Tax Series, William Sprague Barnes, Director. *Taxation in Mexico.* Harvard Law School, International Program in Taxation. Little, Brown and Company, Publishers, 34 Beacon Street, Boston 6, Mass., 1957, 428 pp.

Up to this time, no complete and authoritative presentation of the Mexican tax system has existed. The present volume of the World Tax Series is designed to satisfy this need and has been prepared with the close cooperation of the Mexican authorities. Following the uniform pattern of the Series, the text of the book is arranged in a way which combines a general description of the system and its historical and economic background with a detailed analysis of the major Mexican taxes. This report is primarily the work of *Henry J. Gumpel,* Research Associate at the Harvard Law School, who performed similar work on Taxation in Brazil (review in Bulletin Vol. XI, p. 219). In the present work he has collaborated with *Lic. Dr. Hugo B. Margàin,* Director-General of the Income Tax Department in the Mexican Ministry of Finance and Professor of Constitutional and Fiscal Law at the Autonomous National University of Mexico.

MOROCCO

ANDRE THRIOREAU: *Code Fiscal. Supplement Nr. 21.* FIDUTEC Fiduciaire Marocaine d'Editions Techniques, 81 Rue Colbert, Casablanca.

Supplement Nr. 21, Décembre 1957, of this loose-leaf work on the tax system of Maroc, a review of which appeared in Bulletin Vol. XI, p. 37, has been published.

NETHERLANDS

H. WEISFELT: *Hoe werkt de fiscus?* (Die Tätigkeit der Steuerbehörden) Met

medewerking van A. Boumen en A. J. P. W. Heyne, 2. Aufl. Bearbeitet von J. F. de Jong. Uigeverij AE. E. Kluwer, Deventer 1957, 198 S.

Im Vorwort zur ersten Auflage wurde bemerkt dass über Steuerrecht viel, aber über die Steuerbehörden zu wenig geschrieben wird. In der zweiten Auflage ist der Plan beibehalten worden, aber viele Anderungen und Ergänzungen waren erforderlich. Man findet in diesem Buch viele Themen behandelt, wodurch der Leser eine ausführlichere Übersicht erhält als der Titel erwarten liesse. Behandelt werden z.B. die Rechtslage des Beamten, seine Pflichten und Rechte, Beförderung, Ausbildung und noch viele andere Einzelheiten die man anderweitig schwerlich finden kann.

Prof. Dr. M. J. H. Smeets: *Inkoop van eigen aandelen* (Einkauf eigener Anteile) Fiscale Studieserie, no. 10 Uitgeverij FED, Roemer Visscherstraat 29, Amsterdam 1957, 61 S.

Als Nummer 10 der obengenannten Reihe erschien ein Büchlein, dass sowohl für Aktiengesellschaften als auch für Aktionäre von grossem Nutzen sein kann. Der Einkauf eigener Aktien wird zunächts von betriebswirschaftlicher Seite, von Zivilrechtlicher Seite und steuerrechtlicher Seite betrachtet. Ferner wird der Zusammenhang mit Kapitalberichtigung und Rückzahlung von Aktienkapital dargelegt. Ausserdem kommt die Auswirkung bei der Aktiengesellschaft und bei den Aktionären zur Sprache.

A. Blom: *Algemene inleiding tot het belastingrecht – 2. Uiteenzetting over de vennootschapsbelasting* (Allgemeine Einführung zum Steuerrecht; Darlegung der Körperschaftsteuer). Fiscale Studieserie Nr. 7. Uitgeverij FED, Amsterdam 1957, 138 S.

Die allgemeine Einführung ist kurz gefasst (19 Seiten) und enthält einige allgemeine Bemerkungen und eine Betrachtung über das Steuerrecht. Die Körperschaftsteuer wird systematisch behandelt (S. 33-138). Naturgemäss wird die Gewinnberechnung eingehend betrachtet (in 10 Paragraphen eingeteilt). Das Büchlein bietet Hinweise für die Praxis. Litteratur und Jurisprudenznachweise sind nicht aufgenommen.

D. Brüll, e.a.: *Fiscaal- en Privaatrecht rond rechtspersonen*. Uitgeverij FED; Roemer Visscherstraat, Amsterdam 1957, 316 S.

In fünf ausführlichen Aufsätzen wird von acht Mitarbeitern des Verlags, der regelmässig die steuerrechtliche Literatur bereichert, die steuerrechtliche- und privatrechtliche Seite der juristischen Personen behandelt. *J. A. Fray* bespricht nach der Reihenfolge der Paragraphen, die Körperschafssteuer.

D. Brüll behandelt die steuerrechtliche Gewinnberechnung.

L. Stil betrachtet viele gewerbezweige wie: Hypothekenbanken, Baugesellschaften, Kreditvereinigungen, Versicherungs- Investitionsgesellschaften, Sparkassen, Schiffahrtgesellschaften und Banken.

Am Vierten Kapitel (capita selecta) arbeiteten fast alle Mitarbeiter mit: *Fray* widmet der Rechtskraft ministrieller Verfügungen und den Rechten der Steuerbehörden eine Betrachtung, *Stil* der Liquidation, Mutter und Tochtergesellschaft und verwanten Angelegenheiten, der Agioreserve und der Bewertungsfrage. *L. J. M. Nosewer* behandelt die eingetragene Genossenschaft; *M. R. Reuvers* die Gewinnspaltung, *J. P. Scheltens* die Umwandlung einer Personengesellschaft in eine Aktiengesellschaft, verschiedenartige Aspekte der Familien A.G., Einkauf eigener Aktien und andere Steuern, mit denen eine A.G. zu tun hat. Tj. S. Visser schrieb eine Darlegung über Pensionen und Leibrenten.

Den reichhaltigen Inhalt dieses Buches macht uns ein ausführliches Sachregister und ein Verzeichnis der erwähnten Jurisprudenz zugängig.

Prof. Dr. J. VAN DER POEL: *De vooropstellingen van ons belastingrecht.* (Die Voraussetzungen in unserem Steuerrecht) – 2. Aufl. Uitgeverij FED, Roemer Visscherstraat, Amsterdam 1957, 119 S.

Der Verfasser, HochSchullehrer und Direktor an der Reichsteuerakademie in Rotterdam, hat seinerzeit eine Reihe von Artikeln im *Weekblad der Belastingen* über obengenanntes Thema geschrieben. 1951 erschienen diese einigermassen umgearbeitet als Sonderbuchausgabe. Man interessierte sich nach wie vor für diesen Gegenstand und somit erschien jetzt eine Zweite Auflage. Diese ist nicht nur revidiert sondern auch in vielerlei Hinsicht ergänzt worden. Obgleich an dem Plan nichts geändert wurde. Dieses Buch ist nicht für den Fachmann wertvoll sondern auch für denjenigen der sich mit irgendeinem Gegenstand auf diesem Gebiete zu befassen hat und nicht in der Lage ist von sich aus die Zusammenhänge und Hintergründe zu begreifen. Das Büchlein umfasst:

I. Einleitung
II. Die Voraussetzungen des Steuerrechtes;
III. Beinflussung durch die Politik der theoretischen Voraussetzungen und ihre Auswirkung;
IV. Vergleichung mit den heutigen Steuergesetzen;
V. Schlussbetrachtung.

Zu II. werden die Auffassungen sämtlicher Verfasser kritisch beleuchtet, während zu IV die verschiedenen niederländischen Steuern kritisch ins Auge gefasst werden. In der Schlussbetrachtung findet man eine Darlegung über den Kompromisz in Steuersachen, den der Verfasser befürwortet.

TH. C. HIJZEN, A. ROM COLTHOFF, F. DE ROOS & J. V/D BERGEN: *De Euromarkt in de praktijk* (The European market in practice). N. Samson N.V., Alphen a/d Rijn, Loose-leaf 1958, Price f 18,—

This new reference work of the well-known Dutch publishing office *N. Samson N.V.* is a handbook on the European market. The first delivery contains the text of the Euromarket treaty, a Dutch translation of the Brussels nomenclature and a statement of the expected outside tariffs.

As soon as regulations of importance for businessmen are introduced, subscribers will receive supplements with explanations wherever necessary. Those who are interested in the European market will find much useful information in this attractive book.

C. VAN SOEST & A. MEERING: *Leidraad voor de Belastingstudie* (Guide to tax study) – Part I, Supplement 2. S. Gouda Quint – D. Brouwer & Zoon, Uitg. in het Huis de Crabbe, Arnhem, 1958.

In "Bulletin" Vol. XI, p. 229 we published a review of this work on the Dutch system of taxation and pointed out its merits. The present *Supplement 2* brings the book up-to-date again.

F. KUIPERS, G. A. KIEFT & O. DE BAAN: *Belastingrechtspraak.* Een handleiding voor praktijk en studie. Taylor, Efficiency-Bureau voor administratieve organisatie, Nijmegen.

This Supplement to the above mentioned work on judicial taxproceedings, a review of which has been published in "Bulletin" Vol. XII, contains important new pages, about the lawsuit.

A number of reprinted pages has been added.

H. BARON VAN LAWICK and K. A. J. BIERLAAGH: *Summary of Dutch taxation law.* 1955, 92 pp.

This booklet gives a brief review of the Dutch tax system. It does not aim at completeness, but is only intended to give a broad survey.

J. B. KLOOSTERMAN: *Overzicht van de wetgeving inzake de in-, uit- en doorvoer en de accijnzen in het algemeen.* De Belastingwetgeving Serie I. & A. No. 12. 3rd edition. *Supplement 5*, February 5, 1958. J. Noorduyn en Zoon N.V., Gorinchem, Netherlands.

P. KARMELK: *Tabakswet.* 4th edition. *Supplement 3*, February 19th, 1958. De Belastingwetgeving Serie I. & A. No. 3. J. Noorduyn en Zoon N.V., Gorinchem, Netherlands.

P. KARMELK: *Besluit op de Inkomstenbelasting 1941.* (Income Tax Resolution, 1941) 8th edition. *Supplement 8*, March 6th, 1958. De Belastingwetgeving Serie D.B. No. 2. J. Noorduyn en Zoon N.V., Gorinchem, Netherlands.

P. KARMELK: *Besluit op de Vennootschapsbelasting 1942.* (Corporation income tax). 4th edition. *Supplement 4*, March 19th, 1958. De Belastingwetgeving Serie D.B. No. 13. J. Noorduyn en Zoon N.V., Gorinchem, Netherlands.

C. P. TUK: *Omzetbelasting.* (Sales Tax). 6th edition. *Supplement 5*, March 14th, 1958. De Belastingwetgeving Serie I. & A. No. 11. J. Noorduyn en Zoon N.V., Gorinchem, Netherlands.

FED losbladig fiscaal weekblad. (loose-leaf tax weekly). Uitgeverij FED. Roemer Visscherstraat 29, Amsterdam-West I.

Nos. 602-623 of the 17th volume of this weekly, which contains tax articles, discussions of case law and resolutions, and answers to questions as regards Dutch tax problems, have appeared.

FED's fiscaal repertorium. Uitgeverij FED, Amsterdam.
Supplements 5 - 11, 1957, have appeared.

Dr. W. H. VAN DER BERGE, H. A. M. VAN DEN DRIES and Prof Dr. B. SCHENDSTOK: *Belastingberichten.* N. Samson N.V. – Publisher – Alphen aan den Rijn, Netherlands.

Supplements 1957, nos. 40-1958 no. 16 to these loose-leaf volumes on the Dutch tax system have been published.

W. E. C. DE GROOT: *Nederlandse Belastingwetten.*
N. Samson N.V. – Publisher – Alphen aan den Rijn, Netherlands.

The five volumes of this loose-leaf system on Dutch taxation contain the texts of the Dutch tax acts. The *nos. 130-134 of the supplements*, which keep these volumes up-to-date, have been published.

H. W. VERMEULEN and H. G. M. WARDENIER: *Teruggaaf van omzetbelasting bij uitvoer.* N. Samson N.V. – Publisher – Alphen aan den Rijn, Netherlands.
18th-25th supplement, 1957-1958.

H. W. VERMEULEN and H. G. M. WARDENIER: *Vrijstellingen en terugagaf van invoerrecht.* N. Samson N.V. – Publisher – Alphen aan den Rijn, Netherlands.
6th-7th supplement, 1957.

NEW ZEALAND

H. A. CUNNINGHAM: *Taxation Laws of New Zealand.* 3rd edition by M. I. Thompson and I. M. Roberts. *Service No. 4.* Butterworth & Co. (Australia) Ltd., 49-51 Ballance Street, Wellington, New Zealand.

A review of this important handbook on New Zealand's Taxation Laws has been published in "Bulletin" Vol. XI, p. 41/42. *Service No. 4* has now been published. It covers the Income Tax Assessment Act 1957 (PAYE). This section has its own index. The method for using The Taxation Laws Service in conjunction with Cunningham's Taxation Laws of New Zealand is a simple one. Each paragraph in the main work is numbered and any amendments or alterations to a paragraph are shown under the same number in the Service.

Taxation Tables 1957 incorporating a survey and detailed commentary on the PAYE legislation contributed by *Charles A. Staples*. 13th edition. Financial Publications Ltd., 33 Jessie St., P.O. Box 6387, Wellington, N.Z. 1957, 103 pp.

In this 13th edition of *Taxation Tables* the Publishers have incorporated a comprehensive section on the Income Tax Assessment Act, 1957 – popularly known as P.A.Y.E. – which comes into force on the 1st April, 1958.

Part I of this book contains tables of weekly basic tax deductions and schedules of rates for "No declaration", for overtime pay and secondary employment, prefaced by explanatory notes. Methods are also given for calculation of the tax deduction where salaries or wages are paid fortnigtly, four-weekly, monthly and half-monthly. Part II consists of the normal contents of Taxation Tables, revised and brought up-to-date, including reviews of recent taxation legislation.

NIGERIA

Investment in Nigeria. By the U.S. Department of Commerce, Bureau of Foreign Commerce. For sale by the Superintendent of Documents, U.S. Government Printing Office, Washington 25; D.C., 1957, 182 pp. Price $1.

The present study not only surveys the basic economic resources of Nigeria but places special emphasis on underlying factors which businessmen will find useful in evaluating Nigeria as a field for investment and trade. Appendix C contains the Legislation affecting business operations.

NORWAY

JACOB JAROY: *Skattelovsamling. Supplement Nr. 7*. Baugeidsgt. 16, Skien, Norway.

Supplement Nr. 7 of this loose-leaf work on the Norwegian tax system, a review of which appeared in Bulletin Vol. XI, p. 152. has been published.

PERU

Investment in Peru. By the U.S. Department of Commerce, Bureau of Foreign Commerce. For sale by the Superintendent of Documents, U.S. Government Printing Office, Washington 25, D.C., Price $1.25.

Part 1 of this handbook discusses the investment climate in Peru and gives general background information. Part 2 discusses the economy of Peru and gives a digest of the labor laws. Part 3 presents a review of Peru's business and tax laws.

PHILIPPINES

Investment in the Philippines. Prepared by the U.S. Department of Commerce, Bureau of Foreign Commerce. For sale by the Superintendent of Document U.S. Government Printing Office, Washington 25, D.C. 1055, 151 pp. Price $1.

This study is presented in three parts. Part 1 provides a brief overall summary of the investment situation, past and present foreign investment,

and general background information about the country. Part 2 deals in some detail with important aspects of the economy. Part 3 contains detailed information concerning taxation and some aspects of Philippine law.

SPAIN

FEDERICO SILVA MUNOZ: *Evaluacion fiscal de la riqueza rustica en los principales paises*. Obra galardonada por la real Academia de Ciencias morales y politicas, con el premio de la Fundacion conde de Toreno (1953-1956). Editorial de Derecho Financiero, Quintana 15, Madrid, 1958, 272 pp.

This is a study of comparative law relating to the taxation of income from immovable property. After an extensive survey of the Spanish system of taxation there follows in chapters IX-XII a discussion of the taxation of these incomes in France, Italy, Great Britain and Portugal. In chapter XV the author makes a number of proposals to improve the Spanish system.

FERNANDO RIVERO DE ANDREA: *El catastro en Espana, Francia, Italia, Bélgica, Holanda y Suiza*. Estudio de legislación comparada, Madrid, 1957, 309 pp.

The land-survey register is the subject of a comparative law study. The author discusses the land registry in Spain, France, Italy, Belgium, the Netherlands and Switzerland. This study is therefore of importance, because in most countries the land registry has the same function with different purposes. It often forms the basis for the levying of a tax on income from immovable property. In the Netherlands, however, this basis is applied for the assessment on the object itself, i.e. the immovable property.

SWITZERLAND

Dr. jur. FELIX VON STRENG: *Die Besteuerung der Kapital- und Liquidationsgewinne nach Thurgauischem Steuerrecht unter Berücksichtigung* des gesamt schweizerischen Steuerrechts, 1956. 134 S.

Diese Dissertation verteidigt vor der juristischen Fakultät von Freiburg behandelt die Besteuerung von Kapital- und Liquidationsgewinnen nach schweizerischem Recht. Die ausführliche Literaturangaben beschränken sich auf schweizerische Quellen. Es ist eine eingehende Studie in der nach einer Einleitung zunächst die Besteuerung von Kapitalgewinnen in der Schweiz vom Gesichtspunkt der "Kapitalgewinnsteuer" aus behandelt wird. Dann werden die Kapital- und Liquidationsgewinne für die Besteuerung von Betriebsgewinne von natürlichen Personen und Rechtspersonen mit verpflichteter Buchführung ins Auge gefasst.

In beiden Abschnitten die scharf getrennt sind findet man dieselben Themen wieder, aber jedesmal anders beleuchtet. Das Schlusskapitel enthält einige allgemeine Probleme.

Dr. ED. KELLENBERGER: *Die Steuern und ihre Reform*. Verlag Stämpfli und Cie., Bern, 1957, 396 S.

The author, who has been in a responsible position in the Swiss Bundesfinanzverwaltung, points out in this work new directions for the development of taxation. Gradually new principles will have to govern taxation. The book is divided into three parts:

I. Economic theory of taxation,
II. Critical considerations of the existent taxes,
III. Reform.

In the first part important problems of social development are dealt with, for instance: the consequences of incorrect tax levying, its influences on the wage policy, national income, control of trade cycles and finally taxation

from the viewpoint of justice. In the second part the various forms of tax levying are submitted to a critical examination. For instance taxation of individuals, on consumption, labour, property and windfall profits.

The third part contains the proposed reform which in general comes down to maintaining the position as it is but supplemented with what the author calls "Rück". He claims that the obligation to transfer the realised windfall profits to the state would ground the taxsystem on a sounder basis. The consequences of such a reform are elucidated extensively.

ARNOLD SCHLUMPF Dr. inr.: *Bundesgerichtspraxis zum Doppelbesteuerungsverbot.* 2. Aufl. bearbeitet durch Fürsprecher Dr. K. Dürr. Dürr Verlag, Bern 1955, 215 S.

Das Problem der Doppelbesteuerung ist nicht neu. Im 5. Jahrhundert v.C. ergaben sich in dieser Hinsicht bereits Schwierigkeiten; und noch immer ist die Frage nicht gelöst.

In den schweizerischen Kantonen sind die Probleme noch so vielfacher Art, dass eine neue und ergänzende Ausgabe der im Jahre 1956 erschienen Arbeit notwendig geworden war. Die Bearbeitung musste in andere Hände übergehen, da die Arbeit des Verfassers ihn auf andere Wege geführt hatte. Das 215 Seiten umfassende Buch, das der Praxis dienen soll, teilt das Stoffgebiet in 2 Teile ein:

1. Das Doppelbesteuerungsverbot;
2. Den Wohnsitz.

Im ersten Kapitel behandelt der Verfasser den Begriff Doppelbesteuerung und die Bedeutung und Auswirkung des Verbotes; das zweite Kapitel bezieht sich auf den Wohnsitz natürlicher Personen, Vereine ohne Rechtspersönlichkeit und juristischer Personen.

JACOB WACKERNAGEL: *Uber die Steuergerechtigkeit.* Rektoratsrede. Verlag Helbing und Lichtenhahn, Basel 1956, 28 S.

In der am 30. November 1956 gehaltenen Rede stellte der Sprecher fest, dass dieses Problem zwar manchmal von dem Gesichtspunkt der Finanzwissenschaft jedoch nicht vom Gesichtspunkt des Steuerrechts aus behandelt worden sei. Zunächts legt er sich die Frage vor: was ist Gerechtigkeit? Eine genaue Umschreibung ist nicht möglich, jedoch ein Jurist kann es anempfinden; sich davon näher Rechenschaft zu geben ist für das Rechtsleben notwendig.

Zwei Probleme werden behandelt: die Versterkung der Steuerbelastung und die Grenze für jeden Steuerpflichtigen. Dabei kommen viele Fragen zur Sprache: u.a. die vorherrschende Stellung der Konjunkturpolitik, die Steuermoral und die verringernde Bedeutung der in früheren Jahren angenommenen Grundsätze.

Im dritten Teil des Vertrages werden die Rechtsgleichheit und die Eigentumsfreiheit mit dem schweizerischen Steuerrecht verglichen, wobei viele auch für andere Länder interessante Themen zur Sprache kommen.

UNION OF SOUTH AFRICA

Investment in Union of South Africa. By the U.S. Department of Commerce, Bureau of Foreign Commerce. For sale by the Superintendent of Documents, U.S. Government Printing Office, Washington 25, D.C., 1954, 149 pp. price 75 cts.

This handbook brings together in convenient form basic information useful to potential investors. It contains chapters on background facts about the Union, doing business in the Union, monetary and fiscal policy, labor and industrial relations; manufacturing industry, mining activities, power, transportation and communications.

UNITED NATIONS

Bulletin annuel de statistiques de transports européens. Huitième année. Nations Unies, Genève, 1957, 96 pp.

Dans l'ensemble ce Bulletin se présente comme les Bulletins précédents. Cependant des diagrammes supplémentaires ont été insérés. Il y a quartre appendices.

Budgets des Etats du Moyen-Orient. Etude trimestrielle du developpement economique, Numéro 13. Nations Unies, Office de sécours et de travaux pour les réfugiés de Palestine, Unesco Building, Beyrouth, République Libanaise, 1956, 333 pp.

Dans ce document on a analysé les budgets des pays du Moyen-Orient (Egypte, Irak, Israël, Jordanie, Liban, Syrie) durant la période 1950/1956. Les données ont été tirées de publications officielles communiquées à l'UNRWA par les Gouvernements des pays d'accueil, ainsi que d'autres publications au Moyen-Orient.

Economic Bulletin for Latin America, Vol. II, No. 2. Prepared by the Economic Commission for Latin America, United Nations, New York, 1957.

The *Economic Bulletin for Latin America* appears twice yearly, in February and September. It provides a résumé of the economic situation of the region designed to supplement and bring up to date the information published in the Commission's annual economic surveys. (review in "Bulletin" Vol. XI, p. 235). Apart from this summary special articles on different subjects related to the economy of Latin America are also included.

UNITED STATES

Federal Tax Treaties and Related Matters.
Prentice-Hall, Inc. Englewood Cliffs, New Jersey.

P-H "Tax Treaties and Related Matters" contains the full text of all the treaties to which the United States is a party. Each treaty has an annotated editorial text which summarizes the treaty provisions under a uniform paragraph plan. The "History" paragraph of each treaty summary keeps subscribers up-to-date with regard to supplementary treaties, regulations, protocols and other matters. The other uniform editorial paragraphs reflect the treaty changes when they become effective and cases and rulings relating to the subject matter. The references in each editorial paragraph lead directly to the actual treaty article or regulation that is the source of the summary.

CHARLES B. BAYLY, JR.,: *Minimizing taxes on professional income.* (1954 IRC § § 1301-1306; 1939 IRC § 107). *1958 Cumulative Supplement.* Newkirk Associates Inc., Law Book Publishers, Post Office Box 4105, Albany 4, New York, 41 pp.

This book covers all court decisions and Regulations and rulings of the Bureau of Internal Revenue published to date under the Act. It follows Section 107 (1939) and Sections 1301-1306 (1954) word for word and subsection by subsection all in chronological order to the end that the answer to any question arising thereunder can be quickly and easily found. The *1958 Cumulative Supplement* in which the 1954 Code is completely covered contains the new and additional material concerning the same subject.

PRENTICE-HALL: *Federal Taxes 1958.* Published Weekly by Prentice-Hall, Inc., Englewood Cliffs, N.J. Subscription rate $210 per year.

The *P-H 1958 Federal Taxes* consists of nine volumes. *Volumes 1, 2 and 3* are income tax compilation volumes. Within each volume are "divisions"

separated by tab cards. A table of contents follows each tab card. *Volume 4* is the Index Volume. It contains Cross reference tables, Report bulletins and Check lists. *The fifth volume* is called the Supplementary volume and contains tax treaties, index to tax articles, supplemental memo BTA & TC subject table, prior law. The *Current decisions volume* contains current court decisions, the full texts of all Internal revenue bulletin rulings on income and excess profits taxes, special rulings, and court proceedings. In the *Estate & Gift Tax Volume* are found compilation, current rulings and decisions, index and finding aids. In the *Excise Tax Volume* there is a separate index for each of the first four tab card divisions. The *I.R.C. Volume* contains the complete 1954 Code as amended. Proposed regulations are also housed in this volume until they are finalized by the Treasury Department. A new edition of Federal Taxes is published each year, generally in December. Weekly Reports keep *P-H Federal Taxes* up to date throughout the year.

How the handle travel & entertainment expenses to assure tax deductions. Edited by Eleanor Mc Cormick. Published by The Journal of Taxation, Inc., 147 East 50th Street, New York 22, New York, 1958, 57 pp.

This is Practitioner's Guide to Current Tax Practice No. 5. It consists of the best material on this subject which has appeared in The Journal of Taxation during recent months. This material has been carefully evaluated, edited, current court decisions summarized, and published in this concise form to make it easy for lawyers and accountants to know what the Internal Revenue Service and knowledgeable tax men are doing about this problem.

The Taxation of business income from foreign operations. Studies in U.S., Foreign, and International tax law. AMA Mangement Report No. 2. American Management Association, 330 West 42nd Street, New York 36, N.Y., 1958, 203 pp.

This volume provides a general orientation in some of the more important principles and practices involved in the taxation of income from foreign sources. The material has been divided into four areas of discussion: first, U.S. tax law; second, the tax law of 11 selected countries; third some practical considerations; fourth, international tax treaties and their effect on double taxation. The 11 country surveys were prepared especially for inclusion in this volume by editors and consultants of Harvard Law School's World Tax Series. They are intended to provide a basic familiarity with tax principles in the countries concerned.

J. K. Lasser Tax Institute and Francis L. Durand: *How to get tax protected income and capital from oil and gas investments.* Business Reports, Inc., Larchmont, N.Y., 1956, 142 pp.

Oil is a specialty investment with an investment language of its own. The first part of this study is directed toward familiarizing the investor with the language used in oil, how investment opportunities develop, and how the investor can participate in them. In the second part of this study is considered how taxes serve to reduce investment risk even in the case of total failure. The third part of the study covers specific case histories. The interplay of investment opportunity and tax overtones discussed in the first two sections of the study are illustrated with concrete examples. Even the informed will find practical comments of value in this study.

V

UNITED KINGDOM

WHAT THE CHANCELLOR SAID

When the Chancellor of the Exchequer, the Rt. Hon. Derick Heathcoat-Amory, M.P., introduced his first Budget on April 15th, 1958, he followed the customary procedure of reviewing the economic situation and then went on to say:

To sum up our policies: the four priorities we should set before us are clear. We must make sure that our economy is strong and sound so that it can stand up in whatever weather lies ahead. And that means we must put first the maintenance of the value of our currency and our competitiveness as exporters.

We must maintain a high rate of savings and investment, for on that our national future depends. We must make sure our economy is not only sound but fair to all sections of the nation. And we must continue to reduce, as opportunity offers, the heavy burdens of taxation.

That these aims can be achieved, I have no doubt whatever, but they only will be if the nation as a whole means them to be. The present time is a critical one. If all of us were to press our own sectional interests to the exclusion of the nation's interest then, let there be no doubt, we should lose all and be back in deep and dangerous economic trouble for which we should have no one but ourselves to blame.

It is with these principles and objectives in mind that I now ask the committee to consider my proposals in taxation. If, in the economic circumstances which I have described and with the limited resources which I have available, I were to remit substantial sums of taxation, the result would in my view be to jeopardize the consolidation of our economic position which must be our immediate task. That would be rash indeed.

On the other hand, I think that I can justifiably give up some small amount of revenue if by so doing I can strengthen our economy at one or two points, improve our tax system, and deal with several cases of special need. Those, therefore, are the objects to which I propose to devote my attention within the narrow limits of finance which I judge to be available this year.

Car licences

I will start by mentioning a number of minor proposals which in various ways will help to improve our tax system. First, vehicle licenses. The present arrangements are not very convenient for motorists, and produce an awkward peak load of work for the issuing authorities at the end of each quarter, particularly at the end of December.

I propose to take powers to introduce a new system under which licences will be issued from the first day of the first month in which they are required for periods of four, eight or twelve months. As an exception, licences costing £3 or less will be issued only for twelve months. The amount of the vehicle tax will be unchanged. The effect on the yield this year will be negligible, but owing to the changed incidence of payments, I am sorry to say the yield will be reduced by about £ 2 million in the first full year of operation. That goes

against the grain but it is a good thing to do. Details of the arrangements will be announced in due course by the Minister of Transport.

Secondly, I propose to abolish the Treasury Chest Fund. Treasury Chests, which for over a century were the means of providing local currency for the use of our forces at a number of overseas stations have now been closed down and the functions transferred to the War Office. The central fund itself can therefore be abolished and its capital, amounting to £ 700,000, be transferred to the Exchequer. Would that I had more chests to abolish.

A third proposal concerns tithe redemption annuities. The scheme set up by the Tithe Act, 1936, is proving cumbersome and costly to administer and I propose to simplify it by providing for annual instead of half-yearly collection and for the compulsory redemption of annuities of £ 3 per annum or less, with power to increase this figure at a later date if necessary.

Time limits for appeals

Next I propose to rationalize the various time limits prescribed by the Income Tax Acts for appeals and claims to relief. The alterations will all be in the direction of making the time limits more generous. This reform, which was recommended by the Royal Commission on Taxation, should ease the way of those who have to deal with our complicated tax laws.

Another minor improvement, which follows assurances given by the Secretary of State for the Colonies, is a proposal to give tax relief in certain circumstances on pensions for overseas service becoming payable under the Overseas Service Act.

Professional subscriptions

I am proposing in the Finance Bill to meet one point that has been pressed upon me in connection with the Schedule E expenses rule. This will enable some deduction to be claimed in respect of subscriptions to professional societies with activities relating to an employee's work and for certain statutory registration fees. It will cost £ 750,000 in the first year and £ 1 million in a full year.

Finally in this group I propose to remove from the law the anomalous rule that a charitable body, such as a church, cannot get its ordinary exemption from tax on property it owns if the property is used by an officer whose income exceeds £ 150 a year.

Dividend stripping

I now turn to a small group of proposals which I have felt bound to include for the protection of the Revenue. The first has to do with an activity known as dividend stripping. This is a device for extracting the liquid taxed reserves of one company with considerable, and unjustified, income tax advantage, to another company which gets those reserves as taxed dividends, and at a considerable cost to the Revenue.

Although the Lord Privy Seal dealt with this in his autumn Budget of 1955, and despite stern warnings given then, I am sorry to say that apparently the fascination of dividend stripping is such that it is still being practised by some. Although the form of the device has somewhat altered – it is now largely practised by companies with trading losses – it remains quite unacceptable, and I must put a stop to it.

The Minister of Housing and Local Government, then in another office, gave clear warning in 1955 that the Government would not hesitate to legislate against subsequent attempts at dividend stripping, and to make such legislation retrospective. Accordingly the provisions I now propose will be retrospective to October 26th, 1955, which was the governing date of the earlier legislation. This should make good a loss of revenue of £ 2 million a

year. But the gain this year will be about £ 4 million because of the retrospection.

Revocable settlements

My next protective provision relates to surtax. Under the existing law, if a man makes a revocable settlement and on revocation he or his wife might benefit, the income arising under the settlement is treated as his for surtax purposes.

A particular settlement, which came before the House of Lords recently, was designed to defeat this law by the artifice of providing that a minimum sum of £ 100 should not be subject to the provisions of the settlement enabling capital or income to be appointed to the settlor's wife. The taxpayer was successful on this technical point. I cannot approve of such a stratagem.

In this respect I propose to restore the law to what was originally intended, so that if any part of the settlement capital or income can go to the settlor or his wife a proportionate part of the income should be treated as the settlor's for tax purposes.

This provision will apply for 1957-58 surtax (which is payable on January 1st, 1959) to all settlements whenever made. But I shall excuse from its operation any settlement made before today that would otherwise be caught, if the settlement is made truly irrevocable within three months after the Royal Assent to the Finance Bill.

Estate Duty changes

My next proposal concerns estate duty. Under the present law, if a life-tenant of settled property disposes of his life interest to the reversioner within five years of his death, estate duty is payable on the settled property on his death. But the converse case, where the reversioner sells his reversion to the life-tenant, is not covered by the existing law, and the gap is being exploited to a considerable extent.

I propose to close this gap. The broad effect will be to charge duty, when the life-tenant dies, on the amount paid by the life-tenant for any reversionary interest in the settlement which he has acquired within five years of his death. The legislation will apply only where the purchase of the reversion and the death of the life-tenant both take place after today. I do not expect any material gain to the Revenue this year, but there should be a gain of £ 2 million in a full year.

Stamp duty on conveyances

I now come to a subject more readily comprehensible to the lay mind. I propose in a modest way to help people who wish to buy their houses. The full rate of stamp duty on conveyances of property is £ 2 per cent. There is a sliding scale providing lower rates of duty for conveyances of land and buildings where the consideration is less than £ 5,000. I propose to improve the scale of graduation and to carry it up to a figure of £ 6,000:

Where the consideration does not exceed £ 3,500 the conveyance will be exempt. Where the consideration exceeds £ 3,500 but does not exceed £ 4,500 the duty will be at 10*s* per cent; where the consideration exceeds £ 4,500 but does not exceed £ 5,250 the duty will be at £ 1 per cent; where the consideration exceeds £ 5,250 but does not exceed £ 6,000 the duty will be at £ 1 10*s* per cent and thereafter the full £ 2 per cent rate will apply. I estimate the cost of this change, together with two other minor stamp duty concessions, at £ 3¾ million in the first year and £ 6 million in a full year.

Age relief

I turn now to a few small changes in personal taxation. The first two affect

some older members of the community, who I think we would all agree are in general having the most difficult time today.

I propose to extend the income tax exemption limits, which were first introduced last year, from £ 400 to £ 440 for the married couple where either husband or wife is 65 or over, and from £ 250 to £ 275 for the single person who is 65 or over. Where the income is below these amounts no tax at all will be payable. There will be an appropriate marginal adjustment for incomes slightly above the limits I have mentioned. To avoid misunderstanding I ought to make it clear that this provision, which is deliberately designed for very small incomes, will not give any benefit where the income exceeds £ 492 for a married couple and £ 306 for a single person.

To help old people with rather larger incomes I propose to increase the income limit for the age relief, which is given where the taxpayer, or in a married couple one of the spouses, is 65 years old or more, from £ 700 to £ 800. This means that where the total income is below £ 800 the whole of the income, whether earned or not, will be treated for tax purposes as if it were earned income.

This change will reduce the tax on a single person with an investment income of £ 800 by about £ 27; for a married couple with the same income by about £ 32. Here again there will be marginal provision for incomes a little above the limit set. The cost of these two reliefs taken together will be £ 2¾ million this year and £ 4¾ million in a full year.

Double death duty ended

I also propose to give some help to those who assist elderly or infirm relatives: At present a taxpayer is entitled to an income tax allowane of £ 60 in such cases if the dependents' income does not exceed £ 105. I propose to increase that limit to £ 135, which is a few pounds above the new old-age pension figure of 50*s* a week. This will ensure that as increase in social security benefits does not lead to a loss of tax relief.

In death duties, I am proposing to remove the hardship which can arise when two persons such as husband and wife die together, perhaps in an accident, and the law has to presume that the elder has died first. In some such cases it can happen that death duty is levied twice. I propose to provide, in effect, that in such cases death duty shall be levied once only.

I propose also that what is known as the existing 'quick succession' relief, which gives relief from estate duty on a graduated scale where real property or business assets pass on successive deaths within five years, shall be extended to cover other forms of property that pass in like circumstances. This will cost £ 1½ million this year and £ 3 million in a full year. Both these changes will take effect on deaths occurring after today.

Profits tax

Next I come to a considerable reform in company taxation. The Royal Commission on Taxation recommended, and I now propose that the two rates of profits tax at present charged by reference to distributed and undistributed profits of a company shall be replaced by a single rate to be levied on the whole of a company's profits.

This is generally agreed to be a desirable reform. Those responsible for the management of industry and commerce have emphasized to me most strongly that it would strengthen the financial structure of industry, improve the supply of capital to firms which need it most, and help to remove distortions in company finance. This will all help in modernizing and expanding our industrial system. It will also greatly simplify the tax code and the work of administration. The existing provisions for exemptions and abatements to companies with small incomes will continue.

Apprehension removed

To maintain the present yield of profits tax – about £ 275 million a year – a flat rate would need to be set at about 10½ per cent. I propose to set it at the more convenient figure of 10 per cent. The change will operate as regards profits from April 1st, 1958, the tax on which, broadly speaking, will not be payable until next year. This will cost a negligible amount this year, £ 10 million next year, and £ 16 million in a full year.

After the profits to March 31st, 1958, have been dealt with, the contingent liability for payment of profits tax at subsequent distributions or liquidation will cease. This should remove a source of apprehension in the case of companies which have ploughed a big part of their profits back into the business, and should enable them to face the future with greater confidence.

I am well aware that, although the yield of the duty will remain broadly the same, there will nevertheless be some differences of incidence as between different sections and units of industry. Some that make lower distributions will pay rather more profits tax than hitherto. Some that make higher distributions will pay less. Only a few will break exactly even. The Royal Commission were of course aware of these effects when they made their recommendation. They are effects which must be faced if we are to change to a system which, I believe, is generally recognized to be sounder in the long run. I consider they should be faced now.

Building society interest

I propose at the same time to give effect to the recommendations of the Royal Commission that all loan or share interest paid by building societies, co-operative societies, and all loan interest paid by the nationalized industries should be deducted in computing their profits. These bodies will then pay profits tax at 10 per cent on their properly computed profits. There will be other consequential amendments of the profits tax law; in particular a provision to protect the yield of revenue in the current year by countering any attempts to allocate normal dividends out of last year's profits which should bear 30 per cent tax to current periods.

My last change in direct taxation relates to industrial investment. When I used to work in industry I learnt the prudence of writing off the capital cost of new plant reasonably quickly, so as to be in a position to replace it by something still better when it turned up. I am sure that is the right policy for industry in general.

Higher initial allowances

My predecessors have made changes in the system of taxation for capital assets in accordance with the need to encourage or discourage investment expenditure in the aggregate. I said earlier that I hoped that plans for future developments in industry will continue to be made with confidence, and I want to give a little practical encouragement in this direction. I accordingly propose to increase the present initial allowances by a quarter, so that they become 25 per cent for plant and machinery an 12½ per cent for industrial building. For mining works the rate will remain at the special rate of 40 per cent.

These new rates will apply to qualifying capital expenditure becoming due and payable on and after today. These increases should be of particular help to actively developing concerns which need to retain in the business a high proportion of their profits. This will in many cases provide a compensating benefit for the slightly increased profits tax which the concern may have to pay. The cost of these improvements in initial allowances will be negligible this year, £ 16 million next year, and £ 23 million in a full year.

Entertainment duty

The committee will recall that a number of changes were made in the duty on entertainments by my predecessor last year. A duty of £ 1 per licence was imposed on television, which had become a strong competitor with other entertainments. The duty on the cinema was reduced, while the theatre and sports, which had for long paid appreciably lower rates of duty than the cinema, were freed from duty altogether.

It was not to be expected that the changes in public demand for entertainment which had been taking place would suddenly come to an end. But the movement during the past year has been on a scale which makes it necessary to consider whether some further adjustment in the duty is called for. Attendances at cinemas, which had been declining for some years, have in the last financial year fallen much more sharply. The industry have represented to me with vigour, both in a memorandum and at a meeting with the Financial Secretary, that in these circumstances the entertainments duty on cinemas should be abolished. Even Members of this House have not been altogether silent.

I have considered carefully all that has been said. I must say frankly that it cannot possibly be an object of Government policy to keep open the doors of every cinema in the country, regardless of the tastes and habits of the public. If people prefer to occupy more of their leisure time in other forms of entertainment and less in film-going, some reduction in the number of cinemas seems inevitable. However, I am satisfied that the present level of the duty is, in the changed circumstances, now too high and should be substantially reduced.

Average level halved

The present rate of duty is 50 per cent of the amount by which the total admission price exceeds 11*d*. I propose to reduce it to $33^1/_2$ per cent of the amount by which the total admission price exceeds 1*s* 6*d*. The combined effect of reducing the rate and raising and the starting-point of the duty will be to reduce the average level of the duty by rather more than one-half. I also propose to simplify the arrangements for collecting the duty in a way which should both assist the trade and save work in the Customs and Excise department.

Purchase tax

Before I come to the results of the general review which I have undertaken of purchase tax, I want to say a few words about a larger issue of which we have heard a good deal in recent months – namely, the possibility of substituting for the purchase tax a general sales or turnover tax imposed at a low rate over a much wider range of expenditure.

Since the last Budget this possibility has been thoroughly examined, in the light both of our own experience in this country over the seventeen years during which the purchase tax has been in force, and also of the systems of sales and turnover taxation employed in some other countries. Personally, I have always been attracted by the idea of a general tax at a low rate as an alternative to the purchase tax in its present form. I certainly did not approach this subject with any prejudice in favour of the existing system.

£ 500 million a year to find

But for all the attractions, I can see little prospect – at any rate in the foreseeable future – of changing over to a retail sales tax. Purchase tax yields nearly £ 500 million a year, I have had to assume, while I have been considering this matter, that we shall have to go on looking to some form of indirect

taxation on a wide range of articles to produce a yield on about the present scale.

First of all, what scope is there for broadening the base of the tax? Ideally, one may say that it ought it apply to all consumer expenditure. But how would this work out in practice? Personal consumer expenditure in the United Kingdom is about £ 14,000 million a year.

Breaking this total down into the main items, we first have services at about £ 3,800 million. Theoretically, I know this is a potential field for indirect taxation. But does it make sense? The biggest element in this total is the cost of house accommodation. Then we have travel, insurance, fuel, school fees, payment for the chimney sweep, for the undertaker, and so on. Could we really contemplate the complication and confusion of trying to tax these multitudinous ingredients of life in the modern world? I believe that the practical answer is no.

Next we have between £4,500 million and £ 5,000 million spent on goods which are already subject to purchase tax or to other Revenue duties – tobacco, liquor, petrol, and so on. Another £ 4,500 million is spent on food. I do not personally recoil in absolute horror at the idea of taxation on at least some forms of food. But it would surely be unrealistic to regard food as a major source of revenue. We are left, therefore, with less than £ 1,000 million of expenditure on a variety of untaxed goods – young children's clothing, many textiles, books, newpapers, household soap, and cleaning materials – a whole host of things which have at various times in the past been deliberately exempted from tax. Even assuming that all these goods were included in the scope of the present purchase tax, it would require a uniform rate of tax approaching 20 per cent of the wholesale value to produce the present yield. I believe, therefore, that the comprehensive sales tax charged at a very low rate but yielding the same revenue as the present purchase tax is for practical purposes something of a mirage. And the same is true of a turnover tax.

Retail disadvantages

Turning from the scope of the purchase tax to the method of collecting it many people have suggested that it ought to be imposed at the retail rather than at the wholesale stage. This would, I know, have some advantages from the point of view of traders. But it would also have serious disadvantages. At present we collect purchase tax from about 60,000 manufacturers and wholesalers. If the tax were charged at the retail stage it would have to be collected from about a quarter of a million different points, if not more. It is not surprising that the view reached in 1940 was that it was much more efficient to collect the tax at the earlier stages on the smaller number of traders.

I believe that that view is just as right today as it was then. And it is not merely a question of the number of collection points. We all know the small village general store which sells cigarettes, groceries, ironmongery, clothing, newspapers, indeed practically everything you can think of. All the takings go into a single till with few refinements of book-keeping. It would really be unthinkable to try to insist on anything more elaborate. For all these reasons I have little doubt that this type of indirect taxation is, in general, most effectively and economically collected at the wholesale stage.

Three rates abolished

Although I am no lover of the purchase tax and recognize its defects, I think that its shortcomings have been somewhat exaggerated in recent months. I know that there are anomalies. But whenever you classify things into categories borderline cases arise which, taken in isolation, may sound absurd. I have come to the conclusion that the most helpful thing that I can do is to simplify the tax and to adjust it to a more sensible pattern.

For obvious reasons violent and abrupt change is not in the interest of trade but unfortunately anything approaching major reform of the tax involves substantial changes, at least in some sectors. Having chosen to grasp this nettle now, I have sought to leave the structure of the tax in such a shape as to allow any further changes to be made smoothly and with the minimum of disturbance to trade.

Accordingly, I am reducing the number of rates from seven to four by abolishing the 90 per cent rate, the 50 per cent rate and the 10 per cent rate. Goods now chargeable at the first two of those rates will be chargeable some at 60 and some at 30 per cent, none being increased.

Summary

To sum up, the changes which I propose will cost £ $50^1/_2$ million this year and £ 108 million in a full year. This leaves me, subject to the outcome of the present discussions on the financing of our forces in Germany, with an estimated surplus above the line of £364 million and an estimated deficit overall of £ 236 million. I think these are about right.

I hope that the committee will consider that these measures taken together amount to a not inconsiderable step forward in simplification and reform. There is clearly no room for large relaxations this year, but my proposals do lighten some of the burdens on the taxpayer, as well as improving our fiscal system. They will also, I believe, help to strengthen our economy and, according to the best judgement I can make, should leave it balanced and poised ready to resume a steady rate of expansion just as soon as we can. I have done my best to produce a Budget this year that consolidates what we have gained and which is at the same time flexible and forward-looking. I hope I have succeeded.

THE BUDGET RESOLUTIONS

The following are the resolutions passed by the Ways and Means Committee following the Budget proposals of the Chancellor of the Exchequer:

Entertainments Duty

That, subject to subsection (2) of Section one of the Entertainments Duty Act, 1958 (which provides for a reduced rate of duty in the case of certain mixed entertainments), the amount of entertainments duty chargeable on any payment for admission to an entertainment given after the third day of May, nineteen hundred and fifty-eight, shall be one third of the amount, if any, by which the total amount of the payment (not excluding the amount of the duty) exceeds one shilling and six pence.

And it is hereby declared that it is expedient in the public interest that this Resolution should have statutory effect under the provisions of the Provisional Collection of Taxes Act, 1913.

Wines

That, as from the 16th April, 1958, in the case of wines other than light wines the rates of customs duty (including both the full and the preferential rates) now chargeable, as set out in the Second Schedule to the Finance Act, 1949, shall each be reduced by 12*s* per gallon or, in the case of the additional duty chargeable on wine exceeding 42 degrees proof spitit for each degree or fraction of a degree of the excess, by 1*s* per gallon.

And it is hereby declared that it is expedient in the public interest that this Resolution should have statutory effect under the provisions of the Provisional Collection of Taxes Act, 1913.

Sweets

That, as from the 16th April, 1958, in the case of sweets exceeding 27 degrees proof spirit the rates of excise duty now chargeable, as set out in the Third Schedule to the Finance Act, 1949, shall be reduced, in the case of still sweets by 12*s* per gallon and in the case of sparkling sweets by 8*s* per gallon.

And it is hereby declared that it is expedient in the public interest that this Resolution should have statutory effect under the provisions of the Provisional Collection of Taxes Act, 1913.

Methyl Alcohol

Methyl alcohol, notwithstanding that it is so parified or prepared as to be potable, shall not be chargeable with the customs duties on spirits, nor shall naphtha or any mixture or preparation containing naphtha or methyl alcohol and not containing other spirits; and those articles shall be charged with other customs duties accordingly.

Periods for motor vehicle licences

That new provision may be made as to the periods for which licences may be taken out under the Vehicles (Excise) Act, 1949, and as to the rate of duty for licences other than annual licences, and many repeal or suspend, or authorize the repeal or suspension of, any provisions which now confer a right to a licence for a particular period, or to a repayment of duty of a particular amount on surrender of a licence for less than a year.

Purchase tax

That the following changes shall be made in purchase tax with effect, unless otherwise stated, from the sixteenth day of April, nineteen hundred and fifty-eight:

(1) Subject to the following provisions of this Resolution –
  (*a*) for any charge of tax at 90 per cent there shall be substituted a charge at 60 per cent;
  (*b*) for any charge at 60 per cent or 50 per cent there shall be substituted a charge at 30 per cent;
  (*c*) for any charge at 30 per cent under Group 5 (haberdashery), Group 10 (wallpaper and certain other papers and articles of paper), Group 16 (*b*) (garden furniture), Group 23 (*b*) (baskets and other cane or wicker receptacles) or Group 26 (*c*) (trophy cups, etc.), there shall be substituted a charge at 15 per cent;
  (*d*) for any charge at 10 per cent there shall be substituted a charge at 5 per cent:

Provided that the reduction from 60 per cent to 30 per cent shall not apply to tax chargeable under Group 18 (wireless apparatus), to tax chargeable under Group 19 in respect of gramophones, radiogramophones, player pianos, musical boxes and similar instruments, or parts thereof or accessories thereto, or in respect of gramophone records, or to tax chargeable under Group 35 (road vehicles).

(2) There shall be the following additional reductions in the case of the articles mentioned, that is to say –
  (*a*) in the case of minor articles of apparel and in the case of accessories to apparel of the kind worn on the person, where the rate under Group 5 would be reduced under paragraph (1) above to 15 per cent, it shall instead be reduced to 5 per cent;
  (*b*) in the case of tissues and fabrics exceeding 12 inches in width, where the rate under Group 7 would be so reduced to 5 per cent, tax shall not be chargeable under that Group;

(*c*) in the case of calendars, postcards and lettercards and articles of any of the descriptions known as greeting cards, where the rate under Group 25 or 34 would be so reduced to 60 per cent, it shall instead be reduced to 30 per cent;
(*d*) in the case of nippers and knives (being toilet requisites), where the rate under Group 31 would be so reduced to 60 per cent, it shall instead be reduced to 30 per cent;
(*e*) in the case of baby dusting powders, where the rate under Group 32 would be so reduced to 60 per cent, it shall instead be reduced to 30 per cent.

(3) The following provisions shall have effect as respects furs and fur articles –
(*a*) for the purposes of any charge to tax or exemption from tax in the case of articles now comprised in Groups 1, 3 and 5 (garments, headgear and haberdashery), rabbit skin and woolled sheep and lamb skin shall be treated as not being fur skin, and any such articles made wholly or partly of rabbit skin or woolled sheep or lamb skin shall be chargeable with the same tax (if any) as if not so made;
(*b*) rabbit skin and woolled sheep and lamb skin now chargeable under Group 8 at 50 per cent, shall be chargeable at 5 per cent (and not at 30 per cent, as provided by paragraph (1) above);
(*c*) subject to sub-paragraph (*a*) above, headgear now comprised in Group 3 (*g*) (babies' wear) and by virtue thereof exempt from tax shall cease to be so, if made wholly or partly of fur skin (including any skin with fur, hair or wool attached) and not merely trimmed with fur skin;
(*d*) subject to sub-paragraph (*a*) above, any tax chargeable under Group 5 on insoles made wholly or partly of fur skin (including any skin fur, hair or wool attached) shall, notwithstanding paragraph (1) above, continue to be chargeable at 30 per cent (the rate henceforth applicable under that Group to other articles so made).

(4) The following provisions shall have effect as respects furniture and other articles comprised in Group 11 –
(*a*) the rate of 5 per cent applicable under paragraph (*b*) of the Group to furniture of a kind used for domestic purposes and comprised in the list there set out shall apply also to furniture so comprised of a kind used for office purposes, and the list shall be extended so as to include articles named in the list but now excluded as made of metal and so as to name hat, coat und umbrella stands and racks; and
(*b*) the following articles shall be exempt from tax, namely –
(i) draught excluder strip; and
(ii) water filters designed to remove bacceria and other suspended impurities from drinking water by mechanical means but not including filters also employing chemical reaction.

(5) The following provisions shall have effect as respects appliances and apparatus of a kind used for domestic purposes and now comprised in Group 12 –
(*a*) tax shall be chargeable at 30 per cent in respect of the following articles, including those now exempt from tax, that is to say, in respect of oil burning space heaters (including heaters of a kind used for cooking or boiling and also for space heating, but not including furnaces for central heating systems or hot water systems), but oil burners for such space heaters; if not suitable for use separately, shall be exempt from tax;

(*b*) appliances of the sort described in paragraph (*f*) of the Group (which relates to certain heating appliances incorporating electric fans or electric pumps or both) shall cease to be exempt from tax if otherwise electrically operated or if operated by gas;
(*c*) tax shall be chargeable at 30 per cent in respect of cabinets, bases, covers, tables and stands for sewing machines.

(6) Notwithstanding anything in paragraph (1) or (2) above, any tax chargeable in respect of the following articles shall be chargeable at 30 per cent, namely –
(*a*) hair pins, hair grips, hair curlers, dress combs, hair slides and similar articles;
(*b*) beads, sequins and similar articles;
(*c*) buttons, including shapes and moulds therefor, cuff links and studs;
(*d*) hat-pins;
(*e*) tie-pins, tie-retainers, scarf rings, scarf holders, and similar articles,
and the exemption in Group 5 for pins of base metal shall no longer extend to hat-pins or tie-pins.

(7) Tax shall also be chargeable at 30 per cent in respect of grass boxes for lawn mowers.

(8) The following articles, so far as they are now comprised in the provision mentioned in relation to them and by virtue thereof exempt from tax, or not chargeable under the Group in question, shall cease to be so, that is to say –
(*a*) Footwear, the following:
(i) protective boots designed for use by miners or quarrymen or moulders (Group 2 (*b*));
(ii) clogs and other wooden-soled footwear (Group 2 (*c*));
(*b*) Headgear, the following:
protective helmets designed for use by miners or quarrymen (Group 3 (*c*));
(*c*) Haberdashery, the following:
(i) laces of a kind used for fastening garments or footwear (Group 5 (*f*));
(ii) insoles (Group 5 (*i*));
(*d*) Trunks, bags, wallets, jewel cases, pouches, purses, suit cases, attaché cases, baskets and similar receptacles of a kind used for personal or domestic purposes (whether fitted or not), the following;
(i) document, folio, despatch or brief cases (Group 23 (*c*));
(ii) shopping-baskets and shopping bags (Group 23 (*e*)).

(9) In the case of calendars, postcards and lettercards, and of articles of any of the descriptions known as greeting cards, no reduction of tax for which provision is made above shall take effect until such date as Parliament may determine.

The changes in purchase tax for which provision is made by this Resolution shall be subject to any Order of the Treasury made after the passing of any Act giving effect to this Resolution under Section twenty-one of the Finance Act, 1948, as amended by any subsequent enactment.

And it is hereby declared that it is expedient in the public interest that this Resolution should have statutory effect under the provisions of the Provisional Collection of Taxes Act, 1913.

Purchase tax (Meaning of 'Business')

That provision shall be made for extending the meaning of the expression 'business' for the purposes of purchase tax, and in particular for treating the performance by a local authority of the functions of the authority, and the

carrying out by any other body of persons of the objects of that body, as constituting and as having at all times constituted a business for those purposes.

Income tax (Charge for 1958-59*)*

That income tax for the year 1958-59 shall be charged at the standard rate of eight shillings and sixpence in the pound, and, in the case of an individual whose total income exceeds two thousand pounds, at such higher rates in respect of the excess as Parliament may hereafter determine.

And it is hereby declared that it is expedient in the public interest that this Resolution should have statutory effect under the provisions of the Provisional Collection of Taxes Act, 1913.

Income tax (surtax rates for 1957-58*)*

That income tax for the year 1957-58 shall be charged, in the case of an individual whose total income exceeded two thousand pounds, at the same higher rates in respect of the excess as were charged for the year 1956-57.

And it is hereby declared that it is expedient in the public interest that this Resolution should have statutory effect under the provisions of the Provisional Collection of Taxes Act, 1913.

Income tax (Personal Reliefs)

That –

(*a*) in Section thirteen of the Finance Act, 1957 (relief for persons over sixty-five with small incomes) –

(i) for the references to two hundred and fifty pounds and four hundred pounds (which refer to the income limits for exemption under that section) there shall be substituted references to two hundred and seventy-five pounds and four hundred and forty pounds respectively: and

(ii) for the reference to fifty pounds (which refers to the excess over those limits by reference to which relief under that section by reduction of tax is limited) there shall be substituted a reference to fifty-five pounds;

(*b*) in subsections (2) and (3) (old age relief) of Section two hundred and eleven of the Income Tax Act, 1952, for the references to seven hundred pounds (which refer to the income limit for the full relief under subsection (2)) there shall be substituted references to eight hundred pounds;

(*c*) in Section two hundred and sixteen of the Income Tax Act, 1952 (dependent relatives), for the references to one hundred and sixty-five pounds and one hundred and five pounds (which refer to the income of the dependent relative) there shall be substituted respectively references to one hundred and ninety-five pounds and one hundred and thirty-five pounds;

but paragraphs (*a*) and (*b*) of this Resolution shall not require any change to be made in the amounts deducted or repaid under Section one hundred and fifty-seven (pay as you earn) of the Income Tax Act, 1952, before the twenty-second day of June, nineteen hundred and fifty-eight.

And it is hereby declared that it is expedient in the public interest that this Resolution should have statutory effect under the provisions of the Provisional Collection of Taxes Act, 1913.

Income Tax (Dividends Paid out of Accumulated Profits)

That provision shall be made (including provision as respects past years of assessment) for amending the law as to the circumstances in which –

(*a*) certain dividends are to be treated as paid out of accumulated profits;

(*b*) dividends so paid are to be brought into account as trade receipts which have not borne tax;
(*c*) exemptions from tax are not to apply to dividends so paid;
and for restricting relief for losses by repayment of tax in the case of tax on dividends so paid.

Income Tax (Settlements)

That new provisions shall be made as to the circumstances in which income arising under a settlement or sums payable by a settlor or the wife or husband of a settlor are to be treated under Section four hundred and four of the Income Tax Act, 1952, as income of the settlor and not as income of any other person (and are to be so treated for surtax purposes for the year 1957-58 as well as subsequent years of assessment) and for removing with retrospective effect doubts as to the settlements to which that section and Section four hundred and five of that Act apply.

Income Tax (Incidental Charges)

That for the purposes of any Act of the present Session relating to finance it is expedient to authorize all such incidental charges to income tax (including charges for past years of assessment) as may result –
(*a*) from any provision extending the limits of time within which certain applications, claims, elections or payments may be made or notices given;
(*b*) from any provision exempting from liability to income tax pensions payable to or in respect of persons who have served as officers to whom the Overseas Service Act, 1958, applies, so far as they are payable to persons resident outside the United Kingdom.

Profits Tax (Alteration of Rate and Basis of Charge)

That, as respects chargeable accounting periods ending after the beginning of April, nineteen hundred and fifty-eight, the profits tax chargeable on the profits of any trade or business shall be of an amount equal to 10 per cent of the profits, and there shall be no relief for non-distribution or distribution charge; and provision may be made, in connection with the changes authorized by this Resolution, as to the amounts to be taken into account as distributions for chargeable accounting periods earlier than those above mentioned.

Profits Tax (Miscellaneous Charges)

That for the purposes of the profits tax it is expedient –
(*a*) to make further provision, as respects chargeable accounting periods ending after the beginning of April, nineteen hundred and fifty-eight, in relation to groups of companies, statutory undertakers, nationalized industries, industrial and provident societies and building societies, and to persons receiving payments from them: and
(*b*) to authorize such charges to tax (including charges for past chargeable accounting periods) as may result from amending the law as to the circumstances in which for the purposesof in come tax certain dividends are to be treated as paid out of accumulated profits and dividends so paid are to be brought into account as trade receipts which have not borne tax.

Estate Duty (Miscellaneous Charges)

That for the purposes of estate duty –
(*a*) new provision shall be made for charging duty on deaths occurring after April 15th, 1958, in cases where there is at the death or has previously been in any property an interest limited to cease on the

ESTIMATED EFFECT OF THE NEW PROPOSALS

Inland Revenue	*Estimate for 1958-59*	*Estimate for a full year*
Income Tax:	£	£
Extension of age exemption limits from £250 to £275 for single persons and from £400 to £440 for married couples	— 2,000,000	— 3,000,000
Extension of the income limit for age relief from £700 to £800	— 750,000	— 1,750,000
Relaxation of the Schedule E expenses rule	— 750,000	— 1,000,000
Restrictions of relief for losses where certain dividends are received	+ 4,000,000	+ 2,000,000
Income Tax and Profits Tax:		
Increase of initial allowances on plant and machinery to 25 per cent and on industrial buildings to 12½ per cent	Negligible	— 23,000,000*
Profits Tax:		
Introduction of the flat rate of profits tax at 10 per cent	Negligible	— 16,000,000†
Estate Duty:		
Extension of the quick succession reliefs to all kinds or pfoperty	— 1,500,000	— 3,000,000
Enlargement of life interests	Negligible	+ 2,000,000
Stamp Duty:		
Reduction in certain rates of stamp duties on conveyances of property other than stocks and marketable securities	— 3,500,000	— 5,500,000
Abolition of *ad valorem* duty on credit instalment contracts	— 250,000	— 500,000
Total Inland Revenue	— 4,750,000	— 49,750,000
Customs and Excise		
Customs:		
Spirits (methyl alcohol)	Negligible	Negligible
Wine	— 2,560,000	— 2,800,000
Total Customs	— 2,560,000	— 2,800,000
Excise:		
Spirits (methyl alcohol)	Negligible	Negligible
British Wines, etc	— 190,000	— 200,000
Entertainments Duty	— 13,000,000	— 14,500,000
Purchase Tax	— 30,000,000	— 41,000,000
Total Excise	— 43,190,000	— 55,700,000
Total Customs and Excise	— 45,750,000	— 58,500,000
Motor Vehicle Duties	Negligible	§
Total	— 50,500,000	— 108,250,000

* The cost in 1959-60 will be £16 million.
† The cost in 1959-60 will be £10 million.
§ In the first full year of operation only, there will be a loss of revenue, estimated at £2 million, which will be subsequently recovered.

death (or similar interest), and there has after that date been a purchase of or other dealing with an interest expectant on or subject to the interest so limited;

(*b*) notwithstanding any resulting charge to duty, provision may be made, in lieu of or in addition to any existing provision, for cases in which two or more persons have died within a short period or in circumstances rendering it uncertain which of them survived the other or others, and for cases in which effect is by law given to a testamentary disposition in favour of a person who has not survived the testator, and may apply where any relevant death occurs after April 15th, 1958;

(*c*) Section forty-four of the Finance Act, 1921, and the proviso to subsection (2) of Section forty of the Finance Act, 1930 (which provide that duty shall not become chargeable on certain sales to national institutions, etc., of works of art or other property previously exempted), and any enactment amending those provisions, shall be amended so that the references to a sale shall not include a sale otherwise than by private treaty.

Stamp Duty on Certain Agreements

That certain instruments now chargeable with duty under the heading 'Bond, Covenant', or the heading 'Mortgage, Bond, Debenture, Covenant' in the First Schedule to the Stamp Act, 1891, shall instead be chargeable under the heading 'Agreement or any memorandum of an Agreement' or under the heading 'Deed of any kind', and that certain agreements made for or relating to the sale of goods, wares or merchandise shall be chargeable under the heading 'Agreement or any memorandum of an Agreement' notwithstanding any exemption under that heading.

Source: *Taxation*, April 19, 1958.

ECONOMIC REPORT OF THE PRESIDENT OF THE UNITED STATES

President Eisenhower, in his annual Economic Report to the Congress, states that the U.S. economy was prosperous in 1957, despite a decline in the last quarter. Gross national product amounted to $434 billion, 5 per cent above 1956. Most of the rise, however, was accounted for by higher prices, and the real increase amounted to less than 1 per cent. The decline from $439 billion (seasonally adjusted, annual rate) in the third quarter to $433 billion in the fourth quarter resulted from a weakening of demand in several sectors of the economy. Business outlays on plant and equipment, which had risen sharply from early 1955 to late 1956, leveled off in 1957. Net foreign investment, which reached a peak of over $4 billion (annual rate) in the first quarter, fell to $2.5 billion in the final quarter of the year. While imports changed little, exports decreased as economic expansion abroad slowed down and special factors, including the effect of the Suez crisis, lost their force. In contrast to 1956, when business inventories were increased by $4.6 billion, no accumulation took place in 1957, and stocks were actually reduced in the final quarter. Federal Government outlays for goods and services fell at an annual rate of more than $1 billion after the middle of the year, as a result of a reduction in military procurement. These reductions in demand, through their impact on production, employment, and income, affected consumer expenditures, which also declined slightly in the last quarter.

The Report concludes that the over-all decline in activity in 1957 was moderate. National output in the fourth quarter was less than 1.5 per cent below output in the previous quarter. Nonagricultural employment, adjusted for seasonal changes, in December was about 2 per cent below the summer peak, and personal income had declined less than 1 per cent. Adjustments in inventory holdings accounted for most of the decline in production, employment, and income which developed toward the year's end.

An extension into 1958 of the decline in business expenditures on plant and equipment is suggested by data on new orders and contracts and by information on investment decisions. However, the magnitude of the decline and its duration are uncertain. Foreign demand will probably exert a contractive influence on economic activity in 1958. The reasons for this are the slowing down of economic expansion abroad, pressure on foreign exchange positions, and the passing of the special circumstances that caused the sharp increase in U.S. exports in 1956 and early 1957. On the other hand, investment in residential construction will probably continue to rise, possibly at a faster rate; greater availability of mortgage credit and recent moves to reduce the required cash investment for home purchase are factors here. Also, expenditure for private institutional building are likely to continue to increase. In view of the acceleration of certain defense programs, national security expenditures may be expected to increase in 1958. The outlook for more ample and lower-cost financing strengthens the expectation of a rise in state and local expenditures, particularly for highway construction. Although it is difficult to strike a balance for gauging the effect of the opposing factors in total demand, various considerations suggest that the decline in business activity "need

not be prolonged, and that economic growth can be resumed without extended interruption."

At a time like the present, when the economy is adjusting to the large increases in productive capacity created in the past few years, a longer perspective on economic prospects is necessary. There are many longterm sources of strength in the U.S. economy. The vigorous postwar growth of population is a powerful force for expansion, as increases in population mean new and enlarged markets for output. A further element of strength consists in the increase in expenditures on research and development. The outlook for greater stability has been improved by such developments as progress in market and economic research by businessmen, and the more orderly and longer-range planning now undertaken for the expansion and improvement of productive facilities. The federal-state unemployment compensation system is functioning with enlarged coverage and liberalized benefits, and the broadened coverage or old-age, survivors, and disability insurance helps sustain purchasing power. The strength of financial institutions also provides a basis for long-run confidence.

Despite these favorable factors, an unfavorable feature of the recent performance of the economy must be recognized. In 1957, despite unused capacity in several important lines of industry, prices rose and there was only a small increase in output. Business profits were reduced, and production and employment declined. The Report points out that price increases by business concerns which are greater than warranted by costs or attempt to recapture investment outlays too quickly may be self-defeating by causing a restriction of markets, lower output, and a narrowing of the return on capital investment Labor unions must realize that wage gains which go beyond gains in productivity are inconsistent with a stable price level.

The Report recommends several legislative measures to help achieve the sustainable economic growth of the economy. *The prospective budget surplus for the fiscal year 1959 is insufficient to permit the reductions in corporate and certain excise taxes which were scheduled to take effect on July 1, 1958, and it is recommendedthat these tax rates be extended for another year.* A temporary increase in the statutory debt limit is requested to facilitate greater flexibility in the operations of the Treasury. In order to encourage private investment in government-guaranteed mortgages, an increase in the maximum statutory rate of $4^1/_2$ per cent is requested. Private investors have been reluctant to invest in these mortgages owing to the availability of higher yields on alternative investments. The Congress is asked to authorize funds to the states for the improvement of instruction in science and mathematics. Coverage, size of benefits, and duration of unemployment benefits should be further increased. In order to help strike a better balance between supply and demand of agricultural products, a legislative basis for reducing price supports should be provided. This could be effected by extending the lower limits of the range of permissible price supports from 75 per cent to 60 per cent of parity. To help encourage an expanding foreign trade, the Trade Agreements Act should be extended for five years, thus confirming continued U.S. adherence to the principles embodied in the Act. Congress will be requested to authorize reductions in tariff duties existing on July 1, 1958 by 5 per cent per year over a five-year period. The authorization of U.S. membership in the Organization for Trade Cooperation is again called for.

Source: *International Financial News Survey*, January 24th, 1958

I

AVOIDANCE OF DOUBLE TAXATION THROUGH MULTILATERAL CONVENTIONS

The first Report of the O.E.E.C. Fiscal Committee

by

J. VAN HOORN JR.

1. During the last week of July, 1958 a Press Notice was published on the first report adopted by the Fiscal Committee of the Organisation for European Economic Co-operation (O.E.E.C.) at its eighth session (May 7th, 1958) and submitted to the Council for consideration.

Meanwhile the Council has approved the report and in doing so has made an important move towards the preparation of a unilateral tax convention between the European countries.

2. The Fiscal Committee was created in 1956 (Resolution of the Council of 16th March, 1956) and was charged to study fiscal questions relating to double taxation and other fiscal questions of a similar technical nature, and was instructed to make concrete proposals in this respect to the Council. On July 3rd, 1957 an interim report was submitted. Since its creation the Committee has held various meetings about which information was published in this *Bulletin*[1]). The present issue contains an extract from the Committee's first report (see page 291). The following short remarks are destined to draw the attention to a possible and important development in the field of international tax law.

3. The first feature to be noted is that the results of the Committee's activities have been reached at unanimously. As these results are not confined to the drafting of four articles to be included in existing bilateral conventions or in a possible future multilateral convention, but include more or less detailed commentaries as well,

[1]) Vol. X (1956), page 359, vol. XI (1957) page 161.

this unanimity is a matter for rejoicing. One of the main difficulties in the field of international tax law is the problem of definitions and qualifications. Even if a law text is very clear in its wording, it needs in many cases an interpretation by the Courts. This is the more necessary where it concerns an international agreement, which may be considered as a bridge between two (or more) national laws the system and background of which may be very different from each other. Again the (national) courts will be called upon to interpret the provisions of the convention concerned. It is easy to understand that such interpretations may widely differ.
The circumstance that a Committee of experts belonging to the national tax departments have agreed to propose one text with one interpretation will be a great help in international tax problems being solved in a similar way, even if various *national* Courts may have to give their decisions.

4. In this connection a few words may be said on the subject of an international tax court. Although much could be said in this respect — and, as a matter of fact, has been said already — the following may suffice for the present: In 1951 the I.F.A. Congress held in Zürich recommended the establishment of an international tax jurisdiction, in principle by way of bilateral Courts the decisions of which to be subject to review by a supreme Court. During the Oslo-Conference of the International Bar Association a similar recommendation was made[1]). Finally, perhaps most important of all, the Swiss Federal Tax Court should be mentioned, because this has, in a large number of decisions, built up an interpretation of section 46 (2) of the Swiss Constitution which simply provides that intercantonal double taxation is not allowed; this Court is often called upon to review decisions of cantonal courts and in doing so it has acted and still acts as an instance that brings uniformity of interpretation in a way as is felt desirable in international tax matters as well.
In the last paragraph of its conclusions the O.E.E.C. Fiscal Committee opens the possibility of making future investigations in this respect, although it expresses itself in rather vague terms.[2]). Of course many difficulties as regards constitutional and international

[1]) See this Bulletin, Vol. XI (1957) page 73.
[2]) *infra*, page 301.

public law (sovereignty as to the right to levy taxes in general, and in matters of jurisprudence!) will have to be overcome[1]), but now we may look forward to concrete work being done in the near future.

5. A second feature of interest is that the recommendation of the Committee are in conformity with the ideas which have been propagated by persons and bodies who do not belong to the tax departments. Sometimes there is a feeling that an understanding on the principles of taxation is not possible because of opposed views of the parties concerned, i.e. the Fisc and the taxpayers. The broad conception which may be said to be the underlying basis of the present report shows that a full understanding of the tax problems in the international field is possible. Indeed, this opens the way to a real international cooperation, not only between the countries but also and above all between all experts, irrespective of the circles to which they belong.

6. Of course there may be people who believe that the conclusions arrived at and the proposals made do not cover standards traditionally followed in one or more of the countries concerned. Even if this may be true, it should be borne in mind that it is extremely difficult to "harmonize" tax systems which in many respects widely differ from each other. Apart from the fact that in the matter under consideration nearly any solution would have been better than the present situation, it is admirable that the Committee has reached compromises which in general do not suffer from deficiencies habitually inherent thereto, namely, that they satisfy nobody at all. On the contrary, the recommendations are such that they can be easily adopted as good and reasonable solutions.

7. Finally attention should be drawn to the Committee's remark[2]) regarding the *methods* to be adopted for the avoidance of double taxation. In the postwar period the necessity was being felt to study the *exemption* method, i.e. the method according to which income from foreign sources should be exempt from taxation in the country

---

1) see Sten F. W. BILLE, *La souveraineté fiscale des Etats et l'intégration économique internationale*, Publication Nr. 11 of the International Bureau of Fiscal Documentation, 1958; J. VAN HOORN Jr., *Tax aspects of European Economic Cooperation*, Amsterdamsche Bank Quarterly Review (English edition) Nr. 120, 1958.

2) *infra*, page 294.

of domicile of the beneficiary of such income; irrespective of any tax being levied in the country of origin.[1]). Of course there are many difficulties involved if such a method is to be adopted: what is the "source" or the "origin" of income, and what is the basis to arrive at the taxation of "net" income? Especially the latter subject is of importance for the countries of origin wishing to impose taxes on monies earned there and arising to non-residents. Three groups of interests should be taken into account here: those of the countries of origin, those of the countries of domicile and, last but not least, those of the taxpayers, especially the businesses.

If, at a later stage, the Committee is to make recommendations in this field, it should be aware that such recommendations may be valid for the member-countries of O.E.E.C. only, and that different attitudes may be necessary vis-à-vis other parts of the world. In this connection it is signifiant that the United States has more than once tried to find a solution. Proposed sections in the Internal Revenue Code, 1954 (sec. 951 and following) have not been approved, however. A second endeavour-in the recently concluded tax agreement with Pakistan[2]) — seems not to have been supported by the Senate's approval as far as article XV (1) is concerned. According to this provision the United States would have given a credit against U.S. tax for the tax Pakistan would have levied but for partial exemptions granted to new enterprises. It is to be hoped that the fact, mentioned in the report, that representatives of the United States have attended the meetings of the Committee and have taken part in the discussions, will have fruitful results in the future.

The foregoing few remarks may suffice. Everybody interested in international tax problems will look forward with much interest to the O.E.E.C. Fiscal Committee's future important work.

---

[1]) see, inter alia, the following publications: *International Chamber of Commerce, International double taxation* (1947) and *Avoidance of double taxation* (1955); J. VAN HOORN JR., *Beseitigung der Doppelbesteuerung* (text of a lecture given for the German Association for International Fiscal Law, December 1957) published by the said Association. INTERNATIONAL BUREAU OF FISCAL DOCUMENTATION, Annual Reports, 1955 page 5, 1956 page 7, 1957 page 9.

[2]) This *Bulletin* Vol. XI (1957), page 328.

I

PROBLEMS OF PUBLIC FINANCE IN DEVELOPING COUNTRIES

Exemplified by the experience of the first ten years of the State of Israel

by

A. W. DUESTERWALD-DOROTH, Tel-Aviv.

The function of Public Finance in development countries presents a number of special problems which are of considerable interest for developed countries as well. It is probably no exaggeration to assume that the major part of the human race lives in countries which are either underdeveloped, i.e. in need of development, or actually in the process of development, while the bulk of the world's production and wealth are, as a matter of course, concentrated in the developed countries. The economic and political interrelations between these categories of countries are closer than ever in history. The case of Israel is in certain aspects typical for the pattern of modern economic development. A retrospective glance at the first ten years of the State of Israel which was established on May 15th 1948 provides an illustrative picture — condensed in a relatively narrow space and a relatively short period of time — of some of the characteristic experiences of such a development venture in which the financial policy of the government and parafiscal agencies plays a key role.

It is the typical condition of a development country that its national wealth — i.e. the capital equipment — increases at a rate that exceeds the rate of natural increase of its population and the normal rate of social and economic progress in other comparable countries.

As a rule; investment of such a scope can not be expected from local savings — if any — and private initiative alone. Capital import from abroad — largely through public channels — and a considerable government activity, especially on the field of financing

and directing new investment, are therefore indispensable. So far the situation of Israel corresponds to the above definition of a typical development country.

There are however some deviations from the general scheme. It is assumed as a general rule that in underdeveloped countries tax revenue will not be sufficient to provide for adequate public services and/or to secure a balanced ordinary budget. In Israel tax collections, if measured by the average level of income and wealth, are rather heavy and a relatively high standard of current public, particularly social, services is entirely financed from this source. On the other hand, the increase of production income and wealth per *head*, which is the main target of development, is slowed down by the fact, that in addition to the natural increase there is a continuous inflow of immigrants. Also this fact as well as the security problem is reflected in the monetary situation as well as in the budgets and the financial policies of the government.

One of the few objective and up to date indications for the socio-economic history of modern immigration and development countries is to be found in the accounts of Public Finance. Government services on the field of health, education, production and distribution play a decisive rôle in raising the standards of living and productivity and a most important part of new capital investment is directed and/or finance through public channels.

Of course, in order to provide a true picture, governmental account must be related to the basic data of general social accounts — as far as available. In development countries however it may occur that the social and economic reality makes more rapid progress than the statistical apparatus for its measurement. Until recently, this was the case in Israel. Here, also the structure of the public sector itself is different from the familiar pattern of other countries. Besides the finances of the central government, its agencies and enterprises and the local authorities there exist some other bodies which supplement with a certain degree of autonomy the activities of the State. On the field of colonisation and absorption of immigrants, the most important of these bodies is the Jewish Agency, under the leadership of the Zionist World-Organisation. In the field of social security, health insurance remained outside the governmental "National Insurance Institute", which was established

in 1954. A long time before the foundation of the State, the General Federation of Jewish Labour in Palestine created a "Sick Fund" with a large number of hospitals, polyclinica and sanitories; today the membership of this organisation comprises more than two thirds of the total population.

In order to clarify the interrelation between these bodies and their impact upon the national economy as a whole, the State Comptroller has inserted in his annual reports since 1951, when the general statistical observation was yet in its beginnings, a survey on "The role of government and other public budgets in the national economy". These surveys offer a kind of systematic synopsis of the relevant data and — if necessary — estimates which were available at the end of each period under review. As stated in the Comptrollers Annual Report No. 5.

"The purpose of these reviews is to collect and present, on a comparative basis, basic data on the development of national income and on the financial activities of the Government, the National Institutions, the Local Authorities and the social insurance foundations and to bring into relief the interrelations between these bodies. The social insurance foundations here referred to are those of the General Federation of Jewish Labour in Israel only, as the National Insurance Institute had not yet begun to function in the year under review. [1])

The Knesseth Committee in its recommendation No. 11 of its "Conclusions and Recommendations concerning the State Comptroller's Annual Reports No. 3 and 4", authorized by a plenary session of the Knesseth on November 9, 1954, cited with appreciation the inclusion of these reviews in the annual reports of the State Comptroller and asked that the State Comptroller continue such investigations, which assist the Government and the Knesseth in determining their budget policy in everything that refers to public services".

The following attempt to reconstruct the financial economic history of the first ten years of the State of Israel is mainly based upon a condensed rearrangement of some of the essential findings of these surveys. For years for which no such surveys are available,

---

[1]) 1953/54.

other reliable sources have been used. Sometimes it seemed desirable, for the sake of comparability, to recalculate certain series on another basis than that used in the original surveys. Of course, only a selection from the material in hand can be given in this digest. In a few cases, however, the picture had to be completed by data from other sources or from the author's own research work.

Table 1
Development of Government budgets 1948—1958

Sources of revenue in percent			Expenditure in I.L. millions				
foreign sources	internal loans	Taxes and similar collections	total at prices of 1957/58	at current prices: total	at current prices: capital outlay	at current prices: current Expenditure	year
3%	70%	27%	380	75	—	75	1948/49
19%	44%	37%	530	115	35	80	1949/50
18%	40%	42%	700	155	67	88	1950/51
23%	19%	58%	730	192	72	120	1951/52
28%	11%	61%	700	314	113	201	1952/53
30%	4%	66%	910	503	204	299	1953/54
36%	2%	62%	940	717	310	407	1954/55
31%	2%	67%	1,030	850	343	507	1955/56
23%	11%	66%	1,210	1,099	324	775	1956/57
23%	4%	73%	1,284	1,284	504	780	1957/58 (approved budget)

The first table which is confined to the Governmental sector proper (i.e. excluding Jewish Agency, Local Authorities and Health Insurance) reveals not only the absolute and relative growth of Government Finance. It is also the change in both the composition of government outlay and in the ways and means of government financing which is characteristic of the trends during the decade under review. If the war period from 15th of May 1948 — the Day of Independence — up to the 31st of March 1949 is left out of account, it becomes obvious that Israel's budget is intentionally a

development budget. The share of capital outlay — i.e. investment and repayment of loans mainly raised for development purposes — rose from appr. 7% of the total in 1949/50 to one third in 1955/56. Only the year 1956/57, the year of the Sinai campaign and the Suez Crisis, interrupted this trend as the development budget had to be cut down in order to meet the increased security expenses with the possible minimum of inflationary pressure.

The battle against inflation dominates the fiscal policy of Israel since the beginning and up to the present day. It is reflected on the side of expenditure as well as of revenue. The first period is characterised by a rapid devaluation of the Israel Pound and a corresponding rise in prices. From 1949 to 1952, the nominal amount of government expenditure has nearly trebled, but the real value of this expenditure rose by no more than appr. 30%; the rest of the increase was entirely due to the price inflation. 1952 was a turning point. A new policy of disinflation was adopted and the margin between real and nominal values could at least be narrowed. From 1953 to 1956 the real value of government expenditure increased once again by some 30% — the same as in the preceding period — but nominal values only doubled. The situation has therefore considerably improved, but is far from satisfactory.

The new disinflationary policy finds its expression on the revenue side as well. During the first years of the state, an excessively large part of government expenditure had to be covered by internal borrowing. However, this credit was not derived from genuine current savings. The foreign currency assets, in part inherited from the mandatory administration were soon spent on urgent imports. In the currency reserve they had to be replaced by „land Notes", a kind of development loan; the costs of defence were largely met through the printing press which was fed with Treasury Bills. Since 1952 these inflationary methods were discountinued.

In the following years two basic principles were strictly observed, firstly: Ordinary current expenditure was financed by ordinary current revenue that means by taxes and related government collection, — once again with the exception of the Sinai year 1956/57 when internal borrowing was resorted to for covering part of the extraordinary defence expenditure. As a matter of fact, in normal years, there was a small surplus in the current accounts which

contributed towards the financing of the capital budget. Secondly: Government and legislation with the active support of banking and insurance institutions took various steps in order to encourage and to promote local current saving, and in order to induce both individual and institutional savers to invest as much as possible of the accumulated funds in government or government guaranteed loans for development purposes. The fact that the share of internal borrowing in government revenue since 1952 is very small indicates on the one hand the low level of saving — as natural in a development country — and on the other hand it shows to what a degree the government is anxious to refrain from inflationary borrowing.

This new policy which ruled the second quinquennium of the State of Israel was marked by a rigid intensification of tax collections on the one hand and by the increasing weight of foreign sources of revenue on the other.

Table 2
Index of Real per capital Value of Government
Revenue and Expenditure

Year	National Income *)	Government Taxes and Collections	Government Expenditure and Investment
1950/51	100	100	100
1951/52	110	125	90
1952/53	93	116	83
1953/54	93	144	99
1954/55	105	160	119
1955/56	114	163	121
1956/57	120	177	140

For the limited period for which comparable data are available table No. 2 summarises the development of National Income, total government expenditure and tax collections as compared with the increase of population and after elimination of price changes. During the first decade of the State, its population grew from 800 000 to 2,000,000; during the period reviewed in the table, an

*) Revised acc. to recent publication of Bank of Israel.

increase from appr. 1.2 to 1.9 millions or by about 50% took place. In an underequipped economy it is hardly possible to expand the real production at such a supernormal speed, and the real income per head increased by a relatively modest percentage only. Government outlay was in advance of both the increase of population and real income. This was due, as mentioned before, largely to the development budgets, the task of which is to overcome the handicap of underequipment by promoting and accelerating basic investments. In consequence of the disinflationary policy, taxes and other collections rose above the proportion of national income and government expenditure.

Table 3

Taxes and similar collections in % of National Income

Grand Total	Local Authorities and Sick Fund	Government and National Insurance	Year
?	?	18	1949/50
?	?	20	1950/51
30	9	21	1951/52
31	8	23	1952/53
36	9	27	1953/54
36	7	29	1954/55
37	7	30	1955/56
38	7	31	1956/57

The development of the tax burden is presented in table No. 3 which includes in addition to the governmental collections also the taxes paid to local authorities and the Health Insurance.

The structure and incidence of total taxation in Israel are exemplified in the following table.

Table 4

The Use of the Gross National product for the Minimum Needs of Subsistence, Payment of Taxes, and other purposes.

Purposes of Utilization	1952	1953	1954	1955	1956
1) Taxes and other collections of Public Bodies	25	29	31	31	32
2) Depreciation	6	6	6	6	6
3) Subsistence minimum for working capacity (Excl. use of public services)	43	44	41	37	36
4) Balance left for free use (incl. services)	26	21	22	26	26
5) Total gross (National Product at market prices)	100	100	100	100	100

A split up for the year 1956/57 may further specify the incidence of taxation.

A. *Government collections*	%	%
1) Direct taxes on income and wealth	9.2	
2) Indirect taxes etc.	10.3	
3) Compulsory payments to national and war insurance	2.3	
4) Interest and repayments service fees, post royality, trading profits etc.	3.7	
5) Sub-Total	25.5	
B. *Other Collections*		
6) Local Authorites	3.2	
7) Health insurance etc.	2.6	
8) Sundry	0.7	
9) Total taxes and other collections of Public Bodies		32

Transport	32
10) Depreciation	6
11) Subsistence minimum for working capacity (Excl. use of public services)	36
12) Balance left for free use (incl. saving)	26
13) Total Gross National product (at market prices)	100

It is true there are developed countries where the total burden of taxation, if expressed in % of national product is higher than in Israel. But in these countries the national income per head is much greater. Consequently the free balance of disposable income above the minimum which determines i.a. the saving capacity is even in a heavily taxed country like England about twice as large as in Israel where it amounts to appr. 165 dollars per head.

The increase of revenue from abroad during the first seven years of the state was mainly due to three special sources: Grants in aid and loans from the U.S.A. government and its Export-Import Bank, the Independence — and Development Loan, which is continually raised in annual drives, particularly among Jewish savers, capitalists and institutions in America and other centres of the diaspora, and the reparations from Western Germany. Although the treasury had from time to time to ask for short term foreign currency credits too, a considerable part of this revenue was unilateral and did not increase the liabilities of the state. The growth and volume of government debts is summarised in table No. 5.

It is not so much the absolute scope of the government debts — which amounts to less than one annual budget, than the heavy weight of foreign indebtness and the relatively rapid and apparently permanent increase of the total which represents a problem for the future. When the state of Israel was established the amount of debts taken over from the mandatory government was negligible especially if compared with the assets which had been created mainly from the money of Jewish taxpayers in Palestine and were transferred from the British administration to the new state. Virtually the whole indebtness was accumulated within the last ten years. It must however be kept in mind, that the durable productive assets which were created or acquired from either internal and external loans or

Table 5

Accumulation of Government Debts
(Round Figures)

Fiscal year	Annual Internal Debt (in Mill I.L.)	Increase Foreign Debt (in Mill Dollar)
1948/49	56	55
1949/50	38	
1950/51	63	64
1951/52	36	97
1952/53	30	38
1953/54	18	30
1954/55	169	90
1955/56	41	50
1956/57	228	90
Sub-Total Balance Per 31.3.57	680	514
1957/58 (approved estimate)	57	50
Crude estimate per 31.3.58	737	564
Foreign debt in I.L. (Dollar = 1.800 I.L.)		1,015
Thereof repayable:		
In Israel currency (appr.) I.L. Mill		150
In Foreign currency		865

from grants, reparations and regular internal revenue, surpass the total amount of debts even by a most conservative assessment. This holds true inspite of the fact that the borrowing of the first years was largely dead-weight debt, that means it was spent not for the creation of productive assets but on current — though special — expenditure. It is true, the weight of the internal debt has been reduced as a result of the inflation; the first loans of the state had not yet been linked to either the exchange rate of the dollar or the price index as are the government loans of the recent

years. But the major part of this old debt such as all treasury bills and Land Notes is "neutralised" in the Bank of Israel. In the last years, the main contribution of local savings towards the development budget came from the accumulated reserves of the governmental War and Social Insurance, that means a kind of compulsory loan from compulsory savings in the form of current premium payments of the insured.

In the field of development and investment as well as in the mobilisation of foreign currency revenue the activities of the government are supplemented by the Jewish National Institutions, especially the Jewish Agency. The autonomous budget of the Agency — which are however closely coordinated with the Government budget are almost entirely financed by regular recurrent contributions of the World Jewry (United Jewish Appeal and other organisations). *In the average of the last three years* for instance the annual revenue of all public budgets was distributed as follows (In IL millions, rounded up):

	Taxes stc. *)	Internal Loans *)	Foreign Sources	Total
Government *	526	49	232	807
Local Authorities	66	12	—	78
Health Insurance etc.	52	—	—	52
National Institutions	5	7	140	152
Total	649	68	372	1,089

If we proceed to analyse in short the expenditure of these public bodies it has to be understood that part of the government expenditure on development and social services takes the form of loans and grants to local authorities. These sums however are to be considered as government spending. In the condensed summary,

*) National and War-Insurance contributions are wholly included in the amount of tax- and similar collections. "Internal loans" do not include the loans granted to the development budget from the annual reserve accumalation of these institutions. On account of Posts, Railways and Ports, only the excess of income over operating expenses, which represents a kind of indirect taxation, is included.

above government participation in local budgets is not shown as revenus of the local authorities.

The consolidated accounts of the above mentioned bodies showed on 1956/57 total expenditure amounting to IL 1,458 millions as against IL 1,113 millions in the preceding year. 76% thereof was government expenditure (incl. the Operating expenses of the transport enterprises) and about 12% were spent by the National Institutions. About one third of the Jewish Agency budget are spent on maintenance and first absorption of new immigrants, the rest on development, mainly housing and agricultural colonisation. The total distribution of expenditure in these two characteristic years is shown in the following table:

	1955/56 %	1956/57 %
1) General Services and Administration	6	5
2) Defence and Special budgets	15	25
3) Social Services (Incl. about 51 special services to new immigrants)	19	19
4) Interest	3	3
5) Subsidies	4	4
6) Economic Activities and Sundry	12	10
7) Sub total: Ordinary recurrent expenditure	59	66
8) Investment and development	35	29
9) Repayment of debts (principal)	6	5
10) Grand total	100	100

Of course all those figures do not include the gross turnover of the government trading accounts. The government as main receiver of foreign currency, uses part of these funds for import of foodstuffs and raw materials in order to regulate the prices and to secure orderly supplies.

Only a small part of government development outlay serves the acquisition of assets for government departments and enterprises proper. The major part was spent by granting loans to and participation in the capital of various enterprises and development projects. Some of the industrial and other various enterprises however

are largely or wholly owned and managed by the government, such as the Israel Electric Ev., and the Dead Sea Potash Works which were nationalised some years ago, the "El-Al" Airlines, Chemical Fertilisers and others.

The decisive part of government financing in *all* sectors of the economy is illustrated by the following figures.

Table 6

The Share of the Public Bodies in Financing Gross Investment in Israel

(In IL million and in Percentage)

Period	Public Financing Sources			Other Sources	Total investments
	Government & Governmental Insurance Institutions	Other Public Bodies [1])	Interims-Summary Public Capital		
1	2	3	4	5	6
	IL m. %	IL m. %	IL m. %	IL m. %	IL m. %
1951 or 1951/52	73 34	26 12	99 46	155 54	214 100
1952 or 1952/53	113 36	39 12	152 48	165 52	317 100
1953 or 1953/54	180 55	57 17-	237 72	95 28	332 100
1954 or 1954/55	236 54	83 19	319 73	121 27	440 100
1955 or [2]) 1955/56	330 55	96 16	426 71	179 29	605 100
1956 or [2]) 1956/57	294 48	142 23	436 71	179 29	615 100

In order to prevent misunderstandings it must be observed that not all expenditure of governmental and parafiscal bodies in Israel

[1]) Local Authorities, National Institutions and non-Governmental Social Insurance Institutions.

[2]) Including goods delivered in advance o.a. of reparation budgets after 1957.

can be defined as "payments to the public". By main categories, public expenditure may tentatively be split up as follows (in million of IL)

	1954/55	1955/56	1956/57
1) Personal Income Payments (incl. civil service salaries and the share of wages and profits in domestic purchases)	480	590	750
2) Balance of Domestic purchases of goods and services and sundry	292	288	393
3) Direct imports of goods and services for own use, foreign debt service and other payments abroad by government and other public bodies	180	235	315
4) Total public expenditure	952	1,113	1,458

About 20%—25% of public expenditure were spent abroad. However, public revenue from abroad was considerably larger. The excess revenue in foreign currency was, through various channels, placed at the disposal of the economy for meeting its urgent import needs for consumption, production and investment, while the counterpart funds in IL were disposed of in the framework of public development budgets.

Personal income derived directly from public budgets includes first of all the salaries of civil employees of the government departments, railways, posts, ports and police, the local authorities, teachers, Jewish Agency and the Sick Fund as well as the numerous personnel of Government hospitals. Also transfer payments such as pensions and social assistance are accounted for under this item. Part of the public works is to be considered as a kind of productive unemployment relief; they are put into operation according to an elastic program in order to level out frictional, seasonal and local fluctuations on the labour market. Altogether, direct civil income payments *from* public budgets are assumed to be equivalent to about 30% of the gross National product i.e. slightly less than the amount the public had to pay in form of taxes and similar collections *to* the public bodies concerned.

AU SUJET DE LA DECISION ANTICIPEE EN MATIERE D'IMPOTS

(Suite et fin) [1])

par

C. O. Sandström, Stockholm

La commission mit aussi en discussion la possibilité d'élargir le champ d'application de la décision anticipée quant à certaines questions d'évaluation. Dans quelques unes de ces questions, on put le constater, se faisait aussi sentir le besoin de décision anticipée avec effet obligatoire non seulement pour le contribuable, mais pour tout un groupe de contribuables, Il s'agissait, entre autres, de la question de l'évaluation des actions non cotées en bourse, évaluation à faire lors de la fixation de l'impôt sur le capital. La commission se plaça au même point de vue que celui où elle s'était placée au sujet de l'élargissement projeté du domaine des décisions anticipées dans les questions de droit. A cela venait d'ajouter, suivant la commission, le fait que les actions d'une société n'avaient pas toujours la même valeur en différentes mains. En effet, il fallait parfois tenir compte du nombre d'actions appartenant au contribuable. Si la décision anticipée n'était donc pas de nature à constituer une forme ordinaire d'évaluation des actions non cotées en bourse, il n'était pas dit pour cela que les sociétés anonymes et les actionnaires ne pussent avoir dans des cas exceptionnels, par exemple nouvelle émission, un besoin si grand de décision anticipée qu'il fallait supposer qu'une évaluation de la valeur des actions remplirait elle aussi les conditions prévues pour l'obtention de décision anticipée.

Il ressort donc de ce qui vient d'être dit que l'on avait sans doute reconnu dans les travaux législatifs préparatoires la valeur de préjugé qu'apporte la décision anticipée dans certains cas mais qu'on avait néanmoins estimé que le désir de créer des préjugés ne présen-

1) La première partie fut publiée dans le *Bulletin No: 3*, p. 129.

tait pas en soi-même un intérêt suffisant pour pouvoir motiver les décisions anticipées. D'après le législateur, lorsqu'il s'agissait de résoudre la question de savoir si une décision anticipée devait être prise ou ne pas l'être il ne fallait prendre en considération que l'intérêt du contribuable dans un cas spécial. Et c'est dans ce sens que furent rédigées les règles relatives à la décision anticipée.

Il est donc tout à fait logique que la décision anticipée ait été, pour cette raison, refusée dans un certain nombre de cas où les conditions nécessaires à l'obtention de la décision anticipée faisaient défaut quant au cas particulier mais où une décision anticipée aurait cependant été d'une grande importance dans d'autres cas semblables. Quelques exemples de cas de ce genre peuvent être mentionnés. Dans un de ces cas, il s'agissait de savoir si les émoluments qu'un contribuable avait touchés en suivant un cours d'instruction devaient être considérés à son égard comme revenu imposable. Le Comité National des impôts déclara qu'il en était ainsi mais la Cour Suprême administrative, devant laquelle le contribuable interjeta appel, déclara que sa demande aurait dû être repoussée par le Comité et annula donc la décision du Comité. Dans l'autre cas, il s'agissait de savoir si une allocation de l'Etat qui avait été accordée au contribuable pour lui permettre de passer un examen supérieur de droit devait être considérée comme une bourse exempte d'impôt ou non. Le Comité National résolut la question en faveur du contribuable mais la Cour Suprême, devant laquelle le représentant du fisc appela de cette décision du Comité, déclara dans ce cas aussi que la demande aurait dû être repoussée. Dans les deux cas, la Cour donna comme motif à son arrêt que la décision anticipée ne pouvait être considérée comme d'une importance considérable pour le contribuable; manifestement pour la raison que la demande avait en vue un acte consommé. Dans ces deux cas, une décision anticipée aurait aussi pu servir de guide à d'autres contribuables et était par conséquent attendue, dans les cas susmentionnés, avec le plus grand intérêt par les contribuables et par les autorités fiscales à la fois. Il ressort également de ces deux cas que le Comité National avait eu une opinion plus large que la Cour Suprême administrative en ce qui concerne les conditions à réaliser pour obtenir une décision anticipée.

La décision anticipée du Comité National des impôts présente

donc uniquement le caractère de déclaration de principe faite au sujet de l'impôt du demandeur dont il est question. C'est pourquoi la décision anticipée n'a qu'à indiquer les règles à suivre lors de la fixation de l'impôt à moins qu'il n'en soit autrement par suite de circonstances spéciales.

Les tendances restrictives qui, d'après ce qui vient d'être dit, se sont manifestées dans l'application des décisions anticipées, en particulier de la part de la Cour Suprême administrative, ont provoqué des critiques. Dans ces critiques[1]) on a fait ressortir, entre autres, que les expériences passées montrent que les décisions anticipées jouent un rôle de plus en plus important en tant que précédents et qu'il serait donc opportun de leur donner une extension plus grande que celle qu'elles ont eu jusqu'à présent. Une critique du même genre fut aussi dirigée contre l'opinion adoptée par la Cour Suprême administrative qui autorise cette Cour à étudier d'office la question de savoir si le Comité National aurait dû prendre une décision anticipée. La Cour Suprême administrative a en effet déclaré dans plusieurs causes soumises à son examen par interjection d'appel, sans qu'aucune des parties l'ait demandé, que la décision anticipée n'aurait pas dû être prise et a, pour cette raison, annulé la décision du Comité National. Ce point de vue pouvait, d'après la critique, faire courir le risque d'une «reformatio in pejus» dans certains cas. En conséquence, un contribuable pourrait parfois trouver qu'il est trop dangereux d'interjeter appel d'une décision anticipée qui lui a été partiellement défavorable. Il pouvait alors s'exposer au risque de voir entièrement annuler la décision anticipée même sur les points qui lui étaient favorables. Pour justifier le point de vue adopté par la Cour Suprême administrative, on peut toutefois faire observer, ce que la critique elle-même a du reste reconnu, que le Comité National pourrait sans cela, par le fait de ne pas repousser une demande en décision anticipée, engager l'instance supérieure et l'obliger à sanctionner un acte administratif contraire aux règlements. La question de savoir si les conditions légales pour l'obtention de décision anticipée sont réalisées ou non ne doit pas être matière de procès dont puissent disposer les parties.

Toute décision anticipée prise par le Comité National des impôts

---

[1]) Voir l'article de I. Mutén dans la revue Skattenytt 1957, page 150.

est consignée dans le procès-verbal du Comité. Extrait de ce procès-verbal est envoyé au contribuable qui a demandé la décision anticipée ainsi qu'au représentant du fisc par lettres recommandées avec accusé de réception. L'extrait du procès-verbal doit mentionner ce qu'il y a à observer pour interjection d'appel de la décision anticipée. L'exemple que donne l'annexe I montre la forme que présente habituellement une décision anticipée du Comité.

Conformément au principe du procès contradictoire, la décision du Comité National des impôts doit être notifiée au contribuable aussi bien qu'au représentant du fisc. En revanche, il n'y a aucune obligation de notifier cette décision à la commune intéressée.

Il peut être interjeté appel de la décision anticipée prise par le Comité National des impôts. Appel de l'impôt auquel doit être appliquée la décision anticipée peut sans doute être interjeté suivant les règles ordinaires, en passant par les différentes instances, mais pour que le but de la décision anticipée, c'est-à-dire celui de donner d'avance au contribuable des renseignements en matière d'impôts ne soit pas faussé par suite de la lenteur de la procédure fiscale ordinaire et pour qu'en même temps le contribuable puisse disposer d'un droit d'appel sur la décision anticipée, droit dont il a besoin s'il n'est pas satisfait du contenu de cette décision, le contribuable pourra interjeter appel de la décision du Comité National directement devant la Cour Suprême administrative, la plus haute instance dans la procédure fiscale ordinaire. Ainsi, l'instance suprême est la même pour la décision anticipée et pour l'impôt à imputer au contribuable et de la sorte a été résolu avec souplesse le conflit de compétence qui aurait pu surgir si on avait eu deux instances suprêmes différentes. Appel de la décision du Comité National peut être interjeté et par le contribuable et par le représentant du fisc, c'est-à-dire le directeur des impôts intéressé. Si la décision anticipée a en vue l'impôt communal sur le revenu ou l'impôt sur immeuble la commune intéressée a également droit d'appel. A la Cour Suprême administrative, les causes relatives à la décision anticipée ont droit de priorité.

A la règle que la Cour Suprême administrative est instance d'appel il y a cependant une exception. Dans certaines questions d'imposition d'immeubles la Cour des Comptes est en effet instance d'appel. Il s'agit là des causes où la Cour des Comptes est aussi instance suprême suivant la voie ordinaire de la procédure des impositions.

Il faut remarquer que le droit d'appel n'intervient que si décision anticipée a été prise. Mais si une demande pour obtention d'une décision de ce genre a été repoussée par le Comité National des impôts, appel ne peut être interjeté. La question de savoir-si une demande en vue d'obtenir décision anticipée doit faire l'objet d'un examen ou être repoussée ayant été jugée de nature à ne pouvoir être résolue que par le Comité National, on en tira la conséquence que le droit d'appel d'une décision du Comité protant refus de la demande ne pouvait être accordé. Ce qui justifiait en particulier ce point de vue, d'après la commission, c'est le fait qu'il ne pouvait être opportun que la Cour Suprême administrative rédigeât une décision anticipée sur une question que le Comité avait pensé devoir être différée jusqu'à ce qu'elle fût résolue par voie de procédure ordinaire en liaison avec appel de l'impôt interjeté par le contribuable. En ce qui concerne la décision portant refus sur la base d'enquête incomplète, le demandeur est libre de remettre une nouvelle demande qu'il a complétée.

Dans les cas où il y a droit d'appel le délai pour interjeter appel est d'un mois à partir du jour où la décision anticipée a été notifiée au contribuable.

Afin de prévenir l'abus du droit de consultation, il est établi que le contribuable ,devra, sauf résolution contraire du Comité National des impôts, acquitter un droit approprié aux circonstances, d'un montant de 100 couronnes au minimum et de 500 couronnes au maximum, pour la décision anticipée qui a été prise. Il ne peut être interjeté appel de la décision du Comité National concernant ce droit à acquitter. Si la demande en décision anticipée est repoussée aucun droit n'est exigé.

Si décision anticipée est prise, elle devra servir de règle lors de la fixation de l'impôt que cette dècision a en vue. Le caractère de déclaration de principe qu'a la décision anticipée exclut toutefois son application d'office. C'est pourquoi le contribuable doit lui-même demander aux autorités fiscales, s'il le désire, a être imposé conformément à la décision anticipée ou éventuellement, en cas d'interjection d'appel, à être imposé conformément à l'arrêt de la Cour Suprême administrative ou, le cas échéant, conformément à l'arrêt de la Cour des Comptes. Il devra alors produire la décision anticipée et montrer que les conditions indiquées dans cette décision

se présentent. Dans le cas affirmatif la décision anticipée a l'effet obligatoire vis-à-vis les autorités fiscales. Si, au contraire, le contribuable néglige de fournir des renseignements suffisants à cet égard, il court le risque que la décision anticipée ne soit pas appliquée. Effet obligatoire ne peut pas non plus être attaché à la décision anticipée s'il apparaissait, lors de la fixation de l'impôt, que le contribuable a donné au Comité National des impôts une idée erronée des circonstances de fait. Ce sera alors aux autorités fiscales et éventuellement aux tribunaux de taxation, qu'il incombera d'examiner la question de l'application de la décision anticipée. On peut ajouter qu'une modification de la législation fiscale brise l'effet d'une décision anticipée qui n'a pu encore être appliquée avant l'entrée en vigueur des nouvelles dispositions.

De plus, il faut mentionner que tous les documents relatifs à la décision anticipée ainsi que la décision elle-même sont protégés par leur caractère secret selon la loi portant obligation de ne pas révéler les choses secrètes. Un contribuable ne peut donc pas courir le risque de voir des secrèts commerciaux et autres qu'il a communiqués dans la cause, portés à la connaissance des tiers. Mais comme les décisions anticipées du Comité National des impôts peuvent être d'un grand intérêt pour les autorités publiques et les contribuables qui veulent se tenir au courant de la jurisprudence, la protection légale des documents secrets n'empêche en rien le Comité d'exposer, dans ses communications, les principes qu'il a suivis dans ses décisions anticipées, pourvu que soient observés les points de vue qu'on a voulu faire respecter au moyen de la protection donnée aux documents secrets.

Enfin, pour mettre en évidence l'extension qu'a prise l'activité du Comité National des impôts relativement aux décisions anticipées, on peut indiquer que 275 demandes en décision anticipée ont été remises au Comité pendant 1957. Parmi ces demandes, il ne semble y en avoir qu'une quarantaine qui aient été repoussées.

Quelques réflexions pour conclure

En Suède l'expérience qui a pu être faite de l'activité du Comité National des impôts en ce qui concerne les décisions anticipées a été très favorable. Les décisions anticipées quoiqu'elles n'aient qu'un champ d'action assez limité en raison de la forme restrictive donnée

dans la législation ont montré qu'elles remplissent une mission très importante. On peut constater que les autorités fiscales n'ont fait aucune difficulté à accepter les indications avec effet obligatoire des décisions anticipées. Les autorités fiscales se sont loyalement conformées dans leurs travaux aux décisions anticipées qui ont été prises pour les cas particuliers.

En raison de ce qui vient d'être dit, le système suédois semble bien être de nature à servir de modèle à des institutions correspondantes dans d'autres pays.

Il faut peut-être souligner qu'une grande partie de la fermeté que présente le système suédois réside dans le fait que les décisions anticipées ont été mises entre les mains d'un comité qui ne dépend pas des autres autorités et qui est composé de représentants de l'industrie et des autorités fiscales. Les autorités fiscales ne sont donc pas seules représentées, et le Comité a acquis de la sorte la confiance des contribuables à un bien plus haut degré.

Il est possible qu'il ne se fait pas sans difficulté de transposer le système suédois dans des pays qui ont d'autres systèmes fiscaux. Une adaptation aux conditions qui y règnent peut être nécessaire. Comme l'auteur n'a pas une connaissance suffisante des conditions qui existent dans les autres pays au point de vue fiscal il ne peut être question ici de tâcher d'indiquer comment cette adaptation doit se faire.

Il va de soi qu'il a été assez facile de réaliser le système des décisions anticipées dans un petit pays comme la Suède. Dans les pays plus grands, cela présente bien plus de difficultés. Le respect pour les décisions anticipées et la confiance qu'elles inspirent laissent supposer en effet que les jugements sur les problèmes fiscaux que les décisions anticipées doivent résoudre sont pour ainsi dire uniformes. Une uniformité de ce genre peut facilement être obtenue lorsqu'on n'a, comme en Suède, qu'une seule institution qui ait à prendre les décisions anticipées. Mais les difficultés seraient plus grandes si on était forcé de constituer — ce qui peut être nécessaire dans les pays plus grands — deux ou plusieurs organes de ce genre pour les différentes parties du pays en question. Dans ce cas, il semble nécessaire de veiller à ce que ces différents organes ne montrent pas de divergences trop grandes dans leur façon de juger les causes. En tout cas, s'il y a différents organes pour prendre les décisions anti-

cipées cela laisse supposer qu'il y a aussi une même instance d'appel pour tous ces organes. Si dans un grand pays on veut éviter les désavantages qui sont attachés à un système comportant plusieurs organes chargés de prendre les décisions anticipées, il est évidemment possible de le faire dans une certaine mesure, il faut alors supposer que l'organe unique chargé des dites fonctions donnera un caractère restrictif à son activité. Mais on peut aussi craindre que le but de cette institution ne soit faussé si les décisions anticipées sont prises d'une façon trop restreinte.

Il faut espérer que cet exposé pourra donner une idée du fonctionnement de ce système en Suède et qu'il pourra aussi éveiller le désir de propager largement le système des décisions anticipées. Cet exposé aura rempli son but dans la mesure où se fera cette propagation.

Annexe I

Procès-verbal concernant les causes relatives aux décisions anticipées, dressé à la séance du Comité National des impôts à Stockholm le . . . . . .

Présents: le président M . . . . . .
le vice-président M . . . . . .
les membres MM . . . . . .

le chef de la chancellerie du Comité M . . . . . .
l'expert comptable du Comité M . . . . . .

§ 4

Il est fait rapport de la demande du directeur N. du 5 septembre 1957 pour obtention de décision anticipée en matière d'impôt.

Des documents produits dans la cause, il ressort en substance ce qui suit. Le demandeur envisageait l'achat d'une propriété foncière à Stockholm pour une somme d'environ 600.000 couronnes. L'immeuble, qui s'y trouvait et qui était très vieux, avait cependant besoin de restauration radicale qui comprendraient travaux d'entre-

tion ainsi que travaux de réfection, évalués à 900.000 couronnes environ dont 300.000 devaient être affectés à certains travaux de consolidation des fondements, rendus nécessaires par suite d'un affaissement important du bâtiment. Le but de ces travaux n'était pas d'effectuer une modification suivant un plan nouveau ou rien de semblable; il ne s'agissait que de réparer le bâtiment et d'en hausser la valeur (ici il y a une description détaillée de la nature des travaux projetés).

Le demandeur voulait savoir par décision anticipée si les frais de consolidation des fondements pouvaient être défalqués pour l'impôt.

Le directeur des impôts à Stockholm, après y avoir été invité, a émis son avis dans la cause et ensuite le demandeur a présenté ses observations.

Le Comité National des impôts a décidé ce qui suit:

Décision anticipée

Le Comité National des impôts estime que la consolidation des fondements, indiquée dans la demande, et évaluée à environ 300.000 couronnes, comprend aussi bien la réparation et l'entretien du bâtiment que sa réfection ou amélioration analogue. Dans ces circonstances et attendu que la moitié des frais des dits travaux peut légitimement être considérée comme afférente aux travaux de réparation et d'entretien, le Comité National des impôts déclare que le demandeur a le droit, lors de la fixation de l'impôt, de bénéficier d'une défalcation correspondant à la moitié des frais de la consolidation des fondements, exécutée comme il est dit.

Le demandeur est tenu de payer un droit de 400 couronnes à la Couronne pour la décision anticipée qui a été prise.

(Indication des voies d'appel).

II

SURVEY OF BRITISH TAX LEGISLATION

by N. D. Ashley, London

In the Bulletin of Nov.-Dec. 1956 (Vol. X No. 6) I discussed the main changes made in our taxation laws in Mr. Macmillan's first and (as it proved) only budget. By April of the following year Sir Anthony Eden had resigned, Mr. Macmillan had become Prime Minister, and Mr. Thorneycroft was Chancellor of the Exchequer. Mr Thorneycroft's year, 1957/58, was a poor year for interesting and far-reaching new ideas in taxation.

The taxation of Individuals

Most problems dealt in I.F.A. publications end by deciding what is taxable. Perhaps a few words on how income is taxed in this country, when the amount of it is known, might be of interest:

1. The incomes of both husband and wife are aggregated, and the couple is assessed and taxed as one person. "Splitting" is unknown. With some exceptions, allowances are only given to a married couple once. The income of children of a marriage, either earned by them or received in their own right, is never aggregated with that of their parents. But a parent cannot pay out a portion of his income to his child so as to reduce his taxable income (though the income from these payments is the child's income) until the child has completed its 21st year or has married.
2. The total income of a taxpayer (or of a married couple) is looked on as a kind of ladder. The lowest rungs represent the total allowances to which the taxpayer is entitled, and no income tax is payable on the income covered by any allowances. If a man's income is less than his total allowances, he is not taxable at all.

   Going up the ladder, the next £360 is taxed at an average rate of 24.5%. Actually the so-called reduced rates are given in three stages: the first £60 at 11.25%, the next £150 at 23.75%, and the final £150 at 33.75%. .

   All the remainder of the taxpayer's income is subject to income tax at the "standard rate". For both the years we are considering the standard rate has been 42.5%; it has not changed now for four years.
3. Allowances are either fixed sums, irrespective of the amount of the income, or variable, depending on income, or some class of income, receivable, but subject to a maximum. Examples of fixed allowances are those granted to a single person of £140 (a year), to a married couple of £240, to a widower who employs a housekeeper or to an infirm parent who maintains a daughter to wait on him, of between £50 and £100, and those granted in respect of children, depending on the child's age, of from £100 to £150 for each child. The main variable allowance is that for earned income, which was 2/9 ths of the earnings with a maximum allowance of £450 (equivalent to earnings of £2025); there are several variable allowances which help elderly people with small incomes.

   Allowances can be claimed for premiums paid to insure against a risk or to obtain an annuity payable from a certain age. With small exceptions no allowance can be claimed for an insurance against a risk, unless the risk is that of death (though to the death risk other risks may be added, e.g. that the assured reaches a certain age). Allowance will only be granted in respect of such part of a premium as does not exceed 1/14th of the sum

assured. Generally the amounts allowed are not very generous. An employee may claim an allowance for any portion of his earned income spent on obtaining a right to a future annuity under a group insurance scheme entered into by his employer. Recently professional people and those in business on their own account have been permitted to claim the allowance of sums, not exceeding 1/6th of the earnings of the year in question, paid for the purpose of securing an annuity for themselves from some financial institution at a later date.

The earned income allowance of 2/9ths of the earnings is given both to the husband and to the wife up to the limit permitted. In addition, as regards the wife's earnings, the other 7/9ths of about the first £140 of her earnings will be allowed as a deduction. Husband and a working wife get the married allowance of £240 and in effect their combined taxable income is reduced by a further £140 (otherwise married women would have been discouraged from working in the war). The next £360 of the wife's earned income is also taxed at the reduced rates. Allowances for payments to obtain annuities are granted in respect of each spouse as though each was unmarried, but the amounts claimable for life insurance payments are subject to maxima varying with the combined income.

Husbands and wives who live apart can call on the authorities to work out the tax to be borne by each spouse; but the total of the two sums payable will be exactly the sum the husband would ordinarily have been assessed to.

4. Surtax is an additional income tax on individuals or the combined income of married couples, computed in rather a different way. It starts when the total income exceeds £2,000 a year, and no allowances could (until last year) be deducted from total income for the purpose of calculating the amount of surtax payable. The rates climb steeply, on the first £500 above £2,000 10%, on the next £500 12½%, on the next £1,000 17½%, and so by steps of £1,000 or £2,000 to a total income of £15,000; the excess over that figure is taxed at 50%. The theoretical maximum combined rate would be 92.5%, but that percentage is, of course, never quite reached.

The Income Tax Act is built up on the assumption that a standard rate will apply as from April 6 of one year to April 5 of the next year, and will apply not only to the tax due from individuals, but also to many other provisions of the Act, particularly to those requiring the deduction of tax, when dividends, interest and the like are paid. The decision as to the rate that shall be "standard" for the year is naturally the Government's, and is very much a question of high policy, depending in essence on whether the Chancellor of the Exchequer thinks he wants more, or can do with less money. But a decision once having been taken, the machine moves forward, all the wheels geared together as before, though the wheels will move at a different speed. On the other hand the system of granting personal allowances to individual taxpayers has the advantage that every change in the scheme of allowances (and in view of inflation some of the smaller fixed allowances have been changed almost every year) can be discussed on its particular merits in Parliament without affecting other allowances. Naturally the increase of some allowance will make an infinitesimal difference to the total position; but allowances are not geared in with a scheme of allowances, so that an alteration of one allowance must be followed by consequential alterations elsewhere.

1957/58 Budget

The standard rate was 42½%. Rates of surtax were also the same as the previous year.

A major change was made in the allowances in respect of earned income.

A person (which includes a husband and wife together)can now claim an allowance of 2/9ths (about 22 %) of the first £4,005 of earned income, and of 1/9th of the next £5,940. A person who has earned £9,945 (or more than this figure) will be taxed as though his earned income was £1,550 (about 15 %) less. The position of old people was bettered by increasing the maxima to which their various reduced rates apply. The allowances for each child was fixed at £100 if under 11 years of age, at £125 if over 11, and £150 if over 16 and receiving full time education.

A break was made for the first time with the rule that no allowances may be deducted from total income for the pupose of computing surtax. Total income may now be reduced by the personal allowances of £140 or £240 (already described), by allowances for children, and certain small allowances to elderly persons, but not by the amounts allowed for earned income.

Our law encourages undertakings to spend money on capital additions by granting, as I pointed out in more detail in the Survey which appeared in Vol. X No. 6 of the Bulletin, (a) initial allowances (an additional write-off in the first year of the asset's existence, which reduces the tax payable in that year, but the capital amount on which future depreciation can be charged is reduced by the amount of the initial allowance), and (b) investment allowances (an additional write-off in the first year of the asset's existence which reduces the tax payable in that year, while the capital amount to be depreciated over the first and subsequent years is unaffected). Initial allowances remained, as before, at 10 % for buildings and 20 % for machinery; investment allowances were not granted at all in 1957/58 except for ships constructed, and for them the rate which had been 20 % was raised to 40 %.

Though not of importance internationally, a question of doubt which was a standing irritant to residents, has at last been dealth with. Every building is, of course, deemed to produce an income, and someone is responsible for tax on that income. But who? Landlord or tenant? Hitherto the answer has often been doubtful, because the two relevant sections of the Act seemed pretty well to contradict each other. It is to be hoped that it will be possible to answer the question with more confidence in the future.

Death duties are a tax on the property or a man as it stood when he died, and arise by reason of the fact that he did die; legatees pay nothing. Shortly after the principal Act on death duties came into force in 1894 the law was altered so that gifts made by a testator on his deathbed could be treated for tax purposes as though they were still part of the dead man's property at his death. Thereafter lawyers have continued to discover ways in which gifts could be made prior to death without attracting tax, while the law has been amended again and again to make it effective from the point of view of the revenue authorities, for instance, by extending the period that must intervene between the date of the gift and that of the death, if the gift is to escape death duties (and it is now five years), till there is quite a large mass of legislation on this one aspect of the law. It is rather horrifying that to clear up doubts as to how an object given, which has ceased to be the property of the donee before the testator died, was to be valued for tax purposes, a section containing nineteen subsections, in all about 3000 words, was required.

The main feature of the 1957/58 budget was the introduction of the Overseas Trade Corporation (the "O.T.C."). Mr. Dale has dealt with this piece of legislation very thoroughly in Vol. XII No. 2 of the Bulletin. Perhaps it might be added that the O.T.C. is the wish-child of the recent Royal Commission on the Taxation of Profits and Income. Forty years ago and again within the last ten years (but in future it will probably happen more frequently) a committee composed of twelve to fifteen persons, experienced in various walks of public life, has been set up to examine all the existing legislation dealing with taxes on income and profits, and to report its findings direct to Parliament. The members of the Commission were not expected to have

preconceived ideas regarding any matters requiring reform, but to listen to, and examine, the views and the suggestions put forward by complainants who submitted that the law operated unduly harshly in the case they had in mind or discriminated against them unfairly, and wanted to have it reformed. Officials provided by the Chancellor gave the Commissioners facts and figures they asked for in order to enable them to judge the correctness of the complainant's statements. The Commissioners thus had two functions, first, a judicial one of satisfying themselves that the complainant had proved that a wrong existed that should be remedied: and secondly, a legislative one of propounding what should be the remedy.

This procedure works admirably if the matter dealt with is fairly small; but it seems that on a vast subject like the principles of taxing foreign income the method of enquiry followed by proposals for legislation may not perhaps be so successful. Having heard complainants the Commissioners drew up their report; they began with the general principles adopted by other countries. They noted that under our law a company, (generally) incorporated in this country, is regarded as operating at the point, say London, where its directors regularly meet, but that *all* the profits of such a company from *its* operations, wherever carried out, are treated as subject to United Kingdom income tax. They noted further the obverse of this proposition, that if directors of a company, incorporated abroad, meet regularly abroad to conduct its operations, none of its profits (unless they are earned in this country) will be subject to United Kindom income tax. The profits of a foreign company, though it is owned by a British company (wholly or in part), are not taxable in this country; what is taxable is the distributions (e.g. dividends) made out of those profits, when they become part of the income of the British company.

As an abstract proposition there is everything to be said in favour of the view that profits should only be taxed once, even where they are earned in one country and ultimately become the income of someone in another country; and most people would agree that the one tax should be assessable where the profits are earned. The operation of our system of granting double taxation (or unilateral) relief by crediting (by giving a credit for) tax already paid abroad against the domestic liability does meet these two requirements, at least where the tax paid abroad is more than, or about equal to, the tax payable at United Kingdom rates. But the credit system fails to give the relief in the case, which is now becoming more and more common, of income received from a country which has undertaken not to tax, or to tax at very low rates, profits earned there by subsidiaries of foreign companies as an inducement to experienced industrial firms to establish new industries in that country. Under the credit system the result is that the whole of the bait is gobbled up by the revenue authorities. The only answer would have been to suggest that such income should be taxed at lower rates than the standard rate, but it is doubtful whether any Government, in view of the great need for revenue, would have agreed to new legislation on these lines. Driven by the nature of their functions to suggest some remedy the Commissioners seized on the exclusively foreign-operating, but domestically controlled, British company, as a solution. Canada knows such comanpies under the name of "foreign business corporations", and the United States taxes "Western Hemisphere trade corporations," which are similarly limited to a particular geographical area, at lower rates than other companies. The question whether at any rate European countries will allow branches to be established in their countries, the property of which is ultimately controlled by persons not amenable (at least directly) to the jurisdiction of their courts, as freely as they permit foreign investors to form subsidiaries, never seems to have been considered.

The result is we now have a series of enactments which has added 17 pages of law to the Statute book (about 10,000 words) and another 17 pages of

"schedules", which are directives to the main law, printed in rather smaller type (I estimate they involve another 12,000 words). Judges, revenue authorities and tax specialists will now have 22,000 more words of extremely complicated legislation to deal with; if material changes affecting large numbers of taxpayers had been made, the additional burden on all concerned might be justified. The difficulty is to see what advantages the foreign-operating company, as described by Mr. Dale, will have over the foreign subsidiary, at least in the vast majority of cases. Double-taxation reliefs will apply, naturally, to all profits of such a company regarded as taxable in the United Kingdom, but there is no suggestion, as for instance in the United States legislation, of lower rates of taxation.

1958/59 Budget

The present Chancellor of the Exchequer, Mr. Heathcoat-Amory, who succeeded Mr. Thorneycroft a few months ago, does not propose to change the standard rate (42½%) or the scale of rates for surtax this year. The maxima for special allowances of various kinds to elderly persons are again raised. Something will be done, though the present proposals may be varied before they take shape as statute law, to strengthen the Revenue in its great struggle against what is called "dividend-stripping" (which can be discussed, if it proves interesting, later). Till 1956 it had been the rule for 150 years that a salary or a pension (for salaried service) was to be regarded as income arising where the employer was resident; and for most senior officials serving the Crown that was Whitehall. In 1956 new rules were made for salaries, but pensions remained under the old rules. From now on officials who have served the Crown abroad and wish to remain there as pensioners of the Crown for the remainder of their lives, will not be subject to United Kingdom income tax.

As I pointed out in my last Survey, the basic rules of income tax were operating fifty or sixty years before limited liability companies came on the scene. Fiscal legislation of the sixties of the last century, when limited liability companies were first given statutory recognition, made no special rules about them, treating persons, natural or juristic, alike. All paid tax at the standard rate, a company on all its income, an individual on all his income above the minimum amount. A company has always had to pay tax on all its income; if it distributed its remaining income, the shareholder was treated as receiving income already taxed at the standard rate. The shareholder bore the tax, the company, because it paid and recovered tax at the same standard rate, bore no tax on that income. In fact, though not in law, companies were treated as though they were large partnerships, the profits, so far as they were retained in the business being looked on as the income of a notional partner, i.e. the company itself. This system has not changed essentially since, although individuals are taxed to-day on a highly progessive scale (which necessitates a system of additional assessments on the rich and of repayments for those of small means).

Just before the war a special levy was made on businesses generally to help to pay for re-armament. In 1947 this levy was converted into an annual tax payable only by companies. The basis of the tax was not quite the same as income tax, but it was very similar; the tax was levied at two rates, the lower one (which last year was 3%) was applicable to profits which were not distributed, the higher one (which last year was 30%) was applicable to profits which were distributed. Companies, therefore, would normally pay 45.5% on profits retained and 30% on profits distributed, and the shareholder would pay income tax on any dividend he received at a rate depending on his personal income. It is now proposed to do a way with the two rates and substitute one rate applying whether the profit is distributed or not. The rate proposed is 10%, but between now and August, when the Finance Bill is read a third time and becomes the Finance Act 1958, much may be changed.

SURVEYS OF TAX LEGISLATION
APERÇUS DE LEGISLATION FISCALE

AUSTRIA

Period from May 1st until July 31st, 1958

Convention

Erlass: Abkommen mit dem Ausland zur Vermeidung der Doppelbesteuerung; Anwendung der Bestimmungen über den Progressionsvorbehalt. Amtsblatt 16.5.58, p. 291.

Income tax

Bundesgesetz vom 16.4.58, betreffend Abgabenbefreiung für Seeschiffahrtsunternehmungen (Seeschiffahrtsbegünstigungsgesetz). Amtsblatt 23.5.58, p. 297.

Bundesgesetz vom 10.7.58, mit dem das Einkommensteuergesetz 1953 und das Bewertungsfreiheitsgesetz 1957 abgeändert werden. BGBl. 19.7.58, p. 1345

Miscellaneous

Bundesgesetz vom 26.6.58, mit dem die Anlage A des Ausfuhrförderungsgesetzes 1957 eine neue Fassung erhält (Ausfuhrförderungsgesetz 1958). BGBl. 7.7.58, p. 1292.

Verordnung des Bundesministeriums für Finanzen vom 14.7.58 zur Durchführung des Beförderungssteuergesetzes 1953 (Beförderungssteuer-Durchführungsverordnung 1958). BGBl. Oesterreich, 30.7.58 p. 1466.

BELGIUM

Period from May 1st until July 31st, 1958

Impôts sur les revenus

Loi du 30.4.58 modifiant les lois coordonnées relatives aux impôts sur les revenus, en ce qui concerne le système de taxation forfaitaire et l'exercice d'imposition des associés actifs. Mon. Belg 11.5.58, p. 3797.

Droits de succession

Loi du 24.4.58 complétant l'article 149 du Code des droits de succession. Mon. Belg. 15.5.58, p. 3948.

Taxes assimilées au timbre

Arrêté royal du 22.5.58 modifiant le Code et le Règlement général sur les taxes assimilées au timbre. Mon. Belge 25.5.58, p. 4309.

Arrêté royal du 27.5.58 modifiant l'arrêté royal du 11.3.53 majorant le taux de la taxe de transmission à l'importation. Mon. Belge 1.6.58, p. 4519.

Arrêté royal du 30.5.58 modifiant le Code des taxes assimilées au timbre, Mon. Belge 1.6.58, p. 4520.

Droits d'accise

Arrêté royal du 22.5.57 coordonnant les dispositions légales relatives au régime d'accise des huiles minérales. Mon. Belge 31.5.58, p. 4466.

Arrêté ministériel du 29.3.1958 réglant l'exécution des dispositions légales

relatives au régime d'accise des huiles minérales. Mon. Belge 14.6.58, p. 4950.

Arrêté ministériel du 31.5.58 relatif au régime d'accise des bières. Mon. Belge 20.6.58, p. 5147

Droits de douane

Loi du 26.4.58 concernant le tarif des droits d'entrée. Mon. Belge 20.5.58, p. 4076.

Lois des 30.4.58 et 2.5.58 concernant les douanes et les accises. Mon. Belge 16/17.5.58, p. 3988.

Arrêté royal du 30.5.58 supprimant la perception du droit spécial exigé lors de l'importations de divers produits originaires de certain pays. Mon. Belge 9/10.6.58, p. 4817.

FRANCE *Period from May 1st until July 31st, 1958*

Généralités

Ordonnance no. 58-653 du 31.7.58 relative à diverses mesures d'ordre fiscal. J.O. 1-8-1958.

Droits d'enregistrement

Arrêté du 10.1.58 modifiant les dispositions de l'article 83 de l'annexe IV du code général des impôts relatif à l'emploi des machines à timbrer. J.O. 15.5.58, p, 4662.

Taxes de consommation

Décret no. 58-480 du 9.5.58 modifiant l'article 4 du décret no. 51-1259 du 5.11.1951 fixant les conditions d'application de l'article 6 de la loi du 23.5. 1951 portant dégrèvement de la taxe intérieure de consommation en faveur des carburants utilisés pour des travaux agricoles. J.O. 12/13.5.58, p. 4596.

Droits d'accise

Arrêté du 29.4.58 fixant les cours moyens de certaines eaux-de-vie pendant le premier trimestre 1958 et les nouveaux taux de la redevance prévue à l'article 384 du code général des impôts. J.O. 8.5.58, p. 4496.

Arrêté du 6.5.58 portant application de l'article 9 du décret no 55-594 du 20.5.1955 relatif à divers allégements fiscaux. J.O. 8.5.58, p. 4497.

Droits de douane

Arrêté du 9.5.58 portant modification de l'arrêté du 13.9.1948 fixant les quantitités de produits originaires du Maroc (ancienne zone française) à admettre annuellement en franchise des droits de douane dans le territoire douanier français. J.O. 11.5.58, p. 4566.

Arrêté du 30.5.58 portant modification de l'arrêté du 13.9.48 fixant les quantités de produits originaires de l'ancienne zone de protectorat français au Maroc à admettre annuellement en franchise des droits de douane dans le territoire douanier français et ouvrant un contingent exceptionnel d'importation en franchise de vins. J.O. 3.6.58, p. 5305.

Arrêté du 30.6.58 portant fixation du contingent et des conditions d'importation en suspension du droit de douane d'importation des linters de coton en feuilles. J.O. 12.7.58, p. 6540.

Décret no. 58-585 du 11.7.58 portant concession des droits de douane d'importation du tarif minimum en faveur de certaines marchandises originaires du Japon. J.O. 12.7.58, p. 6537.

Décret no. 58-607 du 18 juillet 1958 portant suspension provisoire de la perception du droit de douane d'importation sur les graines de ricin et réduction sur les graines de ricin et réduction provisoire de la perception du droit de douane d'importation sur les huiles brutes de ricin. Journ. Off. 19,7.58, p. 6725.

Ordonnance no. 58-642 du 29.7.58 relative au remboursement des droits de douane perçus à l importation de certains vins de consommation courante affectés à un circuit contrôlé et arrêté du 29.7.58 fixant les conditions d'application de cette ordonnance. J.O. 30.7.58, p. 7074.

Arrêté du 30.7.58 portant fixation, pour le deuxième semestre 1958, du contingent et des conditions d'importation en suspension du droit de douane d'importation de la dolomie frittée. J.O. 12.7.58, p. 6540.

Matières diverses

Loi no. 58-499 du 27.5.58 modifiant l'article 1455 du code général des impôts en vue de maintenir le bénéfice de l'exonération de patente en faveur des artisans et façonniers qui utilisent le concours d'un compagnon pour remplacer un fils effectuant son service militaire. J.O. 29.5.58, p. 5086.

Ordonnance no. 58-529 du 11.6.58 autorisant le ministre des finances à émettre un emprunt à capital garanti et bénéficiant d'exemptions fiscales. J.O. 14.6.58, p. 5586.

Ordonnance no. 58-548 et décrit no. 58-549 du 27.6.58 relatifs au régime fiscal de certains produits ou services d'utilisation courante (prorogation jusqu'au 30.6.1959). J.O. 28.6.58, p. 5992.

Décret no .58-557 du 28.6.58 relatif au régime fiscal de certaines ventes d'immeubles dans les départements d'outremer. J.O. 29.6.58, p. 6069.

Décret no. 58-558 du 28.6.58 relatif à l'instructution d'un régime fiscal de longue durée pour les entreprises minières dans les départements d'outremer. J.O. 29.6.58, p. 6069.

Arrêté du 19 juillet 1958 modifiant et complétant l'article 188 B de l'annexe IV au Code Général des Impôts. Journ. Off. 21. & 22.7.58, p. 6792.

GERMANY

Period from May 1st until July 31st, 1958

Conventions

Gesetz vom 16.6.58 zu dem Abkommen zwischen der Bundesrepublik Deutschland und der Südafrikanischen Union zur Vermeidung der Doppelbesteuerung bei den Einkünften aus dem Betrieb der Seeschiffahrt und der Luftfahrt. BGBl., II, 26.6.58, op. 158.

Erste Verordnung vom 19.6.58 und zweite Verordnung vom 24.6.58 zur Erneuerung des Zollzugeständnisses der Vereinbarung vom 29.6.56 zwischen der Regierung der Bundesrepublik Deutschland und der Regierung der Republik Chile über die zollfreie Einfuhr von Schilesalpeter in der Zeit vom 1.7.56 bis 30.6.57 (Zollkontingent für Chilesalpeter-1 u.z. Erneuerung. BGBl., II, 26.6.58, p. 163/4.

Income tax

Neufassung vom 26.4.58 der Einkommensteuer-Durchführungsverordnung. BGBl. I, 5.5.1958, p. 306.

Neufassung der Lohnsteuer-Durchführungsverordnung vom 13.5.58, BGBl., I. p. 375.

Verordnung von 20.5.58 zur Durchführung steuerrechtlicher Vorschriften des Gesetzes über Kapitalanlagegesellschaften. BGBl., I, 30.5.58, p. 381.

Entscheidung des Bundesverfassungsgerichts zu Vorschriften über die steuerliche Behandlung von Zuwendungen an politische Parteien. BGBl., I, 16.7.58, p. 447.

Gesetz vom 18.7.58 zur Änderung steuerlicher Vorschriften auf dem Gebiet der Steuern vom Einkommen und Ertrag und des Verfahrensrechts. BGBl., I, 23.7.58, p. 473.

Neufassung der Verordnung vom 16.7.58 über Steuervergünstigungen zur Förderung des Baues von Landarbeiterwohnungen. BGBl., I, 24,7.58, p. 523

3. Verordnung vom 16.7.58 zur Änderung der Verordnung über Steuer-

vergünstigungen zur Förderung des Baues von Landarbeiterwohnungen. BGBl., I, 24.7.5 p. 523.

Verordnung vom 19.7.58 über die Verlängerung der Steuerbefreiungen der Deutschen Genossenschaftskasse. BGBl., I, 24.7.58, p. 525.

Property tax

Gesetz vom 24.7.58 zur Änderung vermögensteuerrechtlicher Vorschriften. BGBl., I, 29.7.58, p. 538.

Equalization of burden law

22. Durchführungsverordnung vom 19.7.58 über Ausgleichsabgaben nach dem Lastenausgleichsgesetz. BGBl., I, 24.7.58, p. 526.

Neufassung vom 19.7.58 der 12. Durchführungsverordnung über Ausgleichsabgaben nach dem Lastenausgleichsgesetz. BGBl., I, 24.7.58, p. 533.

9. Gesetz vom 24.7.58 zur Änderung des Lastenausgleichsgesetzes. BGBl., I, 29.7.58, p. 537.

Turnover tax

Verordnung vom 16.7.58 zur Änderung der Verordnung zur Durchführung der umsatzsteuerrechtslichen Bestimmungen des am 15.10.54 abgeschlossenen Offshore-Steuerabkommens. BGBl., I, 24.7.57, p. 521.

Verordnung vom 16.7.58 zur Änderung de Verordnung zur Durchführung umsatzsteuerlicher Bestimmungen des Truppenvertrages und des Truppenzollgesetzes. BGBl., I, 24.7.58, p. 522.

Customs

2. Verordnung vom 12.5.58 zur Änderung der Erläuterungen zum Deutschen Zolltarif 1958. BGBl., I, 20.5.58, p. 338.

16. Verordnung vom 29.5.58 über Zolltarifänderungen zur Durchführung des Gemeinsamen Marktes der Europäischen Gemeinschaft für Kohle und Stahl (Überleitung in den Deutschen Zolltarif 1958) BGBl. ,I, 13.6.58, p. 392.

17. Verordnung vom 4.7.58 über Zolltarifänderungen zur Durchführung des Gemeinsamen Marktes der Europäischen Gemeinschaft für Kohle und Stahl (Harmonisierte Eisen- und Stahlzölle). BGBl., I, 11.7.58 p. 425.

Gesetz über die Anwendung der mit den Gesetzen über das Zweite bis Fünfte Berichtigungs- und Aenderungsprotokoll zu den Zollzugeständnislisten des Allgemeinen Zoll- und Handelsabkommens (GATT) veröffentlichten Listen XXXIII (Anwendungsgesetz) BGBl., II, 10.7.58, p. 202.

18. Verordnung vom 9.7.58 über Zolltarifänderungen zur Durchführung des Gemeinsamen Marktes der Europäischen Gemeinschaft für Kohle und Stahl. BGBl., I, 16.7.58 p. 441.

1. Verordnung vom 9.7.58 zur Änderung der Verordnung über die Befreiung saarländischer Waren von Eingangsabgaben. BGBl., I, 16.7.58, p. 442.

3. Verordnung vom 25.7.58 zur Änderung des Deutschen Zolltarifs 1958 (Schwefelkohlenstoff, Strohpappe usw.) BGBl. I, 2.8.58, p. 562.

Miscellaneous

Gesetz über die Feststellung des Bundeshaushaltsplan für das Rechnungsjahr 1958 (Haushaltsgesetz 1958). BGBl., II, 30.7.58, p. 234.

LUXEMBOURG *Period from May 1st until July 31st, 1958*

Impôts sur le revenus

Arrêté grand-ducal du 6.6.58, déterminant les modalités applicables aux bonifications ou remboursements d'impôt sur le revenu 1958, prévus par l'article 3 de la loi du 12.5.58 concernant le Budget des recettes et des dépenses de l'Etat pour l'exercice 1958. Mémorial du G-D de Luxembourg, 7.6.58, p. 787.

Taxes de consommation

Arrêté ministériel du 14.7.58 relatif au régime fiscal des bières. Mémorial du G-D de Lux. 28.7.58, p. 1044.

Droit de douane

Arrêté ministériel du 26.4.58 relatif au tarif des droits d'entrée. Mémorial du G-D de Lux., 9.5.58, p. 539.

Arrêté ministériel du 9.5.58, concernant les douanes et les accises. Mémorial du G-D de Lux. 17.5.58, p. 547.

Arrêté ministériel du 22.5.58, relatif au tarif des droits d'entrée. Mémorial du G-D de Lux. 6.6.58, p. 777.

Arrêté grand-ducal du 20.6.58, supprimant la perception du droit spécial exigé lors de l'importation de divers produits originaires de certains pays. Mémorial du G-D de Lux. 20.6.58, p. 819.

Matières diverses

Loi du 14.5.58 portant modification de la loi du 25.5.49 concernant la réorganisation de l'Administration des Contributions et des Accises. Mémorial du G-D. de Lux. 17.5.58, p. 1.

NETHERLANDS

Period from May 1st until July 31st, 1958

International tax law

Regulation for unilateral avoidance of double taxation. Ned. Stct. 26.6.58, p. 3.

Income tax

Decree of the Minister of Finance of 19.5.58 regarding re-introduction of investment allowance. Stb. Nr. 288.

Turnover tax

Decree re the refund of turnover tax. Ned. Stsct. 25.6.58, p. 3

Decree of 29.4.58, modification of regulations re turnover tax 1954 Stb. 560.

Decree of 3.5.58 modifying the royal decree of 27.12.56 (Stb. 650) re exemption from turnover tax for deliveries and services of social and cultural character Stb. 226-227.

Law of 6.6.58 approving the Royal decree of 10.10.57 (Stb. 390) re modification of the list of goods for which the turnover tax for imports is being increased. Stb. 285.

Decree of 19.7.58 remodification of the resolution in respect of turnover tax 1954 (Stb. 560).

Law of July 28, 1958 approving the Royal decree of February 4, 1958 modifying the Royal decree of December 21, 1954 which contains a list of goods for which the turnover tax on import is increased. Stbl. 360.

Excise duties

Tax on motor-vehicles. 60-day licences. Ned. Stct. 16.6.58, p. 5.

Execution of article 5, § 3 of the tobacco law (Stb. 1921, 712). Ned. Stsct. 30.6.58, p. 7.

Customs

Exemption from import duties and turnover tax for goods of educational, scientific or cultural character. Ned. Stct. 30.6.58, p. 6.

Miscellaneous

Modification of the interest due because of postponement or delay of tax payments. Ned. Stsct. 27.6.58, p. 1.

EIRE

Budget

When Dr. Ryan, the Minister for Finance in the Republic of Ireland, introduced his Budget, he announced no spectacular changes in taxation, indeed, hardly any changes at all. but he indicated some significant moves to bring the income tax system up to date. The Finance Bill will contain a series of clauses dealing with the treatment for tax purposes of husband and wife. Provision will be included also to enable a self-employed person or non-pensionable employee to obtain relief for payments made to secure a life annuity for himself in old age, and an adjustment of the law as to the assessment of life assurance companies will be involved.

Anti-avoidance provisions will be introduced in order to tax directors and employees on excessive provision made for them under supperannuation schemes. There will also be a similar attack on expenses payments and benefits in kind. On the other hand, the 100 per cent exemption from tax granted for five years for new or increased exports will be extended for a further five years. However, this relief will not in any case be extended beyond 1969-70. It is hoped to encourage home and foreign industrialists to build, extend and equip factories in the next few years for manufacture for export. As to the introduction of P.A.Y.E., Dr. Ryan said he would await the advice of the Income Tax Commission before reaching a decision. In the estate duty field, the law will be changed to secure that foreign duty payable on property situate outside the Republic shall not be deducted from the value of the property if the foreign duty is subject to a double tax agreement with the Republic.

Source: *The Accountant*, May 3, 1958.

GERMANY

Aufhebung der Aufsichtsratsteuer

Auf Seite 17 dieses Jahrganges haben wir einen Bericht über die Aufhebung der Aufsichtsratsteuer aufgenommen. Es hat sich herausgestellt dass dieser Bericht zu einem Misverständnis führen könnte. Es freut uns jetzt einen kurzen Aufsatz von Herrn Assessor *Wolfgang Arendt* aufnehmen zu können, der wie folgt lautet:

Mi grossem Interesse habe ich Ihre Mitteilung über die Aufhebung der Aufsichtsratsteuer in der Bundesrepublik Deutschland gelesen. Leider ist mir die von Ihnen angegebene Quelle nicht zugänglich. Ich glaube aber, aus den in dem Bulletin veröffentlichten Ausführungen entnehmen zu können, dass dem Verfasser die Gründe für die Aufrechterhaltung eines Steuerabzuges für ausländische Aufsichtsratsmitglieder nicht bekannt geworden sind. Ich möchte annehmen, dass Sie an einer Unterrichtung hierüber nicht uninteressiert sein werden und erlaube mir daher, Ihnen folgendes mitzuteilen:

Durch das Gesetz zur Änderung steuerrechtlicher Vorschriften vom 26.7.1957 ist zwar die Aufsichtsratsteuer als Quellenabzugssteuer für inländische Aufsichtsratsmitglieder beseitigt worden, hierdurch hat sich aber an der Höhe der steuerlichen Belastung der Aufsichtsratsbezüge von In-

ländern nichts geändert. Seit dem Erlass des Kontrollratsgesetzes No. 12 vom 11.2.1946 wurde nämlich die von der Gesellschaft einbehaltene Aufsichtsratssteuer in voller Höhe auf die bei der späteren Veranlagung des Steuerpflichtigen festgesetzte Einkommensteuer angerechnet. Mit dem Inkrafttreten des Gesetzes vom 26.7.1957, d.h. vom 6.8.1957 an, ist nun lediglich der Quellenabzug beseitigt worden. Die Bezüge fliessen damit dem Aufsichtsratsmitglied zunächst in voller Höhe zu; sie sind von diesem aber in die Einkommensteuererklärung mit aufzunehmen und werden bei der Festsetzung der Einkommensteuer nach wie vor erfasst und mit dem progressiven Einkommensteuertarif besteuert. (Wegen der Einzelheiten darf ich auf meinen Aufsatz in der „Zeitschrift für das gesamte Kreditwesen" 1957, Seite 650, Heft 16, vom 15 August verweisen.) Nach den Vorschriften des deutschen Einkommensteuerrechts unterliegen im Ausland ansässige Personen als beschränkt Steuerpflichtige nur mit bestimmten Einkünften der Besteuerung in der Bundesrepublik. Für Bezüge als Aufsichtsratsmitglied besteht eine Steuerpflicht nur, wenn diese Bezüge einem Quellenabzug unterliegen. Wäre nun die Aufsichtsratsteuer auch für ausländische Aufsichtsratmitglieder abgeschafft worden, so hätte dies dazu geführt, dass diese Personen mit ihren Bezügen von der deutschen Einkommensteuer völlig freigestellt sein würden. Dieses Ergebnis kann aber wohl nicht einmal im Interesse der internationalen Zusammenarbeit gefordert werden, da es vor allem gegenüber den unbeschränkt steuerpflichtigen inländischen Aufsichtsratsmitgliedern nicht zu vertreten wäre. Soweit die Besteuerung der ausländischen Aufsichtsratsmitglieder mit ihren Aufsichtsratsbezügen sowohl in der Bundesrepublik als auch in ihrem Wohnsitzstaat zu einer doppelten Belastung führt, muss der Ausgleich auf dem zur Vermeidung der Doppelbesteuerung üblichen Wege gesucht und gefunden werden. Tatsächlich enthalten auch die meisten Doppelbesteuerungsabkommen entsprechende Vorkehrungen; soweit derartige Abkommen noch nicht abgeschlossen sind, besteht in vielen Fällen die Möglichkeit, dass die in dem einen Staat gezahlten Steuern auf die in dem anderen — meist in dem Wohnsitzstaat — entstehende Steuerschuld angerechnet werden. Diese vielfältigen Vorschriften führen im allgemeinen zu einem fast vollstandigen Ausgleich der doppelten Belastung.

Die Beibehaltung des Quellensteuerabzuges auf Bezüge ausländischer Aufsichtsratsmitglieder führt damit nicht zu einer Schlechterstellung der Ausländer gegenüber den Inländern. Sie ist vielmehr nur geboten, um eine ungerechtfertigte Besserstellung zu vermeiden. Anderseits führt die in dem Gesetz vom 26.7.1957 ebenfalls vorgenommene Senkung des Quellenabzuges auf 30% der Bezüge zu einer tatsächlichen Besserstellung der ausländischen Aufsichtsratmitgliedern gegenüber denjenigen inländischen Aufsichtsratsmitgliedern, bei denen die Summe ihrer Einkünfte infolge der Progression des Einkommensteuertarifs einer höheren Belastung als 30% unterliegt.

Ich hoffe, mit diesem Hinweis den Vorwurf der Diskriminierung gegenüber Ausländern, der meinem Land in Ihrer Veröffentlichung gemacht wird, entkräftet zu haben.

PAKISTAN

New taxes

Presenting the 1958-59 Budget, the Finance Minister of Pakistan announced doubled duties on imported cars and spares. Other import taxes would be increased by varying amounts on a number of goods, including clothes, woollens, hardware, electrical and other instruments, etc.

The Profit Tax is to be continued and will not be allowed as a deduction for income tax purposes; a 12½ per cent tax is to be levied on the issue of bonus shares.

Source: *International Accountants' Journal*, March 1958

U.S.A.

Tax study

This spring, the United States Internal Revenue Bureau has published a tax return study which shows — to nobody's advantage but the taxpayer's — that nine out of ten Americans never claim all the deductions due to them and, in addition, never bother to keep carbon copies of their tax returns.

As a result the authorities last year summoned more than two million American taxpayers to justify their "returns".

"To avoid trouble", say the Revenue authorities, "everyone should keep a record of their returns".

It is, however, the forgotten claims — the claims hardly anybody bothers to make — that produce really intriguing reading.

It appears — according to the Bureau — that women are the real culprits in this respect.

It is possible, for instance, to make a claim for a tax reduction based on what is considered the fair market value of all goods such as clothes, home-made cakes and jams that have been contributed to local bazaars, church fêtes, etc., during the year.

A claim can also be made on donations made to almost any charities — even on the money subscribed on various flag days.

A claim can be admitted for the expenditure of purchasing altar flowers. Finally, any money spent on petrol taking the children (or any other member of the family) to the doctor, hospital or dentist should be detailed on the United States income tax return.

The study concludes by saying that the Internal Revenue Bureau "will be only too happy to make sure that you take full advantage of every allowance possible".

Source: *Taxation*, April 12th, 1958.

U.S. Mexico to resume tax discussions

Technical discussions are scheduled to be resumed in Washington in the near future between representatives of the Governments of Mexico and the United States, looking toward the conclusion of an income tax convention between the two countries for the avoidance of double taxation and the elimination of other tax obstacles to the international flow of trade and investment.

If bases for agreement are found, drafts of a proposed agreement will be prepared and submitted to the respective Governments for consideration. Interested persons in the United States who desire to submit suggestions for possible inclusion in such a convention should forward them to Mr. Dan Throop Smith, Deputy to the Secretary of the Treasury, Treasury Department, Washington 25, D.C.

Source: *Foreign Commerce Weekly*, March 24, 1958

III

UNITED KINGDOM - ORDINARY RESIDENCE

Court of Appeal—16th, 17th and 22nd July 1957

Miesegaes
v.
Commissioners of Inland Revenue

Income Tax—Ordinary residence—Income Tax Act, 1918 (8 & 9 *Geo. V. c.* 40), *Section* 46(1).

The Appellant, a Dutch national, was born in Amsterdam in 1933 *and was at all material times domiciled outside the United Kingdom. In August,* 1939, *he and his father came to the United Kingdom as refugees, and they remained here together until* 1946. *His father left the United Kingdom permanently in March,* 1946, *and died domiciled in Switzerland in July,* 1948. *The Appellant, however, remained at a boarding school in the United Kingdom until July,* 1951. *Up to his father's death he spent his school holidays with his father in Switzerland and thereafter partly in the United Kingdom and partly abroad. He went to Switzerland in August,* 1951, *and remained abroad at all material times thereafter. He did not at any time maintain a residence in the United Kingdom.*

For the purpose of exemption from Income Tax on the interest from certain British Government securities the Appellant claimed that he was not ordinarily resident in the United Kingdom for the years 1947-48 *to* 1951-52. *The Commissioners of Inland Revenue and, on appeal, the Special Commissioners refused the claim for each of the years in question.*

Held, *that the Special Commissioners had evidence before them on which they could reach their decision.*

Case

Stated under the Income Tax Act, 1952, Section 64, by the Commissioners for the Special Purposes of the Income Tax Acts for the opinion of the High Court of Justice.

1. At a meeting of the Commissioners for the Special Purposes of the Income Tax Acts held on 14th May, 1956, Mr. Stanly A. Miesegaes (hereinafter called "the Appellant"), being aggrieved by a decision of the Commissioners of Inland Revenue that they were not satisfied that he was not ordinarily resident in the United Kingdom for the years 1947-48 to 1951-52 inclusive so as to be entitled under Section 46 of the Income Tax Act, 1918, to exemption from Income Tax in respect of interest on certain British Government securities, made application to have his claim for relief under the said Section 46 heard and determined by us.

The sole question for our determination was whether in each of the years 1947-48 to 1951-52 inclusive the Appellant was or was not ordinarily resident in the United Kingdom for the purpose of the said Section 46.

2. The Appellant was born on 12th April, 1933, in Amsterdam of Dutch parents, and at all material times has had Dutch nationality and has been domiciled outside the United Kingdom. His parents were divorced prior to 1939 and his mother later married a Dutch national and has at all material

times resided in Holland. At all material times until his death the Appellant's father had the custody and control of the Appellant.

3. (1) On 26th August, 1939, the Appellant and his father came as refugees to England, where they remained together until 1946. During this period the Appellant and his father were treated as not ordinarily resident in the United Kingdom for Income Tax purposes. It was stated on behalf of the Respondents that they were so treated by virtue of an extra-statutory wartime concession; this was not admitted by the Appellant.

(2) In March, 1946, the Appellant's father went to live in Switzerland for reasons connected with his health, with the intention of establishing his permanent residence there. There he stayed for some months in a sanatorium, and thereafter lived at an hotel at Klosters, in which village he bought a plot of land and started to build a house for his residence. He died, domiciled in Switzerland, on 10th July, 1948, before the house was completed.

A bundle of correspondence containing copies of letters written by the Appellant's father was procuded to us and is annexed hereto, marked "A", and forms part of this Case [1]).

4. At the time of his father's departure for Switzerland (March, 1946) the Appellant, who was then nearly 13, was attending a preparatory school in England. He remained at this school until 1947, spending the holidays with his father, and in 1947 he went to continue his education at Harrow, where he remained, so far as concerns the ordinary school terms, until July, 1951. In September, 1951, he went to continue his education at a college in Switzerland. It was not contended that he was resident in the United Kingdom at any time thereafter.

5. After his father's death the question of the Appellant's guardianship in England was never determined. His mother was thought to be his guardian in Dutch law, but never acted as such in England, and his only visits to her in Holland during the relevant years were for one period of eight days in 1950 and three periods of seven, two and nine days respectively in 1951. He had an aunt who resided in England, and she and a solicitor (who were together administrators of his father's English estate) acted unofficially as his trustees during his minority. He also had a friend in England, Miss Symons, who had been nurse and companion to his father and governess to him. He had no residence of his own during the years in question and has not at any time maintained any residence of his own in the United Kingdom.

6. During the period covered by the financial years 1947-48 to 1951-52 inclusive the Appellant was at school in England during the normal school terms. He spent his school holidays during his father's lifetime living with his father in Switzerland, and after his father's death partly with Miss Symons at Walton, Surrey, and partly abroad. The periods spent abroad were as follows: —

July to September, 1948, in Switzerland;
December, 1948, to January, 1949, in Switzerland;
August to September, 1949, in France;
3rd to 11th April, 1950, in Holland at his mother's home;
24th August to 10th September, 1950, in Switzerland;
8th to 15th January, 1951, in Holland at his mother's home;
13th to 15th April, 1951, in Holland at his mother's home.

From 17th August, 1951, to 5th April, 1952, the Appellant was abroad, at college in Switzerland and at various other places, including Holland, where he visited his mother from 21st to 30th December, 1951.

---

[1]) Not included in the present print.

7. It was contended on behalf of the Appellant that:
(i) he was ordinarily resident with his father in Switzerland in the year 1947-48;
(ii) he was not ordinarily resident in the United Kingdom in any of the years in question.

8. It was contended on behalf of the Commissioners of Inland Revenue that:
(i) the capacity to form or pursue an independent intention was not essential to a person's becoming resident in this country;
(ii) if and in so far as intention or motive might be relevant, it appeared from the evidence that the Appellant's father, and later his guardians, had decided that he should complete a course of education in the United Kingdom lasting more than five years;
(iii) the evidence, and in particular the Appellant's sojourn in the United Kingdom for the greater part of each year whilst pursuing the said course, led to the conclusion, that he was resident here during each of the said years;
(iv) the Appellant's residence here was part of the regular and ordinary course of his life and he was ordinarily resident here in each of the years in question.

9. We, the Commissioners who heard the appeal, considered that we should first decide whether the Appellant was resident in the United Kingdom in each of the years in question, and second, if he was so resident, whether his residence had the quality of ordinary residence.

With regard to the first question, we found that the Appellant was resident in the United Kingdom in each year. One of the facts which we had to take into account was that except for the last year, 1951-52, he spent by far the greater part of his time in England. It was said on his behalf that his presence here during this period was for the special purpose of schooling; in our opinion that consideration did not in the circumstances of the case point very strongly to the conclusion that he was not resident here. With regard to 1951-52, the Appellant was here for over four months; this was in continuation of what we found to be his residence here for the previous four years and we found that he was resident in the United Kingdom for 1951-52 also.

We considered the second question in the light of our conclusion that the Appellant was resident in the United Kingdom for each of the five years, and we found that such residence was the ordinary course of the Appellant's life during his adolescence. In the light of all the evidence we found, and so far as it is a question of law we held, that the Appellant was ordinarily resident in the United Kingdom for each of the years in question, and we held that his claim failed.

10. The Appellant immediately upon our determination of the claim expressed his dissatisfaction therewith as being erroneous in point of law and in due course required us to state a Case for the Opinion of the High Court pursuant to the Income Tax Act, 1952, Section 64, which Case we have stated and do sign accordingly.

11. The question of law for the opinion of the Court is whether, in view of the facts hereinbefore set forth, our decision in paragraph 9 of this Case is justified.

R. A. Furtado
N. Rowe
} Commissioners for the Special Purposes of the Income Tax Acts.

Turnstile House,
94-99, High Holborn,
London, W.C.1.
19th November, 1956.

The case came before Wynn-Parry, J., in the Chancery Division on 26th and 27th February, 1957, when judgment was given in favour of the Crown, with costs.

Mr. John Foster, Q.C., and Mr. John Creese appeared as Counsel for the taxpayer, and Sir Frank Soskice, Q.C., and Sir Reginald Hills for the Crown.

Wynn-Parry, J.—This is an appeal from the Special Commissioners by way of Case Stated, they having upheld the decision of the Commissioners of Inland Revenue, who had taken the view that they were not satisfied that the Appellant was not ordinarily resident in England for the years 1947-48 to 1951-52 inclusive, so as to be entitled, under Section 46 of the Income Tax Act, 1918, to exemption from Income Tax in respect of interest on certain British Government securities.

In this Court the test which I conceive I have to apply is, I think, conveniently stated in the speech of Lord Warrington of Clyffe in *Lysaght* v. *Commissioners of Inland Revenue*, 13 T.C. 511. Lord Warrington of Clyffe, in the course of his speech. said (at page 536):

> "I have reluctantly come to the conclusion that it is now settled by authority that the question of residence or ordinary residence is one of degree, that there is no technical or special meaning attached to either expression for the purposes of the Income Tax Act, and accordingly a decision of the Commissioners on the question is a finding of fact and cannot be reviewed unless it is made out to be based on some error in law, including the absence of evidence on which such a decision could properly be founded."

In the same case Lord Sumner said (at pages 527-8):

> 'It is well settled that, when the Commissioners have thus ascertained the facts of the case and then have found the conclusion of fact which the facts prove, their decision is not open to review, provided (*a*) that they had before them evidence, from which such a conclusion could properly be drawn, and (*b*) that they did not misdirect themselves in law in any of the forms of legal error which amount to misdirection. My Lords, the word 'ordinarily' may be taken first. The Act on the one hand does not say 'usually' or 'most of the time' or 'exclusively' or 'principally', nor does it say on the other hand 'occasionally' or 'exceptionally' of 'now and then', though in various Sections it applies to the word 'resident', with a full sense of choice, adverbs like 'temporarily' and 'actually'. I think the converse to 'ordinarily' is 'extraordinarily', and that part of the regular order of a man's life, adopted voluntarily and for settled purposes, is not 'extraordinarily'. Having regard to the time and duration, the objects and the obligations of Mr. Lysaght's visits to England, there was in my opinion evidence to support, and no rule of law to prevent, a finding that he was ordinarily resident, if he was resident in the United Kingdom at all."

In the course of his opinion Lord Buckmaster said (at pages 533-4):

> "My Lords, the real question that arises in this case is whether the finding of the Commissioners that the Respondent was resident and ordinarily resident in England is a finding of fact which cannot be disturbed or whether it is open to examine the circumstances set out by the Commissioners for the purpose of seeing whether the conclusion they drew is one that this House will accept. The distinction between questions of fact and questions of law is difficult to define, but according to the Respondent whether a man is resident or ordinarily resident here must always be a question of law dependent upon the legal construction to be placed upon the provisions of an Act of Parliament. I find myself unable to accept this view. It may be true that the word 'reside' or 'residence' in other Acts may

have special meanings, but in the Income Tax Acts it is, I think, used in its common sense and it is essentially a question of fact whether a man does or does not comply with its meaning. It is, of course, true that if the circumstances found by the Commissioners in the Special Case are incapable of constituting residence their conclusion cannot be protected by saying that it is a conclusion of fact since there are no materials upon which that conclusion could depend. But if the incidents relating to visits in this country are of such a nature that they might constitute residence, and their prolonged or repeated repetition would certainly produce that result, then the matter must be a matter of degree; and the determination of whether or not the degree extends so far as to make a man resident or ordinarily resident here is for the Commissioners and it is not for the Courts to say whether they would have reached the same conclusion."

In *Thomson* v. *Minister of National Revenue*, in the Supreme Court of Canada, (1946) S.C.R. 209, at page 224, Rand, J., says this:

"The gradation of degrees of time, object, intention, continuity, and other relevant circumstances, shows, I think, that in common parlance 'residing' is not a term of invariable elements, all of which must be satisfied in each instance. It is quite impossible to give it a precise and inclusive definition. It is highly flexible, and its many shades of meaning vary not only in the contexts of different matters, but also in different aspects of the same matter. In one case it is satisfied by certain elements, in another by others, some common, some new. The expression 'ordinarily resident' carries a restricted signification, and although the first impression seems to be that of preponderance in time, the decisions on the English Act reject that view. It is held to mean residence in the course of the customary mode of life of the person concerned, and it is contrasted with special or occasional or casual residence. The general mode of life is, therefore, relevant to a question or its application."

With respect, I regard that passage, and particularly the last paragraph I have read, as accurately reflecting the view of the English Courts on the question of what is meant by "ordinarily resident".

It is, therefore, against that background that I have to consider the material before the Special Commissioners and the conclusions to which they have come. I may say at once that in my view the Special Commissioners had ample material before them to arrive at the conclusions to which they did come. I think that there is great force in what Sir Frank Soskice emphasised, namely, that the Appellant at the age of six was brought by his father to this country on 26th August, 1939, and that the father and the son remained in this country until March, 1946, before which date the father clearly had the volition of departing from this country and either taking his son with him or sending him here, and it is plain upon the facts set out in the Case that the Appellant and his father were ordinarily resident in this country over a period from 26th August, 1939, to March, 1946. Some difficulty was caused by the wording of paragraph 3 (1) of the Stated Case, because the Special Commissioners, having referred to the fact that the Appellant and his father came to this country in August, 1939, where they remained together until March, 1946, go on to say this:

"During this period the Appellant and his father were treated as not ordinarily resident in the United Kingdom for Income Tax purposes. It was stated on behalf of the Respondents that they were so treated by virtue of an extra-statutory wartime concession; this was not admitted by the Appellant."

Now, it is clear that the last sentence which I have read does not contain any finding of fact. The only finding of fact in the previous sentence is that

"the Appellant and his father were treated as not ordinarily resident in the United Kingdom".

But that does not preclude either the Special Commissioners or this Court from forming a view on the material to be found elsewhere in the Case as to whether or not in fact they were ordinarily resident in the United Kingdom for Income Tax purposes during the period from August, 1939, down to March ,1946.

The importance of approaching the matter by considering what happened between 1939 and 1946 is that what happens afterwards can be said, so far as the son is concerned, to be in continuity with what has gone before. It is true that in March, 1946, the Appellants' father went to live in Switzerland for reasons connected with his health, and also, as the Case finds.

"with the intention of establishing his permanent residence there."

Mr. Foster pressed upon me the argument that that was such a change in circumstances that I should have no regard to what had gone before but should start the investigation in the critical years, 1947-48 to 1951-52, without having in mind the stay of the father and son in this country up to March, 1946. I do not think it is right to do that. The Commissioners were entitled – and it is enough for me to say that the Commissioners were entitled if they thought fit – to take into account that earlier period, and, indeed, they say at the end that they have taken into account all the evidence before them. It may well be that they did take into account this earlier period, and during that earlier period the son was, at any rate during a part of it, at school, and by March of 1946 he was attending a preparatory school in England. It is clear beyond doubt that he stayed in England for the purpose of completing his training at that preparatory school with a view to going on, as he did go on, to continue his education at Harrow, where he remained, as the Case says, as far as concerns the ordinary school terms, until July, 1951.

This type of case does not appear to me like a case of domicile, where an infant's domicile will depend on what steps are taken by his father, and if the father changes his domicile, the domicile of the infant will change. This is a question of residence, and quite clearly the father and the son can have different residences and, indeed, as the authorities shown, one person – in this case the son – could have two residences. But to my mind the Special Commissioners were amply justified in treating the period which this boy, the Appellant, spent at school in this country as a period during which he was "ordinarily resident" in this country. Certainly I can find no justification for any interference with their conclusion upon that point.

Mr. Foster sought to divide the period in question in two, and I think he brought the first period by stages down to the end of the Easter term at Harrow, which ended on 1st April, 1949. But however one divides the period, it appears to me that, if I am right on the view which I take as to the first period, the case is *a fortiori* as regards the later period. In paragraph 6 there will be found set out the periods which the Appellant spent abroad during the years of assessment in question, and there is a finding that after his father's death he spent his school holidays partly with Miss Symons, who had been his governess, at Walton, Surrey, and partly abroad. The further one analyses those periods the more difficult, it seems to me, is it to quarrel with the decision of the Special Commissioners that the Appellant must be regarded as having been ordinarily resident in this country.

The only period which calls for any special mention is the last year of assessment, namely, the year 1951-52. The Commissioners held, in the result, that the Appellant was ordinarily resident during that fiscal year. They approached the matter in this way. They say at the beginning of paragraph 9 that they.

"considered that we should first decide whether the Appellant was resident in the United Kingdom in each of the years in question, and

second, if he was so resident, whether his residence had the quality of ordinary residence."

When they come to the year 1951-52 they find as a fact that the Appellant was resident in the United Kingdom for that year. They give as their reasons, or part of their reasons, that he was here during that year for over 4 ½ months and that that was in continuation of what they found to be his residence for the previous four years. I do not myself see any ground for quarrelling with that conclusion as being erroneous in law. Then the Special Commissioners, considering the question of whether the Appellant was ordinarily resident in the United Kingdom for that year, applied the test which seems to me clearly to be the right test: was he here in the ordinary course of his life during his adolescence? That is really applying the test referred to by Rand, J., in *Thomson* v. *Minister of National Revenue,* in the passage which I read earlier in this judgment.

It therefore comes down to this, that on the analysis which I have made of the material which was before the Special Commissioners, and bearing in mind the limitations upon this Court to interfere with conclusions of fact, and also the passages I have read from the speeches in the House of Lords in *Lysaght* v. *Commissioners of Inland Revenue,* I can see no justification for interfering with the decision of the Special Commissioners. The appeal, therefore, must be dismissed.

Sir Frank Soskice – Would your Lordship say it should be dismissed with costs?

Wynn-Parry, J. – With costs, yes.
Sir Frank Soskice. – If your Lordship pleases.

The taxpayer having appealed against the above decision, the case came before the Court of Appeal (Lord Evershed, M.R., and Morris and Pearce, L.JJ.) on 16th, 17th and 22nd July, 1957, when judgment was given unanimously in favour of the Crown ,with costs.

Mr. John Foster, Q.C., and Mr. John Creese appeared as Counsel for the taxpayer, and Sir Frank Soskice, Q.C., Sir Reginald Hills and Mr. Alan Orr for the Crown.

Lord Evershed, M.R. – I will ask Pearce, L.J., to deliver the first judgment.

Pearce, L.J. – This is an appeal from a judgment of Wynn-Parry, J., upholding, on appeal by way of Case Stated, a decision of the Special Commissioners that the Appellant was "ordinarily resident" in England for the years from 1947-48 to 1951-52 inclusive and was therefore not entitled to exemption under Section 46 of the Income Tax Act, 1918 from tax on the interest on certain British Government securities. The Appellant contends that, on the facts of this case, it is not possible properly to find that he was ordinarily resident in England during the years in question, and that therefore, as a matter of law, this Court should overrule the Commissioners' decision.

The Case Stated shows that the Appellant was born on 12th April ,1933, in Amsterdam, of Dutch parents. His nationality is Dutch and his domicile has never been English. His parents were divorced before 1939, and he was at all material times in the custody of his father. In 1939 he came with his father as a refugee to England. In March, 1946, the father went to live in Switzerland for health reasons, intending to make his home there permanently. There, after some months in a sanatorium, he moved to an hotel, and strated to build himself a house. Before it was completed he died in Switzerland on 10th July ,1948. When the father went to live in Switzerland the Appellant was nearly 13 years old. He was attending a preparatory school in England. There he stayed until 1947, when he went to Harrow. He spent his school

holidays with his father in Switzerland until his father's death, and thenceforth partly with his former governess in England but mostly abroad. He remained at Harrow until July, 1951. On 17th August, 1951, he went abroad, and continued his education at a Swiss university. Thereafter he has not lived in England. During the material years, therefore, it was only as a schoolboy at Harrow that he lived in England.

Mr. Foster's main argument is this. Such residence (assuming, but not admitting, that it can properly be called residence at all) cannot constitute ordinary residence. It has not the quality of ordinary residence. It is not voluntary residence; and it is institutional. If one asked a schoolboy. Mr, Foster argues, where he lived, he would never say that he lived at his public school. Although a person may admittedly have more than one ordinary residence, his school would never be one of them, In order to succeed in this appeal, he must establish that such residence by a boy at a public school cannot constitute an ordinary residence.

In the case of *Levene* v. *Commissioners of Inland Revenue*, 13 T.C. 486, Lord Cave, L.C., saids this, at page 505:

> "My Lords, the word 'reside' is a familiar English word and is defined in the Oxford English Dictionary as meaning to dwell permanently or for a considerable time, to have one's settled or usual abode, to live in or at a particular place'. No doubt this definition must for present purposes be taken subject to any modification which may result from the terms of the Income Tax Act and Schedules; but, subject to that observation, it may be accepted as an accurate indication of the meaning of the word 'reside'. In most cases there is no difficulty in determining where a man has his settled or usual abode, and if that is ascertained he is not the less resident there because from time to time he leaves it for the purpose of business or pleasure."

He then deals with various cases which have no bearing on the one before us, and continues, at the bottom of page 506,

> "It remains to be considered whether during the period in question the Appellant 'ordinarily resided' in the United Kingdom for the purposes of Section 46 of the Act, and I think that there was material upon which the Commissioners could answer this question in the affirmative. The suggestion that in order to determine whether a man ordinarily resides in this country you must count the days which he spends here and those which he spends elsewhere, and that it is only if in any year the former are more numerous than the latter that he can be held to be ordinarily resident here, appears to me to be without substance. The expression 'ordinary residence' is found in the Income Tax Act of 1806 and occurs again and again in the later Income Tax Act, where it is contrasted with usual or occasional or temporary residence; and I think that it connotes residence in a place with some degree of continuity and apart from accidental or temporary absences."

In *Lysaght* v. *Commissioners of Inland Revenue*, 13 T.C. 511, Lord Buckmaster said this, at page 534:

> "It could not, I think, be denied that, even although the Respondent had his home in Ireland, his sojourn in this country might be so prolonged as to place his residence here beyond dispute, but none the less I understand the judgment of the Court of Appeal to mean this, that they regard the purpose of his visits sufficient to show that he could not be regarded as resident. They state that it was not of his own free choice but in obedience to the necessities of his position in relation to the company of John Lysaght, Ltd., that he was over here, from which it would appear that the element of choice is regarded by the Court of Appeal as a factor of great, if not of final,

consequence in determining residence. In my opinion this reasoning is not sound. A man might well be compelled to reside here completely against his will; the exigencies of business often forbid the choice of residence and though a man may make his home elsewhere and stay in this country only because business compels him, yet none the less, if the periods for which and the conditions under which he stays are such that they may be regarded as constituting residence, it is open to the Commissioners to find that in fact he does so-reside, and if residence be once established 'ordinarily resident' means in my opinion no more than that the residence is not casual and uncertain but that the person held to reside does so in the ordinary course of his life."

Lord Buchmaster's remarks as to the exigencies of business seem equally applicable to the esigencies of education. Education is a large, necessary and normal ingredient in the lives of adolescent members of the community, just as work or business is in the lives of its adult members. During the years of youth education plays a definite and dominating part in a boy's ordinary life. In this case the school terms at Harrow dictated the main residential pattern of the boy's life. Education is too extensive and universal a phase to justify such descriptions as "unusual" or "extraordinary". It would be as erroneous to endow educational residence with some esoteric quality that must, as a matter of law, remove it from the category of residence, or ordinary residence, as it would be to do so in the case of business residence. The argument based on the institutional or compulsory nature of a boy's life at school is misleading. The compulsion is merely the will of his parents, who voluntarily send him to that school. It would be hazardous, and in my opinion irrelevant, to investigate whether adolescents are residing voluntarily where their lot is cast and how far they approve of their parents' choice of a home or school. The Appellant's argument might lead to the unreal conclusion that a boy whose parents were in the Far East and who was therefore boarded with a tutor, or at an educational establishment where boys remain all the year round, would not reside anywhere at all. The educational and institutional nature of the residence are, of course, factors to be taken into account; but it would be wrong to hold that such residence cannot be ordinary residence.

In a passage from *Lysaght's* case, which the learned Judge cited, Lord Sumner said, at page 527:

> "It is well settled that, when the Commissioners have thus ascertained the facts of the case and then have found the conclusion of fact which the facts prove, their decision is not open to review, provided (*a*) that they had before them evidence, from which such a conclusion could properly be drawn, and (*b*) that they did not misdirect themselves in law in any of the forms of legal error which amount to misdirection. My Lords, the word 'ordinarily' may be taken first. The Act on the one hand does not say 'usually' or 'most of the time' or 'exclusively' or 'principally', nor does it say on the other hand 'occasionally' or 'exceptionally' or 'now and then', though in various Sections it applies to the word 'resident', with a full sense of choice, adverbs like 'temporarily' and 'actually'. I think the converse to 'ordinarily' is 'extraordinarily', and that part of the regular order of a man's life, adopted voluntarily and for settled purposes, is not 'extraordinarily'."

Other apt passages from the opinions in that case were cited by the learned Judge, who then applied them to the facts of the case. In his view, the correct test is: Was the Appellant living in England in the ordinary course of his life during his adolescence? He decided that the Special Commissioners were entitled to find as they did. Mr. Foster complains that the learned Judge

based an argument on the fact that the son's presence in England during the relevant years was in continuity with what happened between 1939 and 1946. No inference should, he argues, be drawn from those years; or, if any inference be drawn, it should be an inference in his favour, since the Case contains nothing to guide one as to the quality of the Appellant's residence during those earlier years. But in my view the learned Judge drew no inference that he was not fully entitled to draw from the facts stated in the Case. He was entitled, as were the Commissioners, to look at the facts as a whole. The broad picture was this. The Appellant came to this country with his father as a refugee at the age of 6 years, and was educated at an English preparatory school. When he was 12 his father went abroad again bur left his son here during the school terms to continue his education in England and go on to Harrow. On those facts and the other facts in the Case Stated the Commissioners clearly had material on which they could find that the Appellant was ordinarily resident in England during his years at Harrow. It is impossible for us to interfere with that finding.

Mr. Foster had a subsidiary argument, that in respect of the year 1951-52 the Commissioners should not have found that he was ordinarily resident, since he was only residing here during the first 4½ months of that year and that therefore no tax should be payable on any interest received after the expiration of that period of 4½ months. But in making a decision on the fiscal year 1951-52 the Commissioners relied on the fact that the 4½ months' period was in continuation of the Appellant's residence for the previous years. and in my opinion they were entitled to find as they did. But Sir Frank Soskice, on behalf of the Crown, has very fairly said that, as an act of grace, they are prepared to abandon any claim to tax on interest paid after the Appellant finally left this country on 17th August, 1951.

For those reasons, I would dismiss the appeal.

Morris, L.J. – I entirely agree with the judgment that my Lord has just delivered. There is very little that I would wich to add.

It seems to me that the Special Commissioners were correct in their approach when they decided that first they should consider whether the Appellant was resident in the United Kingdom in each of the years in question and, in the second place, whether his residence had the quality of ordinary residence.

In regard to the meaning of "residence", we are guided by what Lord Sumner said in *Lysaght* v. *Commissioners of Inland Revenue*, 13 T.C. 511, at page 529, when he said that the meaning "is its meaning in the speech of plain men". In the same case Lord Buckmaster, at pages 533-4, said,

> "It may be true that the word 'reside' or 'residence' in other Acts may have special meanings, but in the Income Tax Acts it is, I think, used in its common sense and it is essentially a question of fact whether a man does or does not comply with its meaning."

I would consider that a boy who spent the greater part of the year at a public school was "resident" in the United Kingdom during such year. It was forcefully submitted by Mr. Foster that the Appellant was only here for a special and limited purpose. In considering questions of domicile, or in considering whether it is likely that when schooling is over a boy will or will not stay in this country and make it his home, it might be appropriate to regard his presence, or his continued presence, here as due to a special or limited purpose. I need say no more about that because that, in my judgment, is not the issue with which we are concerned. But during a period at school it seems to me that the purpose of being educated is neither special nor limited; it is the central purpose of the boy's career at that stage of his life. It is because it is desired to fulfil and achieve that purpose that the boy either stays here or comes here to reside for a period. It seems to me that

residence here is of the essence of the plan arranged for the body's upbringing. The scheme decided upon over the period of certain formative years of life was, in this case, that the boy should either stay here or come here in order to live and move and have his being in a public school during all the school terms. I should have thought, therefore, that residence here was not only a part of the scheme for his life during that stage of it but that residence here was the central and essential feature of the scheme.

Mr. Foster in his submission referred us to a passage from the speech of Lord Simonds in *Edwards* v. *Bairstow*, (1956) A.C. 14, at page 29. Lord Simonds said:

> ". . . it is universally conceded that, though it is a pure finding of fact, it may be set aside on grounds whih have been stated in various ways but are, I think, fairly summarised by saying that the court should take that course if it appears that the commissioners have acted without any evidence or upon a view of the facts which could not reasonably be entertained."

Mr. Foster's submission is that the view of the facts formed by the Special Commissioners is one that could not reasonably be entertained. I find myself unable to accept that submission or that view of the matter. In *Edwards* v. *Bairstow* Lord Radcliffe said this, at page 36:

> "If the case contains anything ex facie which is bad law and which bears upon the determination, it is, obviously, erroneous in point of law. But, without any such misconception appearing ex facie, it may be that the facts found are such that no person acting judicially and properly instructed as to the relevant law could have come to the determination under appeal. In those circumstances, too, the court must intervene. It has no option but to assume that there has been some misconception of the law and that this has been responsible for the determination."

Again, I can find here nothing *ex facie* which is wrong, and I cannot feel that any person acting judicially and properly instructed as to the relevant law could not have come to the determination now under appeal. Indeed, I should have thought, speaking for myself, that the decision of the Special Commissioners in this case was the inevitable decision.

It seems to me that there was ample evidence on which the Special Commissioners could arrive at their conclusion of fact. Even if it could be said that there are mixed questions of fact and of law, I see no error in the decision, That leaves, then, only the question as to whether the residence was ordinary residence. On the guidance given to us in the passages cited by my Lord from speeches in the *Lysaght* case, it seems to me that, in the language used by Lord Sumner at page 528, there was

> "evidence to support, and no rule of law to prevent"

a finding that the Appellant in this case was, in the years in question, ordinarily resident here. I therefore think that the appeal fails.

Lord Evershed, M.R. – I am also of the same opinion.

Lord Radcliffe in *Edwards* v. *Bairstow*, (1956) A.C. 14, at page 33, said:

> "I think that it is a question of law what meaning is to be given to the words of the Income Tax Act 'trade, manufacture, adventure or concern in the nature of trade' and for that matter what constitute 'profits or gains' arising from it. Here we have a statutory phrase involving a charge of tax, and it is for the courts to interpret its meaning, having regard to the context in which it occurs and to the principles which they bring to bear upon the meaning of income."

The same may no doubt be said of the phrase "ordinarily resident"; though those two words constitute an obviously simpler formula than that with which

the House was concerned in *Edwards* v. *Bairstow* and one which would be certainly commonly met in "the speech of plain men" and one less susceptible to argument. Moreover, the meaning of the words "ordinarily resident" has been stated in the passage to which my brother Pearce referred in the speech (for example) of Lord Buckmaster in the *Lysaght* case, where he said that the phrase means

> "no more than that the residence is not casual and uncertain but that the person held to reside does so in the ordinary course of his life."

That being so, the Appellant's case cannot, as it seems to me, be put higher than this: Could a tribunal – could the Special Commissioners in this case – applying themselves judicially to the task before them reasonably come to the conclusion to which they did come, that this boy was, during the relevant period, ordinarily resident in the United Kingdom? In my judgment, the proper answer to that question is in the affirmative.

I only add that the cases of *Levene* and *Lysaght* and the passages from the speeches in those cases cited at the beginning of his judgment by Wynn-Parry, J., and by my brethren in this Court seem to show that, these two words "ordinarily resident" having the meaning which they have "in the speech of plain men", the Courts will regard the question Aye or no, is an individual "ordinarily resident" here, as pre-eminently one of degree and therefore of fact. I therefore agree that this appeal fails and should be dismissed.

Sir Frank Soskice. – Will your Lordships say that the appeal should be dismissed with costs?

Lord Evershed, M.R. – Yes; and then it is no doubt recorded somewhere, for the comfort of Mr. Foster, that you have made a concession in regard to the last years?

Sir Frank Soskice. – Yes, my Lord, it either has been or will be.
Lord Evershed, M.R. – Very well. We need not trouble with that.
Sir Frank Soskice. – If your Lordship pleases.
(Solicitors: – Hardman, Phillips & Mann; Solicitor of Inland Revenue.)

Source: *Taxe Cases*, Vol. 37 – Part, 7 1957

BELGIQUE - SOCIETE ETRANGERE - ETABLISSEMENT EN BELGIQUE

COUR D'APPEL DE BRUXELLES, 17 décembre 1956

Taxe Professionnelle. – Matière imposable. – Société étrangère. – Condition préalable d'imposabilité en Belgique. – Avoir bénéficié en Belgique d'un revenu taxable.
Taxe Professionnelle. – Matière imposable. – Société étrangère. – Etablissement en Belgique. – Notion (Période avant 1938). – Société belge agissant en qualité de courtier non mandataire. – Fournissent en outre certaines prestations accessoires sans avoir le pouvoir d'engager la société étrangère – N'est pas un établissement de la société étrangère. – Société belge, en fait dépendante de la société étrangère. – Principal actionnaire et mêmes administrateurs. – Indifférent. – Société étrangère. – Non taxable.

L'article 31, § 1er, litt. a, des lois coordonnées, déclarant que sont redevables de la taxe les personnes physiques ou juridiques, les sociétés sans personnification civile et les associations de fait ou communautés qui bénéficient en Belgique de revenus désignés à l'article 25, même si elles résident à l'étranger ou dans la colonie, se borne à déterminer les personnes éventuellement redevables de la taxe et n'est, dès lors, d'application que lorsqu'est établie au préalable, l'existence d'un revenu taxable en Belgique dans le chef d'un résidant étranger.

Le fait qu'une société belge serait complètement dépendante d'une société étrangère est impuissant à démontrer l'existence d'un contrat de mandat conféré par la société étrangère à la société belge lui donnant pouvoir de conclure des marchés en son nom: il est indifférent, à cet égard, que la société étrangère possède elle-même la majorité des titres de la société belge et que les autres titres sont souscrits, pour la plupart, par les administrateurs de la société étrangère, qui sont en même temps administrateurs de la société belge, il n'en reste pas moins que, d'après leur constitution, les deux sociétés forment des personnes juridiques distinctes et indépendantes. Les prestations accessoires (encaissement des factures, formalités en douane, manipulations et surveillance des marchandises) qui incombent normalement à un courtier, d'après les usages, ne lui confèrent pas le pouvoir d'engager son commettant.

I. - *sur la recevabilité du recours:*

Attendu que le recours, régulier en la forme, a été introduit dans le délai légal;

II. - *au fond*:

Attendu que, aux termes des conclusions de la requérante, les seules cotisations restant en litige, après les dégrèvements accordès par la décision directoriale, sont les cotisations aux impôts sur les révenus (T.P. - C.N.C.) établies à charge de la requérante par le 12me bureau central des contributions à . . . . . sous l'article 506 du rôle de l'exercice 1938, par rappel de droits de l'exercice 1936, et sous l'article 138 du rôle de l'exercice 1939, par rappel de droits de l'exercice 1937, en fonction de bénéfices taxables arrêtés par la décision à 356.116 fr. 30 pour l'exercice 1936 et à 196.572 fr. 77 pour l'exercice 1937, (p. 35 et 53);

Attendu que ces cotisations ont été établies d'office, à défaut de déclaration et après consultation de la commission fiscale (p. 33 et 48);

Attendu que, suivant l'Administration, les bénéfices ci-dessus seraient ceux réalisés par la requérante, en Belgique, sur les opérations commerciales qu'elle y a traitées par l'entremise de la S.A. belge «A. . . . . » établie à A. . . . . ., et seraient taxables en vertu de l'article 31, § 1er, litt. a, des lois coordonnées;

Attendu que cette disposition légale, déclarant que «sont redevables de la taxe les personnes physiques ou juridiques, les sociétés sans personnification civile et les associations de fait ou communautés, qui bénéficient en Belgique des revenus désignés à l'article 25, même si elles résident à l'étranger ou dans la colonie », se borne à déterminer les personnes éventuellement redevables de la taxe et n'est, dès lors, d'application que lorsqu'est établie, au préalable, l'existence d'un revenu taxable en Belgique dans le chef d'un résidant à l'étranger;

Attendu qu'en l'espèce, s'agissant de bénéfices, d'une exploitation commerciale pousuivie par une société étrangère, ces bénéfices ne sont taxables que s'ils sont visés par les articles 27 et 70 des lois coordonnées;

Attendu que l'actuel article 27, § 4, des lois coordonnées, tel qu'il fut modifié par l'article 5, § 2, de la loi du 28 juillet 1938, donne une définition précise de ce qu'il faut entendre par établissement belge d'une entreprise étrangère; qu'en vertu de cette disposition «sont considérés comme établissements belges, *même en l'absence de toute représentation capable d'engager l'entreprise étrangère*, les sièges de direction effective, succursales, fabriques, usines, ateliers, agences, magasins, bureaux, laboratoires, comptoirs d'achat ou de vente, dépôts, ainsi que toutes installations fixes de caractère productif»

Attendu que les cotisations litigieuses par rappel de droits des exercices 1936 et 1937 ne sont pas régies par la loi du 28 juillet 1938 ,mais par l'ancien article 27, § § 1er et 4, et les articles 25 et 70 des lois coordonnées:

Attendu que cet article 27 assujettit à la taxe professionnelle les bénéfices des exploitations étrangères résultant de «toutes opérations traitées par leurs établissements belges ou à l'entremise de ceux-ci»; que d'autre part, l'article 70 considère les redevables étrangers comme soumis à la loi lorsqu'ils ont en Belgique «un ou plusieurs établissements quelconques, tels que sièges d'opérations, succursales ou agences»;

Attendu que la portée de ces dispositions légales a été nettement précisée, en ce qui concerne les sociétés étrangères, par un arrêt de la Cour de Cassation du 1er octobre 1934 (Pas. 1934, I, 401 et J.P.D.F. 1935, p. 35); que cet arrêt proclame la règle qu'il n'existe en Belgique de «siège quelconque d'opérations» d'une société commerciale étrangère qu'à la condition que l'établissement comprenne une représentation capable d'engager la société et qu'en conséquence ne sont point imposables en Belgique les bénéfices résultant d'opérations conclues à l'étranger, alors même qu'elles auraient été proposées ou exécutées en Belgique à l'entremise d'un agent quelconque»;

Attendu que par les pièces jointes à ses réclamations (farde 55 b) la requérante a apporté la preuve de ce que la société belge «A . . . . .» à A . . . . ., n'agissait pour elle qu'en tant que *courtier*, sans pouvoir de l'engager; que la société belge n'avait pas mandat de conclure des contrats de vente de grains au nom et pour compte de la société suisse; que les marchés, que cette dernière passait sur proposition de son courtier belge, étaient conclus par elle-même, en Suisse, même s'ils devaient s'exécuter en Belgique;

Attendu que la décision attaquée ne conteste pas cela, mais tente d'en énerver la valeur probante par les considérations que la société belge serait complètement dépendante de la société suisse et effectuerait d'autres prestations dans l'intérêt de cette dernière, qui dépassent la mission d'un simple courtier et permettent de conclure que la société belge n'est qu'une «filiale» ou un «organisme de vente» de la société suisse;

Attendu que ces considérations de fait sont impuissantes à démontrer

l'existence d'un contrat de mandat conféré par la société suisse à la société belge, lui donnant pouvoir de conclure des marchés en son nom; que pareil mandat – condition indispensable pour que la requérante puisse être assujettie à la taxe professionnelle en Belgique – est contredit par la conclusion des marchés par la société suisse elle-même, en Suisse;

Que s'il est vrai que la société suisse possède elle-même la majorité des titres de la société belge et que les autres titres sont souscrits, pour la plupart, par les administrateurs de la société suisse, qui sont en même temps administrateurs de la société belge, il n'en reste pas moins que, d'après leur constitution, les deux sociétés forment des personnes juridiques distinctes et indépendantes;

Que rien ne permet de conclure, en fait, qu'un marché transmis par la société belge devait nécessairement être entériné par la société suisses sous prétexte que les mêmes personnes ne pourraient pas ne pas confirmer comme organes de la société venderesse ce qu'elles avaient proposé comme organes de la société de courtage; que l'indépendance juridique des deux sociétés autorisait manifestement la société suisse à refuser éventuellement son exequatur à des marchés traités directement en son nom par la société belge, lorsqu'elle estimait ceux-ci non conformes à ses intérêts;

Attendu d'autre part, que les prestations accessoires (encaissement des factures, formalités en douane, manipulations et surveillance des marchandises), vantées par la décision, incombent normalement au courtier sur la place d'A . . . . ., d'après les usages, sans pour autant lui conférer le pouvoir d'engager son commettant;

Attendu que c'est dès lors à tort que la décision a maintenu les taxations dans le chef de la requérante, société suisse, des bénéfices sur les opérations conclues par elle en Suisse;

Par ces motifs, la Cour,

Statuant contradictoirement;

Entendu en audience publique le rapport de Monsieur le Conseiller Naulaerts et l'avis conforme de Monsieur Van de Vliedt, Avocat Général;

Reçoit le recours tel que précisé ci-dessus et le déclare fondé;

Annule, en conséquence, les cotisations litigieuses et condamne l'Etat belge, Département des Finances, à rembourser à la requérante toutes sommes qu'il aurait indûment perçues du chef des cotisations annulées et ce avec intérêts moratoires conformément à l'article 74 des lois coordonnées;

Donne acte à la requérante qu'elle se réserve d'opposer, s'il échet à l'Etat belge, la forclusion de son droit au recouvrement des impôts litigieux.

12e Ch. A. - *Prés.*: M. Rutsaert. - *Rapp.*: M. Naulaerts. - *Min. publ.*: M. Van de Vliedt, Avocat Général.

Note d'observation: Cet arrêt concerne l'ancien article 27 des lois coordonnées, actuellement modifié par l'article 5, § 2, de la loi du 28 juillet 1938. Le nouvel **article 27**, § 4, des lois coordonnées, répute établissements belges taxables même en l'absence de toute représentation capable d'engager l'entreprise étrangère les sièges de direction effective, succursales, fabriques, usines, ateliers, agences, magasins, bureaux, laboratoires, comptoirs d'achats ou de ventes, dépôts ainsi que toutes installations fixes de caractère productif. Une société étrangère n'est toutefois, actuellement encore, taxable en Belgique que pour autant qu'elle y possède, en propre, un établissement productif, c'est-à-dire susceptible de produire des revenus professionnels et filiale, juridiquement indépendante, n'est pas considérée comme tel.

Source: *La Revue Fiscale*, Nov.-Dec. 1957

IV

REVIEWS - COMPTES RENDUS

AUSTRIA

DR. KURT NEUNER und DR. OSKAR ZECHMEISTER: *Steuer-Index über Rechtsmittelentscheidungen, Erlässe und Schrifttum des Jahres 1957*. Wirtschaftsverslag Dr. Anton Orac, Graben 17, Wien I, 1958, 374 S.

Der *Steuer-Index* zählt bereits zum festen Bestand der einschlägigen Literatur, da er als verlässlicher Quellennachweis zeitraubendes Suchen erspart. Mit dem „Steuer-Index 1957" ist der fünfte Band des im Jahre 1954 erstmalig herausgegebenen Nachschlagewerkes erschienen. Die vorigen Bände wurden besprochen in „Bulletin" Bd. X, S. 231 und Bd. XI, S. 119 und 300. Der vorliegende Ausgabe wurde ein Gesamtstichwortverzeichnis für alle fünf Bände angeschlossen. Wer also aus der Zeit vom 1.1.1953 bis 31.12.1957 ein Erkenntnis, einen Erlass oder eine Zeitschriftabhandlung sucht, wird in diesem Stichwortverzeichnis einen unmittelbaren Hinweis auf den entsprechenden Jahrgang der bisher erschienenen fünf Bände finden. Da die Zitate ausführlich gestaltet worden sind, kann der Benutzer bereits auf Grund des Zitates erkennen, ob das Aufsuchen der zitierten Fundstellen für ihn zweckmässig ist oder nicht.

Dr. KARL FELLNER: *Stempel- und Rechtsgebühren, Grunderwerbsteuer, Erbschaft- und Schenkungssteuer*. Gesetze, Kommentar mit Entscheidungen, Bewertung, Bilanz- und Berechnungsbeispiele. *Ergänzung C zur 5. erweiterten Auflage*. (Stand vom 28 Februar 1958). Unter Mitarbeit von *Dr. Helmut Wildmoser*. Im Selbstverlag, Röntgenstrasse 4, Linz.

Ueber Ziel und Aufbau des Werkes orientiert die Besprechung in Bulletin Bd. XI, S. 122.

Die vorliegende Ergänzung C zur 5. erweiterten Auflage dieses Kommentars ist durch die Wiederverlautbarung des Gebührengesetzes 1957 notwendig geworden. Der neugefasste Text des Gesetzes wurde im ganzen eingefügt. In dieser Ergänzung C sind ferner die bis zum 31 Januar 1958 ergangenen VerwGH-Erkenntnisse und die bis zum 28. Februar 1958 ergangenen Erlässe berücksichtigt.

Dr. ERNST STRACK: *Das Umsatzsteuerrecht in Theorie und Praxis*. 2. Aufl. 3. *Nachtrag*, November 1957. Wirtschartverlag Dr. Anton Orac, Graben 17, Wien I.

Über Ziel und Aufbau dieses Loseblattwerkes orientiert die Besprechung in „Bulletin" Bd. XI, S. 121. Dieser dritte Nachtrag beinhaltet insbesondere: Steuerfreie Vorgänge in einer Zollfreizone; Einzelfälle steuerschädlicher und steuerunschädlicher Bearbeitungen und Verarbeitungen. Ferner enthällt diese Lieferung neue Blätter zum Auswechseln. In gewohnt übersichtlicher Weise sind alle Änderungen berücksichtigt worden.

Dr. RODERICH JIRESCH und Dr. JOSEF ZAPLETAL: *Das Gewerbesteuergesetz* samt den einschlägigen gesetzlichen Vorschriften und dem Durchführungserlass. Unter Berücksichtigung der Rechtsprechung mit Erläuterungen.

Zweite Auflahe. Manzsche Verlag- und Universitätsbuchhandlung, Kohlmarkt 16, Wien 1, 1958, 264 S.

Die Verfasser haben in diesem Werke den auf dem Gebiet der Gewerbesteuer für die Zeit ab 1. Januar 1954 geltenden Rechtsstoff wiedergegeben um den Praktiker und den Steuerpflichtigen eine Sammlung der auf diesem Gebiet bestehenden Vorschriften an die Hand zu geben. Es wurden die Vorschriften mit erläuternden Anmerkungen und Auszügen aus der Rechtsprechung des Verwaltungsgerichtshofes versehen. Der gesamte Rechtsstoff ist im vorliegenden Werk in drei Abschnitte geteilt. Der erste Abschnitt enthält das Gewerbesteuergesetz selbst, nebst erläuternden Anmerkungen und den Erkenntnissen des Verwaltungsgerichtshofes, der zweite Abschnitt enthält die Durchführungsbestimmungen, und der dritte Abschnitt bringt andere neben dem Stammgesetz noch geltende gesetzliche Spezialvorschriften und das Gewerbesteuerausgleichsgesetz.

Dr. RUDOLF REINHARD: *Das neue Grundsteuerrecht.* Rechtsvorschriften, Motivenbericht, Erläuterungen und Sachregister. Im Anhang: Zeitliche Grundsteuerbefreiung. Industrieverlag Peter Linde, Dominikanerbastei 10, Wien I, 1958, 77 S.

Das Grundsteuergesetz 1955 wird ab 1. Januar 1958 angewendet. Der Verfasser konnte daher nur in Anlehnung an die bisherige Praxis, unter Berücksichtigung der bisher erfolgten Rechtsprechung, soweit sie noch auf das neue Grundsteuergesetz anwendbar war den Stoff behandeln. Auch die Grundsteuerbestimmungen werden in diesem Buch an Hand der gesetzlichen Bestimmungen und der bisher gesammelten Praxis besprochen. Das Werk ist erschienen als Nr. 8 in der Schriftenreihe der *"Osterreichischen Steuer- und Wirtschaftskartei"*, Herausgeber *Dr. Ernst Fritsch.* Ein alphabetisches Stichwortverzeichnis erleichtert das Nachschlagen.

BELGIUM

MARCEL FEYE and CHARLES CARDIJN: *Procédure fiscale contentieuse.* 2e èdition avec la collaboration de Robert Roelandt. Etablissements Emile Bruylant, Rue de la Règence 67, Bruxelles, 1958, 476 pp.

Prof. Jean van Houtte drew attention to the first edition of this work in "Bulletin" Vol. 1, p. 228. He described it as one of the most important books about tax law which have appeared in Belgium. For the second edition the book has not only been enlarged from 240 to 476 pages, but has also been entirely re-edited. Not only the alterations in the legislation, but also the extensive case law made this necessary. In the first part the "Reclamations et recours" are dealt with. Here the administrative and legal treatment of direct, indirect, municipal and provincial taxes are described. In the second part the assessment, prosecution and superannuation are treated. The material has been divided into chapters and sections in a clear way. Much case law has been added.

ALBERT TIBERGHIEN: *Handboek voor Fiscaal Recht.* (Handbook for tax law). Instituut voor Financie- en Belastingwezen, Jozef II straat 153, Brussel, 1955, 479 pp.

This work, which is regularly kept up to date by supplements, has been written by Albert Tiberghien, professor in Tax Law at the "Sint Aloysius Handelshogeschool", editor of "Algemeen Fiscaal Tijdschrift" and of the "Instituut voor Financie- en Belastingwezen". The author has aimed at giving a comprehensive handbook of Belgian taxation. After the introduction in which i.a. is given a survey of the Belgian tax system, the administrative procedure and a number of general problems, the various taxes are discussed

systematically. In Book I we find the normal income tax, special income tax, those taxes which are put on a par with the income taxes; registration, succession and stamp duties, taxes put on a par with stamp duties, customs and excise duties. Book II deals with taxes payable to other institutions than the state, taxation in the Belgian Congo and exemption of taxes for international bodies. In Book III the principle "non bis in idem" has been treated. A very recommendable book for practitioners.

BRAZIL

TITO REZENDE: *Impôsto Adicional de Renda* ("Lucros Extraordinarios"). Vol. XXXII da Biblioteca da Revista Fiscal e de Legislaçao de Fazenda. Rio de Janeiro, 1957, 143 pp.

This is a handbook on the additional income tax levied in Brazil. Apart from the text of the act it contains numerous explanations and comments. Also the decisions of the ,,Divisão do Impôsto de Renda" and examples have been included. An extensive alphabetical index facilitates the use of the book.

TITO REZENDE e JAIME PÉRICLES: *Manual do Impôsto de Consumo*. Tomo I - IX. Vol. XXIV, da Biblioteca da "Revista Fiscal e de Legislação de Fazenda". Rio de Janeiro, 1951-1956.

These nine volumes, the index of which alone numbers 125 pages, deal with the Brazilian Sales Tax. It is a complete work with many explanations of the Act and case law. When necessary supplements are issued. Subscribers to the excellent periodical issued by the same publishers *"Revista fiscal y de legislaçao de Fazenda"* are not only kept posted as regards the Sales Tax but also with the other Brazilian taxes: Income tax, Stamp-duty, Customs-duty. It is a bimonthly publication in which statutes, articles, decisions and rulings in the field of taxation are currently published. The publication is divided into sections, one for each major tax. The Income Tax Section includes the decisions of the Tax Court and the rulings of the Income Tax Division of the Ministry of Finance. It is the standard reference work for the tax practitioner in Brasil.

TITO REZEINDE & JAIME PERICLES: *Consolidaçao das leis do Impôsto de Consumo* - (Directores Técnicos da "Revista Fiscal") - Decreto n. 26.149 de 5 janeiro de 1949. 3a. ediçâo, muito ampliada. Vol. XXIII da Biblioteca da "Revista Fiscal e de Legislaçâo de Fazenda" - Rio de Janeiro 1954, 392 pp.

This practical and comprehensive book contains the consolidated Sales Tax Act of Brazil. Besides 700 explanatory notes, all the regulations, forms, and an alphabetical index have been added.

CANADA

JOHN G. MCDONALD: *Canadian Income Tax. Ninth (cumulative) Supplement.* Butterworth & Co. (Canada) Ltd., 1367 Danforth Avenue, Toronto, 1958, 194 pp.

This Supplement incorporates all current amendments to the statute law and brings the case law up to April 8, 1958. All the statutory amendments and judicial decisions are fully integrated with the text of the book itself. They have received the same treatment as those referred to in the Text and, though slightly shorter in exposition, the comment and critical analysis takes the same form as that in the book. A review of *Canadian Income Tax* was published in "Bulletin" Vol. XI, p. 23.

JOHN MCDONALD: *Cases and materials on Income Tax.* Butterworth & Co. (Canada) Ltd., 1367 Danforth Avenue, Toronto, 1957, 695 pp.

This book of *Cases and materials* has been compiled by the author of *Canadian Income Tax*, a review of which has been published in "Bulletin" Vol. XI, p. 23. The case method of study has become widespread and the casebook a standard adjunct of legal instruction. For the student, the casebook serves as a portable and personal library: the principal cases of concern to him are always at his hand and readily available for study. The student thereby acquires experience in the direct use of the prime materials of the craft which he seeks to master. Although this book is intended primarily for students, many practitioners will find this collection of the reports of 140 leading cases, carefully edited to eliminate irrelevant matter, a useful and convenient addition to their home or office library. In addition to the cases reported, this book includes articles and extracts from other works and copious references to other cases and articles. The text is fully annotated to the Income Tax Act. The book is complete with table of cases, table of statutes and index.

DENMARK

JACOB LA COUR & AXEL WASS: *Skattelovene* - Gyldendalske Boghandel Nordisk Forlag, Kobenhavn 1955, 358 pp.

Diese Buch gibt eine Sammlung der Steuergesetze und -Verordnungen betreffs der Einkommen- und Vermögensteuern und der Steuer auf Immobilien, nebst der Texte der Doppelbesteuerungsverträge, wie diese im Steuerjahr 1955-56, galten.

EUROPE

Données statistiques à l'usage des organes du Conseil de l'Europe, compilées par le Secrétariat Général. (Statistical data for the use of the Council of Europe, compiled by the Secretariat-General). Conseil de l'Europe, de la Documentation, Strasbourg, 1958, 354 pp.

Le 22 septembre 1952, la commission de la Polulation et des Réfugiés de l'Assemblée Consultative du Conseil de l'Europe chargeait le Secrétariat Général de rédiger et de diffuser un «Recueil de statistiques européennes», destiné à permettre un meilleur jugement des conditions démographiques et de l'emploi en Europe et portant sur tous les aspects du fait européen, et cela en contact avec les différents organismes statistiques nationaux. Le présent cahier répond à cette préoccupation. Il sera remis à jour de temps en temps par des publications ultérieures.

Le régime fiscal du chiffre d'affaires et son incidence sur la productivité. Projet No. 315. Publié par L'agence européenne de productivité de l'Organisation Européenne de Coopération Economique, 2, rue André-Pascal, Paris-XVIe, 1957, 279 pp.

L'auteur de ce rapport est M. *Charles Campet*, docteur en droit. M. Campet a conduit son étude en deux temps. Tout d'abord, il s'est efforcé de rechercher in abstracto les liaisons qui peuvent exister entre l'assiette et le recouvrement des taxes sur le chiffre d'affaires d'une part, et le développement de la productivité des entreprises d'autre part. Puis il a essayé de confronter les résultats de cette étude abstraite avec les faits. Pour cela il a procédé à une analyse des systèmes de taxes sur le chiffre d'affaires des neuf pays qui ont déclaré s'intéresser au projet. L'ensemble de ses conclusions a été présenté sous forme de recommandations.

FEDERATION OF RHODESIA & NYASALAND

A. S. SILKE: *The 1957 Income Tax Legislation in the Federation of Rhodesia and Nyasaland*. Juta & Co., P.O.Box 30, Cape Town, 1957, 28 pp.

The Income Tax Amendment Acts passed by the Federal Assembly of the Federation of Rhodesia and Nyasaland have brought about some important changes in the Income Tax Act, 1954. In this booklet the new legislation is fully discussed with the use of practical illustrations. It consists of three parts: Rates of tax and rebates; 1957 amendments to the Income Tax Act, 1954; Text of the 1957 taxation legislation.

FRANCE

FRANCIS LEMEUNIER: *Pourquoi et comment constituer une Société Civile?* Collection «Ce qu'il vous faut savoir». Editions Delmas, 13 rue de l'Odéon Paris (VIe), 1958,

Suivant la méthode créée par l'auteur pour aider à la constitution des Sociétés, la Société Civile est ici étudiée selon le déroulement normal de sa constitution, non seulement du point de vue juridique, mais aussi, ce qui est particulièrement important à notre époque, du point de vue fiscal. Cet ouvrage comme les précédents du même auteur est plus qu'un guide: un véritable conseiller, et nous ne saurions trop le recommander à nos lecteurs. Du même auteur et dans la même collections: Pourquoi et comment constituer une Société en nom collectif, une S.A.R.L., une Société Anonyme. (compte rendus dans «Bulletin» Tome XI, p. 128 et XII p. 36/37).

J. -R. KAUFFMANN, H. EBRARD et J. -C. KAUFFMANN: *Les Taxes sur le Chiffre d'Affaires*. A jour au 1er Avril 1958. En vente chez les auteurs 12, rue Margueritte, Paris (17e), et chez les Editions Juridiques Lefebvre, 48, rue Cardinet, Paris (17e). 253 pp.

Les taxes sur le chiffre d'affaires sont une matière subtile, compliquée et savante. Guider le praticien et le contribuable dans leur labyrinthe est une tâche malaisée qui exige autant de connaissances que de clarté d'esprit et de méthode. Les auteurs de cet ouvrage sont abondamment pourvus des unes et des autres et en font profiter le lecteur. Après une étude analytique des taxes sur le chiffre d'affaires, ils examinent sous le titre «Questions de principe» toute une série de problèmes dont la seule table des matières fait saisir l'intérêt et la difficulté. La sûreté de leur information en fait des guides précieux. Ce livre aura certainement le succès qu'il mérite.

«*Droit Fiscal de la Propriété Industrielle, Littéraire et Artistique*» par ROBERT PLAISANT, JEAN LEBLOND et RENÉ BLANCHER. Librairies Techniques (Paris), 1958 (192 pages - 980.— frs).

Le droit fiscal français est commenté par de nombreux et excellents traités *analytiques*. Mais rares sont encore les ouvrages qui exposent d'une façon *synthétique* l'ensemble des règles fiscales se rattachant à une activité déterminée. De telles synthèses sont pourtant particulièrement nécessaires dans un pays où les diverses catégories d'impôts (directs, indirects, d'enregistrement) sont perçues par des administrations et soumises à des juridictions différentes qui ont conservé chacune une autonomie presque complète. Le petit volume qui réunit toutes les règles légales, jurisprudentielles et administratives ayant trait au régime fiscal de la «propriété intellectuelle» sera donc le bienvenu aux yeux de tous les praticiens qui éprouvent souvent de grandes difficultés dans ce domaine particulièrement complexe. Cela d'autant plus que les auteurs ont étudié certaines situations spéciales (p.e. inventeurs salariés, héritiers, exploitation de marques pharmaceutiques ou de films) qui comportent des difficultés spécifiques.

Mais l'intérêt de l'ouvrage n'est pas seulement pratique, il est aussi doctrinal. Les législation fiscales deviennent de plus en plus des instruments au service d'une politique économique; c'est une évolution qu'on peut certes

regretter (au nom du principe de l'égalité de l'impôt), mais que nous impose la structure même de notre économie. Encore faut-il que la rédaction des textes corresponde vraiment au but à atteindre, et surtout qu'ils aboutissent — dans des situations économiquement semblables — à des résultats sensiblement analogues. Or, seule l'étude synthétique — partant de données pratiques et économiques — peut répondre à cette question. En fait, l'étude de M.M. Plaisant, Leblond et Blancher démontre que la législation fiscale française — dans le domaine qui nous intéresse — n'est pas toujours cohérente, ni efficace. On regrette par moments que les auteurs se soient volontairement confinés dans une étude de documentation, au lieu de formuler des propositions de réforme précises.

Le domaine de la «propriété intellectuelle» comporte de nombreux problèmes d'ordre *international*; en fait, les auteurs ont consacré à cet aspect de la question plus de la moitié de leur étude.

Du point de vue du *droit comparé*, les auteurs ont insisté sur certaines particularités du régime fiscal français, telles que *l'exonération accordée à la cession de brevets* (No 22-45) ou la théorie de la «*qualité d'inventeur*» en matière de Taxes sur le Chiffre d'Affaires (No 110-113, 141). Notons en passant que l'ouvrage constitue un complément très utile au rapport — nécessairement beaucoup plus succinct — que présentera l'un des auteurs, le Professeur Plaisant, au Congrès de l'International Fiscal Association, en septembre 1958.

Mais c'est surtout le problème de la *double imposition* internationale qui préoccupe les auteurs. Presque la moitié de l'ouvrage (No 232-401) est consacrée à l'étude des conventions fiscales internationales signées par la France en matière de propriété intellectuelle. Plus importantes encore nous semblent les considérations sur les *règles autonomes* du droit international français, considérations que nous retrouvons à plusieurs endroits dans la première partie de l'ouvrage, sous le titre «*territorialité*» (No 64-71, 92-93, 100-102, 117-122, 169-173, 184-186, 190-192, 209, 213, 225). C'est ici où la législation et la jurisprudence françaises paraissent particulièrement fragmentaires ou incohérentes. Souvent les auteurs sont obligés de poser une question sans pouvoir y répondre.

Une remarque concernant la «localisation» — en matière de Taxe Proportionnelle — des revenus de brevets, procédés, marques, droits d'auteur, etc.: un inventeur domicilié en France qui concède l'exploitation de brevets etc., à l'étranger, est-il imposable en France? Les auteurs semblent vouloir répondre par l'affirmative, en faisant état de certains arrêts du Conseil d'Etat. (No 66). A notre avis, il faut se garder d'attribuer à cette jurisprudence une portée aussi générale. Les décisions citées semblent être basées sur la conviction que l'activité d'une personne physique ne peut s'exercer — du moins d'une façon constante — que dans le pays de son domicile. Cela peut être exact en ce qui concerne l'activité courante d'une profession libérale (ingénieur-conseil p. e.). Mais les revenus provenant de l'exploitation d'un droit intellectuel ont un caractère particulier qui les rapproche, à certains égards, des revenus d'un capital ; l'activité, source du revenu, n'est par nécessairement simultanée, elle peut avoir été exercée antérieurement à la réalisation du revenu, ou même par une personne autre que celle qui en bénéficie (héritier p. e.). Dans ces deux hypothèses, le pays où s'est exercée l'activité et celui où se trouve le domicile du bénéficiaire peuvent ne pas être le même. Appliquer aveuglément le critère du domicile même aux revenus provenant d'une activité non-simultanée équivaudrait à remplacer le principe de la territorialité par celui de l'imposabilité résidentielle — solution contraire au texte même de l'Art. 92 C.G.I. («. . . bénéfices réalisés en France . . .»).

Nous regrettons de ne pas disposer d'assez de place pour signaler les nombreuses questions que les auteurs ont eu le mérite de soulever et auxquelles ils s'efforcent de répondre dans la mesure du possible. Contentons-

nous de renvoyer nos lecteurs à l'étude de ce petit volume qui, à l'aide d'une méthode nouvelle, contribue très heureusement à faire la lumière dans un domaine particulièrement complexe et obscur du droit fiscal français.

Jean H. ROTHSTEIN, H.E.C.(Paris)

Dr. WILLI ALBERS: *Die Einkommensbesteuerung in Frankreich seit dem Ersten Weltkrieg.* Eine Analyse ihrer wirtschaftlichen, sozialen und administrativen Probleme. Kieler Studien No. 42. Institut für Weltwirtschaft an der Universität Kiel, Dusternbrooker Weg 120/122, Kiel 1957, 320 S.

Ein eingehendes Werk, in dem 36 Tabellen, 12 zusammenfassende Übersichten, und 7 graphische Darstellungen aufgenommen wurden und dazu noch 19 ausführliche Übersichten, verschiedener Art.

Das Buch will den Bedenken die man hegt, dass in der fiskalischen Literatur manchmal entweder die juristisches oder die wirtschaftliche Seite behandelt wird, entgegenkommen. Diese Arbeit will seine Synthese geben. Nach einer kurzen Betrachtung über den Aufbau des französischen Steuersystems, wobei wichtige Themen wie: Gerechtigkeit und Gleichmässigkeit, die politische, wirtschaftliche, psychologische, administrative und geschichtliche Seite zur Sprache kommen, folgt eine engehende Darlegung der Struktur und Entwicklung der französischen Einkommensteuer.

Es ist eine systematische Behandlung wobei die subjektieve- und objektieve Steuerpflicht besprochen wird, und die verschiedenen Ertragsarten und insbesondere die Grundlagen und das Bewertungsproblem, die besondere Beachtung des Verfassers haben.

Die Bedeutung dieses Werkes ist viel mehr als ein Kommentar auf das französische Gesetz als eine Folge der allgemeinen Gedanken und Prinzipien nachdenen der Autor das Gesetz ins Auge gefasst hat.

Les nouvelles modalités de recouvrement de la taxe proportionnelle sur le revenue des capitaux mobiliers - (Décret no. 57-661 du 29.5.57) A.N.S.A., 51, rue Pietre-Charron, Paris 8e., 1957, 34 pp.

In "Bulletin" Vol. XI, p. 199 The French *Décret* of 29 May 1957 about the application of § 1673 of the *Code Général des Impots* was announced. In July 1957 this explanation of the A.N.S.A. (Association Nationale des Sociétés par Actions) was ready. It contains three chapters about the assessment of the "taxe proportionnelle", the penalties and the regulations ruling for those who wish to complain of their assessment.

A.N.S.A. - *Fusions et divisions de sociétés* - Apports partiels d'actif - Régime fiscal - Association Nationale des Sociétés par Actions, 51, rue Pierre-Charron Paris (8e) 1957, 95 pp.

The fiscal aspect of the fusion of companies and related subjects has been treated already in two former A.N.S.A. brochures: nrs. 49 and 41. Since then many changes in the legislation have been introduced and moreover, the treatment of the whole subject in one brochure appeared desireable. 2. the division of companies, 3. the partial contribution, a part of the company is separated from the main body, 4. the partial contribution with complete fusion.

In the first part stamp-and-registration duties are discussed; special attention is devoted to the case that a foreign company is involved in the fusion. The application of section 210 of the Code Générale is seen, i.a. from the point of view of the company absorbed and of the absorbing company.

The *taxe proportionnelle sur le revenu des capitaux mobiliers* and the *progressive surtaxe* are also treated.

From the second part it becomes clear that division can be fiscally a fusion i.e. when the parts are fused into different companies.

In the last two parts the many situations that may arise are treated for all relative taxes.

A.N.S.A. - *La réglementation des changes* - Devises et valeurs mobilières étrangères. Avoirs à l'étranger. Avoirs étrangers en France - Association Nationale des Sociétés par Actions, 51, rue Pierre-Charron, Paris (8e) 1957, 84 pp.

In this publication the main theme has no fiscal character. However, it is of importance for our readers, that we make mention of it, because almost every foreigner who has something to do with French taxes comes into contact with currency provisions.

Algeria

Louis Broët: *Guide pratique des Impôts en Algérie. Mise à jour no. 20,* janvier 1958. Editions Le Messager, 2, Boulevard Carnot, Alger.

A review of this looseleaf work on taxation in Algeria was published in "Bulletin" Vol. XI, p. 220. *Supplement 20,* January 1958 containing a number of new pages has recently been published.

GERMANY

Dr. Edgar Lenski und Dr. Wilhelm Steinberg: *Kommentar zum Gewerbesteuergesetz. Lieferung 3,* Februar 1958. Verlag Dr. Otto Schmidt, Köln.

Durch das umfangreiche Stoffgebiet ist die Gewerbesteuer eine schwierige Steuerform die mannigfachen Änderungen unterworfen ist. Der vorliegende grosse Kommentar ist dank seiner Loseblattform ständig auf dem neuesten Stand von Gesetzgebung und Rechtsprechung.

Dr. Franz Scholz: *Bewertung und Besteuerung des Grundbesitzes. Lieferung 8,* Februar 1958, *4. Ersatz und Ergänzungslieferung.* Verlag Dr. Otto Schmidt, Köln.

Neben umfassender und systematischer Behandlung der Bewertung des Grundbesitzes, der Grundsteuer und des Grunderwerbsteuerrechts, sowie der Berücksichtigung des Grundbesitzes bei der Gewerbesteuer, Umsatzsteuer und Erbschaftsteuer, enthält dieses grosse Loseblattwerk auch die Darstellung der Vorschriften des Körperschaftsteuer- und des Vermögensteuerrechts, soweit es den Besitz von Grundvermögen oder den Grundstücksverkehr betrifft.

Wilhelm Kerscher: *Steuerratgeber 1957 für Wertpapierbesitzer.* Verlag Moderne Industrie, München 2, 1957, 99 S.

Dieses Buch unterrichtet den Leser über die Steuern mit denen er als Wertpapierbesitzer zu tun hat. Es handelt sich um kurz gefasste Notizen die für Laien bestimmt sind. Die Tabellen im Anhang in denen man die normale und besondere Tarife findet und das ausführliche Register tragen viel zur Brauchbarkeit dieses Büchleins bei.

Dr. J. Esser und Dr. H. C. M. Sturm: *Die heutige Steuerbelastung der gewerblichen Wirtschaft. Ergänzungsband.* Steuerlicher Belastungsvergleich zwischen Personen- und Kapitalgesellschaften. Heft 26 Band 5. Institut „Finanzen und Steuern", Markt 14, Bonn am Rhein, 1958, 31 S.

Die Schrift erweitert die in Band 1 bis 4 dieses Heftes niedergelegten Berechnungen der Verfasser über das Ausmass der steuerlichen Belastung der Unternehmen durch einen steuerlichen Belastungsvergleich zwischen Per-

sonen- und Kapitalgesellschaften und deren Anteilseignern. Sie behandelt ferner die Möglichkeiten einer Angleichung der Kapitalverzinsung bei der Kapitalgesellschaft an diejenige bei der Personengesellschaft und würdigt abschliessend die verschiedenen Vorschläge zur Beseitigung der Doppelbelastung der Ausschüttungen.

CARL HERRMANN, Dr. FERHARD HEUER, Dr. ARNOLD HEINING und OTTO VON SCHILLING: *Kommentar zur Einkommensteuer einschl. Lohnsteuer und Körperschaftsteuer*. 7. Auflage.
Lieferung 35, Dez. 1957, *Lieferung 36*, Mai 1958.
Verlag Dr. Otto Schmidt KG, Hohenzollernring 78. Köln.

Ausser allen wichtigen Gesetzestexten enthält das Werk auch ein umfangreiches Sachregister. Die bewährte Loseblattform hält den Kommentar stets auf dem laufenden. Fundstellen zu Rechtsprechung und Schrifttum sind übersichtlich in Registern angeordnet.

Lfg. 35 bringt die Kommentierung der § § 4, 5 und 34 in allen wichtigen Teilen auf den neuesten Stand. Sie berücksichtigt ferner einen Teil der durch das Ges. v. 26.7. 57 eingetretenen Änderungen.

Lfg. 36 erläutert im wesentlichen die Änderungen des EinkStG durch das StÄndG. v. 26.7.58.

Dr. WALTER HUBSCHMANN, Geheimrat ERNST HEPP und Dr. ARMIN SPITALER: *Kommentar zur Reichsabgabenordnung* und den Nebengesetzen. Verlag Dr. O. Schmidt, Köln.

Die Lieferungen 26, März 1958 und *27*, Mai 1958 zur 1. — 3. Auflage sind erschienen.

Internationale Bibliographie des Zollwesens von HERMANN MARTINSTETTER Industrie-Verlag Carlheinz Gehlsen G.m.b.H. vorm. Speath & Linde, Konstanz, 189 S.

Eine eingehende Bibliographie: 2781 Nummern, auf 189 Seiten. Die Einteilung ist folgende: A. Bibliographien (1-125), B. Allgemeine Werke (126-301), C. Geschichte (302-937), D. Organisation (938-1031), E. Ein- und Ausfuhrzölle (1032-1488), F. Zollpolitik (1489-2720), G. Zeitschriften (2721-2781). Jeder Teil ist wieder in Abschnitte eingeteilt. Bei den unter C. D. E und F erwähnten Stoffgebieten sind die vielen Länder, deren Literatur aufgenommen wurde, separat behandelt worden. Ein ausführliches Personenregister bildet den Schluss.

Handbuch der GmbH. - Praktische Rechtshilfe für die Organe der G.m.b.H. und ihre Berater von OTTO WILKE, Rechtsanwalt, Dipl. Kfm. KARL BERG, Wirtschaftsprüfer und Steuerberater, Dr. HELMUT GOTTSCHLING, Rechtsanwalt für Steuerrecht, Dr. MANFRED KUNKEL, Rechtsanwalt Regierungsrat a.D., Dr. H. DIETER KÖHLER, vorm. Syndikus bei der Centrale für GmbH Dr. OTTO SCHMIDT. Verlag Dr. Otto Schmidt KG, Köln 1957.

Ein sehr ausführliches Werk dem die Formulare noch beigefügt werden sollen. Es ist ganz auf die Praxis zugeschnitten. Es gibt keine wissenschaftlichen und theoretischen Darlegungen. Die Verfasser haben eigene abweichende Meinungen möglichst zurückgehalten um den Benutzern des Buches den Weg in die Praxis zu zeigen.

Das Buch is in vier Teile gegliedert:
1. Die GmbH von der Gründung bis zur Auflösung,
2. Das Rechnungswesen der GmbH,
3. Die GmbH im Steuerrecht,
4. Die GmbH im Arbeits- und Sozialversicherungsrecht.

Ein sehr eingehendes Kapitel bildet den fünften Teil. Das Steuerrecht ist von Dr. *Gottschling* behandelt worden. Nach einigen allgemeinen Betrachtungen wird zunächst die GmbH von der Gründung bis zur Auflösung besprochen. Man findet hier nicht nur die Gründung und die Gewinnberechnung behandelt, sondern auch die steuerrechtliche Position der Teilnehmer, Kapitaländerungen, die Schachtelvergünstigung, usw.

Das vierte Kapitel ist besondern Formen gewidmet, das fünfte den Organen und den Gesellschaften, der Lastenausgleich wird im sechsten Kapitel separat behandelt; die persönliche Seite für vielerlei Steuern im siebenten Kapitel, während zum Schluss zusammenfassend ein Vergleich mit anderen Rechtformen gemacht wird.,

Aktuelle Bibliographie zum deutschen Steuerrecht 1930-1945. Bearbeitet von Dr. jur. GÜNTHER FELIX und Dr. jur. ERNST PETER HEINEMANN - Vittorio Klostermann, Frankfurt am Main 1957, 363 S.

Es ist ein umfangreiches Werk, das dem Lehrer der Verfasser: Armin Spitaler gewidmet ist. Dass es sowohl für wissenschaftliche Arbeit als für die Praxis manchmal schwierig und sehr zeitraubend ist Literatur und Rechtsprechung über einen bestimmten Gegenstand zu sammeln wird jeder Herrn Dr. Oermann, Oberfinanzpräsident zu Köln, zugeben. In seinem Geleitwort weist er darauf hin dass ins besondere auf die Jahre 1930-1945 zurückgegriffen werden muss, weil in diesen Jahren in vielen Fällen der Ursprung desjenigen was später zur Entwicklung gekommen ist, liegt.

Der systematische Aufbau ist für ein derartiges Werk von entscheidender Beteutung. Darauf ist grosse Sorgfalt verwandt worden.

Eine Inhaltsübersicht gibt zunächst die Bibliographie, dann das deutsche Steuerrecht mit einer Ergänzung über das österreichische und schweizerische Steuerrecht. Das angeschlossene Inhaltsverzeichnis (15 Seiten) gibt die durchgeführte Systematik:

Allgemeine Fragen, Zusammenhang mit anderen Wissenschaften, enthält auch Geschichte, Wirtschaftslehre, Statistik usw. ferner die Steuerpolitik, Rechtsvergleichung, deutsche Werke über deutsches Steuerrecht, verarbeitet in einer tiefgehendes Systematik. Ein sehr eingehendes Stichwortverzeichnis, das auf die Nummern der Notizen verweist — Sie erreichen die respectabele Anzahl 10.948 — beschliesst die Arbeit.

Regierungsrat Dr. KOTTER: *Steuerstrafrecht und Steuerstrafverfahren*. Dr. Carl Wurm Verlag, Bahnhofstrasse 8, Straubing, 110 S.

In prägnanter Darstellung behandelt der Verfasser das Steuerstrafrecht und Steuerstrafverfahren unter Miteinbeziehung der einschlägigen Vorschriften des Strafgesetzbuches. Die Ausführungen sind klar und übersichtlich. Der Wortlaut der Bestimmungen ist mit angeführt. Insbesondere die Vorschriften über die Selbstanzeige werden erschöpfend erläutert. Die steuerliche Verantwortlichkeit des Beraters ist ebenfalls eingehend behandelt, sodass das Werk für Firmen und ihre Berater von besonderem praktischem Interesse sein wird.

Bewertung und Bilanzierung. Aktuelle Fragen. Band 2 der Reihe „Steuer und Recht" herausgegeben vom Institut für Steuerrecht der Rechtsanwaltschaft e.V. Sitz Bochum. Industria Verlagsbuchhandlung, Herne, 1958, 139 S.

Als erster Band der Schriftenreihe „Steuer und Recht" erschien im vergangen Jahr „Die Auslegung von Steuergesetzen" von Bundesfinanzrichter Dr. Hartz. (besprochen in „Bulletin" Bd. XI, S. 226). Der jetzt erschienene 2. Band behandelt Sonderfragen aus dem Steuer — Bilanz — Recht. Die folgenden Referate der „Steuerrechtlichen Arbeitswoche" Marburg a.d. Lahn 1957

sind enthalten: Oberregierungsrat Dr. Fritz Bubenzer: *Billanzänderung und Bilanzberichtigung unter Zugrundelegung Praktischer Beispiele*; Oberregierungsrat P. Herbert: *Der angemessene Pachtzins bei der Betriebsaufspaltung*; Syndikus Herbert Kummer: *Die Bilanzierung schwebender Geschäfte*; Rechtsanwalt Dr. August Kuna: *Aktuelle Abschreibungsfragen*; Oberregierungsrat Dr. Ritter: *Handels-, Steuer- und Gewerbesteuerbilanz*; Oberregierungsrat Dr. Ritter: *Verlustausgleich und Verlustabzug*; Rechtsanwalt Dr. Dr. van der Velde: *Herstellungs- und Erhaltungsaufwand*. Es wird eine lebendige und praxisnahe Darstellung geboten, die zudem noch durch zahlreiche Beispiele aufgelockert ist. Jeder Interessent wird den neuen Band mit Gewinn lesen.

Dr. GÜNTHER MAIER: *Die Zivilrechtliche Haftung des Steuerberaters gegenüber seinem Auftraggeber*. Michael Triltsch Verlag, Jahnstrasse 36, Düsseldorf, 1956, 118 S.

Vor dem ersten Weltkrieg gab es in Deutschland und vermutlich auch in anderen Ländern keine Steuerberater. Als aber nach 1918 die Steuern stark gesteigert und je länger je komplizierter wurden, entstand überall das Bedürfnis an Beratern in Steuersachen. Allmählich wurden gesetzliche Masznahmen getroffen und der Verfasser konnte in der Einleitung feststellen dass 88% der Steuerpflichtigen für die Einkommensteuer in Deutschland einen Steuerberater benötigen. Verfasser weist auf die grosze Bedeutung dieser Entwicklung hin, auch für die Steuerbehörden. Die zweiseitige Verantwortlichkeit war es, die den Verfasser zu seiner Arbeit veranlasste. In der Einleitung dieses Werkes werden zuerst die Begriffe „Steuerberater" und „Steuerberatung" untersucht und die Verantwortung nach drei Seiten hin: Auftraggeber, Steuerbehörden, und auch Kollegen gegenüber. Die Behandlung bildet den Hauptinhalt des Buches: die kontraktliche Beziehung mit dem Kunden, die Erfühlung der daraus sich ergebenden Verpflichtungen, die weiteren Pflichten usw. Die nicht-kontraktliche Verantwortlichkeit behandelt Kapitel III, während im vierten Kapitel die kontraktliche und nichtkontraktliche Verantwortlichkeit neben einander gestellt werden. Zum Schluss folgt eine eingehende Literaturangabe.

Dr. WILHELM HARTZ, Bundesrichter, und JOSEF OVER, Regierungsrat: *A B C - Führer Lohnsteuer*. Fachverlag für Wirtschafts- und Steuerrecht Schäffer & Co., Hackländerstr. 33, Stuttgart-O.

Die Lieferung 24 enthält im Stichwortteil Anpassungen an die Rechtsänderungen, die sich aus der Lohnsteuer-Durchführungsverordnung 1958 und der Verordnung über den Lohnsteuer-Jahresausgleich ergeben. Der zweite Hauptteil enthält die Lohnsteuer-Durchführungsverordnung 1958 und der Verordnung über den Lohnsteuer-Jahresausgleich ergeben. Der zweite Hauptteil enthält die Lohnsteuer-Durchführungsverordnung in der Fassung vom 26, März 1958 mit Hinweisen in kommentarmässiger Form, und im Anhang sind abgedruckt der Auszug aus der Einkommensteuer-Durchführungsverordnung, die Verordnung über den Lohnsteuer-Jahresausgleich vom 26. März 1958 sowie die neuen, ab 1. Januar 1958 geltenden Sachbezugswerte. Die Ergänzungen erscheinen jeweils nach Gesetzesänderungen oder Durchführungsbestimmungen. Bei aller Gründlichkeit sind sie so klar und knapp gehalten, dass der ABC-Führer Lohnsteuer stets das handliche und übersichtliche Nachschlagewerk bleibt.

Deutsche Steuergesetze. Rote Textsammlung mit Verweisungen und Sachverzeichnis. Loseblattausgabe. *Ergänzungslieferung Februar 1958*. 324 Seiten. Preis DM 4.50. - *Ergänzungslieferung April 1958*. 120 Seiten. Preis DM 2.—. - Hauptband, 13. Auflage, ergänzt bis April 1958: 2036 Seiten Taschenformat. In Leinenordner DM 21.—. Verlag C. H. Beck, Wilhemstrasse 9, (13b) München 23.

Die Ergänzungslieferung Februar 1958 enthält die Einkommensteuer DVO mit der Änderung vom 7.2.58, die Änderungen des Körperschaftsteuer- und des Gewerbesteuergesetzes vom 19.12.57, die Auslgeichsteuerordnung in der Fassung der 7. ÄnderungsVO vom 18.12.57 sowie die ab 1. Januar 1958 gültigen Lohnsteuertabellen.

Die April-Lieferung 1958 bringt die Lohnsteuer-DVO in der Fassung der 2. VO zur Änderung und Ergänzung der LStDV 1955 vom 26.3.58, die VO über den Lohnsteuer-Jahresausgleich in der Fassung vom 26.3.58 sowie die durch die 9. ÄnderungsVO vom 22.3.58 bewirkten Änderungen der USt-Durchführungsbestimmungen.

Gewerbesteuergesetz nebst Durchführungsverordnung, Einführungsgesetz (auszugsweise) und Verwaltungsanweisungen, erläutert von Dr. Walter Blümich, Walter Boyens, Werner Steinbring und Dr. Otto Klein. Verlag Franz Vahlen, Wildenowstrasse 6, Berlin-Lichterfelde-West, 1958, 860 S.

Mit dieser Neuauflage des seit langem vergriffenen Standardkommentars ist ein völlig neues Werk geschaffen. Welche Fülle neuen Materials verarbeitet werden musste, lässt schon die Umfangsvermehrung um annähernd 300 Seiten erkennen. Dieses Werk geht auf alle Fragen des Gewerbesteuerrechts erschöpfend ein. Die Rechtsprechung des Reichsfinanzhofes, des Obersten Finanzgerichtshofes, des Bundesfinanzhofes und, soweit erforderlich, auch die Finanzgerichte, sowie das Schrifttum sind nach neuestem Stande berücksichtigt. Es ist unmöglich, im Rahmen einer kurzen Besprechung auf weitere Einzelheiten einzugehen. Eine Durchsicht dieses grossangelegten, umfassenden Werkes lässt jedoch erkennen, dass es wohl kaum ein Problem auf diesem Gebiet gibt, auf das das Buch nicht in klarer, verständlicher Form eingeht. Es wird begrüsst werden, dass dabei auch abseits liegende, für weite Kreise aber nicht wenige wichtige Fragen erörtert sind. Zur leichten Orientierung trägt ein eingehendes, 82 Seiten umfassendes Sachverzeichnis bei. In seiner neuen Gestalt wird das Werk seinen Ruf als führender Standardkommentar zum Gewerbesteuerrecht weiter festigen.

Die Veranlagung zur Einkommensteuer und zum Notopfer Berlin für 1956. Einkommensteuergesetz und Einkommensteuer-Durchführungsverordnung mit Einkommensteuer-Richtliniern nebst Anlagen. Verlagsbuchhandlung des Instituts der Wirtschaftsprüfer, Cecilienallee 36, Düsseldorf, 1958, 752 S.

Diese Ausgabe fasst die für den VZ 1956 geltenden gesetzlichen Bestimmungen und Verwaltungsanordungen zusammen, um damit dem Benutzer umständliche Sucharbeit zu ersparen. Zu diesem Zwecke wurden die für den VZ 1956 massgebenden Bestimmungen der verschiedenen Änderungsgesetze in das EStG 1955 eingebaut. Nur vom VZ 1957 ab geltende abweichende Vorschriften wurden unter entsprechendem Hinweis auf ihren Inhalt und ihr Wirksamwerden durch Fussnoten berücksichtigt, um die Rechtsentwicklung aufzuzeigen. Aus dem gleichen Grunde wurden auch reine Ergänzungsvorschriften mit Wirksamkeit ab VZ 1957 unter entsprechender Kenntmachung in den Gesetzestext aufgenommen.

Der Bundeshaushalt. Heft 15, Band 7. Institut „Finanzen und Steuern", Markt 14, Bonn am Rhein, 1958, 73 S.

Die Schrift zeigt die Lasten auf, die aus der Vergangenheit übernommen werden mussten, behandelt anschliessend den Vollzug des Bundeshaushalt 1957 und würdigt dann kritisch den Bundeshaushaltsplan 1958. Diese Haushaltsanalyse kommt zu dem Ergebnis, dass die jetzt vom Bundesfinanzminister eingeleitete Finanzpolitik, die in Verbindung mit einer echten

Steuer- und Finanzreform sich „am Rande des Defizits" bewegt, als unverzichtbare Massnahme einer gesunden öffentlichen Finanzwirtschaft verwirklicht werden muss.

Grundlagen und Möglichkeiten einer organischen Finanz- und Steuerreform III. Heft 30, Band 3. Institut „Finanzen und Steuern", Markt 14, Bonn am Rhein, 1957, 63 S.

In den Jahren 1954 und 1955 hat das Institut in zwei Bänden die „Grundlagen und Möglichkeiten einer organischen Finanz- und Steuerreform" dargestellt. Die weitere finanzpolitische Entwicklung bis zum Ende der zweiten Wahlperiode des Deutschen Bundestags, die die Regierung der dritten Wahlperiode in ihrer Erklärung vom 29. Oktober 1957 zu der Ankündigung einer echten Steuer- und Finanzreform bewogen hat, hat das Institut veranlasst, erneut die für eine organische Lösung gegebenen Möglichkeiten, wie sie sich heute darstellen, zusammenzufassen. Dies ist in dem hier vorgelegten Ergänzungsband zu dem Heft 30 der Schriftenreihe geschehen.

Dr. Carl Koch und Björn Wolter: *Das Steuergeheimnis.* Systematik und Einzelfragen der Geheimhaltungspflichten der Finanzbehörden. Mit einem Geleitwort von *Prof. Dr. A. Spitaler.* Verlag Dr. Otto Schmidt, Köln, 1958, 188 S.

Dies ist — wie im Geleitwort erwähnt wurde — die umfassenste Arbeit über diesen Gegenstand: die diesbezüglichen Entscheidungen bleiben groszenteils innerhalb des Gebietes der Behörden und somit ist es von Wichtigkeit, dasz dem Leser nunmehr das ganze Stoffgebiet, ergänzt bis zum 1. Februar 1957 vorgelegt wird. Die Literatur wurde eingehend berücksichtigt. Das Literaturverzeichnis umfasst nicht weniger als 7 Seiten! Das Stoffgebiet ist in 7 Teile zerlegt, jeder Teil besteht wieder aus mehreren Abschnitten, wodurch man ein übersichtliches Ganzes erhielt. Anschlieszend an eine Einleitung wurde zunächst festgestellt in wiefern die Geheimhaltungspflicht geht, sachlich sowohl wie persönlich. Dem Paragraphen 22 Abs. 2 Abgaben Ordnung, der die Geheimhaltung auferlegt, wird ein besonderer Teil gewidmet; der 4. und 5. Teil behandlen diejenigen Fälle in denen von Daten wohl Gebrauch gemacht werden darf; der 6. Teil behandelt die Verletzung der Geheimhaltungspflicht. In dem 7. Teil kommen erwünschte Änderungen zur Sprache. Ausführliche Register beschlieszen das Werk.

Rudolf Kalthoff: *Rechtsmittelentscheidungen im Steuerrecht.* Dritte wesentlich erweiterte Auflage. Verlag Dr. Otto Schmidt, Köln, 1957, 150 S.

In den beiden ersten Auflagen dieses Handbuches zur Bearbeitung von Rechtsmitteln für Beamte, Richter und Steuerberater wurde dargelegt, wie von der Verwaltung und den Gerichten Rechtsmittelentscheidungen im Steuerrecht vorzubereiten und abzufassen sind. Es erschien aber wünschenswert, dass auch die Berater der Steuerpflichtigen eine gründliche Anleitung zur Bearbeitung ihrer Rechtsmittel erhalten. Daher bringt die 3. Auflage eine begrüssenswerte Erweiterung in dieser Hinsicht. Sie ist auf den neuesten Stand gebracht, letzte Erkenntnisse der Rechtsprechung und des Schrifttums sind sorgfältig nachgetragen worden.

Jakob Theis: *Die Ehegattensteuer.* 4. völlig neubearbeitete Auflage. Der Rechts- und Steuerdienst, Kölner Schriftenreihe zeitnaher rechtswissenschaftlicher Abhandlungen, Heft 37. Verlag Dr. Otto Schmidt, Köln, 1958, 73 S.

Im „Bulletin" Bd. XII, S. 101 haben wir die 3. Auflage dieses praktischen Führers durch die Übergangsregelung zur Ehegattenbesteuerung besprochen.

Jetzt ist das Buch nach dem gegenwärtigen Stand der Erkenntnisse (1958) völlig neu bearbeitet worden. Der Verfasser hat in dieser letzten Auflage das zentrale Problem der Übergangsregelung — die steuerliche Anerkennung von Rechtsverhältnissen zwischen Ehegatten, insbesondere von Arbeits- und Beteiligungsverhältnissen, und den Einfluss des ehelichen Güterrechtes auf die steuerliche Beurteilung — nach dem gegenwärtigen Stand der Erkenntnisse völlig neu behandelt.

JAKOB THEIS: *Praktischer Führer durch das Steuerrecht. 7.* Auflage. *16. Ers.- u. Erg.- Lfg. 24. Juni 1958.* Verlag Dr. Otto Schmidt, Köln.

Dieses Loseblattwerk bringt das Gebiet des gesamten Steuerrechts in einfacher Sprache, veranschaulicht durch Verwendung zahlreicher Beispiele, nahe. Die vorliegende *Lieferung 24* bringt die Darstellung des Einkommensteuerrechts auf den neuesten Stand. Die EinkStDVO und die EinkStRichtl. 1956/57 sind mitverarbeitet worden.

Dr. G. FELIX, Dipl.-Kfm. F. DREES, Dr. H. -J. FLICK, cand. jur. H. KROLLMANN und Dr. K. F. EVERDING: *Herstellungs- und Erhaltungsaufwand.* Eine Abgrenzung unter betriebswirtschaftlichen, handelsrechtlichen und steuerlichen Gesichtspunkten. Herausgegeben vom Fachinstitut der Steuerberater. Verlag Dr. Otto Schmidt KG, Köln, 1958, 102 S.

Die Unterscheidung von Herstellungs- und Erhaltungsaufwand is von erheblicher praktischer Bedeutung. Der Erhaltungsaufwand ist in voller Höhe in dem Kalenderjahr abzusetzen, in dem er geleistet worden ist; dagegen ist der Herstellungsaufwand auf die Gesamtsauer der betriebsgewöhnlichen Nutzung zu verteilen. Eine umfassende und systematische Darstellung dieses Problems bietet diese Broschüre die als Heft 38 der *Kölner Schriftenreihe „Die Rechts- und Steuerdienst"* erschienen ist. Den Autoren ist es gelungen, durch ihre neuesten Erkenntnisse viele Meinungsverschiedenheiten zwischen Behörden und Pflichtigen auszuräumen.

Schnellkartei des deutschen Rechts. Verlag Dr. Otto Schmidt, Köln.

Die „Schnellkartei des deutschen Rechts" ist die umfangreichste Sammlung von deutschen Gesetzestexten, Richtlinien und Verordnungen. Sie bringt die vollständigen amtlichen Texte einschl. der ergänzenden Bestimmungen und der dazugehörigen Nebengesetze. Fussnoten unterrichten über Fundstellen und den Zeitpunkt des Inkrafttretens. Die Loseblattform hält das Werk durch schnellste Berücksichtigung etwaiger Gesetzesänderungen stets auf dem neuesten Stand. Das Werk erscheint in 3 Reihen, Reihe III enthält Steuerrecht mit Lastenausgleich. Erschienen sind die *Lieferung 81*, Inhalt: 20. AbgabenDV-LA, Versch. Ergänzungen zum LA, DoppBestAbk. mit Kanada, Bewertung nicht notierter Anteile; *Lieferung 82*, Inhalt: 4. ASpG-DV, DoppBestAbk. Osterreich und Schweiz, EStER 1956/57, LohnSt-Jahresausgleich 1957, KStER 1956; *Lieferung 83*, Inhalt: EStDV 1956/57, Steuertabellen 1958.

Dr. LORENZ GÜRSCHING und Dr. ALFONS STENGER: *Kommentar zum Bewertungsgesetz und Vermögensteuergesetz. Lieferung 7, April 1958.* Verlag Dr. Otto Schmidt, Köln.

In diesem grossen Kommentar werden die beiden wichtigen, in engem sachlichen Zusammenhang stehenden Steuergesetze umfassend und erschöpfend behandelt. Die Loseblattform wurde mit gutem Grund gewählt, um das Werk in Anbetracht der im Fluss befindlichen gesetzlichen Regelungen stets auf dem letzten Stand von Gesetzgebung und Rechtsprechung zu halten. *Die Lieferung 7, April 1958,* 3. Ersatz- und Ergänzungslieferung, ist erschienen. Mit dieser Lieferung erhalten die Bezieher des Kommentars Titel-

blatt, Vorwort und Inhaltsverzeichnis zur zweiten Auflage, da jetzt ein Nachdruck erforderlich geworden ist.

SCHOLZ-BOYENS-WELL-HERRMANN-STEINBRING-STENGER-FELIX: *Bewertung und Besteuerung des Grundbesitzes. Lieferung 9, Mai 1958.* 5. Ersatz- und Ergänzungslieferung. Verlag Dr. Otto Schmidt, Köln.

Neben umfassender und systematischer Behandlung der Bewertung des Grundbesitzes, der Grundsteuer und des Grunderwerbsteuerrechts, sowie der Brücksichtigung des Grundbesitzes bei der Gewerbesteuer, Umsatzsteuer und Erbschaftsteuer, enthält dieses grosse Loseblattwerk auch die Darstellung der Vorschriften des Körperschafsteuer- und des Vermögensteuerrechts, soweit es den Besitz von Grundvermögen oder den Grundstücksverkehr betrifft. Dem Lastenausgleichsrecht ist ein besonders umfangreicher Abschnitt gewidmet. Dieses Buch ist ein wertvolles Hilfsmittel für alle diejenigen, die sich mit irgend welchen Fragen der Steuerbelastung von Grundstücken zu befassen haben. Die *Lieferungen 8 und 9* sind erschienen.

Steuerrechtsprechung in Karteiform. Verlag Dr. Otto Schmidt, Köln.

Das Werk ist die Fortführung der von Senatspräsident Mrozek begonnenen Sammlung höchstgerichtlicher Entscheidungen in Steuersachen, der „Mrozek-Kartei", die bis 1944 erschienen ist. Die StRK enthält als vollständige Sammlung: 1. die Entscheidungen des Bundesfinanzhofes, 2. Urteile des RFH von 1944 bis zu dessen Auflösung im Jahre 1945 und 3. die Entscheidungen des OFH in München. Die StRK wird besonders wertvoll durch den gleichzeitigen Abdruck der vollständigen Urteilsbegründungen mit dem Gesetzestext in einer kommentarähnlichen Form der Anordnung, besonders auch wegen der ausführlichen Register. Erschienen sind die *Lieferungen 75,* März 1958; *76,* April 1958.

Steuerberater-Jahrbuch 1957/58 - Herausgegeben im Auftrag des Fachinstituts der Steuerberater von Prof. Dr. ARMIN SPITALER, Köln, Verlag Dr. Otto Schmidt KG, Köln 1958, 571 S.

Der 9e Fach-Kongress der deutschen Steuerberater wurde vom 14-16. Oktober 1957 zu Köln gehalten. Die dort behandelten Gegenstände und noch viele andere, findet man in diesem Jahrbuch mit einem Vorwort von Prof. Spitaler. Wie gewöhnlich enthält das Jahrbuch viele wichtige Aufsätze sowohl über allgemeine als über spezielle Gegenstände. Unter den allgemeinen Gegenständen wird die Aufmerksamkeit gelenkt auf die moralischen Aspekte *(Josef Oermann),* Grundgesetz und Besteuerung *(Heinz Paulick),* Rechtssicherheit, Zweckmässigkeit und Gerechtigkeit im Steuerrecht *(A. Spitaler).* Als Sondergegenstände können genannt werden:

Vier Jahrzehnte Umsatzsteuer *(Walter Hubschmann)* Umwandlungs-Steuergesetz *(Conrad Böttcher)* Ehegattenbesteuerung *(Edgar Lenski),* welcher der Aufsatz von *Reinhard Kapp* sich einigermassen anschliesst; das Wirschaftsleben kommt in mehreren Aufsätzen zur Sprache. Ausserdem enthält das Buch noch drei wichtige Artikel von *Robert Fritsch* über die Gefahr fiskalischer Einseitigkeiten, *Franz Oswald* über Steuermilderungen und *T. Felmy* über Steuerstrafverfahren und Rechtsstaat.

Verlag der Steuertarife KG P. Wachsmann, Margarethenstrasse 28, M. Gladbach.

Im Verlag der Steuertarife sind erschienen: *1. Die amtlichen AfA-Tabellen* des Bundesministers der Finanzen. *1. Ergänzungslieferung 1958.* (besprochen in „Bulletin" Bd. XII S. 100) Diese Lieferung enthält 17 weitere Branchen die in die Grundausgabe dazwischen sortiert werden können. *2. Die Steuertarife* sämtlicher Steuergesetze 12. Auflage. *12. Ergänzungslieferung.*

A new book on international tax law - SCHMITZ, R. C. Albert, Kommentar zum Internationalen Steuerrecht der Bundesrepublik Deutschland, 2 Vol., Verlagsbuchhandlung des Instituts für Wirtschaftsprüfer GmbH, Düsseldorf 1957, 1 772 pages, 175,—DM.

International fiscal law is a stepchild of sciences though it is a highly interesting field. The great practical value for international economic relations is not yet generally acknowledged. Future development may show, that foreign taxes are a prominent factor of calculation.

Especially difficult is the situation in Germany excluded from international development for a long time. International tax law has progressed rapidly during and after the second world war. Under the leadership of the anglo-american states a worldwide net of double taxation treaties was knotted. Unilateral relief, mainly the credit against tax-system was introduced and extended by a number of nations. Some states even limited their tax liability in order to avoid double taxation. The Fiscal Committee of the League of Nations and of the United Nations has done valuable work, which still is far off unknown here. Especially the London and Mexico model drafts deserve more attention.

Therefore it becomes more and more difficult to compose such a comprehensive work as Spitaler did in 1936. Nevertheless since 1945 some outstanding books have been written in the field of international tax law such as the excellent work of Verlooren van Themaat and that one of Udina. Wells and Lenz reported about the American and Swiss situation. Valuable comment on treaties was given by Koch, (partly together with Rothstein resp. Ehrenzweig), further more by Locher and Dalimier.

Schmitz has commented international fiscal law, as far as the Federal Republic of Germany is concerned.

This first general part of his book circumscribes the title of the book and discusses some common problems. There are defined: international fiscal law, international tax law and double taxation. Ways and means to mitigate double taxation are explained as well as the collision of treaties and internal law. The last chapter of this part is a short survey on the problems of the European Coal and Steel Community.

In the second special part terms like Wohnsitz (domicile), gewöhnlicher Aufenthalt (residence), Geschäftsleitung und Sitz (head and seat), Betriebsstätte (permanent establishment) are defined corresponding to the internal German tax law and how they are changed through double taxation agreements. The influence of treaties on the subject of taxes and on the progressive taxation as well as the taxes to which agreements apply are discussed.

Then the scope of German taxes is prescribed and shown how they are limited by treaties. First the Einkommensteuer (income tax) and the Körperschaftsteuer (profits tax) are presented. The Einkunftsarten (different kinds of income) are enumerated and their limitation through agreements is determined.

In the same way the Notopfer Berlin, Vermögensteuer, Erbschaftsteuer, Gewerbesteuer, Grundsteuer and Lastenausgleich are commented. Special attention is drawn to questions of valuation. This part is finished with the description of formal tax law and tax penal law. At the end of the book there are the wording of tax law especially the treaties. And excellent register of tax cases is added. The detailed index has practical value for the reader.
Schmitz has done a diligent and industrious work. The task he has undergone has similar difficulties like Sysyphus.

He has gathered a lot of material which was widespread in a number of books which are not even simple to know and to get. The jurisdiction of the German tax courts is carefully reproduced. It is a pity that the foreign literature, which would have given many hints, is not considerated. The theme given by the title is exhausted by the book. Only the new German

Unilateral Relief (§ 34 c Einkommensteuergesetz) which is based on the credit against tax system was not commented in the book, perhaps due to difficulties in time. § 34 c Einkommensteuergesetz is one half of German double taxation law and therefore a great part of German international tax law. Nevertheless, valuable hints in this field are given in the general part of the book as for example the definition of corresponding taxes.

Due to Schmitz conception of the termination of tax law the German side of all problems is always discussed extensively, the foreign law and international development are sometimes neglected.

I admire the work that Schmitz has done. His book is a valuable contribution on German international tax law.

Dr. Hans FLICK, Köln

Saarland

Dr. R. KLEIN: *Das Recht des Saarlandes. Teil 6 : Steuerrecht.* Heft Nr. 4, April 1957: *Der Bilanzbuchhalter und Betriebsrechner.* Saarländische Verlagsanstalt, Ursulinenstrasse 1, Saarbrücken.

Ziel und Aufbau dieser vorzüglichen Blattei wurden in der Besprechung in „*Bulletin*" Bd. XII, S. 39 gewürdigt. Im vorliegenden Heft 4 ist das Bestreben in den Kapiteln O bis 5 in der Wiedergabe des Standes der Gesetzgebung (des Saarlandes) der Fachliteratur und der steuer-, wirtschafts-, arbeits-, un sozialrechtlichen Entscheidungen so vollständig zu sein, wie die Praxis es notwendig macht. In Kapitel 6 — Buchhaltung und Betriebsrechnung — sind die Begriffe „Vorfälle und Kosten" abgehandelt. Es folgen eine Reihe steuerlicher Themen, die von praktischer Bedeutung für Unternehmen im Saarland sind. Ihre Behandlung beruht auf der saarländischen Gesetzgebung, die in manchen wesentlichen, vor allem aber in den praktischen Auswirkungen nicht identisch ist mit der Steuergesetzgebung im Bundesgebiet.

GREAT BRITAIN

One Hundredth Report of the Commissioners of Her Majesty's Inland Revenue for the year ended 31st March 1957. Her Majesty's Stationery Office, London 1958, 215 pp.

In this report can be found many data. In the forword it is recalled that the first report appeared in 1857. Since then it has been extended continuously, this year with a survey of the tax administration especially important for foreigners for whom technical expressions in the literature and case law are often difficult to understand. A survey of alterations in tax law has been included. All the taxes are discussed separately in the appendices. A noteworthy book.

C. D. HARDING: *Green's Death Duties.* Fourth edition. Butterworth & Co. (Publishers, 88 Kingsway, London, 1958, 1092 pp.

Since the previous edition of this book appeared in 1952 (review in "Bulletin" Vol. VI, p. 226), important changes have taken place in death duty law. Save for a respite in 1955. the Finance Act of each year has brought many changes, some of them of major importance, to the statutory law, while the volume of case law has continued unabated. There has been a growing tendency in recent years to re-examine the fundamental principles of death duty law and to question interpretations of them which have enjoyed tacit acceptance for many years. All the developments have been dealt with in this new edition. One inevitable consequence is a considerable increase in the length of this edition as compared with its predecessor. This well established, authoritative book is a leading work on its subject. It can be thoroughly recommended to the man who needs a straightforward, up-to-date guide relating to the law and practice of death duties and will be welcomed as providing solutions to the problems arising out of this intricate subject. The law is stated in this volume as it existed on November 1st, 1957.

Overseas Trade Corporations. Explanatory Notes. Issued by the Board of Inland Revenue, Board's Library, New Wing, Somerset House, London W.C. 2, 1958, 36 pp.

The Finance Act, 1957, introduced a scheme giving certain relief from income tax and profits tax to Overseas Trade Corporations. Broadly speaking an O.T.C. is not charged to profits tax on its trading income and is not charged to income tax on its undistributed trading income but is required to account for income tax on dividends and other distributions made out of exempt trading income. These Notes explain the main features of the law and practice relating to Overseas Trade Corporations.

INCOME TAXES OUTSIDE THE COMMONWEALTH compiled by the *Direction of the Board of Inland Revenue*. Her Majesty's Stationery Office, P.O. Box 569, London E.E.1 *Second Supplement, January, 1958*. Price 15s. 0d. net.

A review of this very useful work was published in "Bulletin" Vol. XI, p. 145. There it was pointed out that this is a loose-leaf book, intended to provide a series of summaries of the income tax laws of selected countries. Part I (United States of America) and Part II (Republic of Ireland) were published together in 1956. The First Supplement, published in June 1957 revised the information given in those parts and added the first two notes on France and Belgium. The *Second Supplement* revises the information previously given and adds a further two notes on the Netherlands and the Federal Republic of Germany.

"Current Law" Income Tax Acts Service. Sweet & Maxwell, 3 Chancery Lane, London WC2.

In "Bulletin" Vol. XI, p. 144 a review of "Current Law" Income Tax Acts Service was published in which its merits were pointed out.

Release 46: May 5, 1958. The Finance Bill.

The Finance Bill was published on April 29 (Bill 104). This Release brings to subscribers the Income Tax, Surtax and Profits Tax provisions of the Bill, annotated with cross-references to the Income Tax Acts and Konstam.

Release 47: May 19, 1958.

This Release is principally concerned with further digests of Income Tax and Surtax Cases. It also includes a further Double Taxation Order, the Overseas Trade Corporation Regulations and the Extra-Statutory Concession in operation at December 31, 1956.

H. A. R. J. WILSON and K. S. CARMICHAEL: *Income Tax Principles*. 3rd edition. H.F.L. (Publishers), 10 Earlham Street, Cambridge Circus, London WC2, 1957, 180 pp.

The general principles and those matters affecting the average tax payer are clearly set out and explained in this book which is meant for students for the Intermediate Accountancy Examinations. After the introduction to the study of income tax, the book goes on to deal with o.a. the individual reliefs from income tax; the rules in the various schedules charging tax; capital allowances; the rules for deduction of tax at source; relief for losses; surtax; management expenses etc. Many examples are given throughout the book.

NICHOLAS KALDOR: *An Expenditure Tax*. Second impression. George Allen & Unwin Ltd., Ruskin House, 40 Museum Street, London, W.C. 1, 1958, 249 pp.

The ideas discussed in this book were first developed in memoranda prepared for members of the "Royal Commission on the Taxation of Profits and Income" in the course of 1951. This book examined the idea that the taxation of individuals should be based not on their income, but on their

expenditure. The idea in itself, as the author states in the Introduction, is not new. The book is divided into two part. The six chapters of Part I are concerned with Equity, Incentives and Economic Stability and Progress. All the practical and administrative aspects of a personal expenditure tax are relegated to Part II. This work is likely to stimulate thought amongst economists, politicians and others interested in economic and social questions.

INDIA

Taxation and foreign investment. A study of taxation laws in India in relation to foreign investments. National Council of Applied Economic Research, New Delhi, 1957, 164 pp.

This study deals with an investigation carried out in September 1956 about the impact of India's tax laws upon foreign investors. Full cooperation was received from both Government and private enterprise. The name of Mr. J. H. Th. Schipper of the Netherlands is mentioned in this connection. The problem is investigated from many angles in 16 chapters and is of importance also for other countries. The tables containing a comparison with other countries are interesting. Finally 28 recommendations, a questionnaire and an index have been included.

K. C. CHACKO: *The monetary and fiscal policy of India.* Vora & Co. Publishers Private Ltd., 3 Round Building, Kalbadevi Road, Bombay 2, 1957, 386 pp.

This is a study of the policies and problems relating to the Indian money, market, the Reserve Bank of India, the commercial banks, the cooperative banks, the rural credit organisation, the monetary system of India and the fiscal policy of the Government from 1939 to the present day. At a time when far-reaching economic changes are taking place in India, the book will be found interesting and valuable to the students of banking and finance both in India and abroad.

A. N. AIYAR & T. A. RAMACHANDRAN - *The Wealth-Tax Act. 1957* - Company Law Institute of India Private Ltd., 21, Thyagaraya Road, Madras 17, 1957, 127 pp.

This Act has been enacted after much opposition and several alterations. It was given retrospective operation from the 1st of April 1957. The commentary (104 pages) followed by "The Wealth-Tax Rules 1957" (23 pages) contains an introduction followed by an explanation of the sections of the Act. Parallel with the Act the book has been divided into eight chapters in which the material and the formal side are treated separately. The tax is levied in respect of the net wealth of every individual, Hindu undivided family and company. Foreign assets are excluded in the case of all persons "not resident" or "not ordinarily resident" in India. The net wealth has to be determined as on the valuation date according to the market value of the assets on that date.

A. N. AIYAR & T. A. RAMACHANDRAN - *The Indian Income-Tax Act, 1922* (Act XI of 1922) as amended upto 1st October 1957 with the Finance Acts of 1956 and 1957. Company Law Institute of India Private Ltd., 21, Thyagaraya Road, Madras 17, 1957, 120 pp.

In Part I of this work an Introduction is given (44 pages) in which the important alterations of the last few years are discussed. Further follow some interesting subjects in alphabetical order.

Part II contains a commentary on the sections of the Indian Income-Tax Act, 1922, as amended upto 1st November, 1957, (152 pages). Then comes the Finance Act, 1956 including legal measures.

Part III contains rules, notifications, orders, etc. (120 pp). Among them is an explanation of the possibilities of tax exemptions under certain special conditions.

IRELAND

H. A. R. J. WILSON & F. N. KELLY - *Irish Income Tax and Corporation Profits Tax* - H.F.L. (Publishers) Ltd., 10 Earlham Street, London WC2, 1957, 287 pp.

This work is a textbook for students and businessmen. The subject has been stated as simply as possible so that the principles are clear. The material has been divided systematically into 14 chapters. In the first chapter general subjects have been treated like: principles of assessment, circuit court judge, persons liable, the income tax year, the five schedules, collection of tax at source.

In the second chapter the relief and allowances are discussed.

Every schedule is treated in a separate chapter. There are special chapters devoted to allowances, losses and surtax, double taxation relief and corporation profits tax.

The value of the book is increased by an extensive index and a table of cases.

ISRAEL

R. M. BARKAY: *The Public Sector Accounts of Israel 1948/49 — 1954/55*. Vol. I-II. Falk Project for Economic Research, 24 Hillel Street, Jerusalem, 1957, 362 pp.

This report is one of a series in the field of national accounts initiated by Daniel Creamer, first Director of the Falk Project. The report consists of five chapters and a number of appendices. There are chapters on A set of accounts for public sector agencies, Public sector agencies consolidated, The central government, Local authorities, The national institutions.

ITALY

GUISEPPE SPINELLI: *Norme generali per la repressione delle violazioni delle leggi finanziarie* — Dott. A. Giuffrè, Editore, Via Solferino 19, Milano 1957, 403 pp.

This is the fourth edition of this work on the prevention of tax fraud. The greater part of this edition is similar to the previous one. New is, however, the fourth part in which the collection of the penalties concerning tax fraud is treated.

ASTER ROTONDI: *Introduzione alla Tecnica Tributaria* — Il Diritto Tributario, Serie I, Volume XX. CEDAM, Casa Editrice Dott. Antonio Milani, Via Jappelli 5, Padova 1957, 125 pp.

The author gives a scientific introduction to the technique of taxation. In the general part he examines what to be understood by technique, in relation to art, religion, "nature" law and positive law. In the second part the writer deals with the technique of tax levying, tax collection, case law and criminal law in fiscal matters.

ALDO BOIDI: *Commento alla legge sulla imposta complementare progressiva sul reddito*. Seconda edizione aggiornata a tutto il 10 gennaio 1956. Unione Tipográfico. Editrice Torinese, Corse Raffaello 28, Torino 1956, 592 pp.

This book contains an extensive commentary to the supplementary income tax. Much attention is paid to the tax liability of foreigners, the obligation of secrecy, the territorial principle, etc.

The complete tariff has been added at the end.

RAG. ORESTE ALLOY: *Norme pratiche per l'applicazione della legge sulla perequazione tributaria.* Legge 5 gennaio 1956 N.1, Via Luisa Battistotti Sassi 24, Milano, 1956, 57 pp.

This book contains a concise commentary on the new tax collection act of January 5th, 1956. An index referring to the pages of the commentary and to the paragraphs of the set has been added at the end, facilitating the use of the booklet.

A. L. ARRIGONI: *La dichiarazione dei redditi per le società tassate a bilancio.* Seconda edicione riveduta ed ampliata. La Stampa Commerciale, Milano 1957, 157 pp

This handy, pocketsize publication, bound in plastic, gives a survey of the data necessary for the income tax return of a company. In a separate chapter the schedular income tax (Richezza Mobile) and the supplementary income tax on companies (imposta sulle società) are discussed. An index has been added.

Imposta di fabbricazione sugli oli minerali e sui gas liquidi. Classificazione dei prodotti — Aliquote dell'imposta — Esenzioni — Riduzioni — Repressione delle frodi — Legislazione vigente — Collezione legale — Pirola N. 1196, L. di G. Pirola, 16 Via Cavallotti, Milano 1957, 83 pp.

In this book the tax on the manufacture of oil and gas enacted by decree of February 28th, 1939, no. 334 is dealt with. All the amendments since that date have been added.

Imposta di fabbricazione sugli oli minerali. Norme per la emissione dei certificati di provenienza e per la tenuta dei registri di carico a scarico. Collezione legale Pirola, N. 1196-a. L. di G. Pirola, 16, Via Cavallotti, Milano 1957, 22. pp

This brochure is an appendix to volume 1196 of the "Collezione legale Pirola". It contains the text of the ministerial decrees of August 12th and 13th, 1957, concerning the prevention of illicit trade in oil.

NICOLA D'AMATI: *Teoria generale dell'imposta di bollo.* Dott. A. Giuffré, Editore, Via Solferino 19, Milano 1957, 150 pp.

This book contains a systematic treatment of Stamp Duty. In the first part the Stamp Duty in general is discussed, while in the second part a survey is given of the more technical problems connected with this tax.

SILVIO MORONI: *Ammortamenti e contabilità a due redditi: del contribuente e del fisco.* La Stampa Commerciale, Editrice del giornale „Il Sole", Via Ciovasso 4, Milano, 93 pp.

In this book the Italian legislation concerning depreciation is given. The text of the Act has been commented on, while the resolutions and instructions have been added.

MASSIMO JANDOLO: *Rassegna di giurisprudenza sulla imposta generale sulla entrata.* Raccolta die giurisprudenza amministrativa e tributaria. Dott. A. Giuffré, Editore, Via Solferino 19, Milano 1957, 717 pp.

This is a systematic survey of the Italian Sales Tax Act. To the sections of the Act have been added case law, resolutions and circulars. A very clear survey of a difficult matter.

GIUSEPPE SANTANIELLO: *Rassegna di giurisprudenza sulle leggi doganali e leggi sul monopolio.* Raccolta di giurisprudenza amministrativa e tributaria. Dott. A. Giuffrè, Editore, Via Solferino 19, Milano 1957, 287 pp.

In this work the Italian Customs Duty Act (1940), Title VII of the Sales Tax Act (import and export 1940) and the Act concerning the monopoly of salt and tobacco (1942) are treated. The principal case law has been added to the sections of the Acts under discussion.

ANGELO DUS: *Teoria generale dell'illecito fiscale*. Dott. A. Guiffrè, Editore Via Solferino 19, Milano 1957, 388 pp.

In this book the author gives a systematic survey of the problem of fiscal fraud. In the first part the fundaments and principles of the subject under discussion are elucidated. In the second part a classification of the different forms of fiscal fraud is given, while in the third part the subject is treated analytically. The author has managed to give a clear survey of the complicated material.

Imposta generale sull'entrata. Nuovo regime impositivo per le materie prime e i prodotti tessili. Collezione legale Pirola, N. 1197. L. di G. Pirola, 16, Via Cavalotti, Milano, 1957, 31 pp.

This booklet contains the Act of August 12th, 1957, and the circular of the Minister of Finance no. 192475 concerning the taxation of textile products.

A. D. GIANNINI - *Istituzioni di Diritto Tributario* - Settima edizione aggiornata - Dott. A. Giuffrè, Editore, Milano 1956, 526 pp.

This book is a scientific work on the nature of tax law by Professor A. D. Gianni of the University at Bari. It consists of an introduction, a general and a special part. In the introduction general problems are discussed, among other subjects international treaties, interpretation and tax literature. The general part contains chapters on the fiscal relation, the extinction of the tax obligation and fiscal sanctions. In the special part the various direct and indirect taxes in Italy are discussed. There are also chapters on special taxes. An analytical index concludes this excellent book.

R. MAZZETTI - *Commento analitico alla legge del bollo* - Arti grafiche Ticci, Siena 1957, 264 pp.

This book contains an analytical commentary of the Italian Stamp Duty Act. The author, who has taken a practical standpoint, analyses the current ministerial decrees and resolutions. Case law has been added. An extensive index facilitates the use of this practical work.

NETHERLANDS

Dr. H. F. A. VÖLLMAR, J. BOXEM and B. J. UDINK: *Vennootschappen, Verenigingen en Stichtingen*. (Corporations, Associations and Foundations) *Supplement 3 to Volume A*. Uitgevers-Mij. AE. E. Kluwer, Deventer, Price f 5,75.

In Bulletin Vol XI, p. 147 a review of this work was published. This *3rd supplement* contains a number of new pages for the section on corporations, a new section on the 1957 Act on the transfer of capital reserves and new pages to be substituted for old ones in the index.

Verdrag tot oprichting van de Europese Economische Gemeenschap (Euromarkt). Bewerkt en toegelicht door G. H. J. ABELN e.a. Uitg. Mij.: AE. E. Kluwer, Dventer, 1958.

This is a new loose-leaf work of the well-known Dutch publisher of tax handbooks AE. E. Kluwer N.V., Deventer. Although the European Economic Community is built up on a customs union, it is going to be much more than

that. The treaty contains provisions for the liberation of the traffic of persons, services and capital between the member states; for gradual realization of a common policy in the domain of agriculture and transportation; for the coordination of the economic policy of the member states. In this publication attention is paid not only to regulations regarding customs, but also to the other subjects mentioned in the European treaty. Besides the text of the treaty explanations of importance for the business world will be included. Finally the executive regulations of the treaty which are of importance for business will find a place in this book too. There is no doubt therefore that this useful work will be a welcome source of reference for all those who want to be kept posted about the developments of the European market.

J. J. Hof: *Raakpunten bedrijfseconomie en belastingen naar de winst.* Fiscale Studieserie, Uitgeverij F E D, Amsterdam, 1957, 122 S.

Die Steuerwissenschaft ist zwar nicht so alt wie die Steuererhebung, aber Sie ist dennoch bedeutend älter als die Betriebswirtschaftlehre. Beide Zweige der Wissenschaft haben sich unabhängig von einander entwickelt, da beide ganz verschiedene Ziele haben. Das kommt auch in dem verschiedenen Sprachgebrauch zum Ausdruck: dieselbe Ausdrücke haben manchmal für beide Wissenschaften verschiedene Bedeutung. Mann kann jedoch in den letzten Jahren eine gewisse Annäherung feststellen. Wenn der steuerrechtliche Gesetzgeber auf guten kaufmännichen Brauch hinweist, wie es bei dem Niederländischen Gesetzgeber 1950 der Fall war, dann werden die Berührungspunkte bereits gröszer. Der Verfasser, Reichswirtschaftsprüfer und Mitglied einer der wichtigsten Wirtschaftsprüfervereine, das „Nederlandsch Instituut van Accountants", hat diese Berührungspunkte in dem 122 Seiten umfassenden Buch untersucht. Nach einer kurzen Einleitung in der der gute kaufmännische Brauch zentral gestellt wird, werden nach einander behandelt: betriebswirtschaftliche Grundlage, Bewertung, Vorräte, allgemein und danach für Sonderfälle, Abschreibungsgüter, und Gewinnspaltung, Rücklagen.

H. F. R. Dubois: *De Registratiewet 1917.* 6th edition. Uitg. Mij. W. E. J. Tjeenk Willink, Zwolle, 1958. Price: f 19,50.

The fact that a sixth edition proved to be necessary — the fifth appeared in 1946 — indicates that this book is much consulted. The author has treated the material systematiçally and extensively. Originally the French Act of 22 Frimaire VII was valid in the Netherlands, be it with drastic changes. The Dutch Act was made in 1917. It has often been altered and supplemented since then. The chapters of this book give a clear picture of the legislation. Successively are treated: the formality of the registration, the registration tax, the proportional duties for transfer of immovables, of participations in so called building societies, the issuing of shares etc., auctioning of movables. Finally the fixed duties and some regulations of a general character are treated.

M. Drukker: *Beschouwingen over de Successiewet 1956.* (Considerations about thé Succession Duty Act, 1956). Uitgeverij F E D, Amsterdam, 1957, 246 pp.

The commentary on the new Dutch Succession Duty Act, 1956 by Prof. Schuttevaêr was announced in Bulletin Vol. XI, pp. 39, 147 and 312. Besides this above mentioned work has appeared written by M. Drukker who as a prominent tax officer in Amsterdam has daily experience with the application of the new Act. As the title indicates this is not a complete commentary. A description of the most important alterations is given and besides this the following subjects are treated: the valuation, the gift tax and the life assur-

ance. The first chapter about the most important alterations is extensive (119 pages); there considerations can be found about systematics, terminology, legal basis and about various basic alterations compared with the old Act. A most interesting book.

TH. C. HIJZEN, A. ROM. COLTHOFF and F. DE ROOS: *De Euromarkt in de practijk*. N. Samsom N.V., Alphen aan den Rijn, 1958. *First supplement.*

This *first supplement* to the loose-leaf work on the European market contains a preface, a table of contents of the annexed documents, lists of goods, invisible transactions and overweas territories, protocols concerning: The European Investment Bank, France, Italy, goods subject to a special import regime, oil, privileges and immunities, statutes of the International Court of Justice, agreement concerning the association of the overseas territories, Protocols concerning the import of bananas and coffee. Declarations concerning Berlin, the Kingdom of Libia, Suriname and the Netherlands Antilles.

FED losbladig fiscaal weekblad. (loose-leaf tax weekly). Uitgeverij FED. Roemer Visscherstraat 29, Amsterdam-West I.

Nos. 624-651 of the 17th volume of this weekly, which contains tax articles, discussions of case law and resolutions, and answers to questions as regards Dutch tax problems, have appeared.

FED's Fiscaal Repertorium. Uitgeverij FED, Roemer Visscherstraat 29, Amsterdam-West I.

A staff of experts are employed to make excerpts of Dutch fiscal literature on cards which are sent to subscribers every month. The cards are filed per act and then per article. The issues nrs. 12-13 have been received.

Dr. W. H. VAN DER BERGE, H. A. M. VAN DEN DRIES and Prof. Dr. B. SCHENDSTOK: *Belastingberichten.* N. Samsom N.V. — Publisher — Alphen aan den Rijn, Netherlands.

Supplements 1958, nos. 17-21 to this loose-leaf handbook on the Dutch tax system have been published.

W. E. C. DE GROOT: *Nederlandse Belastingwetten.*
N. Samsom N.V. — Publisher — Alphen aan den Rijn, Netherlands.

The five volumes of this loose-leaf system on Dutch taxation contain the texts of the Dutch tax acts. The *nos. 135-136 of the supplements*, which keep these volumes up-to-date, have been published.

H. W. VERMEULEN and H. G. M. WARDENIER: *Teruggaaf van omzetbelasting bij uitvoer.* Volume I and II. N. Samsom N.V. — Publisher — Alphen aan den Rijn, Netherlands.

Supplements 26-27 to these loose-leaf volumes have been published.

A. M. DIJK, G. JANSEN, J. C. SCHROOT and F. VERSTEGEN: *De Gemeentelijke Belastingen.* (Municipal Taxes). Vuga-Boekerij, Arnhem.

A review of this loose-leaf work on municipal taxes in the Netherlands was published in "Bulletin" Vol. XI, p. 147. *Supplement 21* has appeared.

P. KARMELK: *Motorrijtuigenbelastingwet.* 5the edition. *Supplement 4,* June 17, 1958. De Belastingwetgeving Serie D.B. No. 7. J. Noorduyn en Zoon N.V. — Gorinchem — Netherlands.

P. KARMELK: *Statistiekwet.* 3rd edition. *Supplement 2*, June 19th, 1958. De Belastingwetgeving Serie I. & A. No. 13. J. Noorduyn en Zoon N.V. — Gorinchem — Netherlands.

R. M. SMITS: *Woordenboek van Omzetbelastingtarieven.* N. Samsom N.V. — Publisher — Alphen aan den Rijn, Netherlands.

Supplement 16, April 24th, 1958, of this dictionary of Sales Tax Tariffs in the Netherlands has appeared.

Mr. J. C. DE WAARD, J. TIGGELMAN and R. M. SMITS: *Omzetbelasting* (Sales Tax). Fiscale handleiding voor de practijk. Vuga-Boekerij, Arnhem.

In "Bulletin" Vol. XI, p. 151 a review of this loose-leaf handbook on the Dutch Sales Tax legislation was published. *Supplements 23-25* have been published.

Tweede raport van de Commissie ter bestudering van de latente aanspraken van de fiscus en van de contribuabele. (Zweiter Bericht des Ausschusses zur Untersuchung der latenten Ansprüche des Fiskus und der Steuerpflichtigen) Geschrift no. 94 van de Vereniging voor Belastingwetenschap. N. Samsom Alphen aan den Rijn 1957, 54 pp.

1953 erstattete ein Ausschuss der aktiven niederländischen Vereinigung für Steuerwissenschaft einen Bericht, in dem die latenten Ansprüche des Fiskus auf dem Gebiete des Gewinnes berücksichtigt wird. Der Bericht sowie die am 31. Oktober 1953 stattgehabte Debatte, findet man in den Nummern 86 und 87 der Schriftenreihe. Latente Steuerschulden sind solche die ruhen, die also noch nicht aktiv geworden sind. Insoweit sie mit dem Betriebgewinn zusammenhangen, sind sie im ersten Bericht behandelt; aus dem Zweiten geht hervor, dass es sich hier um ein Sympton bedeutend grösseren Umfanges handelt. Zunächst wird die Rubrizierung beachtet, danach wird den Latenzen in ihrer Bedeutung für verschiedene Steuern Beachtung geschenkt. Das dritte Kapitel — das das Mitglied des Ausschusses J. S. Visser verfasste — behandelt ausführlich die Latenzen auf die Taxationen.

J. BRAUTIGAM: *Boekhoudinzicht voor aankomende administrateurs en voor belastingdeskundigen.* (Einblick in die Buchhaltung, für künftige Administratoren und Steuersachverständige). Uitgeverij FED, Amsterdam 1958.

Kapitel I enthält, nach einer Definition des Begriffs Buchführung, eine Übersicht der verschiedenen Methoden. In den nächsten Kapiteln folgt dann eine Besprechung der Sprache der Journalposten, der Bilanzen und der Bilanzposten, sowie eine Darlegung des wichtigen Teils: die steuerrechtliche Gewinnbestimmung.

Administration des Privatvermögens, der Pensionen, Steuerlatenzen u.s.w. werden im letzten Kapitel behandelt. Eine Beilage enthält ein Zifferbeispiel der Berechnung des steuerlichen Ergebnisses.

Eine wertvolle Veröffentlichung, die Buchführern und Steuerberatern willkommen sein wird. Diese Veröffentlichung eignet sich auch für diejenigen, die sich einer Prüfung auf dem Gebiete der Buchhaltung oder der Steuern unterziehen wollen. Auch für Juristen, deren Ausbildung auf diesem Gebiete im allgemeinen ungenügend ist, wird diese Arbeit von Nutzem sein. Es gewährt in besonders reizvoller Art einen Einblick in dieses Stoffgebiet.

PROF. Dr. C. GOEDHART: *Hoofdlijnen van de leer der openbare financiën.* (Grundzüge der Finanzwissenschaft). Capita Selecta der Economie XX H. E. Stenfert Kroese N.V., Leiden 1958, 364 S.

Dieses Werk des Hochschullehrers an der Universität Amsterdam bringt

vieles, das für die Leser des Bulletins von grosser Wichtigkeit ist, da die Hintergründe des Steuerrechts darin zur Sprache kommen. Die Literatur zahlreicher Länder wird eingehend berücksichtigt. Damit man sich davon überzeugen kann braucht man nur die Literaturübersicht und das Personenregister nachzuschlagen.

Das Buch behandelt das ausgedehnte Gebiet der Finanzwissenschaft. Gegenstand und Entwicklung der Wirtschaftstheorie, die Ausgaben und Einnahmen der Behörden, die behördlichen Kredite und den Etat. Unter den Einnahmen findet man eine Darlegung der geschichtlichen Entwicklung, Systematik und Retributionen.

Die Steuern werden eingehend besprochen (S. 88-210), Geschichte, Systematik, wirtschaftliche Folgen und Steuerpolitik.

SPAIN

FERNANDO SAINZ DE BUJANDA: *Hacienda y Derecho*. Instituto de Estudios Politicos. Plaza de la Marina Espanola 8, Madrid 1955, 505 pp.

Prof. Sainz de Bujanda gives in this book important theoretical considerations about public finance and taxation. Apart from chapters about the autonomy of the science of public finance and the codification of tax law there are also chapters about the financial aspect of European unification, economic planning and public finance, the financial aspect of social security and the relationship between political organization and public finance. The author has devoted a special chapter to the principles of international tax law.

A most praiseworthy work.

SWITZERLAND

Zum Problem der gleichmässigen Besteuerung der Erwerbsunternehmungen. Herausgegeben vom Eidgenössischen Finanz- und Zolldepartement. Verlag für Recht und Gesellschaft, Bundesstrasse 15, Basel 1955, 167 S.

Im Herbst 1953 wurde der schweizerische Bundesrat gebeten Vorschläge zu machen für eine gleichmässige Steuererhebung von Unternehmungen, gleichviel welcher Rechtsform. Damals wurde ein Ausschuss eingesetzt, der 1955 Bericht erstattete. Es wurde eine ausführliche Arbeit; dieses Buch umfasst 167 Seiten. Die 9 Schlussfolgerungen sind auch ausserhalb der Schweiz von Wichtigkeit, da das hier behandelte Problem, wenn auch immer wieder in anderer Form, auch in anderen Ländern vorkommt.

Das Werk besteht aus 2 Teilen. Der erste Teil umfasst eine Beschreibung der bestehenden Ungleichheiten in der Steuererhebung von Unternehmungen im Bundesstaat. Der zweite Teil bietet Möglichkeiten für eine bessere Regelung.

Dr. JOSEF DELLA PUTTA: *Das Steuerwesen im Kanton Schwyz und die Steuerbelastung durch das Steuergesetz von 1946*. Juris-Verlag, Zürich, 1957, 177 S.

Die Steuererhebung eines Berglandes zwichen zwei Seen, groszen Teils mit Wäldern bedeckt, und dasz zum groszen Teil aus nicht-produktivem Land besteht, bietet besondere Probleme. Schwyz ist das letzte Kanton, das zur Erhebung einer Einkommensteuer geschritten ist. Das Buch enthält im ersten Teil eine Darlegung der Existenzmittel, danach kommen die öffentlichen Finanzen zur Behandlung, schliesslich die Steuererhebung. Der zweite Teil fasst die Leistungsfähigkeit sowie die Belastung derselben ins Auge, und das Alles mit vielen Tabellen.

Die schweizerische Aktiengesellschaft. (La société anonyme suisse) 1928-1958. Sondernummer zum 30 jährigen Bestehen der Zeitschrift. Polygraphischer Verlag, Limmatquai, Zürich, 1958, 80 S.

Die „Schweizerische Aktiengesellschaft" hat sich in drei Jahrzehnten zu einem kaum mehr wegzudenkenden Organ für alle Rechts-, Steuer- und Wirtschaftsfragen der Aktiengesellschaften entwickelt. Im Laufe der Jahre ist auch den Steuerfragen vermehrte Beachtung geschenkt worden. In den drei Dezennien ihres Bestehens hat die Zeitschrift danach gestrebt, ihrer Zielsetzung, stets der Praxis zu dienen, treu nachzuleben. Diese Sondernummer enthält u.a. folgende Aufsätze: Dr. W. Dober, *Stille Reserven im Handels- und Steuerrecht*; Prof. Dr. E. Känzig, *Die Aktiengesellschaft und die Wehrsteuer*; Dr. H. Rohner, *Die Neuregelung der Besteuerung der Aktiengesellschaften im Kanton Schaffhausen*; M. -A. Schaub, *Siège fictif et siège réel.*

Charge fiscale en Suisse 1957. Elaboré par l'Administration Fédérale des Contributions. Statistiques de la Suisse, 299e fascicule. Publiées par le Bureau Fédéral de Statistique. Administration fédérale des contributions, Section de statistique, Berne, 1958, 72 pp.

Cette publication s'en tient, quant à la méthode et à la présentation, aux mêmes principes que l'année dernière. Un nouveau chapitre a été introduit concernant le «Développement de la charge fiscale depuis 1939». D'autre part, un tableau établi en collaboration avec l'office fédéral de l'industrie, des arts et métiers et du travail, a été joint à cette partie de la publication; il donne un aperçu sur le développement de la charge fiscale du produit du travail ouvriers et employés dans les 10 principales villes du pays.

TURKEY

KARAMETE, HAKKI: *Wirtschaftssystem und Wirtschaftsgesinnung, Steuersystem und Steuermentalität in der Türkei*, Diss. Köln 1957.

Die Türkei gilt als Land der Zukunft. Sie ist ein bedeutender und trotz der gegenwärtigen Devisenschwierigkeiten zuverlässiger Handelspartner der europäischen Industriestaaten. Veröffentlichungen, die zutreffende Daten über dieses Land geben, sind im englischen, französischen und deutschen Schrifttum überraschend selten und häufig veraltet.

Es ist deshalb zu begrüssen, dass Karamete, ein türkischer Rechtsanwalt und Wirtschaftsprüfer, der lange Zeit in der Finanzverwaltung tätig war, einen zuverlässigen Abriss des Wirtschaftssystems und des Steuersystems der Türkei vorlegt. Von der anthropologischen Betrachtungsweise Schmölders' ausgehend, gibt er zunächst eine Übersicht über die natürlichen Grundlagen und die neuen staatlichen und gesellschaftlichen Grundlagen der Republik. Er zeigt die Entwickelung der türkischen Wirtschaft ausgehend von der Tradition des Islams über die Revolution Atatürks zu der Politik der Demokratischen Partei seit 1950 auf. Die verschiedenen Elemente, die die Wirtschaftsgesinnung beeinflusst haben, werden konfrontiert mit der Wirtschaftsgesinnung der heutigen türkischen Bauern und Städter.

Das Steuersystem der Türkei wird ausführlich dargestellt. Dabei ist auch die umfassende Reform der Verbrauchsteuern des Jahres 1957, die in der internationalen Literatur kaum Erwähnung gefunden hat, berücksichtigt. In diesem Teil findet das wertvolle Werk von Bursal eine Ergänzung. Die Beschreibung der Steuermentalität und ihrer Wechselwirkungen zum Steuersystem bilden den Schluss des Buches. Im Anhang ist eine deutsche Übersetzung des türkischen Gesetzes zur Förderung ausländischen Kapitals abgedruckt.

Wer wirtschaftliche Beziehungen zur Türkei unterhält oder aufbauen will, ist gut beraten, wenn er das Werk Karametes zur Hand nimmt. Dem am internationalen und ausländischem Steuerrechts sowie der Rechtsvergleichung interessierten wird dieses Buch, teilweise in Ergänzung von Neumarks vortrefflicher Monographie über die Einkommensteuer, wertvolle Aufschlüsse geben.

Dr. Hans Flick, Köln.

UNITED STATES OF AMERICA

Proceedings of the Seventh Annual Tulane Tax Institute. The Bobbs-Merrill Company, Inc., Publishers, Indianapolis, 1958, 678 pp.

The formal papers delivered at the Seventh Annual Tulane Tax Institute by a group of outstanding authorities in the field of income, estate and gift taxation are presented in this volume in order to make them available to persons who are interested in federal taxation. The programs of the Tulane Tax Institute are planned for the purpose of making available to accountants, attorneys and tax executives the best lectures on tax law that can be given in a period of three days. This book contains addresses on the following subjects o.a.: Taxwise life insurance planning, Income tax planning for the estate and successors, Capital gains in mineral transactions, Methods of determining taxable income without adequate records, Planning the corporation, Personal holding companies, Taxation of securities transactions.

DANIEL M. HOLLAND: *The Income-Tax burden on stockholders.* A study by the National Bureau of Economic Research, New York. Published by Princeton University Press, Princeton N.J., 1958, 241 pp.

Dr Holland, associate professor of Economics at New York University, measures and analyzes the differential burden on stockholders caused by the existence of two income taxes on corporate earnings — an essentially proportional tax at the corporate level when earned, and a progressive tax at the personal level when received as dividends. The author presents and analyses the findings for 1950, a representative year and also discusses the changes in the differential tax burden in the period 1940-1952. The results of this study will be useful to anyone who is concerned with how the tax burden is distributed.

Financing Metropolitan Government. Symposium conducted by the Tax Institute, November 18-19, 1954, Princeton. Tax Institute, Inc., Princeton, 1955, 295 pp.

The speakers at the 1954 Symposium of the Tax Institute examined the broad trends affecting metropolitan governments; they examined the areas on a functional basis; they looked at the problems of two specific city areas; they examined the impact of the national and state governments; and finally an attempt was made to find constructive solutions. This volume contains a brilliant combination of presentation and discussion of metropolitan financial problems.

MONTGOMERY B. ANGEL: *Valuation problems.* Current problems in Federal Taxation. Revised series. Revised to September 1957. Practising Law Institute, New York, 48 pp.

The author explains the principles of the valuation problem. Attention is paid to the factors influencing valuation. In the second part a case is explained in which difficulties regarding the estate and gift tax occur. Many remarks can be found which may be of value for other countries as well.

PRENTICE-HALL: *Federal Tax Treaties and Related Matters.* Prentice-Hall, Inc., Englewood Cliffs, New Jersey. Loose-leaf.

P-H "Tax Treaties and Related Matters" contains the full text of all the treaties to which the United States is a party. By means of supplements the following material has been added to this useful book a.o. since January, 1958: Supplementary protocol signed by the representatives of the U.S. and the United Kingdom of Great Britain and Northern Ireland: a list of effective and proposed tax traties; a table of withholding tax rates; supplementary

tax treaties with Belgium and Britain; an article by Kjeld Rordam entitled "the Danish-American Convention for avoidance of double taxation"; recent Ruling.

JAMES M. OWEN: *How to prepare your Louisiana individual Income Tax Return for 1957*. Louisiana Business Bulletin, Vol. 20, No. 1. Division of Research, College of Commerce, Louisiana State University, Baton Rouge, Louisiana, 1958, 34 pp.

This Bulletin is designed to furnish information that will assist citizens and residents of Louisiana in the preparation of their State income tax returns.

STANLEY I. POSNER and HERBERT J. ALLAN: *What the businessman should know about Federal Taxes and Foreign Investment*. Public Affairs Press 419 New Jersey Ave. S.E., Washington 3, D.C., 1958, 14 pp.

The purpose of this monograph is to provide a brief survey of the tax system of the U.S.A., with particular emphasis on those aspects of the tax laws which influence investment by American citizens in foreign ventures.

Twenty-five years of Tax Institute Publications. Tax Institute, Inc., 457 Nassau Street, Princeton, New Jersey, 1958, 32 pp.

In observance of its twenty-fifth anniversary, the Tax Institute has compiled this list of its publications. Four hundred authors from the various tax professions, as well as other distinguished persons, constitute the list of contributors. In addition to its annual symposium volumes and the monthly issues of *Tax Policy*, the Tax Institute has published eight Forum Pamphlets, three volumes of Pennsylvania Conference Proceedings, two volumes of panel discussions, three volumes of tax yield statistics, one volume of a metropolitan economic series, 138 Taxes for Democracy, and some early pamphlets and reports. This accomplishment well deserves our congratulations.

ROBERT M. MUSSELMAN: *Alexander's Federal Tax Handbook 1958*. Twenty-second edition. The Michie Company, P.O. Box 57, Charlottesville, Virginia 1958, 1261 pp.

This book has been written to meet the need for an explanation of the federal tax laws in the simplest possible terms consistent with an adequate treatment of the subject. Particular attention has been given to those areas where the entire former pattern of the law was changed by the Internal Revenue Code of 1954. All significant amendments and interpretations which have been made since the adoption of this Code have been included. Since the previous editions of this textbook some considerable rearrangement of material has been made and five additional chapters have been added. Rather than a sweeping revision of limited areas, the emphasis has again been on a clarification and strengthening of individual sections throughout. Footnote citations have been greatly expanded, with particular attention to the latest cases and rulings.

Economic Bulletin for Latin America, Vol. II, No. 2, October 1957. United Nations, New York.

The Economic Bulletin for Latin America, published by the Secretariat of the Economic Commission for Latin America, appears twice yearly, in February and September. The essential purpose of this periodical is to provide a résumé of the economic situation of the region designed to supplement and bring up to date the information published in the Commission's annual economic surveys. This issue contains: 1. Latin America's foreign trade in the early months of 1957, 1. The economic development of Bolivia, 3. Index clause in deferred payments.

JORNADAS DE DERECHO TRIBUTARIO. (Jorneys of tax Law) 15-20 October 1956. Biblioteca de Publicaciones Oficiales de la Facultad de Derecho y Ciencias Sociales de la Universidad de Montevideo, Sección III-XCV. Montevideo, 1957, 728 pp.

This extensive work contains the reports of the first Latin-American conference on tax law which was organized by the *Facultad de Derecho y Ciencias Sociales* and the *Instituto Uruguayo de Derecho Tributario*. Besides the many papers presented to the Congress, also the debates and the resolutions have been included in this volume. The following themes were discussed. Autonomy of tax law, international double taxation, autonomy of local government in matters of taxation. A number of the papers presented on each subject have been published. No doubt this is an interesting volume for those who have to do with the matter treated.

JUAN EDUARDO AZZINI Y EDISON GNAZZO: *La imposición a las sociedades en el Uruguay*. (Cuaderno no. 18). Instituto de la Hacienda Pública, Tristán Narvaja 1546, Montevideo 1957, 20 pp.

In this booklet the development and the importance of the corporation as a tax subject is outlined. In the second chapter the authors give a survey of the taxation of different kinds of corporations in Uruguay.

V

INLAND REVENUE EXTRA-STATUTORY CONCESSIONS [1] [2]

Of the concessions listed below, the following are additional to those published in the Board's 93rd to 99th Reports:

Income tax:

No. 6. Basis of assessment of new and altered owner-occupied property first occupied on or after April 1st, 1956.
No. 11. Doctors' and dentists' superannuation contributions.
No. 27. Overseas tax for which credit is not allowable.

The following concession has lapsed:

Board's 93rd Report

Estate duty concession No. 13. Reversionary interests.

INCOME TAX

1. Agricultural depression

Relief from income tax, Schedule A, is granted in respect of remissions of rent of farm land on account of agricultural depression.

2. Unoccupied land

Relief from income tax, Schedules A and B, is allowed on waste and unenclosed land, and on agricultural land which the owner is unable to let or to farm himself.

3. Lost rent

Relief from income tax, Schedule A, is allowed in respect of rent which is wholly and irrecoverably lost or waived owing to the bad financial circumstances or absconding of the tenant. (In Northern Ireland the relief is statutory.)

4. Unworked mills and factories

Relief from income tax, Schedule A, is allowed under the head of 'empty property' where mills or factories are unworked, notwithstanding that they contain machinery and that the machinery is turned occasionally for the prevention of rust.

5. Maintenance of property

Section 101, Income Tax Act, 1952, provides that, if the owner of land or houses proves that the cost to him of maintenance, repairs, insurance and management, on the average of the five years preceding the year of claim, exceeds the flat rate repairs allowance for that year, he can claim repayment of income tax, Schedule A, on the property up to the amount of tax on the excess. The following relaxations are allowed:

---

[1]) Appendix to the Hundredth Report of the Commissioners of Inland Revenue, reproduced with the permission of the Controller of H.M. Stationery Office.

[2]) In Operation at December 31st, 1956. For former lists see this *Bulletin*, Vol. (1956), p. 236.

(*a*) Where the claimant owns both lands and houses, the claim may be based on aggregate expenditure on lands and houses taken together, irrespective of the actual separate expenditure on each of the two classes of property.
(*b*) Where a new owner is unable to obtain details of previous owners' maintenance expenditure, a claim is admitted on the basis of his actual expenditure in the year of claim (provided that the expenditure is not exceptionally heavy) until a five years' average is available, if the claimant undertakes to accept the 'actual year' basis for five complete years.
(*c*) The estimated cost of repairs obviated by alterations is allowed, provided the alterations have not created a new subject of assessment.
(*d*) Where plant or machinery is employed for property maintenance, the actual expenditure on renewals of the plant or machinery as and when incurred qualifies for inclusion in a maintenance claim. As an alternative to this basis of claim, however, the claimant may charge, in place of the actual outlay on renewals, the normal allowances for initial allowances, wear and tear, etc., which would be due under Chapter II, Part X, Income Tax Act, 1952, if the plant or machinery were employed in a trade or business.

6. Basis of assessment of new and altered owner-occupied property first occupied on or after April 1st, 1956

Newly erected or structurally altered property in England and Wales which is occupied by the owner has in the past usually been assessed for income tax, Schedule A, on the basis of its valuation for rating. This has been done because the definition of gross value contained in the Rating and Valuation Acts corresponded closely to the definition of annual value for the purposes of Schedule A. Since the rating revaluation came into force on April 1st, 1956, however, the new rating asssesments have not been used for Schedule A purposes and Schedule A assessments on this type of property are instead continuing to be made at the figures which would have applied had the assessments been made before April 1st, 1956.

This concession is subject to the concurrence of the General Commissioners of Income Tax for the division in which the property is situated.

7. Business passing on the death of a trader

The death of a trader and the consequent passing of his business to his successor is an occasion for the application of the discontinuance provisions of the Income Tax Acts. Where, however, a business passes on death to the trader's husband or wife who has been living with her or him, the discontinuance provisions are not enforced unless claimed. But, in any case, losses and capital allowances for which the deceased had not obtained relief are not permitted to be carried forward.

8. Machinery or plant: changes from a 'renewals' to a 'wear and tear' basis

Expenditure on machinery or plant which has been the subject of a 'renewals' deduction does not technically qualify as capital expenditure for the purpose of annual 'wear and tear' allowances or balancing allowances (Section 330 (1) (*a*), Income Tax Act, 1952). Taxpayers who change from a 'renewals' to a 'wear and tear' basis are, however, permitted to claim such allowances as if the expenditure did so qualify.

9. Management expenses

Under Section 425 and 438, Income Tax Act, 1952, life assurance companies etc., which are charged to tax on interest etc., by deduction or otherwise, and not on profits under Case I of Schedule D, are entitled to claim repayment of tax on management expenses.

The initial and annual depreciation allowances which would be given under the provisions of the Income Tax Acts on office machinery and motor-cars used for trade purposes, if the trade were assessed under Case I of Schedule D, are treated as management expenses for the purposes of claims under those sections. Similarly, the net annual value of premises owned and occupied for trade puposes is also treated as management expenses.

10. Deficiency payments in respect of homegrown cereals

Deficiency payments in respect of home-grown cereals should in strictness be credited, in the case of wheat and rye, by reference to the dates when the crops were sold and delivered, and, in the case of barley, oats and mixed corn crops, by reference to the dates of harvesting as grain. In practice, except where the 'commencing' or 'ceasing' provisions apply, final deficiency payments for cereals other than wheat are, however, allowed to be brought into account in the farmer's accounting year in which such payments are notified.

Further, where total deficiency payments are small or where they have been dealt with in the accounts in such a way that any adjustment in respect of such payments would be unlikely to make more than a small variation in the profits, no objection is raised to the liability being settled on the basis of the accounts,

11. Doctors' and dentists' superannuation contributions

Under Section 378, Income Tax Act, 1952, contributions required to be made in pursuance of a public general Act of Parliament by the holder of an office or employment towards the provision of superannuation benefits may be deducted in assessing his emoluments. Section 378, is, in practice, treated as extending to assessments under Schedule D on the profits of a medical or dental practitioner who is required to make superannuation contributions in pursuance of the National Health Service Acts. Where, however, the practitioner also pays premiums or contributions towards a retirement annuity within Section 22, Finance Act, 1956, the deduction for his statutory contributions is restricted to the difference between the amount on which relief is due under the Act of 1956 and the greatest amount on which he could claim such relief on paying a sufficient premium.

12. Flat-rate allowances for cost of tools and special clothing

An employee who has to bear the cost of providing tools or special clothing necessary for his work is entitled, under paragraph 7, Ninth Schedule, Income Tax Act, 1952, to an allowance for the expenditure incurred. For most classes of trade flat-rate allowances have been agreed with the trade unions concerned, and these allowances are given without inquiry as to the expenditure actually incurred in the individual case. The existence of a flat-rate allowance does not, however, debar an individual employee from claiming as a deduction the actual expenses he has incurred.

13. Miners: allowances in lieu of free coal

Income tax is not charged on cash payments received by miners from their employers in lieu of the free coal which they have been entitled to receive by virtue of their employment.

14. Pensions to police officers and firemen

The amount by which the special pension awarded on retirement through disablement from injury on duty (or from war wounds) exceeds the pension which would have been awarded if retirement had been on ill-health grounds is not treated as income for income tax purposes. Similarly, a disability pension awarded in addition to a retirement pension is not treated as income.

15. Children of war widows

(*a*) The exemption from income tax given by Section 380 (3), Income Tax Act, 1952, to payments made by the Ministry of Pensions to widows of members of the Forces in respect of their children is applied to similar payments in respect of children made to 'unmarried wives', and also to similar payments in respect of children made to widows and 'unmarried wives' of members of the Mercantile Marine and to widows of civilians who have died from war injuries.

(*b*) The same exemption is also applied to similar payments in respect of children which are made to war widows (or 'unmarried wives') by Commonwealth governments.

16. Directors' travelling expenses

The general rule is that the cost to a taxpayer of travelling to and from his place of business is not allowable as a deduction in computing his tax liability; consequently, the full amount of an allowance paid by a company to a director or senior employee in respect of such expenses is chargeable to tax under Chapter II, Part VI, Income Tax Act, 1952. The rule is modified in the following types of case:

(i) A director (whether whole- or part-time) of two or more companies within a group of parent and subsidiary or associated companies, whether or not entitled to separate remuneration from each of the companies of which he is a director, is regarded as having one place at which he normally acts as a director of companies within the group, and as entitled to a deduction (or a dispensation from assessment under Section 164, Income Tax Act, 1952) for expenses necessarily incurred in travelling from that place to other places on the business of the group in the course of his duties as a director. The same principle is applied to an individual who is an employee of one company and a director of another company within the same group of companies. (By 'associated company' is meant a company on whose board the group is represented because of the group's shareholding or other financial interest.)

(ii) A director who gives his services without remuneration to a company not managed with a view to dividends (e.g. a company owning a hall or sports ground, or running a club) is not treated as assessable in respect of any travelling expenses paid to him.

(iii) Where a directorship is held as part of a professional practice (and not, for example, because of some direct or indirect financial interest in the company), expenses incurred by the director in carrying out his duties are allowed as deductions in assessing the profits of the practice under Schedule D, whether the practice is carried on alone or in partnership. Reasonable expenses paid to the director by the company are accordingly not assessed upon the director under Scheule E, provided no claim is made to a deduction under Schedule D.

'Travelling expenses' includes in all cases reasonable hotel expenses necessarily incurred.

17. Expenses allowances and benefits in kind

Under Chapter II, Part VI, Income Tax Act, 1952, expenses allowances and benefits in kind received by directors and (with certain exceptions) by senior employees are assessable to tax as emoluments of the director or employee, subject to a deduction for expenses incurred which satisfy the conditions laid down in paragraph 7 of the Ninth Schedule to the same Act. The following relaxations are made in practice:

(*a*) No assessment is made in respect of removal expenses borne by the employer where the employee has to change his residence as a result

of transfer to another post within the organization provided that the expenses are reasonable in amount and their payment is properly controlled. 'Removal expenses' includes such related items as a temporary subsistence allowance while the employee is looking for accommodation at the new station.

(*b*) Where the benefit assessable consists of a rentfree house, the director or employee is chargeable on the annual value (or the rent paid by the employer) and on expenses borne by the employer, such as rates. The amounts charged on the employee are restricted in the case of a patently old-fashioned and too large house.

(*c*) Under Section 161 (3), Income Tax Act, 1952, living accommodation provided for an employee (as distinct from a director) in part of the employer's business premises is exempt from charge under Chapter II, Part VI, where certain conditions are satisfied. In practice the exemption is also allowed in the case of a full-time director of a company whose beneficial shareholding does not exceed 5 per cent of the ordinary share capital, unless his emoluments (including the value of benefits within the scope of Chapter II) exceed £2,000.

18. Dependent relative allowance

Where a dependent relative (within the meaning of Section 216, Income Tax Act, 1952) does not reside with the claimant and receives from him less than the amount of the allowance provided for by that section (as amended), an allowance of the actual amount of the contribution is given, though in strictness the requirement that the relative should be 'maintained' by the claimant is not fulfilled. Where contributions are made by two or more persons, though not amounting in all to the statutory allowance, an allowance of his actual contribution is given to each.

19. Members' contributions to trade unions

So much of a member's contribution to a trade union (whether registered or not) as is allocated to superannuation benefits, in addition to any portion allocated to funeral benefits or life assurance, is treated as qualifying for life assurance relief.

20. Residence in the United Kingdom: year of commencement or cessation of permanent residence

For the income tax year in which a person comes to the United Kingdom to take up permanent residence his income from abroad is not assessed on the basis of the income for a full income tax year but is computed by reference to the period of his residence here during the year. A similar practice is adopted for the income tax year in which a person ceases to reside in this country if he has left here for permanent residence abroad. (This concession does not apply to changes of permanent residence between the United Kingdom and the Republic of Ireland.)

21. Minors and contingent interests

Section 398 (2), Income Tax Act, 1952, provides, in general, that sums paid under an irrevocable settlement of capital to a child of the settlor, being a child who is an infant and unmarried at the commencement of the year of assessment in which the sum is paid, are to be treated for income tax and surtax purposes as income of the settlor and not of the child. Sums which have been accumulated under such a settlement contingently on the child attaining the age of 21 or marrying and which are handed to the child on the happening of either contingency are not treated as caught by the subsection.

22. Interest etc. paid otherwise than out of taxed income

Under Section 170, Income Tax Act, 1952, tax deducted from interest, annual payments, etc., paid otherwise than out of taxed income has to be paid over to the Revenue.

Where interest etc. is so paid in a later year than the due year, but in the due year could have been paid wholly or partly out of taxed income, an allowance is made, in fixing the amount to be paid over under Section 170, for the tax which the payer would have been entitled (under Section 169 of the same Act) to deduct and retain if the interest etc. had been paid at the due dates.

If hardship would otherwise be caused, a similar allowance is made in the case of a trust or other non-tracing institution paying interest etc. out of the taxed income of past years.

23. Interest paid in full by a trader to a building society

Where, for the purposes 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, 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 had been assessed under Section 170, Income Tax Act, 1952.

24. Double taxation relief: deduction of unrelieved oversea tax

Where oversea tax is credited against United Kingdom tax under a double taxation agreement or is the subject of unilateral relief, any excess of oversea tax which cannot be so credited or relieved is deductible in computing the amount of the oversea income for income tax and profits tax purposes. Where there are relevant distributions chargeable to profits tax at the higher rate, the effect of the deduction is ordinarily to increase the total tax liability, and where this is so, no deduction is made for income tax or profits tax purposes.

25. Double taxation relief: United Kingdom branch of non-resident bank

Tax credit relief under double taxation agreements is available under the law only to persons who are resident in the United Kingdom. Where, however, the United Kingdom branch of a non-resident bank has in the past received Dominion income tax relief on its investment income, but owing to the conclusion of a double taxation agreement such relief is no longer available, tax credit relief is given on the same income as though the bank were resident in the United Kingdom.

26. Double taxation relief: building society interest

Paragraph 5, Sixteenth Schedule, Income Tax Act, 1952, provides that credit for overseas tax shall not exceed the sum arrived at by charging the doubly taxed income at a rate (generally known as the 'effective rate') ascertained by dividing the United Kingdom income tax payable by the taxpayer for the year by his total income for the year. Interest received from a building society which has entered into the special arrangements under Section 445, Income Tax Act, 1952, is left out of account in calculating the effective rate.

27. Oversea tax for which credit is not allowable

Tax paid in a country outside the United Kingdom by a United Kingdom resident on business profits arising there is, in general, treated as an expense of the business if credit against the United Kingdom tax on those profits is not allowable or the right to forgo credit is exercised.

28. Bank interest etc. received by charities

The exemption from tax under Schedule D in Section 447 (1) (*b*), Income Tax Act, 1952, in favour of charities extends to yearly interest or other annual payments forming part of the income of a charity. In practice this exemption is extended to bank interest, whether yearly or not, received by charities and to discount on Treasury Bills held by charities.

29. Income of Roman Catholic religious communities of or their members

The precise legal position as regards the title to such income, which is in fact treated by the community as belonging to the common fund, is often difficult to ascertain. In practice in the case of certain Orders (such as those engaged in charitable work among the poor) relief is given under the provision relating to charities; in the case or the Contemplative Orders and other Orders which are not in law capable of being regarded as charities, a proportion of the aggregate income not exceeding £70 per monk or nun (as representing the amount applied for the maintenance of each individual) is regarded as his or her income for the purpose of relief from tax.

30. Charities exempt from charge to income tax, Schedule D, Case VI - short leases

Charities are entitled to statutory exemption from tax on rents payable to them where the tax is chargeable under Schedule A, or, in the case of rents under leases for periods exceeding fifty years, under Schedule D. In practice, exemption is also given from tax chargeable under Schedule D on 'excess rents' under leases for shorter periods.

31. Loan and money societies

A loan or money society is granted such relief as will restrict the net income tax liability to tax on the amount of dividends and interest paid or credited to members or depositors having taxable income, less, as regards members, an appropriate deduction for management expenses contributed by them. The tax is calculated at the reduced rates on dividends and interest accruing to members and depositors who are liable only at the reduced rates.

32. Holiday clubs and thrift funds

Clubs formed annually for the purposes of providing facilities for saving towards holidays are allowed such relief as will restrict the net income tax liability to tax on the proportion of liable income applicable to members having taxable income. Similarly, in the case of a thrift fund the relief allowable is such as will restrict the net income tax liability to tax on the amount of profits or interest paid or credited to members having taxable income. The tax is calculated at the reduced rates on income accruing to members liable only at those rates.

33. Registered trade unions

The exemption of registered trade unions under Section 440 (2), Income Tax Act, 1952, from income tax under Schedules A, C and D in respect of interest and dividends applicable and applied solely for the purposes of provident benefits is in practice extended to rents. It is also extended to interest, dividends and rents of any year in so far as they are actually applied to provident benefits within that year (although not 'applicable solely' to such benefits).

SURTAX

1. Deduction for mineral rights duty

Payments of mineral rights duty are not allowable as deductions in computing total income for taxation purposes. For surtax purposes, however,

an individual whose income includes mineral rents and royalties is allowed a deduction, in computing his total income, in respect of mineral rights duty borne by him on the rents etc. receivable for that year. The deduction allowed is 1*s* in the £ of the gross mineral rents and royalties receivable (less any amount on which repayment of income tax in respect of management expenses has been made under Section 181, Income Tax Act, 1952).

2. Administration of estates: deficiencies of income allowed against income of another year

Under Section 419, Income Tax Act, 1952, a person who has an absolute interest in the whole or part of the residue of the estate of a deceased person is treated, during the administration period, as entitled to the residuary income of the estate (i.e. the gross income less certain deductions, e.g. in respect of annuities payable) or to the appropriate proportion thereof. If for a particular year the deductions allowable are greater than the gross income of the estate the excess is allowed as a deduction in computing the net income of the preceding or succeeding years.

PROFITS TAX

1. Directors' remuneration from directorcontrolled companies

Paragraph 11, Fourth Schedule, Finance Act, 1937 (as amended by Section 34, Finance Act, 1952), lays down, in the case of director-controlled companies certain limits on the amount of the remuneration of the directors (other than whole-time service directors not owning or controlling more than 5 per cent of the ordinary share capital) which is to be allowed as a deduction in computing the profits of such a company for profits tax purposes. As from the beginning of 1951, in certain cases the limits depend on, *inter alia*, whether, for more than half the chargeable accounting period, there are two or more directors of the company (not being 'whole-time service directors') who are required to devote substantially the whole of their time to its service-in a managerial or technical capacity. If a director works as such for more than one company he is in practice regarded as falling within this definition in relation to that company which has occupied the largest fraction of his time during the chargeable accounting period if:

(*a*) he has worked substantially full-time for the companies as a whole for more than half the chargeable accounting period; and

(*b*) the time worked for the particular company under consideration amounts in the aggregate to more than half the full normal working hours of the chargeable accounting period.

2. Determination of net relevant distributions to proprietors

Section 39 (2), Finance Act, 1947, provides that where a body corporate not ordinarily resident in the United Kingdom controls, directly or indirectly, not less than half the voting power in a United Kingdom body corporate, distributions by the United Kingdom body to the oversea body shall be left out of account in determining the distributions to proprietors of the United Kingdom body taxable at the higher (distributed) rate. In a case where the oversea body exercises its control of the United Kingdom body indirectly through the medium of a 100 per cent United Kingdom subsidiary, distributions by the first mentioned United Kingdom company to that subsidiary are ignored in the same way as if they had been made to the foreign company.

INTEREST ON UNPAID TAX

1. Death of taxpayer before due date for payment of tax

Section 8, Finance (No. 2) Act, 1947 (see now, as regards income tax,

Schedule D, and surtax, Section 495, Income Tax Act, 1952), provided for interest (at 3 per cent per annum) to be charged on unpaid Schedule D tax, surtax and other taxes where:

(*a*) the tax due on the assessment in question is more than £1,000; and
(*b*) payment is not made within three months of the date on which the tax fell due.

Where a taxpayer has died before the date on which the tax fell due and his executors or administrators cannot pay the tax before they obtain probate or letters of administration, the interest charge on the unpaid tax is abated to the amount (if any) which would have been charged if the tax had become due on the date on which probate or letters of administration are obtained.

ESTATE DUTY

1. Mourning

A reasonable amount for mourning for the family and servants is allowed as a funeral expense.

2. Duty payable in Commonwealth countries

Where no double taxation relief (under Section 20, Finance Act, 1894, or Section 54, Finance (No. 2) Act, 1945) is available in respect of duty payable in another part of the Commonwealth on property situated there, the duty is deducted from the capital value of the property in question in order to ascertain the value thereof chargeable with British estate duty. In strict law such a deduction is only admissible where the property is situated in a foreign country.

3. Roman Catholic religious communities

The property of Roman Catholic religious communities whose purposes are charitable is treated as trust property held for a charitable purpose even where there is no enforceable trust, with the result that estate duty is not claimed on the death of one of the nominal owners of the property.

4. Pensions etc. to police widows and dependants

Estate duty is not claimed on pensions and other payments made upon a policeman's death to his widow or dependants under the Police Pensions Act, 1921, or the Police Pensions Act, 1948.

5. Surrender or discharge of legal rights in a Scottish estate

Where a surviving spouse or child within five years before his on her death unconditionally surrenders or discharges certain legal rights in a Scottish estate (*jus relicti, jus relictae* or *legitim*), estate duty is not claimed, although it could be claimed under the provisions of Section 45 (2), Finance Act, 1940.

6. Disclaimer of certain rights under an English intestacy

Where the surviving spouse of a person dying intestate disclaims unconditionally his or her right under English law to a net sum charged upon the intestate's residuary estate, estate duty is not claimed in connection with the death of the spouse although it could be claimed under the provisions of Section 45 (2), Finance Act, 1940.

7. Special contribution attributable to gifts inter vivos

Where a death occurs before the end of the year 1947-48, Section 64, Finance Act, 1948, provides for a measure of relief from special contribution in respect of assets on which death duties are payable. Where the death occurs after 1947-48, Section 64 affords no relief, but if by reason of such a death

estate duty becomes payable in respect of a gift *inter vivos* and the income from the gift has been taken into account in an assessment to special contribution on the donee, the proportion of the special contribution attributable to such income is allowed as a deduction against the value of the gift for estate duty purposes.

8. Loans to the Treasury free of interest

Certain British Government securities are exempt from death duties so long as they are in the beneficial ownership of persons who are neither domiciled nor ordinarily resident in the United Kingdom. In similar circumstances, exemption is allowed in respect of moneys loaned to the Treasury free of interest.

9. Valuation of house owned and occupied by the deceased

The general rule of valuation of property for purposes of estate duty is to take the market at the date of death.

(*a*) In the case, however, of a house, owned and occupied by the deceased, where a near relative of the deceased who was ordinarily resident with him at the date of death remains in the house and has no other place of residence available, any increase in the market value above the pre-war value is disregarded in so far as it could only be realized by a sale with vacant possession. The valuation made on that basis would, however, reviewed if the house were sold or let within a reasonable period of (say) two years after the death.

(*b*) In the case where a house to which the concession at (*a*) above has been applied is sold within two years of the death and the proceeds of sale are wholly utilized by the relative of the decease in the purchase of another house for his own occupation, the basis of valuation at (*a*) is not disturbed. Where, however, the proceeds are only partly so utilized the second house costing less than the amount realized on the sale of the first house, estate duty is charged on the proceeds subject to a deduction to the extent to which the purchase price of the second house is attributable to the premium for vacant possession.

10. Value payments under the War Damage Act, 1943

Where the payment of duty on value payments under the War Damage Act, 1943, is postponed under the terms of Section 6 (3), Finance Act, 1894, the taxpayer is given the option of paying duty either:

(*a*) on the statutory basis, viz. on the value at the deceased's death of the sum received, with interest on the duty from the date of death; or

(*b*) on the actual sum received, with interest on the duty from the date of receipt.

11. Inter vivos *gifts to charities*

Where, at the donor's death, there is no existing fund which has been and continues to be directly benefited by the gift, the claim to duty is not pursued against the charitable institution.

12. Settled funds: allowance for, or repayment of legacy or succession duty

Section 29, Finance Act, 1949, provides that where estate duty (at the new consolidated rate imposed by that Act) becomes chargeable for the first time on settled property by reason of its passing on the death of the life-tenant, an allowance for any legacy or succession duty already paid on the capital value of the settled property shall be given against the charge of estate duty. It is a condition of relief that the property has not previously passed on the

death, after the commencement of the Act, of a person not competent to dispose. In practice, this condition is treated as satisfied where the only previous passing under the settlement after the commencement of the Act was one on the occasion of which no estate duty was payable.

13. Property held in joint tenancy etc.

Property which is so disposed of as to be enjoyed by persons in succession on death, although technically it may not be 'settled property' for estate duty purposes, is (except as regards cases falling within Section 33 (1), Finance Act, 1954) treated in the application of relieving sections as 'settled property' where it is to the interest of the taxpayer so to treat, it e.g. property held in joint tenancy.

14. Civilian deaths in Malaya, Korea and Kenya

The relief from estate duty formerly granted by war-time legislation (which expired in October 1950) to the estates of civilians dying from injuries caused by the operations of war is applied to the estates of civilians dying from injuries caused by the operations in Malaya, Korea and Kenya.

15. Interest on estate duty on the proceeds of sale of timber

Section 9, 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.

CORPORATION DUTY

1. Temperance societies

Where the work of a temperance society is solely the propagation of temperance principles corporation duty is not claimed from it.

STAMP DUTIES

1. Stamp allowance on lost documents

Allowance of the stamp duty on lost documents is made either by repayment, where replicas have been stamped, or by free stamping on the replicas.

2. Stamping of replicas of documents which have been spoilt or lost

Where the stamp duty is allowed on a document because it has been spoilt or lost and replaced by a replica but the duty has been increased so that the amount to be impressed on the replica is more than the amount allowable on the original, the additional duty is impressed free of charge.

3. Group life and pension policies

Documents which assure to the members of a fluctuating body of unnamed persons (e.g. all the employees of a company) capital sums on death before retirement and/or pensions on retirement are assessed to stamp duty on the total at risk in one sum instead of on the individual amounts, no further duty being charged if a member withdraws without taking benefit and a new member enters in his place and takes a similar benefit.

4. Partial release of mortgage

The correct duty is 10*s* duty, but *ad valorem* duty at 1*s* per cent is accepted if such duty be less than 10*s*.

5. Transfer and reconveyance of collateral security

The correct duty is 1*s* per cent. The practice is to limit the duty to 10*s* if the transfer of the original security is duly stamped.

6. Cheques

The Stamp Act, 1891, exempts from stamp duty cheques used for pay and other purposes connected with H.M. Forces. The exemption is treated in practice as extending to cheques used for the purposes of Allied Forces in this country and West Germany.

7. Transfers of stock issued by the Electricity Board for Northern Ireland or the Ulster Transport Authority

Transfers of stock issued by the Northern Ireland Electricity Board or the Ulster Transport Authority, which are exempt from stamp duty in Northern Ireland are treated as exempt from stamp duty in Great Britain if the stock is not registered in Great Britain. (Reciprocal treatment is given by the Northern Ireland Government to transfers of stock issued by the nationalized industries in Great Britain which are exempt from stamp duty in Great Britain.)

ORGANISATION FOR EUROPEAN ECONOMIC CO-OPERATION (O.E.E.C.)

EXTRACTS FROM THE FIRST REPORT OF THE FISCAL COMMITTEE[1])

A. General remarks

Position of the problem

It may usefully be recalled by way of preamble that it was not until comparatively recent times that countries sought to settle the problems of double taxation: that is, the concurrent imposition of tax on the same subject matter by two States, by means of bilateral agreements. As a result in particular of the work begun in 1920 by the League of Nations, which led to the drafting in 1928 of Model bilateral Conventions for the avoidance of double taxation, a network of agreements was created principally between the European countries during the inter-war period. The work of the League of Nations finally resulted in the Model Conventions of Mexico (1943) and London (1946) which have served as a pattern for most of the bilateral Conventions signed or revised since the end of the last war. The majority of the Member countries are now parties to bilateral Conventions, as a result of which a great advance has been made in eliminating double taxation.

But much still remains to be done. A number of countries have not yet concluded Conventions between themselves or have concluded Conventions covering certain fields of taxation only. Cases of double taxation still therefore remain which are being rendered more difficult by the extension of taxation and more acute by the steadily increasing development of economic relations between the Member countries and the increasing interdependence of their economies. These same factors, moreover, are continually giving rise to new cases for which solutions must be found. Bilateral

[1]) See also page 193 in this issue.

Conventions cannot, in general, provide a solution in cases involving a third State.

Another point is that as between the current bilateral Conventions the rules to be applied for avoiding double taxation are still by no means uniform. Thus, in the fifty Conventions or so already being applied between the Member countries of the O.E.E.C., identical problems are subjected to different and more or less satisfactory solutions. Even in regard to questions for which the countries concerned originally intended to adopt similar rules, divergences are very often to be found. It is a fact that in many cases the Conventions cannot be clearly interpreted and this makes them difficult to understand, except by experts. As a result, it is impossible for a taxpayer to ascertain exactly what tax liabilities he incurs by engaging in economic activities in other countries. Manufacturers, businessmen and financial circles have thus a feeling of insecurity which does not encourage the development of intra-European economic relations. Then there are the administrative complications for the taxpayer and for the national authorities due to the diversity in the existing regulations: these too must not be underestimated.

Although, when compared with the efforts being made to free the economic relations between the Member countries of the O.E.E.C. from the obstacles created by quantitative import restrictions, by Customs tariffs and by restrictions on invisible transactions and transfers and on capital movements, an improvement with regard to double taxation is of less importance, the need for progress in this field is also essential. This is all the more justified as the obstacles represented by double taxation are not, in general, the result of any deliberate intention. Their effect is simply that a person doing business or investing in more than one State is arbitrarily given less favourable treatment than a person who does business or investing in one State alone.

From a technical point of view, these obstacles could of course be abolished by harmonising the taxations laws of the Member countries. But such a harmonisation, which would imply in certain cases a prior harmonisation of public and commercial laws, is not a necessary condition in order to obtain a substantial improvement. To remove a great many of the taxation obstacles to the expansion of intra-European trade, payments and investments, the first step

consists in applying a less ambitious programme which would be confined to solving taxation problems having an international aspect and, in particular, to delimiting taxation powers uniformly between the Member countries.

It should also be noted that, from the taxation point of view, the great advantages that would result from the adoption of common rules can be secured without the Member countries suffering any appreciable loss. For the restrictions placed on their respective taxing powers would merely entail readjustments which would be limited to certain extensions or reductions, and any losses of budget revenue which might be incurred by a State on account of the elimination of double taxation would find their justification in the economic advantages that this elimination would entail.

Aim of the committee's work

Basing itself on the considerations set out in the foregoing paragraphs, the Fiscal Committee has directed its studies to the establishment of a uniform line of conduct acceptable to all the Member countries with respect to all the questions usually dealt with in double taxation Conventions. It has been principally concerned hitherto with the prevention of double taxation with respect to taxes on income and profits.

The Committee has reached agreement on the first four questions which it brought under study:

(a) listing and definition of taxes on income and capital (including taxes on estates and inheritances) which should be covered by double taxation agreements;
(b) concept of permanent establishment;
(c) concept of fiscal domicile;
(d) tax discrimination on grounds of nationality or similar grounds.

The draft Articles giving concrete expression to the agreement reached are analysed below (page 296) and are attached as Annexes to the present report.

Seven other questions are now being studied by the Fiscal Committee:

(a) taxation of income of shipping, inland waterways transport and air transport enterprises and of their crews;

(b) taxation of remuneration in respect of dependent and independent personal services;
(c) taxation of income from immovable property;
(d) direct taxation of royalties;
(e) definition and apportionment of profits between the head office of an enterprise, its permanent establishments and its subsidiaries;
(f) taxation of interests;
(g) taxation of dividends.

On the first four questions the studies are already well advanced and there is reason to hope that unanimous agreement may be reached during the coming sessions of the Committee.

Once the study of the various questions relating to taxation of income and profits are completed, the Fiscal Committee will proceed with the examination of the problems concerning taxation of capital. In conjunction with the study of these matters, it will also study the technical methods of avoiding double taxation (e.g. the exemption method and the tax credit method). In accordance with its terms of reference, it further proposes to study the problems of double taxation in connection with estates and inheritances as well as with indirect taxes.

The task entrusted to the Committee is necessarily a long-term work and concrete results can only be obtained gradually. On various questions, final agreement depends on the solutions to be adopted for connected problems. The Fiscal Committee proposes to establish a series of draft articles which, taken together, will finally cover all the problems which the bilateral double taxation Conventions are designed to solve and will thus constitute a Model bilateral Convention acceptable to all Member countries. It would then be possible to envisage going further towards harmonisation by replacing the existing bilateral Conventions between the Member countries of the O.E.E.C. by a single Multilateral Convention. It is naturally impossible, at this stage, to foresee how long it will take to implement such a Convention.

In the Committee's opinion, a Multilateral Convention would not prevent Member countries which felt a need for more detailed provisions, owing to the existence of particular conditions, from implementing them in the form of protocols, for example. Such

might be the case for adjacent countries wishing to settle the position of frontier workers or itinerant merchants.

The Fiscal Committee wishes to recall here that the International Chamber of Commerce, at its 15th Congress in Tokyo in May 1955, adopted a Resolution inviting the O.E.E.C. to undertake an investigation of the possibility of concluding, between the Member countries, a Multilateral Convention which would have the great advantage of securing uniformity of principles and practice in double taxation matters in a vast area of world trade.

The Fiscal Committee is fully aware of the many difficulties which must be overcome before co-ordination can be established and maintained in the complex field of international taxation relations. It considers it important, however, to stress not only that its members are convinced of the need for greater co-ordination, but that during its studies there has been considerable identity of views over the solutions to be adopted. The Fiscal Committee therefore considers that very substantial results can be obtained in the next year.

Another consideration is that the application of common rules by the Member countries of the O.E.E.C. may, because of their position in the world economy, be an inducement to other countries to adopt the same rules. The Fiscal Committee wishes to express its appreciation of the fact that Representatives of the United States have attended its meetings from the beginning and have taken part in its discussions.

The Fiscal Committee feels that it would be advantageous if specific provisions, as and when agreed by the Committee, were implemented in the existing bilateral Conventions and in those to be concluded subsequently. In this way, the Conventions would be gradually co-ordinated and the adoption of a single Multilateral Convention between the Member countries considerably facilitated.

This co-ordination would have many advantages: the application of common rules by the Member countries in questions of double taxation would provide more stability than can be guaranteed by the existing bilateral Conventions which are negotiated or revised independently of one another. Such rules would in particular give more certainty to Member countries' residents doing business in other European countries and to investors, and this would be bound

to have a favourable effect on the development of visible and invisible trade and intra-European investment. If this development is to be ensured, the risk of losses which may result from modification of the tax treatment to which residents of other countries are subjected must as far as possible be avoided. Common rules would also simplify the work of the taxation authorities of the Member countries.

To achieve these results, close and constant collaboration on a suitable multilateral basis must be maintained between the Member countries. A satisfactory solution cannot be obtained from purely bilateral discussions. In addition, in view of the many problems which continually arise when bilateral Conventions are being concluded or revised the Committee wishes to point out how useful it is for Member countries' officials responsible for double taxation questions and experts in the subject to meet from time to time in the O.E.E.C. to clarify and solve these problems together.

The Fiscal Committee considers that the best and most practical way to co-ordinate gradually the bilateral Conventions and to prepare the way for a Multilateral Convention would be to submit to the Council, as common views are reached on questions forming a whole, draft Articles which would be embodied in a recommendation with a view to their implementation by Member countries.

The Fiscal Committee has been encouraged to follow this line of approach because, in a number of bilateral Conventions recently negotiated or revised between Member countries, certain of the Articles proposed by the Committee have been mutually adopted by the negotiators. For example, the draft Article on permanent establishment has been adopted in the bilateral Conventions negotiated by Germany with France, the Netherlands, Sweden, Denmark, Norway and Luxembourg. Various draft Articles prepared by the Fiscal Committee have also been adopted in the Convention recently negotiated between the Netherlands and Austria.

First results of the committee's work

As mentioned above, (page 293), the Fiscal Committee has already reached agreement on four important questions connected with the taxation of income and profits which often cause difficulty when Conventions have to be negotiated or existing Conventions

revised or interpreted. With regard to each of these questions, the Fiscal Committee has adopted a new standard text for the respective Article in the double taxation Conventions. For each draft Article it has prepared a detailed Commentary. The four draft Articles and the corresponding Commentaries are given in Annexes to this Report.[1]) The present chapter therefore will be limited to defining the purpose of each Article and the advantages of the text proposed for it.

Listing and definition of taxes on income and capital (including taxes on estates and inheritances) which should be covered by double taxation agreements.

This Article, which appears at the beginning of Conventions concerning taxes on income and capital and Conventions concerning estates and inheritances, defines the field of application of the Conventions. The intention in the text given in Annex I[1]) is to render the terminology and nomenclature relating to the taxes covered by each Convention acceptable and precise, to ensure identification of the taxes covered by the Convention, to widen the Convention's field of application as much as possible by including taxes imposed by political subdivisions or local authorities and to avoid the necessity of concluding new Conventions whenever changes are made in the taxation laws of the Contracting States. The provisions of the Article are framed as simply and as clearly as possible, and in a similar manner for the two classes of taxes involved, i.e. taxes on income and capital and taxes on estates and inheritances.

Concept of permanent establishment

The Conventions for the avoidance of double taxation on income and capital concluded between the Member countries accept the principle that industrial and commercial profits accruing to an enterprise of one of the Contracting States cannot be subject to tax in the other Contracting State unless the enterprise carries on a trade or business in that other State through a permanent establishment situated therein. If the enterprise carries on a trade or business in the other State, tax on the profits it earns can be charged in that other State, but only on so much of them as is attributable to the permanent establishment.

1) see Part B of this Extract, pag. 303 *et seq.*

What is involved here therefore is an essential concept for which it would be very advantageous if the Member countries adopted a common definition in their double taxation Conventions. Although, in this respect, the existing Conventions to some extent take as their pattern the Articles on permanent establishment of the Mexico and London Model Conventions, nevertheless, differences, which are sometimes very considerable, are to be found in the definitions adopted, and it even occurs that the same country accepts different conceptions in the various agreements which it has entered into.

The draft Article given in Annex II[1]) proposes a standard text which clarifies and simplifies the existing situation; it takes into consideration the current factors in the problem and is based on liberal criteria. Its adoption would therefore have a favourable influence on the development of economic relations between the Member countries. It would make matters much more convenient for taxpayers and would give them much greater certainty; it would also make the work of the national taxation authorities much easier. In view of the importance of this question, a particularly detailed Commentary has been prepared.

Concept of fiscal domicile

The concept of fiscal domicile is another essential concept in double taxation Conventions because it serves to determine the individuals and legal persons contemplated in the Conventions and, in addition, when there is a conflict of domicile, to determine the Contracting State which should have the right to tax. In view of the considerable differences between the concepts applied by Member countries in their internal law, unanimous agreement on the concept of domicile in double taxation Conventions is indispensable.

The purpose of the draft Article given in Annex III[1]) is to determine clearly the fiscal domicile of individuals and legal persons. The Article begins by defining, under the expression "resident of a State" the individuals or legal persons who, under the national law of that State, are liable to taxation therein by reason of the various personal connections they may have with that State. The Article then establishes the successive criteria that have to be

[1]) see footnote at page 297.

applied where an individual is considered to be a resident of more than one State. As regards legal persons, partnerships and associations not possessing legal personality, the Article indicates that in cases of conflict of domicile the State of residence is the State in which the place of effective management is situated.

Tax discrimination on grounds of nationality or similar grounds

Although this question has no connection with problems of double taxation, nevertheless, in a number of double taxation Conventions, it is the subject of special provisions designed to prevent discriminatory treatment, in the form of other or more burdensome taxation, from being applied in one of the two States to taxpayers possessing the nationality of the other State. Similar provisions are to be found in a number of other Conventions: commercial Conventions, Conventions on employment, Conventions on establishment and Conventions of friendschip. The European Convention on Establishment of 13th December, 1955, concluded under the auspices of the Council of Europe and signed by 14 Member countries of the O.E.E.C., also contains in its Article 21 a provision forbidding discrimination based on nationality, but it only applies to individuals and up to now has only been ratified by one country. To this question can be linked the question of the taxation of stateless persons. Ten Member countries of the O.E.E.C., signed the Convention of 28th September, 1954, to improve the conditions of stateless persons, Article 29 of which provides that such persons must be given the treatment accorded to nationals.

The draft Article given in Annex IV[1]) contains a provision on reciprocal taxation treatment of nationals. Although tax discrimination on grounds of nationality is an exception in the Member countries of the O.E.E.C., nevertheless it is important that Member countries' adhesion to the principle of no discrimination for nationality reasons should be clearly embodied in the texts of their double taxation Conventions in view, particularly, of the force of example that this can have for their relations with third countries.

The Article also contains a provision that a permanent establishment owned by an enterprise of one of the Contracting States in the other State must not be less favourably taxed by that other State

[1]) see footnote at page 297.

than enterprises of the latter. This provision on non-discrimination as regards permanent establishments, which is found less frequently in the existing Conventions than the provision on reciprocal taxation treatment of nationals, will give firms greater security in expanding their international business. Lastly, the draft Article contains a provision which so far has only rarely been adopted in existing Conventions: this concerns the taxation treatment of enterprises under the control of residents of the other Contracting State.

Conclusions: The fiscal committee's proposals to the council

In conclusion the Fiscal Committee proposes that the draft Articles annexed to this Report should be embodied in a Recommendation of the Council to the Member countries inviting them to adopt these texts when revising existing Conventions or signing new Conventions between them.

It is also proposed that the countries should notify to the Organisation any such new or revised bilateral Conventions in which the Articles have been adopted or if this has not been possible the reasons for not doing so.

The Fiscal Committee would be instructed to examine these notifications and to report to the Council on the measures taken in application of the Recommendation and on the measures which might be taken to facilitate its implementation in one or more specific countries.

Lastly, the Fiscal Committee expresses the hope that the Council will confirm its present mandate. The Committee considers that it will be in a position to submit to the Council before 1st July, 1961 a draft Convention for the avoidance of double taxation with respect to taxes on income and capital as well as concrete proposals concerning its implementation. The Committee considers that it will also be in a position to submit on this date to the Council a report on the progress of its work concerning the problems of double taxation with respect to taxes on estates and inheritances and to indirect taxes. In the meantime the Fiscal Committee will submit to the Council further proposals or draft recommendations on subjects falling within the scope of its mandate.

The Fiscal Committee is fully aware that the elimination of double taxation only constitutes a first step and that the question

of co-ordination and harmonisation of fiscal policies between Member countries will become increasingly important as European economic co-operation becomes closer. While considering that it is necessary to keep for the present to the mandate which it was given the Fiscal Committee wishes to be kept informed of the work of O.E.E.C. which may have a bearing on fiscal questions or may influence the work undertaken by the Committee.

B. Draft articles with the Fiscal Committee's commentaries

I - DRAFT ARTICLE ON TAXES WHICH SHOULD BE COVERED BY DOUBLE TAXATION CONVENTIONS

Taxes on income and capital

1. This Convention shall apply to taxes on income and capital imposed on behalf of each Contracting State or of its political subdivisions or local authorities, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income and capital all taxes imposed on total income, on total capital, or on the elements of income or of capital, including taxes on profits derived from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.

3. The existing taxes to which this Convention shall apply are in particular:

(a) In the case of State A:.....

(b) In the case of State B:.....

4. This Convention shall also apply to any identical or substantially similar taxes which are subsequently imposed in addition to or in place of the existing taxes. At the end of each year, the competent authorities of the Contracting States shall notify to each other any changes which have been made in their respective taxation laws.

5. The competent authorities of the Contracting States shall by mutual agreement resolve any doubts which arise as to the taxes to which this Convention ought to apply.

Taxes on estates and inheritances

1. This Convention shall apply to taxes on estates and inher-

itances imposed on behalf of each Contracting State or of its political subdivisions or local authorities, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on estates and inheritances all taxes imposed on the occasion of death in the form of tax on the corpus of the estate, of tax on inheritances, of transfer duties, or of taxes on donations mortis causa.

3. The existing taxes to which this Convention shall apply are in particular:

(a) In the case of State A:.....

(b) In the case of State B:.....

4. This Convention shall also apply to any identical or substantially similar taxes which are subsequently imposed in addition to or in place of the existing taxes. At the end of each year, the competent authorities of the Contracting States shall notify to each other any changes which have been made in their respective taxation laws.

5. The competent authorities of the Contracting States shall by mutual agreement resolve any doubts which arise as to the taxes to which this Convention ought to apply.

COMMENTARY

Paragraph 1

This paragraph defines the subject of the Convention: on the one hand, taxes on income and capital—the term "direct taxes" which is far too imprecise has therefore been omitted—and, on the other, taxes on estates and inheritances. It is immaterial on behalf of which authorities such taxes are imposed; it may be the State itself or its political subdivisions or local authorities (constituent States, regions, provinces, "départements", Cantons, districts, "arrondissements", circles ("Kreise"), municipalities or groups of municipalities, chambers of commerce, etc.). The method of levying the taxes is equally immaterial: by direct assessment or by deduction at the source, in the form of surtaxes or surcharges, or as additional taxes ("centimes additionels") etc.

Paragraph 2

This paragraph explains taxes on income and capital and taxes on estates and inheritances.

Taxes on income and capital comprise taxes on total income and on each element of income, on total capital and on each element of capital. They also include taxes on profits derived from the alienation of movable or immovable property, i.e. in particular capital profits and profits on real property, as well as taxes on capital appreciation. Finally, the definition extends to taxes on the total amounts of wages or salaries paid by undertakings ("payroll taxes": in Germany "Lohnsummensteuer"; in France the "versement forfaitaire à la charge des employeurs").

Taxes on estates and inheritances include all taxes imposed on the occasion of death in the form of tax on the corpus of the estate, tax on inheritances, transfer duties, and taxes on donations mortis causa. The definition does not extend to taxes on gifts inter vivos, as this point is not yet absolutely clear and should first be studied in more detail.

Clearly a State possessing taxing powers—and it alone—may levy the taxes imposed by its legislation together with any duties or charges accessory to them: increases, costs, interest, etc. It has not been considered necessary to specify this in the draft Article, as it is obvious that in the levying of the tax the accessory duties or charges depend on the same rule as the principal duty.

The draft does not mention "ordinary taxes" or "extraordinary taxes". Normally, it might be considered justifiable to include extraordinary taxes in the draft Convention, but experience has shown that such taxes are generally imposed in very special circumstances. In addition, it would be difficult to define them. They may be extraordinary for various reasons; their imposition, the manner in which they are levied, their rates, their objects, etc., etc. This being so, it seems preferable not to include extraordinary taxes in the draft Article. But, as it is not intended to exclude extraordinary taxes from all the Conventions, ordinary taxes have not been mentioned either. The Contracting States are thus free to restrict the Convention's field or application to ordinary taxes, to extend it to extraordinary taxes, or even to establish special provisions.

Paragraph 3

This paragraph lists the taxes in force at the time of signature of the Convention. The list is not exhaustive. It serves to illustrate the preceding paragraphs of the Article. In principle, however, it will be a full list of the taxes imposed in each State at the time of signature and covered by the Convention.

Paragraph 4

This paragraphs provides, since the list of taxes in paragraph 3 is purely declaratory, that the Convention is also to apply to all identical or substantially similar taxes which are subsequently imposed in addition to or in place of the existing taxes. This provision is necessary to prevent the Convention from becoming inoperative in the event of one of the States modifying its taxation legislation.

Each State undertakes to notify to the other any amendments made to its taxation legislation, by communicating to it at the end of each year, when necessary, a list of new or substituted taxes imposed during that year.

Paragraph 5

This paragraph deals with the procedure for mutual consultation. It is drafted fairly widely to enable the States to consult together whenever they think fit. Normally such procedure amy be initiated whenever doubt arises as to the field of application of the Convention in regard to taxes. Doubts may also arise as to the interpretation of one or other of the preceding paragraphs of the Article, in particular paragraph 2, or any other question concerning taxes imposed additionally or substituted.

II - DRAFT ARTICLE ON PERMANENT ESTABLISHMENT

1. The term "permanent establishment" means a fixed place of business in which the business of the enterprise is wholly or partly carried on.

2. A permanent establishment shall include especially:

(a) a place of management;

(b) a branch;

(c) an office;

(d) a factory;

(e) a workshop;

(f) a mine, quarry or other place of extraction of natural resources;

(g) a building site or construction or assembly project which exists for more than twelve months.

3. The term "permanent establishment" shall not be deemed to include:

(a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;

(b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;

(c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

(d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or for collecting information, for the enterprise;

(e) the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research or for similar activities which have a preparatory or auxiliary character, for the enterprise.

4. A person acting in a Contracting State on behalf of an enterprise of the other Contracting State—other than an agent of an independent status to whom paragr ph 5 applies—shall be deemed to be a permanentestablishment in the first-mentioned State if he has and habitually exercises in that State an authority to conclude contracts in the name of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise.

5. An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State through a

broker, general commission agent or any other agent of an independent status, where such persons are acting in the ordinary course of their business.

6. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

Note: The expression "enterprise of a Contracting State" means an enterprise carried on by a resident of the Contracting State concerned.

COMMENTARY

Paragraph 1

For the sake of clarity it is preferable to have a general definition of the concept of "permanent establishment" which is set out in a separate paragraph and not one which is almost hidden in a list of a number of agreed examples, as is the case in Article V, paragraph 1, of the Mexico and London Drafts of the Model Tax Convention published by the League of Nations. For this reason the Article begins in paragraph 1 by attempting a general definition of "permanent establishment". This general definition attempts to bring out the essential characteristic of a "permanent establishment", viz. that it has a distinct situs a "fixed place of business".

It could perhaps be argued that in the terms of the general definition some mention should also be made of the other characteristic of a permanent establishment to which some importance is attached in the Commentary on the Mexico and London Drafts, namely that, in the words of that Commentary, the establishment "must have a productive character—i.e. contribute to business earnings". In the present permanent establishment Article this course has not been taken. Within the framework of a well run business organisation it is surely axiomatic to assume that each part contributes to the productivity of the whole. It does not, of course, folllow in every case that because in the wider context of the whole organisation a particular establishment has a "productive character" it is consequently an establishment to which profits can properly be attributed for the purpose of tax in a particular territory (see the Commentary on paragraph 3).

The criterion of "productive character" having been rejected, it would have been possible as an alternative to add to the general definition as it is now drafted in paragraph 1 of the Article the criterion of "profitability". This course was not taken mainly because the concept of profitability did not seem wholly relevant. There seemed to be three possible ways of distinguishing such a concept. First, it would be possible to add at the end of the general definition as it now stands in paragraph 1 the words "and through which profits are made or realised" or some similar formula. But this is clearly unsatisfactory because a permanent establishment which makes profits one year may not do so the next and it would be a most unfortunate result if, because of fluctuations in profitability, certain business activities were deemed to constitute a permanent establishment in one year and not in the

next. To some extent this difficulty could be surmounted by taking the second course and adopting a formula on the lines "and through which, taking one year with another, profits are made or realised", but this is by no means a complete answer to the problem because even a branch establishment which year after year itself makes a loss may nevertheless in the context of the whole enterprise of which it is a part "contribute to business earnings" in the sense that the League of Nations' Commentary seems to have meant. The third course is to draft an addition to the general definition in a manner which pays no regard to the question whether the establishment does or does not make distinguishable profits and to adopt the formula ". . . in which the business of the enterprise is wholly or partly carried on with the intention of realising profits". In many respects this third course could perhaps be regarded as the most satisfactory of the three because it ignores what may be the actual accounting results of the enterprise and attempts to define its inherent profitability. But as will be seen it is base upon a test not of fact but of motive and this is clearly an insuperable objection. To import a motive test into a set of rules intended to define with precision the taxation liabilities of individuals and companies is wholly undesirable and this third attempt at a definition of "profitability" is obviously unacceptable on that ground alone.

The general definition in paragraph 1 has, therefore, been drafted in its present form because it is the one which gives the greatest clarity and which promises to be the easiest to administer. There follows in paragraph 2 a list of prima facie examples of permanent establishments. In paragraph 3 there is provided a list of specific exceptions which, although they involve "a fixed place of business' should be excepted from the general rule in order to foster international trade or for convenience of administration. It is not, of course, suggested that the list in paragraph 2 is exhaustive. The last words of paragraph 3 (e) also provide a generalised exception to the general definition laid down in paragraph 1. These words have the effect of restricting to some extent the effect of paragraph 1 and go some way to meeting criticism that the scope of the general definition is too wide.

During the drafting of the permanent establishment Article a good deal of consideration was given to the question whether it should contain some special provision for itinerant merchants, pedlars and watermen. After careful consideration it was decided that in such cases there should only be deemed to be a permanent establishment if there is a fixes place of business. Itinerants of this kind are, in general, subject to tax in the country of residence. A special provision to deal with these people seems unnecessary because their income will, in general, be small and it is likely to be most difficult to tax them in any country except the one in which they reside. Moreover, any loss of tax which a country may suffer through giving up its right to tax itinerants from other countries is likely to be more or less compensated by the fact that it will have the sole right to tax itinerants residing within its own borders. It may be, of course, that countries with common frontiers will regard this problem as of sufficient importance to merit some special provision.

Paragraph 2

This paragraph contains a list, by no means exhaustive, of examples each of which can be regarded a priori as constituting a "permanent establishment". In the many bilateral Conventions concluded between Member countries of O.E.E.C. there can, of course, be found other examples which, because of their importance in relation to the domestic taxation law of one or both of the contracting parties, have an equally strong claim to be included in this paragraph. In drafting this paragraph there were, however, three possible courses. First, there could have been compiled a composite para-

graph which would necessarily have been of considerable length and would in effect have consolidated and brought together all the particular instances of permanent establishments which Member countries have found it convenient to include in their Conventions with one another. Secondly, there could have been drawn up a paragraph of medium length, selecting some of the more usual examples from existing bilateral Conventions and rejecting others, giving reasons for the choice, Finally, it would have been possible to take the minimum list of those examples common to, and agreed between Member countries. The method finally selected was to a considerable degree dictated by the nature of the task with which the draftsmen of the Article were faced. The main purpose of preparing a new permanent establishment Article was to delimit with some degree of precision the common ground between Member countries, in other words to compile a draft Article which Member countries would be able to accept with a minimum of discussion. With this purpose in mind it would have been a singularly useless exercise to pursue the first of the courses outlined above; the resulting Article would have been of inordinate length and many of its examples would have been completely inapplicable to the circumstances of a large number of Member countries. Similarly with the second course; to select from the many Conventions which exist examples worthy of inclusion would have been somewhat invidious and, unless the selection had been based on an extremely precise and detailed knowledge of the domestic law of each Member country—in the nature of things a most difficult test to satisfy—would have been scarcely less than impertinent. Moreover, the resulting Article would have suffered from many of the defects inherent in the first of the courses mentioned above; some of its examples would have been inapplicable to the circumstances of many Member countries.

It is, therefore, the third course which has been taken. Basing itself on Article V of the Mexico and London Drafts, the Article attempts to comprise a list of examples which represent common ground on which Member countries will be able to agree. There has been included in paragraph 2 most of the examples given in sub-paragraph 1 of Article V of the Mexico and London Drafts; there is, however, one addition and there are one or two exceptions. There has been added "place of management"; it is considered that this example should be specially mentioned since the "place of management" need not necessarily be an "office". On the other hand, it did not seem necessary to include "head office". In so far as this term is not covered, like "professional premises" which has also been omitted, by the general term "office" it seemed that the "head office" of an organisation would normally be the "place of management". "Installations" has also been left out as being a term so general as to be virtually meaningless. The terms "building site and construction or assembly project" cover constructional activities such as excavating or dredging. The provision that a building site or assembly project shall only be deemed to be a permanent establishment if it exists for more than twelve months is not intended to prevent a country from raising a tax assessment before a year has expired if it appears that the site or project is likely to last for more than twelve months. The period of twelve months may, of course, fall, in part, into more than one fiscal year.

During the drafting of the Article it was proposed that the term "warehouse" should be included as a separate item in paragraph 2. This example has been traditionally included in similar Articles as sufficiently important to merit particular mention. The purpose of including the term was, of course, to cover only those warehouses in which the business of letting storage space or other facilities to third parties was carried on. The insertion of the term was not intended to treat as a permanent establishment a warehouse controlled by an enterprise, but used only for the storage, etc. of its own goods. It was, however, suggested that to insert the term would cause confusion and that

the term "warehouse" in paragraph 2 read together with (a) and (b) of paragraph 3 would be misleading. It was accordingly decided not to include the term "warehouse" in paragraph 2. A warehouse in which the business of letting facilities for storage, etc. to third parties is carried on will be a permanent establishment under the general definition of paragraph 1 even though it is not specifically mentioned in the list of examples in paragraph 2. Paragraph 3, however, makes it clear that a warehouse is not a permanent establishment if it is used by the enterprise which controls it merely for the purpose of storage, etc.

Paragraph 3

This paragraph contains, first, a number of examples of forms of business activity which should not be treated as constituting permanent establishments even though the activity is carried on in a "fixed place of business" and, secondly, in the last few words of sub-paragraph (e), a generalised exception to the rule laid down in paragraph 1 that a "fixed place of business in which the business of the enterprise is wholly or partly carried on" shall be regarded *a priori* as a permanent establishment.

The actual examples of exceptions listed in subparagraphs (a) to (e) do not require much detailed comment. The first two and the fourth are common in the bilateral Conventions concluded between Member countries. Paragraph 3(a) of the Article relates only to the case in which an enterprise acquires the use of facilities for storing, displaying or delivering its own goods or merchandise. Paragraph 3(b) relates to the stock of merchandise itself and provides that the stock shall not be treated as a permanent establishment if it is maintained for the purpose of storage, display or delivery. Paragraph 3(c) covers the case in which a stock of goods or merchandise belonging to one enterprise is processed by a second enterprise in another territory on behalf of, or for the account of, the first-mentioned enterprise. The reference to the collection of information in paragraph 3(d) is intended to cover the case of the newspaper bureau which has no purpose other than to act as one of many "tentacles" of the parent body; to exempt such a bureau is no more than an extention of the concept of "mere purchase".

Comment is perhaps called for on the examples mentioned in paragraph 3(e). It is recognised that a place of business the function of which is solely that of advertising, or the supply of information, or of scientific research may well contribute to the productivity of its parent enterprise. To assume so is once more axiomatic. But the services it performs for its parent enterprise are so far antecedent to the actual realisation of profits by its parent body that no profits can properly be allocated to it; accordingly it does not constitute a taxable unit. It should, of course, be emphasised that exemption should be given only so long as the place of business completely satisfies the conditions laid down. If, for example,the research establishment were to concern itself with manufacture, then exemption would be forfeited. The last words of sub-paragraph (e) "or for similar activities which have a preparatory or auxiliary character for the enterprise" require a special explanation of their own. The purpose of these words is twofold. In the first place, since it would be unreasonable to seek to claim that the list of examples quoted in paragraph 3 is, or in the nature of things could hope to be, exhaustive, the last words of sub-paragraph (e) are intended to cover any further examples (such as the organisation maintained solely for the purposes of servicing a patent or "know-how" contract) which are not listed among the exceptions in paragraph 3 but are nevertheless within the spirit of them. The words in question are, therefore, intended to make it unnecessary to attempt to produce an exhaustive list of exceptions which, even if it were comprehensive, would inevitably be of inordinate length and undesirable rigidity. In the second place, the words extend the principle underlying the examples in sub-

paragraph (e) to provide a generalised exception to the general definition in paragraph 1. To a considerable degree they delimit that definition and exclude from its rather wide scope a number of forms of business organisation which, although they are carried on in a fixed place of business, should not be treated as taxable units. To put the matter in another way, the last words of sub-paragraph (e) refine the general definition in paragraph 1 and, when read with that paragraph, provide a more selective test by which to determine what constitutes a *properly taxable* permanent establishment. In view of the examples given, the reference to "similar activities" cannot lead to an arbitrary extension of the exemption set out in paragraph 3(e). It will, of course, be the responsibility of the enterprise to prove that the activities in question are of a preparatory or auxiliary character within the framework of the whole activities of the enterprise. If, for example, the results of the research carried on in a laboratory are not only used by the enterprise but are also sold to a third party, the paragraph would cease to apply. Alternatively, it would be possible for countries to include in bilateral agreements a provision that, where the results of the laborator's research are used partly by the enterprise and in part are sold to third parties, the charge to tax on the permanent establishment should be limited to the profits arising from the sales to third parties. Such a provision would be analogous to the provisions relating to "mere purchase" in a number of Conventions.

Paragraph 4: Dependent Agents and Employees

Whilst in paragraph 3 certain exceptions are made to the general definition in paragraph 1, it seems necessary in conformity with the international practice hitherto followed to treat certain groups of persons as permanent establishments on account of the nature of their business activities, even though they may not have a "fixed place of business".

Persons who may be deemed to be permanent establishments must be strictly limited to those who are dependent, both from the legal and economic points of view, upon the enterprise for which they carry on business dealings (Report of the Fiscal Committee of the League of Nations, 1928, page 12). Where an enterprise has business dealings with an independent agent, this cannot be held to mean that the enterprise itself carries on a business in the other State. In such a case, there are two separate enterprises.

Having thus excluded the independent agents from the term "permanent establishments", it would likewise not be in the interest of international economic relations to treat all dependent agents as being permanent establishments. Treatment as a permanent establishment should be limited to dependent agents of those enterprises which, in view of the scope of their agent's authority or of the nature of their agent's business dealings, take part to a particular extent in business activities in the other State. Therefore, the Article proceeds on the basis that only persons having the authority to conclude contracts shall be treated as permanent establishments. The term "general authority" which has been commonly used in bilateral Conventions has been abandoned and replaced simply by the term "authority". In practice, it seems unlikely that any dependent agents have a completely unfettered authority to enter into contracts. In all cases the authority must be to some extent circumscribed. For administrative reasons, it seems advisable to avoid the difficulties which would inevitably arise if the question whether or not the dependent agent is a permanent establishment had to be decided by reference to the precise extent of his authority. When the agent has sufficient authority to bind the enterprise by entering into contracts, the extent of the enterprise's participation in the business activity of the other country is such that the agent shold be deemed to be a permanent establishment. The use of the term "permanent establishment" in relation to a person, presupposes, of course,

that that person makes use of his authority repeatedly and not merely in isolated cases.

During the drafting of the Article, it was at one stage suggested that one of the tests that should be used to determine whether or not an agent to be regarded as a permanent establishment should be the availability in the country in which the agent operates and at the disposal of the agent of a stock of goods or merchandise belonging to the enterprise. This is, of course, a criterion commonly employed in bilateral Conventions for the avoidance of double taxation. For a number of reasons, this suggestion was not pursued and in its present from paragraph 4 of the Article is founded on the view that the only real criterion is the nature of the authority entrusted to the agent; in brief, whether or not he has, and habitually exercises, an authority to enter into and conclude contracts in the name of the enterprise.

Since the maintenance of a place of business exclusively for the purchase of goods or merchandise is not to constitute a permanent establishment (cf. paragraph 3), a person should not be deemed to be a permanent establishment merely because he has an authority to conclude contracts which is strictly limited to contracts covering the purchase of goods or merchandise.

Under paragraph 4 of the proposal, only one category of dependent agents, who meet specific conditions, is deemed to be permanent establishments. All independent agents and the remaining dependent ones are deemed not to be permanent establishments. Mention should be made of the fact that the Mexico and London Drafts (Article V, paragraph 4, of the Protocol) and a number of Conventions do not enumerate exhaustively such dependent agents as are deemed to be permanent establishments, but merely give examples. In the interest of preventing differences of interpretation and of furthering international economic relations, it would, however, appear to be advisable to define, as exhaustively as possible, the cases where agents are deemed to be "permanent establishments".

Paragraph 5: Independent Agents

Where the enterprise carries on business dealings through an agent of a genuinely independent status, it cannot be taxed in the other Contracting State (cf. the reasons given in paragraph 14 above). Corresponding provisions are included in the Mexico and London Drafts (Article V, paragraph 3, of the Protocol) and in numerous other Conventions for the avoidance of double taxation. In the Mexico and London Drafts and in the Conventions, brokers and commission agents are stated to be agents of a genuinely independent status. Similarly, business dealings carried on with the co-operation of any other independent person carrying on a trade or business (e.g. a forwarding agent) do not constitute a permanent establishment. Such independent agents must, however, be acting in the ordinary course of their business. Where, for example, a commission agent not only sells the goods or merchandise of the enterprise in his own name but also habitually acts, in relation to that enterprise, as a permanent agent having an authority to enter into contracts, he would be deemed in respect of this particular activity to be a permanent establishment since he is thus acting outside the ordinary course of his own trade or business (namely that of a commission agent).

Although it stands to reason that agents of an independent status, representing as they do a separate enterprise, cannot constitute a permanent establishment of the foreign enterprise where they are acting in the ordinary course of their business as such (cf. paragraph 14 of the Commentary), paragraph 5 is retained in the draft for the sake of clarity and emphasis especially since a similar provision is contained in nearly all of the double taxation agreements so far concluded.

Paragraph 6: Subsidiary Companies

The Mexico and London Drafts (Article V, paragraph 8, of the Protocol)

and numerous Conventions for the avoidance of double taxation, provide that the existence of a subsidiary company does not, of itself, constitute that subsidiary company a permanent establishment of its parent company. This follows from the principle that, for the purpose of taxation, such a subsidiary company constitutes an independent legal entity. Even the fact that the trade or business carried on by the subsidiary company is managed by the parent company does not constitute the subsidiary company a permanent establishment of the parent company.

Where, however, the subsidiary company, on behalf of its parent company, carries on an activity within the provisions of paragraph 4, that subsidiary company is deemed to be a permanent establishment of the parent company. Where, for example, the subsidiary company, on the strength of an authority, concludes contracts of sale in the name of the parent company, the subsidiary company will be treated as a permanent establishment of the parent company (but only in respect of such activities). The parent company is subject to tax on so much of the profits accruing from such sales as is attributable to that permanent establishment. This does not affect the separate taxation of the subsidiary company's own profits.

For the same reasons, a parent company should not be treated as constituting a permanent establishment of its subsidiary unless it fulfils the conditions set out in paragraph 4. The same rules should apply to two or more subsidiaries of the same company.

III - DRAFT ARTICLE ON FISCAL DOMICILE

1. For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the law of that State, is liable to taxation therein by reason of his domicile, residence, place of management or any other similar criterion.

2. Where by reason of the provisions of the preceding paragraph an individual is a resident of both Contracting States, then this case shall be solved in accordance with the following rules:

(a) he shall be deemed to be a resident of the Contracting State in which he has a permanent home available to him. If he has a permanent home available to him in both Contracting States, he shall be deemed to be a resident of the Contracting State with which his personal and economic relations are closest (centre of vital interests);

(b) if the Contracting State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either Contracting State, he shall be deemed to be a resident of the Contracting State in which he has an habitual abode;

(c) if he has an habitual abode in both Contracting States or in neither of them, he shall be deemed to be a resident of the Contracting State of which he is a national;

(d) if he is a national of both Contracting States or of neither of them, the competent authorities of the Contracting States shall determine the question by mutual agreement.

3. Where by reason of the provisions of the preceding paragraph 1 a legal person is a resident of both Contracting States, then it shall be deemed to be a resident of the Contracting State in which its place of effective management is situated. The same provision shall apply to partnerships and associations which under the national laws by which they are governed are not legal persons.

COMMENTARY

1. General Comments

The concept of domicile has various functions and is of importance in three cases:

(a) in determining a Convention's *field of application* with respect to physical and legal persons;
(b) in solving cases where double taxation arises in consequence of *a double domicile;*
(c) in solving cases where double taxation arises as a consequence of *conflict between domicile and source.*

The draft Article is intended only to solve the conflict between two domiciles. For further elucidation of the draft Article some general comments are made below referring to the two typical cases of conflict, i.e. between two domiciles and between domicile and source. In both cases the conflict arises because, *under their internal legislation,* one or both Contracting States claim that the person concerned has his domicile in their territories.

Generally the national legislations of the various States impose a more comprehensive liability to tax—"full tax liability"—on account of the taxpayer's personal attachment to the State concerned (the State of "domicile"). This liability to tax is not imposed only on persons who are "domiciled" in a State in the sense in which "domicile" is usually taken in the legislations (civil law). The cases of full liability to tax are extended to comprise also, for instance, persons who stay continually, or may be only for a certain period, in the territory of the State. Some legislations impose full liability to tax on individuals who perform services on board ships which have their home port in the State.

The Conventions for the avoidance of double taxation do not concern themselves with testing the national rules of law of the Contracting States laying down the cases in which a person is to be treated fiscally as "domiciled" and, consequently, is "fully liable to taxation" in that State. The Conventions do not lay down standards which the national rules of law on "domicile" have to fulfil in order that claims for full tax liability can be accepted between the Contracting States. In this respect the States take their stand entirely on the national legislations.

This manifests itself quite clearly in the cases where there is no conflict at all between two domiciles, but where the conflict exists only between domicile and source. But the same view applies in conflicts between two domiciles. The special point in these cases is only that no solution of the conflict can be arrived at by reference to the concept of domicile adopted in

the national laws of the States concerned. In these cases special provisions must be established in the Convention to determine which of the two concepts of domicile is to be given preference.

An example will elucidate the case:

An individual has his permanent home in State A, where his wife and children live. He has had a stay of more than six months in State E, and according to the legislation of the latter State he is—in consequence of the length of the stay— taxed as being domiciled in that State. Thus, both States claim that he is fully liable to tax. This conflict has to be solved by the Convention.

In this particular case the draft Article under paragraph 2 gives preference to the claim of State A. This does not, however, imply that the draft Article lays down special rules on "domicile" and that the national rules of law of State B are ignored because they are incompatible with such rules. The fact is quite simply that in the case of such a conflict a choice must necessarily be made between the two claims, and it is on this point that the draft Article proposes special rules.

What is stated above gives the general background of the draft Article. Special comments are made below.

2. *Special Comments on the Draft Article*

Paragraph 1

The Conventions usually refer to the State of "domicile" in several Articles. It was felt that, for terminological reasons, it would be useful if "a shorthand expression" could be used in all cases where the State of "domicile" is mentioned. In the draft Article it is suggested to use the expression "*resident*". This term is used in Conventions concluded by the United Kingdom and by the United States of America. In the Convention between the United Kingdom and France the expression "un résident" is used in the French text.

Paragraph 1 provides a definition of the expression "resident" of a State for the purposes of the Convention. The proposed definition refers to the concept of residence adopted in the national laws (cf. General Comments). As criteria for the taxation as a resident the definition mentions: "domicile, residence, place of management or any other similar criterion". As far as individuals are concerned the definition aims at covering the various forms of personal attachment to a State which, in the national fiscal legislations, form the basis of a more comprehensive taxation (full liability to tax).

Paragraph 2

This paragraph relates to the case where, under the provision of paragraph 1 an individual is subject to tax as a resident in both Contracting States.

To solve this conflict special rules must be established which give the attachment to one State a preference over the attachment to the other State. As far as possible, the "preference criterion" must be of such a nature that there can be no question but that the person concerned will satisfy it in one State only, and at the same time it must reflect such an attachment that it is felt to be natural that the right to tax devolves upon that particular State.

It is proposed to give preference to the Contracting State in which the individual has a permanent home available to him. This is in accordance with the usual provisions in double taxation Conventions, and this criterion will frequently be sufficient to solve the conflict e.g. where the individual has a permanent home in one Contracting State and has only made a stay of some length in the other Contracting State.

If the individual has a permanent home in both Contracting States, the preference, according to the proposal, shall belong to the State with which

his personal and economic relations are closest, this being understood as the centre of vital interests.

In the cases where the residence cannot be determined by reference to the above provisions, the draft proposes as subsidiary criteria, first, habitual abode, and then nationality.

If the individual is a national of both Contracting States or of none of them, the question shall be solved by mutual agreement between the States concerned. Such cases occur but rarely, and it might be possible to do without a special provision as to them if a general rule—such as is to be found in several Conventions—were included in the Convention to the effect that the competent authorities of the States shall endeavour to come to an agreement for the purpose of preventing double taxation in cases not otherwise provided for by the Convention as well as in cases where the interpretation or the application of the Convention gives rise to difficulties or doubts.

Paragraph 3

This paragraph concerns legal persons as well as partnerships and associations which under the national laws by which they are governed are not legal persons. It may be rare in practice for a company etc. to be subject to tax as a resident in more than one State, but it is, of course, possible if, for instance, one State attaches importance to the registration and the other State to the place of effective management. So, in the case of companies also, special rules as to the preference must be established.

It would not be natural to attach importance to a purely formal criterion like registration which is used but rarely in double taxation Conventions. Generally these attach importance to the place where the company is actually managed, but the formulation of this criterion varies from one Convention to another.

The formulation of the preference criterion in the case of legal persons etc. was considered in connection with the question of the taxation of income of shipping, inland waterways transport and air transport enterprises. A study of the existing bilateral agreements for the avoidance of double taxation on such income has shown that a number of Conventions accord the taxing power to the State in which the "place of management" of the enterprise is situated; other Conventions attach importance to its "place of effective management", others again to "the fiscal domicile" of the operator. The Conventions concluded by the United Kingdom in recent years provide, as regards corporate bodies, that a company shall be regarded as resident in the State in which "its business is managed and controlled". In this connection it has been made clear on the United Kingdom side that this expression means the "effective management" of the enterprise.

As a result of these considerations it is proposed to adopt as a preference criterion in the case of legal persons and of partnerships and associations without legal personality the "place of effective management".

IV - DRAFT ARTICLE ON TAX DISCRIMINATION ON GROUNDS OF NATIONALITY OR OTHER SIMILAR GROUNDS

1. The nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected.

2. The term "nationals" means:

(a) all individuals possessing the nationality of a Contracting State;

(b) all legal persons, partnerships and associations deriving their status as such from the law in force in a Contracting State.

3. Stateless persons shall not be subjected in a Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of that State in the same circumstances are or may be subjected.

4. The taxation on a permanent establishment which an enterprise of a Contracting State owns in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities.

This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

5. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State shall not be subjected in the first-mentioned Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of that first-mentioned State are or may be subjected.

6. In this Article the term "taxation" means taxes of every kind and description.

Note: The expression "enterprise of a Contracting State" means an enterprise carried on by a resident of the Contracting State concerned.

COMMENTARY

Paragraph 1

This paragraph establishes the principle that for purposes of taxation, discrimination on the ground of nationality is forbidden, and that, subject to reciprocity, the nationals of a Contracting State may not be less favourably treated in the other Contracting State than nationals of the latter State in the same circumstances.

The expression "in the same circumstances" which appears in the text refers to taxpayers (individuals, legal persons, partnerships and associations) placed, from the point of view of the application of the ordinary taxation law and regulations, in substantially similar circumstances both in law and in fact.

Consequently if one of the Contracting States, in giving relief from taxation on account of family responsibilities, distinguishes between its own nationals according to whether they reside in its territory or not, that State cannot be obliged to give nationals of the other State who do not reside in its territory the same treatment as it gives its resident nationals but it undertakes to extend to them the same treatment as is available to its non-resident nationals.

Likewise, the provisions of paragraph 1 are not to be construed as obliging a State which accords special taxation privileges to its own public bodies or services as such, to extend the same privileges to the public bodies and services of the other State.

Neither are they to be construed as obliging a State which accords special taxation privileges to private institutions not for profit whose activities are performed for purposes of public benefit, which are specific to that State, to extend the same privileges to similar institutions whose activities are not for its benefit.

To take the first of these two cases, if a State accords immunity from taxation to its own public bodies and services this is justified because the former are integral parts of the State and at no time can their circumstances be comparable to those of the public bodies and services of the other State. Nevertheless, this reservation is not intended to apply to State corporations carrying on gainful undertakings. To the extent that these can be regarded as being on the same footing as private industrial and commercial undertakings, the provisions of paragraph 1 will apply to them.

As for the second case, if a State accords taxation privileges to certain private institutions not for profit, this is clearly justified by the very nature of these institutions' activities and by the benefit which that State and its nationals will derive from those activities.

Furthermore, paragraph 1 of the Article has been deliberately framed in a negative form. By providing that the nationals of one Contracting State may not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of the other Contracting State in the same circumstances are or may be subjected, this paragraph probably has the same mandatory force as if it enjoined the Contracting States to accord the same treatment to their respective nationals. But since the principal object of this clause is to forbid discrimination in one State against the nationals of the other, there is nothing to prevent that first State from granting, for special reasons of its own, certain concessions or facilities to foreigners which are not available to its own nationals. As it is worded, paragraph 1 of the article would not prohibit this should the case ever arise.

Subject to the foregoing observations, the words ". . . shall not be subjected . . . to any taxation or any requirement connected therewith which is other or more burdensome . . ." means that when a tax is imposed on

nationals and foreigners in the same circumstances, it must be in the same form for both, its basis of charge and method of assessment must be the same, taxation (returns, payment, prescribed times, etc.) must not be more onerous for foreigners than for nationals.

Paragraph 2

The purpose of paragraph 2 is more to specify the content of the expression "nationals" used in paragraph 1 than to define it. Strictly speaking, by merely stipulating in a customary formula that this expression applies to all individuals possessing the nationality of one of the Contracting States, the paragraph seems to beg the question; but it has not been judged necessary here to introduce into the text of the Article any considerations on the signification of the concept of nationality, any more than it seemed indispensable to make any special comment here on the meaning and application of the word. Obviously, in determining, in relation to individuals, what is meant by "the nationals of a Contracting State", reference must be made to the sense in which the term is usually employed and each State's particular rules on the acquisition or loss of nationality.

But paragraph 2 is more specific as to legal persons, partnerships and associations. By declaring that all legal persons, partnerships and associations deriving their status as such from the law in force in a Contracting State are considered to be nationals for the purposes of paragraph 1 of the Article, the provision disposes of a difficulty which often arises in determining the States have regard less to the law which governs the company than to the origin of the capital with which the company was formed or the nationality of the individuals or legal persons controlling it. No ambiguity need be apprehended, therefore.

Moreover, in view of the legal relationship created between the company and the State under whose law it is constituted, which from certain points of view is closely akin to the relationship of nationality in the case of individuals, it seems justifiable not to deal with legal persons, partnerships and associations in a special provision, but to bring them under the same term with individuals.

Paragraph 3

On 28th September, 1954, a number of States concluded a Convention relating to the status of stateless persons, under Article 29 of which stateless persons must be accorded national treatment. The signatories of the Convention include several O.E.E.C. Member countries. Such a provision, however, is only suitable for insertion in a multilateral Convention.

Paragraph 4

Strictly speaking, the type of discrimination which this paragraph is designed to end is discrimination based not on nationality, but on the actual situs of an enterprise. It therefore affects without distinction, and irrespective of their nationality, all residents of a Contracting State who own permanent establishments in the other Contracting State. In this connection, while it is true that most Conventions for the avoidance of double taxation lay down the principle that; for the purpose of charging tax, a permanent establishment owned by an enterprise of a Contracting State in the other Contracting State must be regarded as an independentent erprise and treated as such, nevertheless the other State does not always extend to the permanent establishment the full benefit of the treatment it applies to its own enterprises. Thus, the permanent establishment may not be allowed the same depreciation facilities, or a proportion of the principal enterprises overheads is not always allowed to be attributed to the permanent establishment, or any losses incurred by the permanent establishment are not allowed to be

set off. The purpose of paragraph 4 is to put an end to these differences in treatment by stipulating that a permanent establishment which an enterprise resident of a Contracting State owns in the other Contracting State must not be less favourably taxed by that other Contracting State than enterprises resident of that State and carrying on the same activities.

This provision does not mean, however, that a Contracting State must give an individual residing in the other Contracting State, in connection with the taxation for which he is liable in the first Contracting State in respect of a permanent establishment owned by him therein, any personal allowances, reliefs and reductions on account of civil status or family responsibilities which it gives to its own residents. This reservation, moreover, is expressly contained in the text of the Article.

Furthermore, it seems indispensable to specify that the wording of the first sub-paragraph of paragraph 4 must be interpreted in the sense that it does not constitute discrimination to tax non-resident persons, for reasons of practical convenience, differently from resident persons so long as this does not result in more burdensome taxation for the former than for the latter. In the negative form in which the provision has been framed it is the result alone that counts, it being permissible to adapt the taxation to the particular circumstances in which it is levied.

Finally, with regard to the use of the word "entreprise" in the first sub-paragraph of paragraph 4, the question was raised whether it would not be better to use the word "enterpreneur" instead which had the merit of designating both individuals and legal persons and of thus being applicable where it is not the enterprise itself that is taxed but the individual carrying on the enterprise. The word "enterprise" was finally selected, it being understood that the choice between the two terms might depend on the terminology used in the Convention in which the provision is to appear.

Paragraph 5

Paragraph 5 forbids a State to give different treatment to two enterprises residing in its territory, the capital of one of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State. This provision, and the discrimination which it puts an end to, relates to the taxation only of enterprises and not of the persons owning or controlling their capital. Its object therefore is to ensure equal treatment for taxpayers residing in the same State, and not to subject foreign capital, in the hands of the partners or shareholders, to identical treatment to that applied to domestic capital. Paragraph 5 has no connection with nationality as defined in paragraph 2 and in no way does it purport to introduce into the Article a new concept of "nationality of capital".

Paragraph 6

This paragraph states that the word "taxation" used in the preceding paragraphs of the Article means taxes of every kind and description levied by or on behalf of the State, its political subdivisions or local authorities. It does not call for any special comment.

I

LES ASPECTS FISCAUX DU MARCHÉ COMMUN [1])

par

Georges VEDEL

Professeur à la Faculté de Droit de Paris

Les clauses du Traité de Marché Commun intéressant la fiscalité proprement dite — si l'on exclut naturellement tout ce qui touche aux douanes — se trouvent rassemblées dans deux chapitres du Titre Premier de la Troisième Partie du Traité. L'un de ces chapitres (Chapitre II) s'intitule «Dispositions fiscales»; l'autre (Chapitre III) a trait au «Rapprochement des Législations». L'ensemble couvre les articles 95 à 102.

Les stipulations que l'on vient ainsi d'évoquer sont à la fois touffues et importantes. Traité-Cadre comme on l'a dit bien souvent, le Traité de Marché Commun est riche en clauses de cet ordre. Ne pouvant fixer dans le détail ce que serait le fonctionnement du nouvel espace économique qu'ils créaient, et ceci sous peine d'écrire des milliers d'articles, les rédacteurs du Traité ont surtout voulu poser des principes et ont fait confiance à la Commission, au Conseil des Ministres et aux Etats membres pour en tirer loyalement et sagement les conséquences. Il n'en demeure pas moins que les stipulations du Traité, dans la matière fiscale comme en bien d'autres, sont d'une grande portée et qu'il ne faut pas en mesurer l'intérêt au nombre relativement petit de mots dans lesquels elles s'expriment.

Sans doute, nombre de lecteurs du Traité, se plaçant au point de vue particulier qui les intéressait, ont-ils pensé que les précisions fournies par le texte étaient insuffisantes: le banquier, le syndicaliste, le pétrolier, l'agriculteur même s'étonnent volontiers que des problèmes vitaux pour leurs entreprises ou pour leurs activités soient évoqués en quelques pages, quelques lignes, quelques mots et ne puissent être résolus que par des interprétations parfois incertaines,

1) Conférence faite lors du XIIème Congrès de l'I.F.A., Knokke, 1958.

car l'art de comprendre les traités ou les lois a toujours quelque chose d'un peu conjectural, par quoi les juristes s'apparentent aux cartomanciennes ou, si l'on veut une comparaison plus noble, aux météorologistes.

Les théoriciens ou les praticiens de la fiscalité ne peuvent se défendre du même premier mouvement. Eh quoi! Des sujets aussi passionnants et aussi importants au point de vue des relations économiques internationales que la non-discrimination, les remboursements de taxes à l'exportation ou l'harmonisation des fiscalités ne donnent prise qu'à huit articles du Traité! Pourtant, à l'examen, ces huit articles sont plus riches qu'il ne paraît.

On voudrait:

d'abord en donner une analyse,
ensuite en dégager la philosophie,
enfin présenter quelques perspectives d'avenir.

Telles sont les trois parties de cet exposé.

I

Les dispositions que l'on vient d'évoquer peuvent être groupées sous trois rubriques d'importance d'ailleurs inégale, et auxquelles, pour faire image, nous donnerons les titres suivants:

— le «fair play» fiscal;
— la lutte contre les distorsions;
— l'harmonisation des fiscalités.

L'idée qui préside à ce que nous avons appelé la règle du «fair play fiscal» est simple.

Le Traité tend à la réalisation progressive d'un véritable marché commun, débarrassé des entraves publiques ou privées qui s'opposeraient aux échanges entre les Six pays.

Il s'agit évidemment en premier lieu de supprimer les barrières douanières sous leurs formes diverses; en second lieu, en éliminant tout dumping, de permettre une loyale concurrence entre les producteurs de la Communauté. Il va de soi que la fiscalité ne saurait fournir aux Etats ou aux entreprises le moyen indirect de rétablir les obstacles douaniers ou de créer des discriminations entre les entreprises.

Le pouvoir fiscal de chaque Etat membre doit donc se trouver limité par deux règles, qui sont d'ailleurs liées entre elles comme la face et le revers d'une même médaille.

La première, énoncée par l'article 95, est ainsi conçue:

«Aucun Etat membre ne frappe directement ou indirectement les produits des autres Etats membres d'impositions intérieures, de quelque nature qu'elles soient, supérieures à celles qui frappent directement ou indirectement les produits nationaux similaires.»

«En outre, aucun Etat membre ne frappe les produits des autres Etats membres d'impositions intérieures de nature à protéger indirectement d'autres productions.»

La seconde règle, symétrique de la première et posée par l'article 96, veut que les

«produits exportés vers le territoire d'un des Etats membres» ne puissent «bénéficier d'aucune ristourne d'impositions intérieures supérieures aux impositions dont ils ont été frappés directement ou indirectement.»

La symétrie entre les deux règles n'est pas d'ailleurs parfaite au moins dans le temps, car si la seconde doit recevoir immédiatement application, la première voit son entrée en vigueur partiellement différée. En effet, si pendant la première étape du Traité, soit normalement jusqu'au 31 décembre 1962, les Etats ne peuvent adopter de mesures contraires à l'article 95, ils bénéficient d'un délai allant jusqu'à la fin de cette première étape pour corriger ou éliminer les dispositions existantes contraires à ce même article.

Si cependant les principes sont clairs, leur application ne va pas sans difficultés, et il n'est pas besoin de développer ce point de vue devant notre auditoire.

Un problème délicat est posé par la disparité de systèmes de taxes sur le chiffre d'affaires. Le principe de leur remboursement au profit des produits exportés est admis par les termes généraux de l'article 95 et les travaux de notre Association sur les doubles impositions en cette matière ont montré que, sauf en cas d'intégration fiscale poussée, il est à peu près inévitable. Mais ce remboursement doit se limiter aux droits effectivement perçus sur les produits exportés, faute de quoi on tomberait dans un système de primes à l'exportation, contraire aux principes du Traité. Or, la détermination du montant exact des taxes ayant frappé le produit peut être faite avec précision dans tous les systèmes de taxes frappant le produit lui-même «ad valorem», soit à un stade déterminé du circuit de production, soit aux divers stades avec déduction de l'impôt

perçu aux stades antérieurs. Si, au contraire, les taxes perçues sont du type «cumulatif à cascade», la détermination des taxes ayant frappé un produit déterminé est beaucoup plus difficile, puisqu'elle est fonction du nombre des transactions auxquelles ce produit a donné lieu dans le circuit de production et parfois de distribution, c'est-à-dire principalement du degré d'intégration ou du degré de spécialisation des entreprises figurant dans ce circuit.

L'article 97 du Traité essaie de résoudre cette difficulté. Rédigé après de minutieuses discussions, il recourt à l'inévitable règle de la moyenne: chaque Etat membre, pour déterminer le montant des remboursements à opérer sur les produits nationaux exportés est autorisé à fixer un «taux moyen par produit ou groupe de produits». Mais, aussitôt, le texte précise: «sans toutefois porter atteinte aux principes qui sont énoncés aux articles 95 et 96». Cette formule réserve évidemment de sérieuses difficultés d'application. En effet, recourir à un «taux moyen», c'est recourir à un système forfaitaire qui, par nature, implique des cas particuliers favorisés ou défavorisés par le forfait. Dès lors, on ne peut exiger que le principe de l'article 96, à savoir que les produits exportés ne bénéficient d'aucun remboursement supérieur au montant des droits effectivement perçus, joue sans défaillance et pour chaque opération individuelle d'exportation. Cependant, le règle de l'article 96 doit être respectée. Que signifie-t-elle dès lors?

Tout d'abord, et bien entendu, que les Etats qui pratiquent les taxes cumulatives à cascade recourent de bonne foi à la pratique du taux moyen, ce qui signifie non seulement que leurs moyennes soient exactement calculées, mais encore qu'elles ne portent pas sur des groupes de produits composés à dessein pour favoriser certains d'entre eux, au profit desquels l'Etat entend faire un effort dans le sens de l'exportation.

Mais, outre cette première signification subjective, qui est de plein droit, puisque la règle de la bonne foi est tacite dans toute convention et dans tout Traité, l'article 96 combiné avec l'article 97 aboutit à une directive objective: la pratique du taux moyen doit être utilisée de façon suffisamment détaillée pour que ses résultats serrent pour chaque produit et pour chaque type d'exportation la réalité d'assez près de telle sorte qu'il ne soit rien changé substantiellement aux résultats que donnerait un examen individuel

de chaque cas. En d'autres termes, les écarts à la moyenne, inévitables dans un système de forfait, doivent avoir une ampleur inférieure à une certaine limite au-delà de laquelle la concurrence serait faussée. D'ailleurs, si une telle situation se produisait, il semble qu'elle deviendrait justiciable des règles concernant les distorsions, que l'on rencontrera plus loin.

Le même système du «taux moyen» sous les garanties que l'on vient d'évoquer est d'ailleurs applicable pour la fixation des taxes cumulatives à cascades frappant les produits importés.

Ces règles sont d'ailleurs sous la sauvegarde de la Commission, puisque, «au cas où les taux moyens fixés par un Etat membre ne sont pas conformes aux principes précités, la Commission adresse à cet Etat les directives ou décisions appropriées». Il va de soi qu'en cas de litige entre la Commission et l'Etat intéressé, la solution définitive appartiendra à la Cour de Justice.

Le principe du «fair play fiscal» est précisé et complété par l'article 98. Sans doute, les termes des articles précédents, que l'on vient d'analyser, impliquent-ils que les remboursements à l'exportation ne concernent que les impôts frappant les «produits», c'est-à-dire de façon générale les taxes sur les chiffres d'affaires, les droits d'accise et les autres impôts indirects. Mais l'article 98 le précise formellement et interdit tous autres remboursements, c'est-à-dire en gros s'oppose à toute faveur fiscale au profit des exportateurs en matière d'impôts sur les personnes ou les entreprises. Pour instituer de telles faveurs et seulement pour un temps limité, c'est-à-dire à titre circonstanciel, un Etat doit être muni de l'autorisation du Conseil sur proposition de la Commission.

Des règles symétriques sont d'ailleurs posées en ce qui concerne les taxes de compensation à l'importation.

Il paraît que le terme de «distorsion» n'appartient pas à la langue française classique. Mais il est commode en raison même de sa relative imprécision. En gros, une distorsion est une situation introduisant dans un ensemble d'éléments équilibrés un facteur différentiel destructeur de cet équilibre.

Contrairement aux dispositions intéressant le «fair play fiscal» et qui, par nature, n'intéressent que la fiscalité, celles traitant de l'élimination des distorsions se rattachent à un problème plus

vaste, celui du «rapprochement des législations». Le «rapprochement des législations» groupe dans un même chapitre du Traité des règles assez différentes. Il s'agit d'abord d'une question générale et, en quelque sorte *a priori:* l'utilité d'une certaine communauté législative et règlementaire à l'intérieur du Marché Commun. C'est l'article 100 du Traité qui aborde ce point; on le retrouvera plus loin. Mais le rapprochement des législations a un second aspect plus concret et plus impératif, qui est précisément l'élimination des distorsions, matière traitée aux articles 101 et 102.

La situation visée par ces textes est celle d'une «disparité existant entre les dispositon législatives, règlementaires ou administratives» faussant «les conditions de concurrence sur le Marché Commun» et provoquant «de ce fait une distorsion qui doit être éliminée». On voit combien cette définition est large et il n'est pas douteux qu'elle couvre une multitude d'hypothèses. Dans quelle mesure intéresse-t-elle la fiscalité? C'est un problème classique d'interprétation qui se pose ici. La matière fiscale étant traitée par un chapitre spécial est-elle soustraite, de ce fait, aux dispositions générales sur le rapprochement des législations? On pourrait faire revivre ici les débats généraux sur les principes d'interprétation.

Il est peut-être plus simple et plus direct de constater que, si, sous prétexte que la fiscalité fait l'objet d'un chapitre spécial du Traité, l'on devait la soustraire aux dispositions générales relatives au rapprochement des législations, le même raisonnement devrait être fait pour le droit économique, le droit social, le droit financier, qui font également l'object de stipulations spéciales. Ainsi, le chapitre sur le rapprochement des législations et particulièrement sur l'élimination des distorsions serait vidé de son contenu. Car quelles pourraient bien être ces «dispositions législatives, règlementaires et administratives» provoquant des distorsions et qui ne toucheraient ni au droit social, ni au droit économique ni au droit fiscal.

L'utilité des règles relatives à l'élimination des distorsions n'est d'ailleurs pas niable, car si les articles 95 à 99 que l'on a analysés plus haut combattent nombre de distorsions spécifiques de la fiscalité, il en demeure beaucoup d'autres que ces textes ne visent pas. Pour ne prendre qu'un exemple, les articles 95 à 99 interdisent aux Etats de fausser les conditions de concurrence au sein du

Marché Commun par des surcroîts de charges imposés aux producteurs étrangers. Mais un régime de faveurs excessives aux capitaux étrangers, qui n'est pas interdit par les dispositions précitées peut être constitutif de «distorsions» au sens de l'article 101.

On conçoit cependant combien les rédacteurs du Traité ont dû se montrer prudents en ce qui regarde l'élimination des disparités juridiques créatrices de distorsions. Il ne pouvait être question, sous ce prétexte, de faire des organes de la Communauté des superlégislateurs en matière économique, sociale et fiscale, et de détruire ainsi toutes les réserves de souveraineté que le Traité institue au profit des Etats membres.

Aussi les pouvoirs de la Communauté sont-ils soigneusement dosés en matière d'élimination des distorsions. Le Traité distingue entre les distorsions résultant d'une législation déjà établie et celles provenant d'une législation nouvelle. Dans le premier cas, la Commission commence par «entrer en consulation avec les Etats membres intéressés». Ce n'est qu'au cas où cette procédure amiable échoue que la décision appartient au Conseil sur proposition de la Commission. Encore faut-il l'unanimité dans la première étape; ce n'est que dans la deuxième étape de l'application du Traité que le Conseil statue à la majorité qualifiée.

Si, au contraire, la distorsion provient de l'adoption d'une disposition nouvelle par un Etat membre, le système est plus complexe et reflète l'embarras des rédacteurs du Traité pour concilier les impératifs du Marché commun et la souveraineté législative des Etats. Tout d'abord, l'Etat membre doit prévenir la Commission de ses intentions. Après consultation des Etats intéressés la Commission émet une recommandation destinée à éviter la distorsion menaçante. A vrai dire, l'Etat qui envisage la mesure nouvelle n'est pas tenu de se conformer à la recommandation de la Commission. Mais il demeure sous le coup de l'article 101 concernant l'élimination des distorsions résultant du droit en vigueur et, faute d'avoir suivi l'avis de la Commission, cet article est lui applicable avec plus de rigueur, puisque la Commission ne peut demander aux autres Etats membres de modifier leurs dispositions nationales. Bien plus, si, par son imprudence, l'Etat membre qui a pris l'initiative de la mesure nouvelle a provoqué une distorsion à son seul détriment, il ne peut invoquer l'article 101.

L'avenir dira quelle est l'importance réelle des mécanismes d'éliminations des distorsions ainsi prévus et les matières dans lesquelles ils joueront effectivement. Il est vraisemblable que, dans la première étape, la nécessité de l'unanimité au sein du Conseil ramènera le problème à celui de la bonne entente entre les partenaires. En revanche, une fois la première étape franchie, la majorité qualifiée du Conseil sera en possession d'une arme efficace. C'est là le reflet du Traité lui-même qui est conçu pour engager les souverainetés étatiques dans un processus très souple à ses débuts, mais progressif et; à chaque étape, inclinant davantage les souverainetés étatiques devant le pouvoir supranational.

Le troisième principe du traité en matière d'impôts concerne l'harmonisation des fiscalités. Deux articles, relevant d'ailleurs de chapitres différents, abordent la question.

Le premier, l'article 99 inséré dans le chapitre «Dispositions fiscales», concerne de façon précise la fiscalité indirecte.

«La Commission examine de quelle façon les législations des différents Etats membres relatives aux taxes sur le chiffre d'affaires, aux droits d'accise et autres impôts indirects, y compris les mesures de compensation applicables aux échanges entre les Etats membres, peuvent être harmonisées dans l'intérêt du marché commun.»

«La Commission soumet des propositions au Conseil qui statue à l'unanimité sans préjudice des dispositions des articles 100 et 101.»

Ainsi, les problèmes fiscaux étrangers aux impôts indirects échappent en principe à ces stipulations. Mais, comme l'indique le texte que l'on vient de citer, l'ensemble de la fiscalité se trouve englobé dans le problème général du rapprochement des législations. En effet, l'article 100 prévoit la possibilité pour le Conseil, statuant à l'unanimité, d'arrêter des directives «pour le rapprochement des dispositions législatives, règlementaires et administratives des Etats membres qui ont une incidence directe sur l'établissement ou le fonctionnement du Marché Commun». Comme il n'est pas douteux que les dispositions fiscales ont, dans beaucoup de cas, une incidence directe sur l'établissement ou le fonctionnement du Marché Commun, les possibilités d'harmonisation des fiscalités, prévues par l'article 99 pour la fiscalité indirecte, sont étendues à l'ensemble de la matière fiscale par l'article 100.

Mais, qu'il s'agisse de l'article 99 ou de l'article 100, la décision du

Conseil doit être prise à l'unanimité. C'est dire que, pratiquement, l'accord des Etats membres est nécessaire. On est en présence de dispositions bien moins vigoureuses que celles qui concernent le «fair play fiscal» ou l'«élimination des distorsions».

II.

Peut-être aurait-il été plus conforme aux règles du discours de dégager la philosophie du Traité en matière de fiscalité avant d'en décrire les dispositions concrètes. Nous avons suivi le plan inverse, parce qu'il nous a paru que le simple rappel des articles du Traité intéressant la fiscalité surait, par lui-même, valeur d'évocation à l'égard de cette philosophie.

C'est que le problème de la disparité ou de la convergence des fiscalités n'est qu'une partie d'un problème plus général qui s'est proposé aux rédacteurs du Traité. Ceux-ci ne voulaient pas se borner à instituer une simple zone de libre-échange, mais un marché commun. Les différences entre zone de libre-échange et marché commun sont bien connues: dans un cas, la suppression des barrières douanières entre les partenaires se suffit à elle-même, sous réserve des mesures à prendre pour éviter les détournements de trafic; dans l'autre, au contraire, l'établissement d'un tarif extérieur commun est une clause essentielle entre les associés. Une zone de libre échange peut fonctionner par la simple mise en oeuvre des stipulations du Traité, assorties de clauses de sauvegarde pour hypothèses exceptionnelles; un marché commun suppose des institutions organiques et n'est à vrai dire qu'une création continue. Enfin, alors qu'une zone de libre échange prend chaque partenaire dans l'état où il se trouve, un marché commun suppose réalisées ou à réaliser un certain nombre d'harmonisations ou de rapprochements. En d'autres termes, l'essentiel des stipulations d'un traité de libre échange est constitué par des engagements de «ne pas faire»; c'est en somme une convention de désarmement. Un traité de marché commun est, pour l'essentiel, un engagement de «faire ensemble». C'est une alliance ou — si l'on préfère — une association.

Il était donc dans l'esprit même du Traité de postuler un minimum d'harmonisations et d'unifications. Cependant, l'on se trouve assez vite arrêté dans cette voie, et ceci pour deux raisons.

La première est d'ordre politique. Le raisonnement et l'expérience montrent qu'il est impossible de réaliser entre des Etats un certain degré d'intégration technique, qu'il s'agisse du domaine économique, scientifique ou social sans, par là même, postuler une intégration politique. Or, pour des raisons diverses, il n'était pas possible, au moment où les Traités de Rome furent négociés et signés, de s'engager dans la direction d'une fédération ou d'une confédération politique. Les Traités de Rome, Euratom comme Marché Commun, trouvaient dans ce fait une première limite, particulièrement sensible en matière d'harmonisations.

L'autre raison de la timidité du Traité sur le point qui nous intéresse est de nature économique ou, si le mot n'est pas trop fort, de nature scientifique.

Il semble clair pour l'opinion publique — et c'est un point de vue qui fut très populaire en France — qu'un marché commun, c'est-à-dire un champ de libre et loyale concurrence, n'est possible qu'autant que les entreprises appelées à la compétition se trouvent dans des conditions comparables en ce qui regarde les charges qu'elles doivent supporter. En langage d'homme de la rue, ceci revient à dire qu'il est juste et fécond qu'une entreprise d'un pays A) dotée d'une haute productivité et qui, de ce fait, vend meilleur marché, concurrence dans le pays B) les entreprises nationales de ce pays qui, en raison d'une organisation plus défectueuse, produisent à moins bon compte. En revanche, cette concurrence ne saurait être admise si la différence entre les prix de revient des entreprises considérées tient à ce que, dans le pays B), les charges fiscales, sociales et de façon générale, indépendantes de la bonne gestion des entreprises sont plus élevées que dans le pays A). De là l'idée — très couramment admise, même dans certains milieux professionnels — que le Marché Commun postulait une égalisation sinon intégrale, du moins assez poussée de ces charges diverses.

Cependant, le raisonnement économique et les diverses études concrètes conduites en tenant compte de l'expérience du Benelux et de celle de la C.E.C.A. démentaient ce point de vue ou, plus exactement, établissaient que, en traitant d'un point de vue «global» la question des harmonisations et des égalisations, on posait un faux problème et l'on masquait le vrai problème.

Le problème de l'égalisation globale était impossible, d'abord

parce qu'il ne se laisse pas mettre en équation. Il est impossible, d'un point de vue économique, de considérer les charges fiscales sans considérer les charges parafiscales ou sociales, et sans leur adjoindre les charges salariales. Suivant les pays, les entreprises s'acquitteront de leurs charges sous telle ou telle forme, mais il est évident que, si l'on veut raisonner sur les charges globales supportées par la production de chaque pays, il n'y a aucune raison d'attacher une importance quelconque à des distinctions purement juridiques. Mais, si l'on se propose de réaliser une égalisation globale des charges fiscales, sociales, salariales entre six pays, il est bien évident que l'on s'assigne un but qui va au delà de l'intégration politique elle-même, puisqu'au sein du même état, il n'est pas assuré que les charges salariales et les charges sociales ou fiscales calculée sur le salaire soient harmonisées de région à région. En réalité, l'égalisation globale de ces charges est utopique; elle serait d'ailleurs malfaisante comme supprimant des facteurs margineux féconds dans la dynamique économique. Pour prendre un exemple simpliste, il serait malsain du point de vue économique que les salaires fussent les mêmes dans les régions à main-d'oeuvre abondante et dans les régions à main-d'oeuvre rare. L'égalisation supprimerait deux mouvements également féconds engendrés par le déséquilibre: les migrations de main-d'oeuvre et l'industrialisation des régions à main-d'oeuvre abondante.

D'autre part, si l'on porte le problème de l'égalisation à ce degré de généralité, pour ne pas dire de «globalité», terme barbare, on ne peut pas s'arrêter. Il faut tenir compte des phénomènes de redistribution et d'induction économique. Dans la mesure où les charges fiscales servent par exemple à l'Etat à financer des investissements publics ou à couvrir des déficits d'entreprises publiques dont les tarifs sont ainsi abaissés au profit des producteurs nationaux, la charge comporte une contrepartie qu'il faut faire entrer en comptabilité. Et certes, la technique des comptabilités nationales, telles qu'elles sont utilisées pour l'évaluation des diverses expressions du revenu national ou de la charge fiscale rapportée au revenu national, n'interdit pas de tels calculs. Mais ils sont toujours assez approximatifs et ne donnent pas une entière sécurité.

Enfin, à entrer dans de tels calculs, on arrivait progressivement à la conviction qu'à supposer que ce problème des charges globales

de l'économie ait un sens, il recevait des solutions comparables dans chacun des six pays. Et ceci se comprend: entre les Etats membres de la Communauté existe une large homogénéité économique, sociale, culturelle et, au sens le plus large, sociologique. Les niveaux de vie, la productivité, le rapport des charges fiscales et parafiscales au revenu national ne sont pas les mêmes; mais leur ordre de grandeur est comparable et, pour prendre mathématiquement les choses, si l'on excepte les comparaisons extrêmes (la Ruhr et la Sicile par exemple), les différences chiffrées sont souvent inférieures au degré d'approximation des calculs.

Ainsi se dissout l'idée — ou plutôt la fausse intuition qui résiste mal au raisonnement — d'une comparaison globale des charges et, corrélativement, d'une égalisation ou d'une harmonisation globales.

En revanche, au fur et à mesure que l'on examine le problème, on voit surgir l'importance d'une autre notion, inverse de la notion «globale» des charges et de leur égalisation, la notion de «distorsion», déjà rencontrée.

L'exemple le plus simple est celui des charges sociales. Comparer les cotisations de sécurité sociale des entreprises françaises, allemandes, italiennes, etc. . . . est une voie sans issue.

Faut-il les évaluer en chiffres bruts ou en pourcentage des salaires? Faut-il tenir compte des seules charges imposées par la loi ou y ajouter celles qui résultent d'accords volontaires entre salariés et employeurs? Et surtout ne doit-on pas faire masse de toutes les charges entraînées par l'emploi de la main-d'oeuvre en ajoutant aux charges sociales les salaires et les impôts supportés par l'employeur au prorata des salaires, tels que le versement forfaitaire français? Ainsi, l'on serait engagé de nouveau dans cette voie de la comparaison globale qui est à la fois infinie et sans issue?

Mais, dans cet examen, on rencontre un problème particulier du plus haut intérêt, celui de la rémunération de la main-d'oeuvre féminine. Que, dans tel pays, le principe «à travail égal, salaire égal» soit appliqué; que, dans tel autre, la main-d'oeuvre féminin soit, à travail égal, moins rémunérée que la main-d'oeuvre masculin crée une distorsion saisissable. Sans doute, cette distorsion ne sera-t-elle pas très sensible dans les mines ou dans la métallurgie elle sera peut-être capitale dans le textile.

Et l'on comprend dès lors que l'article 119 du Traité fasse un

sort particulier à cette question pour en faire implicitement un élément essentiel du passage de la première à la deuxième étape.

Nous venons de tomber dans une disgression sur les charges sociales car il y a là une approche, par analogie, du problème fiscal. Les dispositions fiscales du Traité rejettent l'idée d'une harmonisation ou d'une égalisation globale des fiscalités au moins comme un objectif immédiat. Sans doute, et nous y reviendrons, le rapprochement des fiscalités est-il au bout de la route que suivra la Communauté, si elle fonctionne convenablement. Mais ce sera un résultat plutôt que ce n'est, d'ores et déjà, un but.

Comme nous l'avons montré plus haut, ce qu'il y a d'absolument impératif dans les dispositions du Traité, c'est le «fair play fiscal». Ce qui, à un moindre degré, mais de façon suffisante est encore impératif, c'est l'élimination des distorsions. L'harmonisation des fiscalités est, au fond, remise à la bonne volonté des Etats membres qui, espère-t-on, seront conduits par les faits et par le bon sens à cette solution.

Un autre élément de la philosophie fiscale du Traité est d'ailleurs, notons-le en passant, que les règles du «fair play fiscal» ne concernent de façon essentielle que la fiscalité indirecte ou, plus exactement les impôts frappant les produits. Les auteurs du Traité semblent avoir ainsi pris parti dans une controverse qui avait vu le jour sur le terrain de la C.E.C.A. Certains auteurs avaient estimé que l'essentiel du «fair play fiscal» tenait dans la fiscalité indirecte. D'autres avaient pensé qu'il fallait tenir compte de tous les impôts influant sur les prix de revient et notamment de l'impôt sur les sociétés. C'est dans le premier sens que le Traité de Rome semble avoir décidé. Sans doute, des distorsions peuvent-elles provenir de disparités législatives en matière d'impôts directs; du moins les articles 95 à 99 qui représentent, comme on l'a dit, le siège des règles automatiques et impératives ne s'appliquent-ils pas à la fiscalité directe, à moins que celle-ci ne devienne un instrument déguisé pour frapper des produits.

Telles sont les idées sous-jacentes à l'ensemble de textes que nous avons analysé plus haut. Elles sont incontestablement prudentes et reflètent le souci de ne pas demander aux Etats des renonciations de souveraineté supérieures à ce à quoi leurs opinions publiques et

leurs milieux dirigeants sont préparés. Il reste à voir dans quelle mesure ces principes eux-mêmes, pour être mis en application de façon concrète, n'exigeront pas plus que ce qui est explicitement écrit dans le Traité. Par un mouvement dialectique curieux, l'idée de l'harmonisation des fiscalités, inscrite dans le Traité en traits estompés, prend déjà de l'actualité et peut apparaître dans un avenir assez proche comme le moyen le plus simple pour satisfaire aux exigences du «fair play fiscal» et de la lutte contre les distorsions. C'est ce que nous voudrions montrer dans la troisième et — rassurez-vous — dernière partie de cet exposé.

III

Commençons par la fiscalité indirecte. Il est bien évident que les règles du fair play fiscal posées par le Traité constituent un minimum qui, d'ailleurs, se ramène à l'idée d'une application faite de bonne foi par les Etats membres.

Il faut également souscrire à l'idée que, en matière de fiscalité indirecte, ce ne sont pas les disparités globales, mais les distorsions spécifiques qui importent. Ne revenons pas sur ce qui a été dit plus haut des disparités globales. Ajoutons simplement, sans nous aventurer dans une démonstration qui serait un peu longue, que les disparités globales reçoivent une correction moyenne du fait du taux des changes, soit que celui-ci s'adapte automatiquement, soit qu'il fasse l'objet d'une adaptation autoritaire.

Mais — et c'est le point essentiel — le caractère «irrelevant», comme diraient nos amis italiens, des disparités globales en matière de fiscalité indirecte, ne supprime pas l'importance des disparités spécifiques. En d'autres termes, on peut bien admettre par exemple que la disparité globale de charges qui existe entre deux pays en matière de taxes sur le chiffre d'affaires (en raison par exemple des différences de taux) soit en moyenne corrigée par le taux des changes, en revanche, si dans l'un de ces pays le système fiscal défavorise une activité donnée, il y a là une disparité spécifique qui ne trouve pas de correction dans le taux des changes. Les distorsions internationales ont ainsi leurs racines dans des distorsions nationales, dès lors que ces distorsions nationales ne sont pas uniformes.

Prenons l'exemple, qui nous est familier, des taxes sur le chiffre d'affaires. Un système de taxes à cascade crée, dans le pays qui y recourt, une distorsion du fait que l'impôt frappant chaque produit n'est pas uniforme et varie avec la quantité de transactions auxquelles ce produit a donné lieu dans le circuit de production ou même de distribution. Sans doute, peut-on, pour chaque produit, calculer un taux moyen, mais en fait, selon les producteurs, le produit aura supporté, dans chaque cas, une charge différente. Ces distorsions se transporteront sur le terrain de la Communauté et apparaîtront d'autant plus vives que leur inexistence dans tel autre système fiscal (celui de la taxe sur la valeur ajoutée par exemple) ne les reproduira pas.

Il est vrai que l'effet de distorsion peut disparaître dans le cas normal où l'exportation amène un remboursement des taxes, mais alors on retombe sur le problème examiné plus haut et qui ne comporte que des solutions approximatives: comment procéder à des remboursements de taxes calculés sur un taux moyen, alors que, dans nombre de cas concrets, les écarts réels à cette moyenne sont importants?

En matière d'exportations invisibles, les distorsions dues à la fiscalité indirecte sont encore plus sensibles, du fait qu'aucun système de remboursement de taxes n'est prévu à cet égard.

Le degré de fraude fiscale éventuellement pratiquée peut également constituer une distorsion spécifique. Sans doute, si la pratique de la fraude est uniforme dans un pays donné et pour les divers secteurs et si elle ne s'accompagne pas d'une seconde fraude dans les remboursements aux exportateurs, agit-elle comme un abaissement de taux et rentre-t-elle dans la catégorie des disparités globales non génératrices de distorsions. Mais si, ce qui a plus de chances de se produire, la fraude est différenciée par catégorie de produits ou d'entreprises, elle confère un caractère spécifique à la distorsion qu'elle engendre.

Observons enfin — pour ne pas nous étendre à l'infini sur cette question — que, sans violer les règles littérales du fair play fiscal, un Etat pourrait provoquer des distorsions spécifiques. En effet, si les articles 95 et 96 du Traité interdisent aux Etats de pratiquer des remboursements à l'exportation supérieurs aux droits effectivement perçus sur les produits, ils ne lui interdisent pas d'utiliser cette

faculté dans certains secteurs et non dans d'autres. C'est peut-être une hypothèse d'école — mais la vie vérifie parfois les hypothèses d'école — un Etat peut décider que les remboursements à l'exportation n'auront lieu que pour certains produits sur lesquels il concentre son effort à l'exportation. Ce faisant, il va, au sein de sa propre économie, donner un coup de fouet à ces produits et placer les secteurs correspondants dans un état de supériorité concurrentielle, créant ainsi sur le plan national une distorsion qui profitera aux productions considérées au plan international. En effet, le taux des changes sera affecté par la règle du non-remboursement des taxes à l'exportation et produira un effet compensatoire pour les secteurs non favorisés et un effet sur-compensatoire pour les secteurs favorisés. Cet exemple — que j'emprunt à M. LAURE, fiscaliste éminent, montrerait — si besoin était — l'utilité des articles qui, dans le Traité, prévoient de façon générale la lutte contre les distorsions spécifiques, que la simple application littérale des articles 95 à 98 ne suffit pas à éviter, même sur le terrain de la fiscalité indirecte.

Mais, si les possibilités de distorsion sont aussi nombreuses et aussi inattendues en certains cas, on peut se demander si la solution, cas par cas, des problèmes qu'elles posent sera suffisante.

Le système des solutions, cas par cas, a sa valeur lorsque les cas ne sont pas trop nombreux. Il est insuffisant quand les difficultés concrètes se multiplient. L'on peut sérieusement douter que la variété des systèmes de taxes sur le chiffre d'affaires au sein de la Communauté et surtout la variété des principes qui les inspirent permette l'élimination cas par cas des distorsions spécifiques. La simple application de l'article 97 (règle du taux moyen) risque d'être un nid à litiges.

C'est ici que l'idée de l'harmonisation prend sa revanche. Sans doute ne s'agit-il pas d'en revenir à des tentatives d'égalisation globale. Il ne s'agit pas d'unifier des *charges*, mais des *principes* et des *techniques* qui engendrent des distorsions en chaîne. Sans doute ne s'agit-il pas davantage d'édicter un Code unique des impôts indirects ou des taxes sur le chiffre d'affaires pour les six pays de la Communauté.

Pour s'en tenir à un point à la fois élémentaire et essentiel, et pour supprimer les risques de litige qui peuvent naître de l'article 97,

les Etats, sous l'impulsion de la Commission et du Conseil, ne pourraient-ils pas admettre deux principes généraux: l'un, selon lequel le système de taxes sur le chiffre d'affaires devrait permettre la détermination exacte et concrète de l'impôt supporté par chaque produit (l'ingéniosité des techniciens dirait si ceci conduit ou non à la suppression des taxes à cascade); l'autre principe serait que les Etats s'interdisent de pratiquer une politique différentielle de remboursements à l'exportation selon les diverses catégories de produits.

Ainsi la souveraineté fiscale de chaque état serait-elle raisonnablement ménagée, notamment en ce qui regarde les taux, la technique de perception et de contrôle. Au fond, en s'engageant dans cette voie, les partenaires du Marché Commun ne feraient qu'expliciter les principes qu'ils ont mis à la base du Traité. Ils régleraient ainsi par voie générale toute une série de contestations possibles sur les règles du fair play fiscal ou sur la lutte contre les distorsions.

L'analyse des possibilités de distorsion naissant de la fiscalité directe (expression commode pour désigner les impôts autres que ceux qui frappent les produits) est autrement délicate. Les auteurs du Traité l'ont ressenti puisqu'ils n'ont pas inclus la fiscalité directe dans le champ d'application des articles 95 à 98. D'autre part, si les auteurs qui se sont occupés des problèmes de la fiscalité au sein du Marché Commun et auxquels j'ai fait de larges emprunts arrivent à des conclusions assez précises en matière de taxes sur le chiffre d'affaires et de droits d'accise, ils sont plus évasifs en ce qui regarde les impôts directs.

D'abord, la souveraineté fiscale des Etats est ici plus jalouse. L'impôt direct est, plus que l'impôt indirect, instrument de redistribution et d'intervention sociale. Le problème de la répartition des charges entre grandes et petites entreprises est, à sa racine, une question politique et économique plus que fiscale. Et que dire des considérations qui inspirent le taux de progressivité de l'impôt sur le revenu ou la prise on compte des charges de famille?

En second lieu, il est bien certain que les distorsions fiscales doivent s'apprécier per rapport à la notion de concurrence et donc de prix de revient. Dans quelle mesure les divers grands impôts directs pesant sur les entreprises s'incorporent-ils aux prix de

revient? C'est une des questions les plus difficiles de l'économie financière et l'on sait que sa solution varie suivant la structure économique de chaque pays, suivant la conjoncture économique et suivant les particularités de chaque secteur.

Ajoutons encore que la correction globale automatique résultant du taux des changes, qui joue pour la fiscalité indirecte, a ici une existence beaucoup plus douteuse. Les disparités entre les fiscalités directes ont certes une grande importance dans les mouvements de capitaux. Mais elles agissent sur ceux-ci mêlés à d'autres facteurs, par le relais de mécanismes compliqués et l'action sur le taux des changes est incontestablement beaucoup moins directe que pour le cas de la fiscalité indirecte.

Enfin, du fait même que la sensibilité des mouvements de capitaux aux disparités de l'impôt direct est beaucoup moins grande que la sensibilité des prix à la fiscalité indirecte, les distorsions sont beaucoup moins redoutables. L'expérience nous apprend que, par exemple, l'allègement des charges pesant sur les sociétés est difficile à réaliser dans les Etats modernes et ceci pour des raisons politiques et sociales évidentes. Or, l'effort d'allègement qu'un pays devrait faire pour produire à son profit une très substantielle modification du mouvement des capitaux serait assez considérable. Ce faisant, il fournirait d'ailleurs à ses concurrents une bonne raison politique d'en faire autant et risquerait de voir le résultat annulé.

Ce n'est pas dire que les distorsions pouvant résulter de la disparité des fiscalités directes soient inexistantes. Mais elles sont moins à redouter et seront moins fréquentes qu'en matière de fiscalité indirecte. Le problème de l'harmonisation, sauf événement imprévu, s'imposera de façon moins pressante et admettra des solutions sans doute plus souples.

Dans cette oeuvre, notre groupement — est-il besoin de le dire — a un rôle de premier plan à jouer. Notre expérience, la compétence scientifique et pratique des membres de l'I.F.A., le caractère largement international, sinon mondial de notre groupement, garantissent la valeur de la collaboration que nous pourrions apporter aux organismes de la Communauté et de l'O.E.C.E.

En tout cas, je crois que l'I.F.A. devrait d'ores et déjà entreprendre sur ces problèmes nouveaux des études approfondies.

En terminant, Mesdames, Messieurs, je vous dois toute une série d'excuses.

Il faut d'abord que vous me pardonniez le caractère aride de cet exposé et les incursions que j'ai dû faire dans des domaines étrangers à la pure technique fiscale. Le sujet même m'obligeait à cette façon de concevoir mon exposé. Il fallait remonter aux sources et l'on sait que, pour être un grand fleuve, la fiscalité est au confluent de bien des courants: économiques, sociaux et politiques.

Il faut ensuite que vous ne m'en veuilliez pas de tout ce que j'ai omis de dire. La masse des travaux publiés sur la question traitée et notamment par des membres de notre Association mettait à ma disposition une matière si riche que, pour l'épuiser, j'aurais dû d'abord épuiser votre bienveillante patience.

Enfin, je dois des excuses toutes particulières à ceux de nos collègues qui, par leur nationalité, n'appartionnent pas à la Communauté économique européenne. Qu'ils n'aient pas l'impression qu'avec nos amis allemands, belges, hollandais, italiens et luxembourgeois, un Français ait voulu discuter une affaire de famille.

Mais, puisque la Communauté se propose d'être ouverte sur le monde extérieur et n'être qu'un moyen supplémentaire de favoriser les échanges internationaux, cette affaire les concerne aussi, indépendamment même de l'intérêt théorique des questions posées par un Marché Commun.

Et surtout, malgré les nuages et les orages, malgré les poussées de nationalisme économique ou politique, l'avenir nous réserve peut-être l'avènement de communautés plus larges et aussi fraternelles que celles que les Six pays ont essayé d'instaurer dans la C.E.C.A., dans le Marché Commun, dans l'Euratom.

A ce moment-là, nous n'aurons certes pas à imposer à d'autres nos recettes et nos habitudes, mais avec l'humble sagacité de ceux qui ont vécu une expérience, nous dénombrerons avec eux les réussites ou les échecs qui ont suivi les Traités de Rome, les problèmes que nous avons dû affronter. L'amitié, il y entre beaucoup de choses et, parmi elles, l'échange du peu de sagesse que la vie apprend aux peuples comme aux individus.

II

SURVEYS OF TAX LEGISLATION
APERÇUS DE LEGISLATION FISCALE

AUSTRIA

Turnover tax

Verordnung des Bundesministeriums für Finan. vom 23.7.58, mit der die Gegenstände bestimmt werden, für die eine Ausgleichsteuer nicht eingehoben wird (Freiliste 1). BGBl. Oesterr. 8.8.58, p. 1475.
Verordnung des BM für Finanzen vom 23.7.58, mit der die Gegenstände bestimmt werden, die für die Berechnung der Ausfuhrvergütung als Rohstoffe, Halberzeugnisse oder Fertigwaren anzusehen sind. BGBl. Oesterr. 29.8.58, p. 1507.

Customs

Verordnung des BM für Finan. vom 23.7.58, mit der die Freiliste 2 neuerlich abgeändert wird. BGBl. Oesterr. 8.8.58, p. 1482.

BELGIUM

Conventions

Arrangement entre la Belgique et la Suisse tendant à éviter la double imposition des entreprises de navigation aérienne et maritime, conclu par échange de lettres datées à Berne, le 5.12.57. Mon. Belge 6.8.58, p. 6200.

Impôts sur les revenus

Arrêté royal du 22.9.58 fnodifiant, en ce qui concerne les minima de bénéfices imposables à la taxe professionnelle dans le chef des firmes étrangères opérant en Belgique, l'arrêté royal du 22.9.1937, d'exécution des lois coordonnés relatives aux impôts sur les revenus, Mon. Belge 2.10.58, p. 7456.

Taxes assimilées au timbre

Arrêté royal du 11.9.58, modifiant le Code des taxes assimilées au timbre. Mon. Belge 28.9.58, p. 7372.
Arrêté royal du 25.9.58 modifiant l'arrêté royal du 11.3.53 majorant le taux de la taxe de transmission à l'importation, Mon. Belge 28.9.58, p. 7373.

Droits d'accise

Arrêté ministériel du 29.8.58 relatif à la franchise des droits d'accise à l'importation. Mon. Belge 31.8.58, p. 6701.

Droits de douane

Arrêté royal du 28.10.58 établissant un droit spécial à l'importation du beurre originaire ou en provenance du Grand-Duché de Luxembourg.Mon.Belg. 29.10.58 p. 7999.

FRANCE

Généralites

Ordonnance no. 58-653 du 31.7.58 relative à diverses mesures d'ordre fiscal. J.O.1.8.58, p. 7207.
Ordonnance no. 58-825 du 9.9.58 relative à diverses dispositions d'ordre fiscal et financier. J.O. 11.9.58, p. 8459.
Décret no. 58-976 du 18.10.58 fixant les conditions d'application de l'article 3 de l'ordonnance no. 58-825 du 9.9.58. J.O. 19.10.58, p. 9569.

Convention

Décret no. 58-702 du 7.8.58 portant publication de la convention tendant à éviter les doubles impositions et à établir des règles d'assistance administrative réciproque en matière d'impôts sur les revenus et sur la fortune, signée à Paris le 8 février 1957, entre la France et le Danemark. J.O. 10.8.58, p. 7519.

Impôts sur les revenus

Ordonnance no 58-882 du 25.9.58 relative à la fiscalité en matière de recherche scientifique et technique. J.O. 26.9.58, p. 8859.

Chiffre d'affaires

Décret no. 58-685 du 4.8.58 relatif aux taux majorés des taxes sur le chiffre d'affaires. J.O. 4/5.8.58, p. 7355.
Décret no. 58-694 du 5.8.58 relatif aux taux majorés des taxes sur le chiffre d'affaires. J.O. 6.8.58, p. 7397.
Décret no. 58-773 du 28.8.58 relatif aux taux majorés des taxes sur le chiffre d'affaires. J.O. 29.8.58, p. 8021.
Décret no. 58-863 du 22.9.58 relatif aux taux majorés des taxes sur le chiffre d'affaires. J.O. 22/23.9.58, p. 8729.

Taxes de consommation

Arrêté du 29.7.58 fixant les cours moyens de certaines eaux-de-vie pendant le 2e trimestre 1958 et les nouveaux taux de la redevance prévue à l'article 384 du code général des impôts. J.O. 4/5.8.58, p. 7355.
Décret no. 58-729 du 9.8.58 exonérant de la taxe intérieure de consommation les produits du pétrole destinés à la fabrication de divers produits chimiques. J.O. 18/19.8.58, p. 7699.
Ordonnance no. 58-796 du 25.8.58 relative au régime fiscal des vins, cidres, poirés et hydromels introduits dans le département de la Corse, (avec rectificatif p. 8218) J.O. 1/2.9.58, p. 8158.
Arrêté du 22.9.58 relatif aux conditions d'application aux stocks d'essences de pétrole de la modification des taux de la taxe intérieure prévue à l'article 5 de l'ordonnance no. 58-653 du 31.7.58. J.O. 29/30.9.58, p. 8947.

Droits d'accise

Arrêté du 26.8.58 fixant les nouveaux taux des redevances prévues aux articles 382 et 384 du code général des impôts. J.O. 28.8.58, p. 8000.

Droits de douane

Décret no. 58-919 du 7.10.58 portant rétablissement partiel de la perception des droits de douane sur les pâtes à papier. J.O. 8.10.58, p. 9222.
Décret no. 58-920 du 7.10.58 portant modification du taux de perception des droits de douane sur les pâtes à papier écrues à la soude. J.O.8.10 58, p. 9222.

Matières diverses

Arrêté du 4.8.58 relatif à la liquidation des dossiers de remboursement des

dossiers de remboursement des charges sociales et fiscales aux entreprises exportatrices. J.O. 8.8.58, p. 7459.

Territoires d'outre-mer

Généralités

Arrêté du 16.9.58 portant agrément d'une entreprise au bénéfice des dispositions de l'article 32 de la loi no. 53-1336 du 31.12.53 relatif à l'institution des régimes fiscaux de longue durée dans les territoires d'outre-mer. J.O. 26.9.58, p. 8865.

Matières diverses

Décret du 17.9.58 approuvant la délibération no. 217 du 9.4.58 de l'assemblée territoriale de la Mauritanie fixant les catégories d'entreprises susceptibles de bénéficier d'un régime fiscal de longue durée. J.O. 21.9.58, p. 8698.

GERMANY

Conventions

Das Königreich der Niederlande und die Bundesrepublik Deutschland sind, von dem Wunsche geleitet, auf dem Gebiete der Steuern vom Einkommen und vom Vermögen sowie verschiedener sonstiger Steuern die Doppelbesteuerung zu vermeiden und andere Fragen auf Steuerlichem Gebiete zu regeln, übereinkommen, das nachstehende Abkommen abzuschliessen. 18.8.1958. Tractatenblad Nr. 122.

Income tax

Neufassung vom 23.9.58 des Einkommensteuergesetzes. BGBl., I, 26.9.58, p. 672.

Turnover tax

Verordnung vom 12.8.58 zur Änderung der Beförderungsteuer-Durchführungsverordnung 1955. BGBl., I, 15.8.58, p. 600.
8. Verordnung von 22.9.58 über Änderung der Ausgleichsteuerordnung. BGBl. I, p. 670.

Customs

3. Verordnung vom 25.7.58 zur Änderung des Deutschen Zolltarifs 1958 (Schwefelkohlenstoff, Strohpappe usw.) BGBl. I, 2.8.58, p. 562.
3. Verordnung vom 2.8.58 zur Änderung der Erläuterungen zum Deutschen Zolltarif 1958. BGBl., I, 9.8.58, p. 584.
4. Verordnung vom 11.9.58 zur Änderung der Erläuterungen zum Deutschen Zolltarif 1958. BGBl., I, 18.9.58, 666.
Verordnung vom 1.10.58 zur Änderung der Seehafen-Zollordnung. BGBl., I, 8.10.58, p. 709.

LUXEMBOURG

Impôts sur les revenus

Arrêté grand-ducal du 27.8.58 complétant l'arrêté grand-ducal du 6.6.58 sur les bonifications ou remboursements d'impôt sur le revenu 1958. Mémorial du G-D de Lux. 30.8.58, p. 1178.

Chiffre d'affaires

Arrêté grand-ducal du 20.8.58 établissant un droit spécial à l'importation de certains produits agricoles et alimentaires. Mémorial du G-D de Luxembourg. 23.8.58, p. 1156.

Droits d'accise

Arrêté ministériel du 8.9.58 relatif à la franchise des droits d'accise à l'importation. Mémorial du G-D de Lux. 17.9.58, p. 1206.

NETHERLANDS

Conventions

Regulation of 11.10.58 nr. 16 re double taxation agreement between the Netherlands and Denmark. Ned. Stct. 16.10.58.,

Turnover tax

Supplement to the decree (1957) re turnover tax on wires. Ned. Stct. 12.9.58, p. 2.
Amendment decree (1955) re refund of turnover tax on exports (Stct. 1955, nr. 69). Ned. Stct. 29.9.58, p. 4.
Decree of 19.9.58 modifying the decree (no. 1, 54) providing for special rules re turnover tax. Stb. 442.

Customs

Royal decree re continuation of suspension of custom duties with respect to the execution of the agreement re European Steel and Coal Community. Stb 471.

II

MISCELLANEOUS — FAITS DIVERS

AUSTRIA

Neues Finanzstrafgesetz in Oesterreich

Das neue Finanzstrafgesetz, dass neuerdings vom Nationalrat beschlossen worden war, ist im Bundesgesetzblatt Nr. 129, herausgegeben am 4. Juli 1958 verlautbart.

Der oesterreichische Steuer- und Wirtschaftskartei entnahmen wir folgendes:

Vor allem wird darauf hingewiesen, dass der meritorische Teil des Gesetzes einschliesslich der einzelnen Tatbestände umfasst, aber auch der Steuerstrafprozessteil erst am 1. Jänuar 1959 in Kraft tritt und bis dahin infolge einer Übergangsbestimmung noch das alte deutsche Steuerstrafrecht und das im Jahre 1956 vom oesterreichischen Parlament abgeänderte, jedoch von vornherein nur als befristete Übergangslösung beschlossene Prozessrecht in Geltung bleibt.

Source: *Oesterreichische Steuer- und Wirtschaftskartei*, 25. Juli 1958.

INDIA

Remittances out of foreign incomes

By a Government press note dated November 15, 1957, the tax concessions available to people residing abroad who wish to bring into India their accumulated foreign income have been clarified.

Income subject to tax. — The subject matter for assessment for any assessment year is the income for the relevant previous year. Thus, for the assessment year 1957-1958, the income which will be subject to tax will be that of the year commencing on 1st April, 1956, to 31st March, 1957 (assuming that the assessee keeps his accounts according to the financial year).

Persons who do not ordinarily reside in India and are "non-residents" for purposes of the Indian Income-tax Act, do not pay any Indian tax on their incomes abroad. They are subject to Indian tax only to the extent to which any income accrues or arises to them in India, or is received in India by them or on their behalf. Any remittances they make to India out of their foreign income are completely free of Indian income-tax, the only exception being remittances made to wives. Such remittances to wives are, however, taxes on the rates applicable to the wife's total income and not on the basis of the income of the persons making the remittances.

Remittances out of accumulated foreign income. — With regard to the position of persons hitherto non-resident in India who wish to bring into India their accumulated foreign income either immediately on their return to India or sometime therafter, amendments made to the Indian Income-tax Act in recent years provide for adequate safeguards.

If a person hitherto non-resident in India brings into India his past foreign profits within two years of his becoming a resident in India, he will not be subject to any tax liability on those profits; *e.g.*, if a bussinessman who returned to India from South Africa in May, 1956, brings a sum of Rs. 2 lakhs in June, 1957, out of the profits earned by him in South Africa before his arrival

in India, the sum of Rs. 2 lakhs will be excluded from the total income for the year 1st April, 1957, to 31st March 1958, *i.e.*, it will not be included in the total income even for rate purposes. Thus if the income earned in India during 1st April, 1957, to 31st March, 1958, is Rs. 6,000, he will be taxed only on Rs. 6,000 and at the rate applicable to Rs. 6,000.

Past profits brought into India after two years of becoming resident. — Even if the past profits are brought to India more than two years after the assessee's becoming resident in India, they will not be included in his total income provided that tax liabilities, if any, already outstanding against the assessee on the date of the remittance are discharged within three months of the date of remittance. Thus, if in the example given above, a further sum of Rs. 3 lakhs out of past foreign profits is brought to India on 10th May, 1959, and if on that date the assessee has an outstanding tax liability of Rs. 10,000, the whole of the sum of Rs. 3 laksh will be excluded from the total income if the tax liability of Rs. 10,000 is discharged before 10th August, 1959.

Remittances of capital. — Remittances of capital are, of course, not taxable as income, in any case.

[*Instructions to Income-tax Officers.* — By circular No. 42 (LIV-1) of 1957 dated the 22nd November 1957, the Central Board of Revenue have expressed their desire that Income-tax Officers should explain the scope of these concessions to all assessees who approach them in this matter.]

2. *Method of taxing resident but not ordinarily assessees.* — It has been reported to the Board that in certain cases of persons who are resident but not ordinarily resident and who have brought in the accumulated profits of past years, *i.e.*, the years preceding the previous year, such profits have been taxed under section 4(1)(b)(ii) without allowing the benefit of the fifth proviso to section 4(1). Income-tax Officers are reminded that where there are two funds at the disposal of an assessee, one fund which is entitled to the benefit of the fifth proviso to section 4(1) and another fund which is liable to income-tax, the presumption should be that any remittance during the previous year has come out of the first fund, unless there is clear evidence to show that the remittance has in fact come from the income of the previous year.

Source: *The Income Tax Reports*, 7th April 1958.

FEDERATION OF MALAYA

Tax facilities

The Malayan Federation proposes the introduction of tax exemption for new and expanding industries. The new provisions will be given under the Pioneer Industries (Relief from Income Tax) Ordinance 1958. Relief will be given to companies (and their shareholders) and individuals who establish "pioneer" industries in the Federation, that is to say industries which are not yet existent in the Federation or which are not yet developed on a scale which is needed by the welfare of the Federation. The Minister of Commerce decides which company or individual will be granted pioneer status.

Pioneer industries will be granted an Income Tax exemption during 2 years after achieving production in marketable quantities. Thereafter the "tax holiday" may be extended for another year if a company invests M$ 100.000 or more. Extension with 3 years is possible if the company invests at least M$ 250.000.

Shareholders receiving dividends from pioneer industries' tax exempt profits will also be exempt from Income Tax on those dividends.

Source: *Foreign Commerce Weekly*, July 7, 1958.

NEW ZEALAND

Overseas employees temporarily working in New Zealand

The question has been raised of the position in which residents of countries

with which double tax agreements have been concluded will be placed if they are present in New Zealand on the business of their employers.

As the income received by the men in question is salary or wages, tax deductions should be made at the source. Howèver, as there is generally no employer in New Zealand to make such deductions the obligation is placed upon each employee to account for the tax himself not later than 20th of the month following that in which the payment of salary is received.

The overall position is, however, governed by the respective Double Tax Agreement. These provide that persons visiting New Zealand on the business of the employer are exempt from income tax in New Zealand if the visit does not extend beyond 183 days in the income year. If the employee's visit extends beyond 183 days in any income year, the employee becomes liable to New Zealand income tax on the remuneration earned during the period of the visit to New Zealand in that income year.

Applying the foregoing, the following will be the position:

(a) *Employees who arrived in New Zealand between April 1, 1957, and March 31, 1958.* —These employees would be liable for income tax if they were present in New Zealand for more than 183 days during year ended March 31. 1958. There would be no remission of income tax on this income as the employees concerned were not resident for income tax purposes in terms of s. 166 of the Land and Income Tax Act 1954. There would, however, be no liability for social security charge.

From April 1, 1958, income tax and social security charge (now known as ordinary income tax and social security income tax) are combined for the purpose of calculation. In addition, the exemption which previously applied in respect of social security charge does not apply to social security income tax. As mentioned above, tax should be accounted for by the employee by 20th of the month following that in which payment of the salary is made. This will be the case irrespective of the length of stay in New Zealand. If the stay is less than 183 days, then a refund of the tax paid will be arranged at the time an application for a clearance to leave New Zealand is made.

(b) *Employees arriving after April 1, 1958.* — The same procedure as set out above will apply. Tax will have to be paid as from the date of arrival and this will be refunded if the stay is less than 183 days.

(c) *Employees arriving within 183 days before any March 31.* — In this instance it will not be necessary for the employee to account for tax deductions on his salary from the date of arrival to March 31. He will, however, be required to account for tax in respect of the period April 1 to dat of departure. If the employee departs within 183 days from April 1, a refund of the tax paid will be made.

Note carefully that this item refers only to employees of employers who are resident in a country with which there is a double tax agreement.

Source: *Current Taxation*, Sept. 1958.

SWEDEN

Steuersenkung in Schweden erwünscht

Einige führende Industrieorganisationen haben neuerdings der schwedischen Regierung eine Bitte vorgelegt, die staatliche Körperschaftsteuer, die vor kurzem von 40 % auf 45 % und von 45 % auf 50 % erhöht worden ist, wieder um 10 % zu senken.

Die Steuerbelastung in Schweden ist jetzt, die gemeindliche Körperschaftsteuer einbegriffen, ungefähr 56 %, welcher Prozentsatz die führenden Organisationen zu hoch achten in bezug auf die internationale Wettbewerbsposition. Ausserdem war die Erhöhung in einer Hochkonjunktur zustande gekommen,

in einem Augenblick wo die Investitionskapazität zo hoch war. Jetzt hat sich die Lage geändert und die Organisationen sind der Meinung, dass es eher notwendig ist die Investitionen zu fördern als Sie zu hemmen.

VENEZUELA

Tax concessions

In a government decree dated 10th July, income tax concessions were granted to encourage the construction industry. For buildings erected under permits issued after 15th July, no tax will be levied on income from rentals for a period of five years, counting from the date on the "certificate of habitability" granted by the Ministry of Health and Public Welfare.

Source: *Bank of London & South America Ltd.*, 13th Sept., 1958.

III

DEUTSCHE BUNDESREPUBLIK — WANN LIEGT BEI AUSLÄNDISCHEN LIZENZEN EINE STEUERBARE LEISTUNG IM INLAND VOR?

VG Berlin, Urteil v. 21. 8. 1957 VII A 377/56 (EFG 1958 S. 109)
UStG § 1 Ziff. 1; UStDB § 7

Leitsatz (des Verwaltungsgerichts):

Wenn ein Ausländer die Auswertung seiner Erfahrungen in Deutschland duldet, liegt eine Leistung im Inland vor.

Aus dem Tatbestand:

Der Bf ist Erfinder. Er hat seinen Wohnsitz im Ausland. Mit einem Unternehmen der Elektroindustrie vereinbarte er, diesem zur alleinigen Auswertung in Deutschland seine gegenwärtigen und zukünftigen Erfindungen, Erfahrungen und bestehenden Schutzrechte zur Verfügung zu stellen. Ausserdem verpflichtete er sich, Ingenieure des deutschen Unternehmens in seinem Laboratorium zu beraten und selbst zum gleichen Zweck die Entwicklungs- und Fertigungsstellen des Unternehmens zu besuchen. Das deutsche Unternehmen zahlte 1954 als Gegenleistung für die vom Bf eingebrachten Vertragserfahrungen eine einmalige Pauschale von 30 000 DM, die das FA der USt unterwarf. Der Bf bestritt, dass die Zahlung der 30 000 DM einen steuerbaren Inlandsumsatz betreffe. Die Berufung hatte keinen Erfolg.

Aus den Gründen:

Der Bf ist nachhaltig und selbständig als Erfinder beruflich tätig und i. S. des UStG damit Unternehmer (§ 2 Abs. 1 UStG). Ein Steuerbefreiungsgrund ist nicht gegeben. Die sonstige Leistung des Bf im Inland besteht darin, dem Berliner Unternehmen die alleinige Auswertung der von ihm gemachten Vertragserfahrungen in Deutschland zu gestatten. Denn der Bf duldet vertragsmässig die Auswertung seiner Erfahrungen im Inland. Gegenstand der Leistung ist nach dem Vertrage hauptsächlich das Dulden der alleinigen Verwertung, nicht aber die Mitteilung der Erfahrungen. Denn es kam dem deutschen Unternehmen vor allem darauf an, die Verwertung der Vertragserfindungen mit Hilfe der Vertragserfahrungen einfacher und wirkungsvoller zustande zu bringen. Erst bei Kenntnis der bei der Entwicklung einer Erfindung gemachten Erfahrungen kann unmittelbar der Erfindungsgedanke auf die Entwicklung und Fertigung übertragen werden. Bei einer wirtschaftlichen Verwertung eines Patents sind nämlich in der Regel bis zur Produktionsreife und damit bis zur Verwertung Erfahrungen zu gewinnen. Wer diese Erfahrungen, die ein anderer bei der Verwirklichung seiner Erfindung bereits gemacht hat, auswerten kann, verschafft sich einen wirtschaftlichten Vorteil. Dies war nach der Auffassung des Gerichts der Grund, aus dem sich die Vertragspartner auch über die Verwertung und die dazu notwendige Überlassung der Erfahrungen einigten. Nach dem Vertrage ist die Überlassung der Erfahrungen nur ein notwendiger Nebenpunkt, der die Voraussetzung für die Verwertbarkeit bilden soll.

Das Urteil des BHF vom 11. März 1954 in BStBl 1954 III S. 152 gestattet keine Anwendung auf den Streitfall. Der Sachverhalt war dort anders gelagert.

In dem vom BHF entschiedenen Fall ging es in erster Linie um eine Beratung eines inländischen Unternehmens vom Ausland her, welche die Mitteilung von Entwicklungen und Verbesserungen einschloss. Hier steht aber die Verwertung der vom Bf im Ausland gewonnenen Erfahrungen ausschliesslich durch das deutsche Unternehmen für das Gebiet Deutschlands im Vordergrund. Die Verwertung der Erfahrungen stellt die Ergänzung der überlassenen Schutzrechte dar, deren Verwertung der Bf im Inland duldet. In anderen Ländern als Deutschland hat der Bf die Verwertung gebietsweise weiteren Unternehmen übertragen.

Anmerkung:

Sachlich hat das VG entschieden, dass eine Duldung des Ausländers vorliegt. Dieses Dulden ist zur Leistung des Ausländ erserklärt worden, und zwar zur sonstigen Leistung (im Gegensatz zu Lieferungen; Oberbegriff ist Leistung). Die USt-Pflicht hing nun davon ab, ob die sonstige Leistung im Inland erbracht wird (§ 1 UStG). Sonstige Leistungen im Ausland unterliegen kraft gesetzlicher Regelung nicht der deutschen USt, sie sind insoweit nicht steuerbar. Der Ausländer stützt sich auf seinen Wohnsitz im Ausland und kann von seinem Standpunkt aus die Sache so ansehen, dass er dort duldet, wo er sich aufhält, also im Ausland. Weiter kann er der Ansicht sein, die blosse Mitteilung seiner Erfahrungen sei Hauptsache des Vertrags, deren Ausnutzung durch den deutschen Lizenznehmer sei nebensächlich und ihm gleichgültig; mit der Lieferung seiner Erfahrungen habe er seinen Vertrag erfüllt, mithin im Ausland geliefert, was kein steuerbarer Umsatz ist.

Zum ersten Einwand ist zu sagen, dass der Ausländer eine Untersagung der Benutzung usw. nur im Inland verlangen könnte, er müsste den Rechtsverletzer am Ort der Verletzung bzw. am Wohnort verklagen. Auf keinen Fall kann für diese Klagen der Wohnsitz des Ausländers massgebend sein, zumal er diesen Wohnsitz beliebig verlegen kann. Mithin spielt sich die Duldung im Inland ab. In anderen Staaten hat der Ausländer auch Lizenzrechte gesondert vergeben, er duldet die Verwertung also auch in anderen Ländern; daher is mit Recht die Duldung als eine sonstige Leistung im Inland angesehen worden.

Wesentlich schwerer wiegt der zweite Einwand: Nicht die Duldung, sondern die Mitteilung seiner Erfahrungen sei die Hauptsache. Diese Mitteilung lässt sich zeitlich und örtlich genau festlegen und nachweisen. Der Ausländer kann den deutschen Interessenten ins Ausland bitten und ihm dort die notwendigen Mitteilungen machen. Dann wäre das ohne Zweifel eine sonstige Leistung im Ausland, also nicht steuerbar. Die Duldungspflicht der Verwertung im Inland könnte dann als Nebensache nur dem rechtlichen Schicksal der Hauptsache folgen und aus diesem Grunde nicht die Steuerpflicht verursachen. Zudem kann es auch wirklich im Einzelfall so sein, dass dem Ausländer die effektive Ausnutzung seiner Erfindung oder Erfahrung im Inland gleichgültig ist, er verlangt seinen Kaufpreis für die blosse Mitteilung, ohne Rücksicht darauf, ob eine Auswertung im Inland wirklich erfolgt.

Hier hat sich das VG so geholfen, dass es als Tatbestand feststellte, nicht die Mitteilung der Erfahrungen, sondern das Dulden ihrer Ausnutzung im Inland sei die Hauptsache des Vertrages. Mit Hilfe dieser Vertragsauslegung konnte das VG die Entschädigung der USt unterwerfen.

Ob diese Vertragsauslegung wirklich zwingend war, kann mangels der Mitteilung des Vertragswortlauts nicht ohne weiteres beurteilt werden. Der Leitsatz des angezogenen BFH-Urteils vom 11. 3. 1954 (BStBl S. 152) sagt jedenfalls: „Verpflichtet sich ein ausländischer Unternehmer, seinen inländischen Vertragsgegner über alle technischen Entwicklungen und Verbesserungen auf dem gemeinsamen Produktionsgebiet zu unterrichten, so liegt in der Regel eine nicht umsatzsteuerbare Auslandsleistung vor".

Diese Rechtsauslegung beruhte auf einem Umkehrschluss, weil derartige

Mitteilungen eines Inländers an einen Ausländer durch ein früheres BFH-Urteil für Inlandsumsätze erklärt worden waren.

Nach internationalem Recht kommt ein Vertrag dort zustande, wo der Antragende die Annahme seiner Offerte erfährt. Für alle Verpflichtungen gilt der Erfüllungsort, und dieser richtet sich (allerdings nur im Zweifel) nach dem Wohnsitz des Verpflichteten. Die Anwendung derartiger Regeln führt leicht zu widersprechenden Ergebnissen. Es muss dann untersucht werden, welche Regel den Vorrang hat. Die Parteien konnten z.B. bestimmen, dass die Mitteilungen am Wohnsitz des Inländers gemacht werden mussten, dann wäre auch dort die Leistung erfolgt. Sie hätten ebensogut vereinbaren können. die Mitteilungen seien im Ausland abzuholen bzw. der Lizenzgeber werden mit der Aufgabe zur Post seiner Verpflichtungen ledig. Dann wäre die Lieferung im Ausland als Tatbestand unbestritten.

Das Urteil lehrt, grössten Wert auf die Formulierung des Vertrages zu legen und diesen so auszurichten, dass die steuerliche Beurteilung einwandfrei erfolgen kann.

Source: *Internationale Wirtschafts-Briefe* 25 Juli 1958.

SOUTHERN RHODESIA — SOURCE OF INCOME FROM SERVICES PERFORMED ABROAD

Commissioner of Taxes v. Shein, 1958 (3) S.A. 14 (F.C.)

In 1931 the taxpayer was engaged by one X to manage, on a salary basis, a store owned by X in the Bechuanaland Protectorate. In 1933 the basis of his remuneration was changed to a half-share of the profits, but he continued to live, as he had previously done, at the store. In 1945 this arrangement was varied. It was then agreed that the taxpayer should continue to manage the store for the same remuneration, but that he could live in Bulawayo, provided that he, at his own expense, employed a full-time storekeeper to run the day-to-day business of the store. The taxpayer was to continue personally to discharge the other duties pertaining to his employment. This arrangement was in effect during the years of assessment. The taxpayer duly employed a storekeeper and himself spent the first four days of each month at the store, supervising the business and giving directions for the succeeding month. He lived in Bulawayo and took other employment there. While in Bulawayo he spent a certain amount of time on the business of the store. At the end of the year the taxpayer and X met at the store. The accounts were examined, the profits agreed and a settlement made.

The Commissioner assessed the taxpayer to tax on one-ninth of his earnings from the store, after deducting the salary paid to the local storekeeper on the basis that the taxpayer spent, on the work of the store, four days a month in Bechuanaland and half a day a month in Southern Rhodesia.

The taxpayer appealed against this assessment for tax for the years ended 31st March, 1950, 1951, 1952, 1953 and 1954, to the High Court of Southern Rhodesia which allowed the appeal. The learned Judge who heard the appeal found that the Commissioner was substantially correct in his view that the taxpayer spent half a day a month in Bulawayo on the work of the store, but rejected the contention that the four days' work a month he did in Bechuanaland could fairly be regarded as representing the sum total of his other work on behalf of the store. The learned Judge held in effect, that, in ascertaining the source of the taxpayer's income from the store, the work he did himself must be equated with the work done by the storekeeper on the spot, and that the taxpayers's profits must be regarded as being derived from their joint work in Bechuanaland. He held that the work done in Bulawayo which on this approach was insignificant in amount, was trivial and incidental and did not affect the main issue.

The Commissioner lodged an appeal to the Federal Supreme Court which, however, confirmed the judgment of the High Court.

In the view of Tredgold, C. J., who delivered the judgment, Lewey, F. J., and Clayden, F. J., concurring, the Judge of the High Court was undoubtedly right in holding that the work done on behalf of the taxpayer had to be taken into account in deciding the source of his income from the store. The learned Chief Justice then went on to say:

"It is suggested that [the Judge] was wrong in some of the assumptions of fact that formed the basis of this conclusion. Even if he was (and this I do not

accept) and even granting that such wrong assumptions could properly support an appeal that lies only on a point of law (and this I very much doubt) I do not see how he could have reached any other conclusion on the facts established before him. The respondent did not, as was suggested, contract to find a manager for the store. He contracted to manage the store and the fact that he was permitted, by the terms of his agreement, to delegate portion of his duties in running the store to another, cannot alter this essential fact. The respondent's full responsibility continued. Had his storekeeper defaulted, his contractual duty would have been to keep the store going. He could have found another delegate storekeeper, but it would have been consistent with his contract had he continued to keep the business going in some other way, as by going down himself, or by using the African assistants. He undertook the work of conducting a store in Bechuanaland and the mere fact that he was permitted to do a portion of that work through an agent was a concession that did not affect his basic undertaking. It was argued that the respondent's work was supervision of the local storekeeper and that this was done principally from Bulawayo. Even it this were correct the supervision only became effective in Bechuanaland. But in any event the argument is fallacious for the respondent undertook much more than just to keep an eye on the storekeeper. He undertook to keep the business going. Whether he did it by a local representative or in some other way was immaterial to the party with whom he had contracted. A man may render services by accepting responsibility just as much as by manual or other work. When he does he accepts responsibility at the place at which the undertaking for which he accepts responsibility is being carried on, wherever he may be at the moment.

It may be accepted that, prima facie, the test of the source of a payment for services rendered is the place where those services are rendered: *C.I.R.* v. *Lever Bros. & another*, 1946 A.D. 441 at 449; *C.I.R.* v. *Epstein*, 1954 (3) S.A. 689 (A.D.) at 698. The learned Judge in the present case said:

"It now seems settled law that generally the source of such income is the place where the services for which the salary is paid are rendered."

Unless the word "generally" is understood to introduce a considerable qualification the proposition may perhaps, in this passage, be too boldly stated. The ultimate test of source is the originating cause. (*Lever Bros.* case, *supra*, at 450.) Where a person is engaged to perform work in one place and, purely as a matter of convenience, he does part of the actual work elsewhere, while producing his final result at the place contracted, difficult questions may arise. But this difficulty does not present itself in the case under consideration, for here the respondent did the main work for which he was employed in Bechuanaland, though he did a large part of it through the agency of another.

Once this is accepted the proportion of the work he did in Southern Rhodesia becomes inconsiderable. As has been pointed out, it has been found and indeed it is agreed that it amounted only to half a day a month. It remains to consider whether his income should be apportioned so that the small amount attributable to work done in Southern Rhodesia and which the contract contemplated should be done in Southern Rhodesia be taxed here. It is not questioned that it is legally correct to apportion income if it is in fact clear that it is derived from more than one source. (*C.I.R.* v. *Lever Bros.*, *supra*, at 451).

The grounds of appeal imply that one of the reasons that actuated the High Court in refusing to apportion the income was a finding that the amount accruing from Southern Rhodesia was due to services that were "casual and incidental" in their nature. In point of fact the High Court made no such finding and the expression "casual and incidental" is derived from one of the authorities quoted in the judgment. (Income Tax Case 77, 3 Tax Cases 72). The High Court itself used the expression "trivial and incidental" and the

distinction is not unimportant. I do not myself feel that the fact that services are casual or regular can have much bearing on the question of the source of payment for such services. The fact that they are trivial and incidental may. As was pointed out by de Villiers J. A., in *Rhodesia Metals Ltd.* v. *Commissioner of Taxes*, 1938 A.D. 282 at 300,

"source means not a legal concept but something which a practical man would regard as a real source of income; the ascertaining of source is a practical hard matter of fact".

This was a dissenting judgment but the particular passage was quoted with approval by the Privy Council. (1940 A.D. 432 at 436). When a man is engaged to perform a certain work in a given country but has minor duties, which are purely subsidiary and incidental, that fall to be performed in another country, then I do not think it is a practical approach to suggest that portion of his income has its source in that other country. When he is not paid separately for these extraneous duties, it becomes particularly artificial to try to allot portion of his earnings to them.

In the present case the respondent performed the following duties in Bulawayo.

He ascertained the ruling prices of hides and small stock. He handed the invoices and accounts to the book-keeper. From time to time he placed orders for goods and performed miscellaneous duties, as convenience and his other occupations dictated. All these duties could have been done almost equally well by correspondence from Bechuanaland. Altogether they did not occupy more than a few hours a month. All were entirely subsidiary to the real work of conducting the business there. Indeed, had the Commissioner accepted the fact that the work of the respondent's manager must be equated with his own in ascertaining the source of his income, I have little doubt that he would not have attempted to distinguish on a basis of source the earnings attributable to work done in Bulawayo."

The appeal was accordingly dismissed with costs.

Note

The following rules can be deduced from the above decision:

1. A person may render services by accepting responsibility just as much as by manual or other work.
2. A person may render services through the agency of another.
3. Although the ultimate test of source is the originating cause, the source of income for services rendered, if the main work for which the servant is employed is done in a particular place, is in that place.
4. Income can be apportioned if it is clear that it is derived from more than one source.
5. If purely subsidiary and incidental duties are performed in a country other than where the main work is done, it is not a practical approach to suggest that portion of his income has its source in that other country.

Source: *The Taxpayer*, South Africa, July 1958.

IV

REVIEWS — COMPTES RENDUS

BELGIUM

PROF. JEAN VAN HOUTTE: *Principes de Droit Fiscal Belge*. Editions Erasme, Av. d'Oudenghem 233, Bruxelles 1958, 408 pp.

A review of the Dutch version of this handbook on Belgian taxation was published in "Bulletin" Vol X p. 350. Prof. van Houtte has made use of the appearance of the French edition to bring his book up-to-date. In this French edition the alterations in the legislation, as well as recent case law and ministerial decrees have been included. Recapitulating the characteristics of this book we can state that it is meant primarily for students. The subject has been approached from a scientific angle. In twelve chapters the author explains the character of taxation, its function, the tax study, classification of taxes, history of the Belgian tax system, sources and applications of tax law, interpretation, basis and assessment of taxes, points of difference. Professor van Houtte has succeeded in making a clear distinction between principles and details. A very recommendable book.

The Belgian system of taxation in its relation to corporations. Office Belge du Commerce Exterieur, 15, rue des Augustins, Bruxelles, 1958, 41 pp.

This study consists of two parts. The first examines the Belgian system of taxation as it affects the activities of a corporation, as well as the individual income of directors and personnel, whereas the second compares the corporate tax structure in existence in various other countries.

Recueil des Lois Fiscales sous la surveillance de F. AMERIJCKX, Professeur ordinaire á l'Université de Gand. Edité par l'Union belge des Conseillers fiscaux, 343 Documéntation juridique et fiscale A. van der Leest, 343, Avenue des Pagodes, Bruxelles II.

Les Compléments 27-30 1958, de ce livre sur le système fiscal belge un compte rendu duquel a été publié dans le "Bulletin" Vol. XII, p. 32 ont paru.

Jurisprudence Fiscale et Sociale. Publié par Documentation juridique et fiscale A. van der Leest, 343, Avenue des Pagodes, Bruxelles II.

Les Suppléments 1958 nos. 2-7 de cette documentation sur le système fiscal belge ont paru.

CANADA

Report of Proceedings of the Eleventh Annual Tax Conference convened by the Canadian Tax Foundation at the Royal York Hotel, Toronto, November 11-12, 1957. Canadian Tax Foundation, 154, University Avenue, Toronto 1, 1958, 273 pp.

This Report, following the practice of recent years (review in Bull. XI, p. 123) reproduces a complete transcript of the proceedings of the Foundation's 1957 Conference held at the Royal York Hotel in Toronto. The panel discussions were about the subjects: Provincial profit allocation rules; Tax cases in

the news; What to do about self-employed pension plans; Forestry tenures and taxes; Foreign tax havens for Canadian business; Tax planning for the executive; Mining taxation; The tariff.

The National Finances 1958-59. An analysis of the programme of revenues and expenditures of the Government of Canada. Canadian Tax Foundation, 154 University Avenue, Toronto 1, 1958, 170 pp.

A review of the previous edition of this guidebook on Canadian public finance appeared in Bull. Vol. XII, p. 34. The present publication is the fourth in this annual series which is designed to give the interested reader unbiased information on the operations of the Canadian government. There are chapters on the Budget, the Tax Structure 1958, the Expenditure Programme 1958, the Cash position and Crown corporations.

FRANCE

DENIS DE RICCI: *Investissements en Amérique Latine*. Aspect juridique et fiscal. Tome I Brésil, Colombie, Equateur, Pérou, Vénézuela. Tome II Argentine, Bolivie, Chili, Paraguay, Uruguay. Avec Mises à jour au 1er janvier 1957 du Tome I. Editions A. Pedone, 13 rue Soufflot, Paris, 1957, 104 + 87 + 21 pp.

Cet ouvrage est un instrument de travail en rassemblant sous une forme intelligible les renseignements de base essentiels pour une étude préliminaire des possibilités d'investissements dans un pays donné. Il est le fruit d'une étroite collaboration entre des avocats spécialistes de chacun des pays intéressés: réalisé selon un plan uniforme destiné à en faciliter l'utilisation il évite résolument toute étude théorique. Les deux premiers chapitres sont consacrés l'un au «Régime des changes et à l'introduction des capitaux étrangers», l'autre à la «Constitution des sociétés à participation étrangère». Les trois chapitres suivants sont relatifs à la «Législation des sociétés», au «Régime fiscal» et aux «Charges sociales». Enfin, le repatriement des capitaux et des bénéfices fait l'objet des deux derniers divisions. Des mises à jour permettront de suivre l'évolution des législations et des faits.

MARCEL LE BRIS: *Professions et taxes sur le chiffre d'affaires*. Les Editions Impôts et Sociétés, 23 Rue Chauchat, Paris-9e. *Mises à jour 1958*.

Cet envoi constitue la première mise à jour de l'année 1958. Elle comprend 19 feuillets. Un compte rendue de ce livre a été publié dans le «Bulletin» Tome XII, p. 36.

Feuillets de Documentation Pratique des Droits d'Enregistrement et du Timbre
Les Publications Francis Lefebvre, 15, rue Viète, Paris (17e)

As a supplement to the already existing loose-leaf volumes on French taxation *Feuillets de Documentation Pratique des Impots Directs* (review in Bulletin Vol. XI, p. 127) and *Feuillets de Documentation Pratique des Taxes sur le Chiffre D'Affaires* the well-known publisher Francis Lefebvre has now added to these excellent reference works a book on French Succession, Registration and Stamp duties. Like the other books it contains a commentary to the Acts concerned.

This book consists of nine parts: Reglementation Générale des Droits d'Enregistrement; Tarif commenté des droits d'enregistrement; Baux et locations verbales; Cessions de fonds de commerce, de clientèles ou de droits au bail; Ventes d'immeubles; Droits sur les sociétés; Contrôle et contentieux; Impôt du timbre; Dispositions diverses.

The material has been arranged according to subject, which facilitates the consultation of the book. The extensive index is a great help for the reader to find his way quickly. This work will be kept up-to-date by supplements.

E. P. PLAGNOL: *Les Impôts*. Troisième édition, En vente chez l'auteur, 6, rue George Eastman, Paris (XIIIe), 1958, 569 pp.

The second edition of this comprehensive book on French taxes was announced in "Bulletin" Vol. X, p. 116. On the whole the author has kept in this third edition the same classification of chapters as in the second edition, except in Book 4 where a few alterations have been made. There are 4 books: 1. Classifications. Character of the various taxes. History of the French tax system. 2. Registration duties. 3. Sales taxes. 4. Direct taxes and similar taxes. Each book is again divided systematically into parts and chapters so that the reader gets a clear survey of the whole of the French tax system.

Juris-Classeur Fiscal - Impôts Directs. Tome 1-5. Editions Techniques, 128, rue de Rivoli, Paris 1er.

Dans l'encyclopédie juridique «Juris-Classeur» sont publiés cinq volumes de droit fiscal, contenant les impôts directs.

La réforme fiscale de 1948-50 a produit en France la codification de la législation dans le Code Général des Impôts. Les textes, dudit Code Général relatifs aux impôts directs, sont donnés dans le tome premier du Juris-Classeur Fiscal ainsi que les lois, décrets, arrêtés non codifiés et les conventions internationales. Un système détaillé des références facilite la recherche. Dans les tomes 2-5 se trouve un traité lucide, divisé dans les rubriques suivantes: généralités, impôt sur les personnes physiques, impôt sur les personnes morales, taxes diverses d'Etat, taxes locales, taxes perçues au profit de certaines collectivités, structure de l'administration, pouvoirs généraux de l'administration, recouvrement, contentieux, bibliographie. Ce bel ouvrage edité sur feuillets mobiles, est mis à jour par un complément périodique, paraissant 30 fois par an.

Juris-Classeur Fiscal - Taxes sur le Chiffre d'Affaires. Tome 1-2. Editions Techniques, 128, rue de Rivoli, Paris 1er.

Nous venons de recevoir encore deux volumes du Juris-Classeur Fiscal, deuxième partie, contenant les textes et un traité des taxes sur le chiffre d'affaires. Le traité comprend les chapitres: introduction, régime général de taxes sur le chiffre d'affaires, étude particulière de la situation fiscale d'ensemble de certains produits, opérations de personnes, taxes uniques spéciales.

Tout du point de vue scientifique que pratique le Juris-Classeur Fiscal est un des meilleurs ouvrages de ce genre dans le monde entier.

LOUIS BROËT: *Guide pratique des Impôts en Algérie. Mise à jour no. 21*, juin 1958. Editions Le Messager, 2, Boulevard Carnot, Alger.

A review of this looseleaf work on taxation in Algeria was published in "Bulletin" Vol. XI, p. 220. *Supplement 20*, January 1958 containing a number of new pages has recently been published.

GERMANY

Professor DR. OTTMAN BÜHLER: *Steuerrecht*. Einzel-Steuerrecht, 3. Auflage. Betriebswirtschaftlicher Verlag Dr. Th. Gabler, Wiesbaden, 1958, 372 S.

Die vorliegende Ausgabe ist die dritte Auflage diese Werkes, das eine Übersicht über die 50 Steuern Deutschlands bietet. Den vorhergehenden allgemeinen Teil haben wir im Bull. VIII auf S. 87 angezeigt. Es sind genau 50; das geht aus der Übersicht hervor mit der die Arbeit anfängt. Die Systematik beruht auf dem Unterschied: I. Direkte, II. Indirekte Steuern: I.a. Steuern vom Einkommen, b. vom Vermögen, c. Sachsteuern und Investitionshilfe und Lastenausgleichabgaben. IIa. Verkehr, b. Verbrauchsteuern und c. direkte Aufwandsteuern. Nach dieser Systematik, die dem Verfasser anscheinend

nicht gerade behagt, ist dieses Buch aufgebaut. Es wurde bestrebt den leitenden Gedanken möglichst hervortreten zu lassen. Ein reichhaltiges Register des behandelten Stoffgebietes erleichtert das Nachschlagen.

Dr. jur. W. O. W. TERSTEGEN: *Unlauterer Wettbewerb durch Steuer-Hinterziehung*. Theodor Oppermann Verlag, Hannover, 1958, 72 S.

Dies ist Band I einer Reihe: "Betrieb-Preise-Steuern", der das Stoffgebiet das in der Studiengesellschaft für Betriebswirtschaft e.V. behandelt wurde, umfasst. Mit der Redaktion wurde der Vorsitzende Dipl. Kfm. Herbert Lorenz betraut.

Im Vorwort betont der Verfasser die Störungen in den Wettbewerbverhältnisse, als eine Folge der Steuerhinterziehung. Das Büchlein bringt vier Beispiele, die es ermöglichen das Problem in weiterem Umfang zu sehen. Die Darlegung schliesst mit einer grossen Anzahl von Anmerkungen, in denen die einschlägige Literatur berücksichtigt wurde.

Im Verlag des *Instituts der Wirtschaftsprüfer*, Cecilienallee 36, Düsseldorf, sind erschienen:

1. *WP-Verzeichnis 1958*. Stand vom 1. Januar 1958.

Von dem Verzeichnis der Wirtschaftsprüfer und Wirtschaftsprüfungsgesellschaften in der Bundesrepublik Deutschland wird die 4. Neuauflage nach dem Kriege vorgelegt.

2. *Die Veranlagung zur Körperschaftsteuer für 1957*. 192 S.

Wie im vergangenen Jahr (Besprechung in "Bulletin" Bd. XI, S. 309) wurden auch für die Veranlagungsarbeiten 1957 die Texte des Körperschaftsteuergesetzes, der Durchführungsverordnung und der Richtlinien übersichtlich zusammengestellt. Die bewährte Methode, die Bestimmungen der Durchführungsverordnung und die einzelnen Abschnitte der Richtlinien den Paragraphen des Gesetzes zuzuordnen, wurde beibehalten. Der Anhang wurde überarbeitet. Im Anhang: Gemeinnützigkeitsverordnung, Gesetz über Kapitalanlagegesellschaften, Umwandlungssteuergesetz und weitere wichtige Ergänzungsvorschriften. Stichwortverzeichnis.

3. *Die Veranlagung zur Gewerbesteuer für 1957*, 171 S.

Um die vorliegende Broschüre dem jüngsten Rechtsstand anzupassen, wurde die gesamte neuere Rechtsprechung des Bundesfinanzhofs, soweit sie von Bedeutung war, eingearbeitet. Im Anhang wurden aufgenommen: Auszug aus dem Einführungsgesetz zu den Realsteuergesetzen, Tabelle der Steuermessbeträge nach dem Gewerbeertrag, Errechnung der Gewerbesteuer-Rückstellung bzw. der Gewerbesteuer-Überzahlung. Stichwortverzeichnis.

4. HANS ESCHER: *Der Umfang der Aktivierungspflicht bei den Ausgaben für das Sachanlagevermögen in Handels- und Steuerbilanz*, 1958, 83 S.

In diesem Arbeit wird das schwierige und umstrittene Problem der Aktivierungspflicht bei den Ausgaben für das Sachanlagevermögen in Handels- und Steuerbilanz behandelt. Der Verfasser ermittelt Grundsätze die als Richtschnur für eine konsequente Lösung dieses Problems bei der praktischen Prüfungsarbeit dienen können.

5. Dr. Jur. HORST SCHREIBER: *Sanierung, Sanierungsgewinn, Besserungsverpflichtungen und -leistungen im Steuerrecht*, 1958, 136 S.

Die Frage der Abzugfähigkeit der Besserungsleistungen kann systemgerecht nur gelöst werden, wenn Klarheit über Bedeutung und Auswirkung des § 11 Ziff. 4 KStG geschaffen wird. Der Verfasser dieser Dissertation hat dazu

die Rechtsprechung zur "Steuerfreiheit" des Sanierungsgewinns einer Kritik unterzogen.

6. *Steuerreform 1958.* Einkommensteuergesetz, Körperschaftsteuergesetz, Gewerbesteuergesetz in alter und neuer. Fassung gegenübergestellt sowie die Änderungen des Steuererleichterungsgesetzes für Berlin und des Steueranpassungsgesetzes, 1958, 224 S.

Der bedeutsamste Teil der Steuerreformgesetze des Jahres 1958 bildet das Gesetz zur Änderung steuerlicher Vorschriften auf dem Gebiete der Steuern vom Einkommen und Ertrag und des Verfahrensrechts vom 18. Juli 1958 (BGBl. I S. 473). In dieser Broschüre wird ein anschauliches Bild des Ausmasses und Inhalts dieser wichtigen Änderungen gegeben. Das Einkommensteuergesetz, das Körperschaftsteuergesetz und das Gewerbesteuergesetz werden in vollem Wortlaut zum Abdruck gebracht, wobei die alte und die neue Fassung der einzelnene geänderten Vorschriften einander gegenübergestellt werden.

Finanzierungsprobleme und Steuerpolitik. Herausgegeben von der Deutschen Gesellschaft für Betriebswirtschaft. Deutscher Betriebswirte Verlag, Berlin 1957, 93 S.

Dieser Band enthält einige in Düsseldorf gehaltene Vorträge. Die Redaktion hatte Dipl. Kfm. *E. Schaufer* übernommen. Sechs Beitrage behandeln das Problem von verschiedenen Seiten. Auch aus den Diskussionen wird einiges übernommen. Dr. *Joachim von Spindler* hat vor allen den Kapitalmarkt im Auge. *Alfred Hansi* behandelt das Thema weiter und legt sich die Frage vor wie dieser Markt gesunden könne. Hierbei treten die fiskalischen Probleme stark hervor. *Rudolf Münemann* bespricht moderne Industriefinanzierungsformen. Dr. *F. Wilhelm Christians* behandelt das Problem der Mittelindustrie und der Handelsunternehmungen. Dr. *Erich Berger* den Zusammenhang mit dem Kredit, während der letzte Beitrag von *Prof. Dr. Werner Löffler* die Finanzierung in dem gemeinsamen Markt zum Ausgangspunkt hat.

Steuergesetze. Textsammlung mit Verweisungen und Sachverzeichnis. Loseblattausgabe. (Neuausgabe der Sammlung „Deutsche Steuergesetze" in grösserem Format) 1. und 2. Lieferung. Stand 15. September 1958. 785 Seiten. In Leinenordner DM 18.— Verlag C. H. Beck, München.

Die in 13 Auflagen verbreitete Loseblatt-Sammlung „Deutsche Steuergesetze" erscheint in neuer Ausgabe in grösserem Format, in übersichtlicherer Gestaltung und mit besser lesbarer Schrift unter dem Titel „*Steuergesetze*". Von der Neuausgabe liegen die 1. und 2. Lieferung vor. Sie enthalten bereits vollständig die Komplexe Einkommen- und Körperschaftsteuer (in der für 1958 gültigen Fassung) mit den neuen Einkommensteuer- und Lohnsteuertabellen, Umsatzsteuer, Beförderungsteuer sowie Kraftfahrzeugsteuer, ausserdem das Bewertungsgesetz, das Gewerbesteuergesetz, das Steueranpassungsgesetz u.a. Mit der 3. Lieferung (2. Ergänzungslieferung), die im Dezember erscheint, wird die Neuausgabe vollständig. Diese Lieferung wird ausser den noch fehlenden Gesetzen auch ein neubearbeitetes, dem jüngsten Stand entsprechendes Register enthalten.

RUDOLF HARMENING, *Kastenausgleich — Kommentar. Loseblattausgabe. 14. Lieferung.* 960 Seiten. Preis DM 28.50. Grundwerk, 2. Aufl: 4 Bände (1.-14. Lieferung), 7080 Seiten. In vier Leinenordnern DM 180.— Verlag C. H. Beck, München und Berlin.

Die durch die zahlreichen Änderungs- und Ergänzungsvorschriften notwendig gewordene Überarbeitung des Kommentars wurde mit der 14. Liefe-

rung abgeschlossen. Dabei ist auch die Rechtsprechung berücksichtigt. Eine Reihe neuer Vorschriften mussten zur Aufnahme in die folgende Lieferung zurückgestellt werden, die so bald als möglich erscheinen soll.

OTTO WILKE: *GmbH-Formulare*, zugleich 5. Teil des „Handbuchs der GmbH" Verlag Dr. Otto Schmidt, Köln, 1958, 133 S.

Diese Formulare geben praktische Beispiele für die Anwendung des GmbH in einzelnen Falle. Sie sind zum Teil der Praxis entnommen, zum anderen setzen sie einen erdachten Tatbestand voraus.

Das Hauptwerk „Handbuch der GmbH" wurde in „Bulletin" Bd. XII, S. 256. besprochen.

Dr. FRITZ JOHS. VOGT: *Die steuerliche Betriebsprüfung und ihre Grenzen.* Völlig neu bearbeitete 4. Auflage der „Amtlichen Betriebsprüfung". Verlag Dr. Otto Schmidt, Köln, 1958, 272 S.

In einer anschaulichen Darstellung gibt der Verfasser mit diesem Werk eine umfassende Sicht der steuerlichen Betriebsprüfung, wobei er dieses Thema nicht nur von der juristischen und betriebswirtschaftlichen Seite angeht, sondern auch die finanzpolitischen und menschlichen Auswirkungen dieser Begegnung des Staates mit seinen Bürgern aufzeigt. In dieser 4. Auflage ist die neuere Rechtsprechung berücksichtigt, zumal sie in vielen Punkten eine ganz neue Ausrichtung zeigt. Neue Kapitel sind hinzugekommen: Die Prüfungsmacht und ihre Grenzen, Vorbereitungen auf die Prüfung, Prüfungstechnik. Im übrigen wurden auch neue Unterkapitel aufgenommen.

Der Wissenschaftliche Beirat beim Bundeswirtschaftsministerium. 4. Band. Gutachten vom Januar 1955 bis Dezember 1956. Herausgegeben vom Bundeswirtschaftsministerium. Verlag Otto Schwartz & Co., Göttingen, 1957, 74 S.

Wer genötigt ist, Stellung zu aktuellen Fragen der Wirtschaftspolitik zu nehmen und sich in Referaten oder Denkschriften darüber zu äussern, findet in den Bänden der Gutachtensammlung eine Fülle von Anregungen und die unentbehrliche Orientierung am Grundsätzlichen..Band 4 enthält die Gutachten zu den folgenden Problemen: Möglichkeiten und Grenzen regionaler Wirtschaftspolitik; Probleme einer produktivitätsorientierten Lohnpolitik; Welche Massnahmen entsprechen der gegenwärtigen konjunkturellen Situation? Instrumente der Konjunkturpolitik und ihre rechtliche Institutionalisierung; Probleme der volkswirtschaftlichen Gesamtrechnung und ihrer Auswertung.

Die Steuertarife sämtlicher Steuergesetze. 14. Auflage. Stand: 1.9.1958. Verlag der Steuertarife P. Wachsmann, Margarethenstrasse 28, M. Gladbach.

Die Steuertarife erscheinen wieder in neuer Auflage. Sie sind auf den neuesten Stand gebracht, erweitert, vollständig umbegaut, neu eingeteilt und durchnumeriert worden.

Gegenwartsfragen des Steuerrechts. Festschrift für Armin Spitaler. Herausgegeben von Gerhard Thoma. Verlag Dr. Otto Schmidt, Köln, 1958. 258 S.

Das vorliegende Buch wurde dem Vorstandsmitglied des Fachinstituts der Steuerberater e.V. in Köln, Herrn *Prof. Dr. Armin Spitaler,* zu seinem 60. Geburtstag gewidmet. Die in dem Werk gesammelten Abhandlungen stammen von seinen Freunden und Verehrern. Wir erwähnen die folgenden Aufsätze: *Prof. Dr. O. Bühler,* Die Begünstigung der „Capital Gains" im Steuerrecht der angelsächsischen Staaten (England, Kanada, USA); *Jean H. Rothstein,* Die indirekte Anknüpfung (zu den neuen französischen Überseeverträgen;

Dr. Hübschmann, Die Problematik der wirtschaftlichen Betrachtungsweise; *Dr. Günther Felix*, Steuerrecht und Verwaltungsrecht; *Gerhard Thoma*, Steuervergehen und Steuerberatung.

Von der Auslegung und Anwendung der Steuergesetze. Herausgegeben von Dr. GÜNTHER FELIX. Erschienen im C. E. Poeschel Verlag, Postfach 529, Stuttgart, 1958, 528 S.

Aus Anlass des 60. Geburtstages von *Professor Dr. Armin Spitaler* (Universität Köln) haben seine Schüller ihm in diesem Band eine Festgabe überreicht. Das Werk hat unabhängig von der Schule Professor Spitalers allgemeingültige Bedeutung für das gesamte Steuerwesen. Es handelt sich nicht um eine Festschrift im üblichen Sinn, sondern um Arbeiten, die auf Grund wissenschaftlicher und praktischer Erfahrungen neue Grundlagen für die Auslegung und Anwendung von Steuergesetzen geben. Das Werk gliedert sich in drei Teile.

Teil I enthält die Abhandlungen. Es gibt dort u.A. die folgenden Aufsätze: K.-H. Bramson, Ethische Betrachtungsweise im Steuerrecht; R. Willems, Finanzwissenschaftliche Erkenntnisse als Auslegungselemente; R. Fürst, die Steuern als Objekt betriebswirtschaftlicher Forschung; H. Flick, Zur Auslegung von Normen des internationalen Steuerrechts; S. Schiffbauer, Harmonisierung von Steuern im Gemeinsamen Markt. Teil II bringt Inhaltsangaben und Informationen über gelungene Dissertationen, die der allgemeinen Beachtung wert sind. In den letzten Jahren sind unter der Betreuung von *Spitaler* zahlreiche Dissertationen entstanden, die einen Aussagewert für die breitere Öffentlichkeit haben. Teil III enthält ein vollständiger Überblick über das Schrifttum von Professor Spitaler aus den Jahren 1925-1957. Zum Schluss macht ein ausführliches Schlagwortverzeichnis diesen inhaltsreichen Band für die Praxis besonders wertvoll.

Synoptische Darstellung der Steuersysteme in den Mitgliedstaaten der Europäischen Wirtschaftsgemeinschaft. Herausgegeben vom Bundesverband der Deutschen Industrie, Steuerabteilung, Köln 1958. Joh. Heider, Druckerei und Verlag GmbH, Bergisch-Gladbach. 64 Seiten, 34 × 24 cm Querformat, Preis 5,20 DM.

Der Bundesverband der deutschen Industrie gibt in der vorliegenden Veröffentlichung einen Gesamtüberblick über das Steuersystem das in den sechs Mitgliedstaaten der EWG besteht. Bei der Gegenüberstellung sind jeweils die Steuertatbestände, die Bemessungsgrundlagen, die Steuersätze und das Steueraufkommen für jede in den sechs Ländern vergleichbare Steuer nebeneinandergestellt. Das Heft stellt damit für jeden, der sich über die Struktur der Steuersysteme in den EWG-Ländern schnell orientieren will, ein ausgezeichnetes Hilftsmittel dar.

Steuerrechtsprechung in Karteiform. Höchgerichtliche Entscheidungen in Steuersachen. Mrozek-Kartei. Verlag Dr. Otto Schmidt, Köln.

Erschienen sind die Lieferungen 77, Mai 1958 - *78/79*, Juni/Juli 1958.

Dr. Dr. WALTER HÜBSCHMANN, Prof. Dr. Dr. ROLF GRABOWER, ERNST BECK und Prof. Dr. HUGO VON WALLIS: *Kommentar zum Umsatzsteuergesetz. Lieferung 10*, Juli 1958. Verlag Dr. Otto Schmidt, Köln.

Dr. Dr. EDGAR LENSKI und DR. WILHELM STEINBERG: *Kommentar zum Gewerbesteuergesetz. Lieferung 4*, Juli 1958. Verlag Dr. Otto Schmidt, Köln.

Schnellkartei des deutschen Rechts. Verlag Dr. Otto Schmidt, Köln.
Erschienen ist die Lieferung:

Reihe III. *Lfg. 84,* Juni 1958, Inhalt: Lohnsteuer-DV 1957, Steuerrechtl. Vorschriften bei KapAnlGes., Ergänzung der Steuerkurswerte, Änderungen zur Umsatzsteuer, u.a.m.

GREAT BRITAIN

World Tax Series. Taxation in the United Kingdom. 1958 cumulative supplement. By WALTER W. BRUDNO and FRANK BOWER. Little Brown and Company, 34 Beacon Street, Boston 6, Mass., 1958, 43 pp.

A review of *Taxation in the United Kingdom* was published in Bull. XI p. 228. This supplement, which replaces the special 1957 supplement, brings the parent volume up to date as of 30 July 1958 and summarizes the legislative alterations made by the Finance Act of 1958.

Key to Profits Tax. Edited by PEREY F. HUGHES, 5th edition. Taxation Publishing Company Ltd., 98 Park Street, London W.1., 1958, 313 pp.

Taxation's *Key to Profits Tax* brings in its 5th edition the Finance Act, 1958 provisions. In the well-known clear and concise way the profits tax law and practice is presented. References to Acts and cases are included as well as practical examples. A diagram and the thumb-index facilitate the use for practitioners.

"Taxation" Key to Income tax and Surtax. Edited by PERCY F. HUGHES. Taxation Publishing Company, 98 Park Street, London W.I. 1958. *Budget Edition* and *Finance Act Edition.*

The *Budget Edition* and the *Finance Act* Edition of the "Key to Income Tax" contain the recent alteration of the British Income tax presented in the usual clear way we have come to expect. The previous edition of this practical guidebook was published in *"Bulletin"* XII p. 40.

PERCY F. HUGHES: *Staples on Back Duty.* Seventh edition. Gee & Company (Publishers), 27-28 Basinghall Street, London EC2, 1958, 192 pp.

In this edition comprehensive examples of the working of back duty cases have been included, together with references to recently decided cases affecting this important aspect of taxation. The Board of Inland Revenue has taken increasingly active steps in recent years to combat evasion, the powers afforded to them by the Finance Acts of 1951 and 1956 being particularly helpful in this respect. This legislation is dealt with in this edition. Full reference has been made to the final report and recommendations of the Royal Commission on the Taxation of Profits and Income (published in 1955) as they affect tax evasion.

"Current Law" Income Tax Acts Service. Sweet & Maxwell, 3, Chancery Lane, London, W.C. 2.

Reviews of this loose-leaf service were published in "Bulletin".

Release 48, August 14, 1958, brings to subscribers the text of the Finance Act, 1958, fully annotated.

INDIA

A. N. AIYAR and T. A. RAMACHANDRAN: *The Expenditure Tax Act, 1957* - Company Law Institute of India Private Ltd., 21 Thyagaraya Road, Madras 17 - 1958, 91 pp.

India is the first country in the world to levy a tax on expenditure. In this it has followed the advice of Dr. Kaldor in his "Indian Tax Reform". This book contains the texts of the Act with annotations; the Expenditure-Tax Bill, 1957; extracts from Dr. Kaldor's report and the Expenditure-Tax Rules, 1958. An index facilitates the use of the book.

V. BALASUBRAHMANIAM: *The Law and Practice of Estate Duty*. N. M. Tripathi Ltd., Princess Street, Bombay 2, 1956, 857 pp.

The Estate Duty Act is a new Law of Taxation in India. The author has succeeded to an admirable extent in making clear the concepts and the provisions under the Act. He has also dealt with the provisions under the various laws governing rights to property, gift, will, succession, inheritance, and survivorship which have a bearing on the provisions of the Act. The book will be helpful for practising lawyers and accountants and also for all concerned with the levying and the paying of Estate Duty.

ITALY

LELIO ZAPPALA - ANTONIO MARIONETTI et FRANCESCO LANZA: *L'imposta sui redditi di ricchezza mobile* - Casa Editrice Dott. Eugenio Jovene, Napoli, 1957, 744 pp.

Les auteurs ont publiés un manuel de l'impôt sur les revenus des capitaux mobiliers, qui mérite bien l'attention de tous les étudiants de cette matière.

EMANUELE MORSELLI - Archivio Finanziario - Volume VII - Cedam, 677 pp.

En dehors de quelques articles, dont soit mentionnés «un esempio di politica finanziaria congiunturale; le finanze pubbliche del Congo Belga par *Maurice Masoin*», la chronique contient de nouveau un résumé de jurisprudence et de litérature.

VIKTOR UCKMAR: *La tassazione degli stranieri in Italia* - Il Diritto Tributario, Serie 1, Volume XVIII - Cedam, Casa Editrice Dott. Antonio Milani, Padova, 1955, 282 pp.

La première partie de ce livre étant destinée à la position fiscale des étrangers en général, le libre donne, dans la deuxième partie, une description du régime fiscale concernant les étrangers en Italie.

Le Finanze Pubbliche dei sei paesi della C.E.E. nel 1957 - Associazione fra le Societá Italiana per Azioni - Via Cesare Battisti 121 p. 1, Roma, 1958 - 581 pp.

A survey of public finance in the six countries of the European Market is given in this book. After a list of literature on the tax problems of the common market, a survey of each country has been built up along the same scheme: economic situation in 1957, budget treasury, public debt, government expenditure, public means, local finance, final considerations. The chapters on taxation not only give a picture of the system, but also of the rules and the returns of the last few years. An interesting book for all those studying the financial problems of the Common Market.

Prof. Dott. EUGENIO PEDEMONTE: *Costituzione e Amministrazione delle Società Commerciali con speciale riguardo agli obblighi tributari* - XIV edizione - Libreria Internazionale di Stefano, Via R. Ceccardi, Genova 1959, 507 pp.

This is a handbook on the foundation and administration of corporations in Italy with special attention directed to the tax aspects: The various aspects of the subject under discussion are treated successively with copious reference to law texts and case law. Examples and forms enhance the value of the book for the practitioner.

ERMINIA GRISOLIA GESANO: *Rassegna di giurisprudenza sulla imposta di successione*. Dott. A. Giuffrè, Via Solferino 19, Milano, 1958, 254 pp.

La presente Rassegna offre al lettore una raccolta di massime di giurisprudenza sulla imposta di successione con rifermento al periodo dal 1932 al 1957. Per determinati argomenti si è fatto rifermento anche ad anni anteriori. In Appendice, a completamento della legislazione e per una migliore consultazione, sono state integralmente riportate alcune disposizioni legislative e le tabelle delle aliquote della imposta di successione.

Testo unico delle leggi sulle imposte dirette - Associazione Bancaria Italiana, Piazza del Gesú 49, Roma 1958, 578 pp.

In Italy a unification of the income tax acts has taken place in 1958. This book gives the text of this unified Act with numerous resolutions.

Prof. Rag. FRANCESCO MARTINENGHI: *Le società personali*. Seconda edizioni. L. di G. Pirola, Milano, 1956, 171 pp.

This book gives a concise but clear survey of the law pertaining to and tax aspects of various kinds of personal companies and similar bodies existing in Italy viz. società, semplice, società ih nome collettivo, società in accomandite semplice, società di fatto e irregolari.

Effetti economici dell'imposizione sulle società. Associazione fra le Società Italiane per Azioni, Via Cesare Battisti 121, Roma, 143 pp.

This book has been written for those who wish to be informed about the economic aspect of the taxation of corporations. For those who want to deepen their knowledge the book contains a very comprehensive survey of literature.

JAPAN

SAURO SHIOMI: *Japan's finance and taxation 1940-1956*. Columbia University Press, 2960 Broadway, New York 27, 1957, 190 pp.

Dr. Shiomi, president of the Japan Tax Association, describes in this book the adoption of a modern tax system in 1940, the fiscal problems of postwar reconstruction, and the revolutionary changes in the tax system that occurred in 1950 as a result of the recommendations of the Shoup Mission. Dr. Saburo Shiomi's work offers not only technical explanations of past developments and the present status of the Japanese taxation system, but also competent analytical studies of the system in close connection with economic realities. If further gives valuable suggestions in many respects as to what a future taxation system should be.

MOROCCO

ANDRE THRIOREAU: *Code Fiscal. Supplément Nr. 22*. FIDUTEC Fiduciaire Marocaine d'Editions Techniques, 81 Rue Colbert, Casablanca.

A review of this loose-leaf work on the tax system of Marocco was published in "Bulletin" Vol. XI, p. 37. *Supplement nr. 22* containing new pages for the parts *Impots directs and Parafiscalité familiale* has been published.

NETHERLANDS

J. P. SCHELTENS: *Navordering bij directe en andere belastingen.* (La perception supplémentaire des impôts directs et indirects). Fiscale monografieën No. 9, Uitg. Mij. AE. E. Kluwer, 1958, 203 pp.

Dans ce livre est publiée la réponse argumentée et revisée sur la question mise au concours par l'Université d'Amsterdam en 1954, demandant un essai sur le droit de la perception supplémentaire. Cette réponse était cou-

ronnée d'or. L'auteur soutient qu'en principe la perception supplémentaire est toujours possible, mais qu'il y a lieu des restrictions en certain cas.

J. SPAANSTRA: *De Vennootschap onder Firma* - Fiscale monografieën No. 10 - Uitg. Mij. AE. E. Kluwer, Deventer, 1958, 132 pp.

Die „Vennootschap onder firma" (offene Handelsgesellschaft) ist eine in den niederländischen Verhältnissen vielfach vorkommende Gesellschaftsform. Das Vage dieser Rechtsform bringt eine immer mehr wachsende Anzahl von Problemen mit sich, sie beziehen sich grossenteils auf das Steuerrecht. In dieser Arbeit werden Entwicklung und heutiger Stand dieses Problems gemeinverständlich und systematisch behandelt. Namentlich wird die Aufmerksamkeit auf Fragen gelenkt, die sich im Zusammenhang mit der Einkommensteuer ergeben.

Das Buch beginnt mit einem Kapitel über die „Vennootschap onder firma" im bürgerlichen Recht.

F. KUIPERS: *Belastingmaatregelen 1957/1958*. Taylor Efficiency-Bureau voor administratieve organisatie, Postbus 44, Nijmegen, 1958, 136 pp.

This book contains a survey of a number of tax measures carried out in the Netherlands during the years 1957/1958: Suspension of the investment deduction, temporary extension of the accelerated depreciation, temporary increase of the corporation and property tax, alteration of the Sales tax, recapitalisation facilities are treated. The author has included the text of the Acts and added explanations and examples.

H. VAN HENSBERGEN and J. KOUDIJS - *Beschouwingen over Openbare Financiën* - N. Samsom N.V., Alphen aan den Rijn 1957, 352 pp.

Der Verfasser *Koudijs*, Oberinspektor der Gemeindefinanzen am Innenministerium dankt in seinem Begleitwort seinem Mitarbeiter, dem verstorbenen Herrn Van Hensbergen, ehemaligem Direktor des Provinziellen Accountantsdienstes von Nord-Holland, der am Abend da er die Revision seines Teiles des Buches beendet hatte, verschied. Dieses Buch enthält eine allgemein-verständliche Darstellung der wichtigsten Gegenstände der öffentlichen Finanzen. Es umfasst nach einer kurzgefassten Einleitung, zwei Teile, die beide in Kapiteln zerlegt sind, und zwar:

I. Die Lehre der öffentlichen Finanzen und verwandte Gegenstände,

II. Eine Übersicht der Rechtsregeln über die Komptabilität des Reiches, der Provinzen und der Gemeinden.

Die steuerrechtliche Seite bildet nur einen kleinen Teil des behandelten Stoffgebietes. Man findet diese im Kapitel über die geschichtliche Entwicklung des Finanzwesens und in dem über die normalen Einkünfte der Behörde. Die staatlichen Unternehmen nehmen einen wichtige Platz ein. Man findet darin auch Betrachtungen über die Steuern als Instrument wirtschaftlicher und sozialer Politik, über Uberwälzung und Umgehung der Steuern usw.

F. W. A. M. PAYMANS - *Waardewet 1927* (Staatsblad No. 17) 2nd edition - Edited by W. Hoogeveen - De Belastingwetgeving, edited by P. Karmelk, Serie I. & A. No. 10 - J. Noorduyn en Zoon N.V. - Gorinchem, Netherlands.

This book deals with the Dutch Act on the determination of the value of goods when they are imported. In this second edition the chapter on the conception of value has been revised. Besides, the official instructions on the Evaluation Act, explanations are given which clarify the significance and meaning of various legal sections. Attention has also been paid to historical developments. To increase the practical value of the Book appendices have been added containing the composition and the mode of working of the Court

for Indirect Taxation. Further a list is given of measures and coins. Finally a list of abbreviations used in trade and an index increase the usefulness of this book.

Tj. S. Visser — *De betekenis van de wet op de herkapitalisatie 1957* (The significance of the recapitalisation act 1957) — N. Samsom N.V., Alphen aan den Rijn, 1958, 67 pp.

An Act on the recapitalisation came into being in the Netherlands in 1951 to ease the adaptation of the relation between the paid-up capital and the value of the capital assets of corporations. This Act opened the possibility to increase the capital before the 1st July 1954 by means of the issuing of bonus shares on which the income tax owed by shareholders does not exceed 20%.

A commentary by Tj. S. Visser, chief accountant with the Ministry of Finance, gave a very welcome explanation. This act has been replaced by a new one with the consideration "that it is desirable to ease the adaptation of the relation between paid-up capital and the value of the capital assets of corporations". The increase of capital must be effected before January 1st., 1959. Mr. Visser has again provided readers with an excellent commentary of the new Act.

G. Slot — *Voorraadwaardering* — Fiscale Monografieën, no. 8, Uitg. Mij. AE. E. Kluwer, Deventer 1958, 124 pp.

In this work the valuation of stocks is treated in connection with the determination of the profit of a corporation. The value of the assets has not been discussed. The formerly valid provisions about the valuation of stocks were deleted in the Dutch Act of 1950, and replaced by a reference to good-commercial usage. Therefore the significance of this monograph exceeds the Dutch law. This becomes clear already from the titles of the chapters: corporation profit according to the nominalist conception, fiscal profit according to the same conception, corporation and fiscal profit according to substantialist conceptions. A short epilogue concludes the book.

A. M. Dijk, G. Jansen, J. C. Schroot, F. Verstegen: *De Gemeentelijke Belastingen* (Municipal Taxes). Vuga-Boekerij, Arnhem.

The following supplement to this loose-leaf book on Municipal Taxes in the Netherlands has appeared: *22*, containing an alphabetical index which greatly increases the usefulness of the work.

FED losbladig fiscaal weekblad. (loose-leaf tax weekly). Uitgeverij FED. Roemer Visscherstraat 29, Amsterdam-West I.

Nos. 652-655 of the 17th volume of this weekly, which contains tax articles, discussions of case law and resolutions, and answers to questions as regards Dutch tax problems, have appeared.

FED's fiscaal repertorium, Uitgeverij FED, Amsterdam.
Supplements 1958, nr. 14-15, have appeared.

A. C. Gorren: *Zegelwet 1917.* (Stamp Duty Act, 1917) 2nd edition. *Supplement 5*, September 10th, 1958. De Belastingwetgeving Serie R. & D. No. 3. J. Noorduijn en Zoon N.V. — Gorinchem — Netherlands.

P. Karmelk: *Suikerwet 1924.* 2nd. edition. *Supplement 5.* De Belastingwetgeving Serie I. & A. No. 9. J. Noorduyn en Zoon N.V. — Gorinchem — Netherlands.

P. KARMELK: *Besluit op de Inkomstenbelasting 1941.* (Income Tax Act, 1941). 8th edition. *Supplement 9,* August 30th, 1958. De Belastingwetgeving Serie D. B..No. 2. J. Noorduijn en Zoon N.V. — Gorinchem — Netherlands.

P. KARMELK: *Besluit op de Vennootschapsbelasting 1942.* 4th edition. *Supplement 5,* September 24th, 1958. De Belastingwetgeving Serie D.B. No. 13. J. Noorduijn en Zoon N.V. — Gorinchem — Netherlands.

P. KARMELK: *Wet op de Vermogensbelasting 1892* (Property Tax Act, 1892). 5th edition. *Supplement 5,* October 15th, 1958. De Belastingwetgeving Serie D.B. No. 4. J. Noorduijn en Zoon N.V. — Gorinchem — Netherlands.

J. B. KLOOSTERMAN: *Wetten inzake den accijns op het gedistilleerd.* (Accise taxes). 3rd edition. *Supplement 7,* September 8th, 1958. De Belastingwetgeving Serie I. & A. No. 8. J. Noorduijn en Zoon N.V. — Gorinchem — Netherlands.

G. LAEIJENDECKER: *Successiewet 1956.* 3rd edition. *Supplement 1.* July 9th, 1958. De Belastingwetgeving Serie R. & D. No. 1. J. Noorduyn en Zoon N.V. — Gorinchem — Netherlands: (a review of this book was published in "Bulletin" Vol. XI, p. 151)

Mr. C. P. TUK: *Omzetbelasting.* (Sales Tax) 6th edition. *Supplement 6,* August 7th, 1958. De Belastingwetgeving Serie I. & A. No. 11. J. Noorduijn en Zoon N.V. — Gorinchem — Netherlands.

Messrs. N. SAMSOM N.V. — Publisher — Alphen aan den Rijn have published the following supplement to their loose-leaf systems on taxation in the Netherlands: W. E. C. DE GROOT: *Nederlandse Belastingwetten.*

The five volumes of this loose-leaf system on Dutch taxation contain the texts of the Dutch tax acts. The *nos. 137-138 of the supplements,* which keep these volumes up-to-date, have been published.

Dr. W. H. VAN DEN BERGE, H. A. M. VAN DEN DRIES and Prof. Dr. B. SCHENDSTOK: *Belastingberichten.* Supplements 1958 nr. 22-34.

H. W. VERMEULEN and H. G. M. WARDENIER: *Teruggaaf van omzetbelasting bij uitvoer. Supplement 1958 nr. 28.*

H. W. VERMEULEN and H. G. M. WARDENIER: *Vrijstellingen en teruggaaf van invoerrecht. Supplement nr. 8.*

Mr. J. C. DE WAARD J. TIGGELMAN and R. M. SMITS: *Omzetbelasting* (Sales Tax). Fiscale handleiding voor de practijk. Vuga-Boekerij, Arnhem.

In "Bulletin" Vol. XI, p. 151 a review of this loose-leaf handbook on the Dutch Sales Tax legislation was published. *Supplement* 26 has been published.

NEW ZEALAND

Butterworths Taxation Service (New Zealand) *Service no. 5* to Cunningham's Taxation Laws of New Zealand. Butterworth & Co (Australia) Ltd. 49-51 Ballance Street, Wellington, New Zealand.

We refer to the review of this excellent service on New Zealand taxation in "Bulletin" Vol. XI p. 232. *Service no. 5* which has recently been published contains a number of pages to be exchanged. A new section on "PAYE Practice" and new editions of the table of cases and the index have been added to the Service.

V

BELGIQUE — CONVENTION FRANCO-BELGE

Circulaire du 21 juin 1957 No.Ci/R.9F./186.366

TAXE MOBILIÈRE. — Matière imposable. - Redevances afférentes à la concession de biens mobiliers. - Convention franco-belge du 16 mai 1931 (art. 9, § 2). - Exonération limitée aux seules redevances relatives à des brevets.

1. La convention franco-belge du 16 mai 1931 dispose en son article 9, § 2, que:

«Les droits d'auteur et les revenus de brevets d'invention sont imposables dans le pays du domicile fiscal des bénéficiaires. Toutefois, s'ils constituent un revenu d'entreprise industrielle ou commerciale, ils sont imposables dans les conditions prévues à l'article 7» (c'est-à-dire dans le pays où est situé l'établissement stable, bénéficiaire des revenus).

2. En prévision d'une revision éventuelle de la convention, qui aurait étendu l'application de cette disposition à toutes les redevances afférentes à la concession de biens mobiliers (autres que des brevets). l'Administration a été amenée:

— à surseoir au recouvrement de la T.M. relative aux redevances de l'espèce tirées de Belgique par des contribuables domiciliés en France:

— à tenir en suspens les réclamations dirigées contre des cotisations à la taxe mobilière sur les mêmes redevances.

3. Les pourparlers n'ayant pas abouti, il a été décidé d'en revenir à une stricte application de l'article 9, § 2, susvisé, c'est-à-dire de limiter, pour le passé et pour l'avenir, l'exonération de T. M. aux seules redevances relatives à des brevets.

Le droit pour la Belgique de percevoir la T.M. sur les autres redevances découle du texte même de la convention, dont l'article 9, § 2, vise exclusivement les droits d'auteur et les brevets d'invention. Ce droit a été confirmé par plusieurs arrêts rendus en matière de redevances rémunérant la concession du droit de projeter des films cinématographiques (cfr. Bruxelles, 31-1-1940 et Cass. 21-10-1940, Société belge des films OSSO), et récemment encore par un arrêt de la Cour d'Appel de Bruxelles du 15-5-1957, en cause S. A. Usines Lavenne Frères, dont les considérants relatifs à l'objet qui nous occupe sont reproduits ci-dessous:

«Attendu qu'il n'est pas fait allusion dans la convention précitée u 1er juillet 1949 (entre les sociétés belge et française) ni à un pareil brevet, ni à la concession d'une licence de brevet au profit de la société requérante;

»Attendu que cette convention, de même que la susdite lettre du ..... précisent uniquement «que les relations d'affaires entre la société requérante et la société FREITAG se limitent à la concession de la fabrication et de la vente des produits Freitag», la société requérante fabriquant selon les procédés de l'entreprise française et revenant les produits fabriqués pour son propre compte;

»Attendu qu'il advient, dans ces conditions, impossible de considérer que les redevances payées par la requérante à la société «Freitag» constituent la rémunération d'un brevet d'invention, ce qui écarte l'application — revindiquée par la requérante — de l'art. 9, § 2, de la convention franco-belge du 16 mai 1931;

»Attendu qu'il apparait donc qu'il s'agit en l'espèce de l'exécution l'une convention par laquelle la société «Freitag» s'est bornée à concéder à la société requérante le droit d'exploiter un procédé de fabrication qui lui appartient, fabrication et vente étant faites de surcroît sous le contrôle et sous la surveillance de la société concédante;

»Attendu qu'il s'agit ainsi d'une simple concession d'un droit mobilier, opération visée par l'art. 14, § 1er, 4°, alinéa 4, des lois coordonnées précitées, aux termes duquel la taxe mobilière s'applique également, c'est-à-dire indépendamment des autres cas prévus par l'article 14, § 1er, «aux produits de la location, de l'affermage et de la concession de tous biens mobiliers».

4. En conséquence de ce qui précède:

1° MM. les directeurs voudront bien rejeter immédiatement toutes les réclamations dirigées contre des T.M. assises sur des redevances payées à des contribuables domiciliés en France, pour la concession de biens mobiliers autres que des brevets d'invention;

2° MM. les receveurs entameront aussitôt que possible la procédure en recouvrement des cotisations échues mais tenues en suspens, et ils veilleront au paiement régulier des cotisations qui viendront ultérieurement à l'échéance;

3° MM. les contrôleurs et inspecteurs A veilleront à ce que l'art. 9, § 2, de la convention du 16-5-1931 soit dorénavant appliqué dans le sens prescrit ci-avant.

Source: *La Revue Fiscale*, Nov-Dec. 1957

ALPHABETICAL AND ANALYTICAL INDEX
TABLE ALPHABETIQUE ET ANALYTIQUE

I Articles written in English — Articles écrits en anglais

Age relief 7
Agreement between Inland Revenue and Chamber of Shipping 177
Allowance
.age allowance 56
.annual allowance. 3, 56
.balancing allowance 4
.capital allowance. 2, 10
.dependants allowance. . . . 56
.initial allowance . . . 3, 4, 87, 179
.investment allowance . . . 3, 87
Appeal
.right of 52
.time limits for 176
Apprehension removed. . . . 179
Balancing charges 4
Budget 1957/58 - Great Britain 221
,, 1958/59 ,, ,, 224
,, 1958 Eire 230
,, 1958/59 India . . . 147
Ceiling on taxes 19
Commission 54, 69, 72
Companies 49, 56, 66
.private 50
.residence 65
.reduced tax in Nigeria . . . 148
Concessions
.Inland Revenue 279
Corporations 65
Customs 15, 143, 229
Deductions
.tax from dividends 74
Deficit financing 82
Dental expenses 52
Depreciation 51
.accelerated depreciation 84, 85, 87
Development of N. Australia . 53
Dividends
.accounting period 73
.deductions 74
.received in Australia from a non-resident 22
.stripping 177
.sources in Australia. 21
Domicile 66
.concept 298
Double taxation
.arrangement 5
.conventions 301
..India and other countries . 147
..Multilateral 193
..Netherlands-Denmark . . . 15
..U.S.A.-Canada Ratify Convention 19
..U.S.A.-New Zealand 27
.Conventions on taxes-U.S.-Canada 19
.treaties 67
.unilateral relief 67
Duty
.corporation duty 289
.death duty legislation . . . 149
.double death duty 178
.entertainment duty . . 180, 182
.estate duty 177, 187
..extra statutory concessions . 287
.excise duty 15, 182, 229
..methylalcohol 183
..stamp duty 177, 189
..sweets 183
..wines 182, 229
Economic report U.S.A. . . . 190
Education expenses 52
Establishment, concept permanent 297
Federal tax conference . . . 48
Federal tax department . . . 117
Fiscal committee of O.E.E.C. 291
.concept of permanent establishment 297, 303
.concept of fiscal domicile 297, 311
.conclusions 301
.double taxation conclusions 301, 314
.tax discrimination 299
Foreign exchange gain 23

IATA financial committee . . 63
Import taxes increased . . . 148
Income tax. 56, 80, 187
.amended rules 175
.dividends 186
.extra-statutory concessions . 279
.gifts 57
.Great Britain 1, 73
..income tax 1
...basic principles of tax law 65
...capital allowances 2, 10
...chargeable income 1
...double taxation agreements 5
...imperfections of the system 68
...how O.T.C. fits into tax system 75
...legislation. 69
...renewals 5
...shipping agreement. . . . 7
...trading loss 5
...trading within United Kingdom 25
.incidental charges 187
.Netherlands 143, 229
.personal relief 86
.regulations 145
.rules amended in Colombia . 175
.settlements 187
.temporarily working man . . 345
India
.budget proposals 147
.expenditure tax 87
.wealth tax 87
Industrial establishment measures 149
Inland Revenue. 282
Institute tax recommendations 90
International tax law 229
Leave long service 52
Legislation 68, 220
Licences
.car 175
.motorvehicle 183
New taxes 231
Nordic Custom Union 149
O.E.E.C.. 291
Patents 51
Pay roll tax 49, 55, 58
Profits tax
.alteration of rate 187
.extra statutory concessions . 287
.foreign exchange profit . . . 146
Provisions 74
Proposals for tax reform in Germany 85
Public finance in Israel. . 197, 209
.in developing countries . . . 197
Rates . . . 7; 9, 58, 68, 86, 125, 203
.annual allowance 3, 4
.company taxes 56
Remittances out of foreign income 344
Residence 65, 66
Revocable settlements 177
Royalties to English companies 144
Sales tax 53
Ships 4
Society building interest . . . 175
Stamp duty 177, 289
Superannuation for selfemployed 50
Surtax on income 146
Surtax for mineral right duty 285
Tax
.agreements Australia-Canada 144
.ceiling in U.S.A. 19
.concessions in Portugal . . . 89
.concessions in Venezuela . . 347
.discriminations 299
.discussions 232
.facilities 345
.federal in Canada 112
.finance specific projects . . . 144
.legislation survey 220
.modified on residents 148
.new estate Bill 146
.new ones 231
.policy in Canada 146
.programme 18
.property in Netherlands . . 87
.proposed increase of rates . . 88
.proposed measures . . . 148, 188
.purchase . . . 180, 181, 183, 185
.rates 68
.rates abolished 181
.rates in New Zealand . . . 125
.reform in W. Germany . . . 85
.sales tax 87
.study 232
.turnover 15, 81, 229
.withholding on Non-resident aliens 150
Taxation 1
.Australian taxation 55
.I.A.T.A. Financial Committee 55
.Individuals 220
.in Great Britain 1
.in Spain 83
.shipowners 1
Trading 25
.income (dividends) 73
.within the U.K. 25
Treasurers reply 54
Treaty 7

II Articles written in French — Articles écrits en français

Administrateurs de S.A. (Egypte) 17
Aspects fiscaux du Marché Commun 321
Comité National des impôts . 130
Conventions . . . . . .
.Belgique-Suède 17
.Belgique-Union de l'Afrique du Sud 141
.France-Amérique 78
.Franco-Belge 370
.France-Suède 12
Décote 12
.sur stocks 84
Droits
.d'accise 1, 2, 78, 141, 142, 225, 226
.de douane 1, 2, 13, 78, 79, 80, 141, 142, 143, 226, 229
.d'enregistrement 226
.de succession 225
.de timbre 13
Impôts
.décision anticipée . 129, 134, 211
.sur les revenues . . 12, 15, 18, 142, 225, 228
Licences étrangères en France 17
Pénalisation 83
Prélèvement temporaire . . . 82
Rétablissement de l'équilibre financier 82
.administrative 83
.augmentation de droits de timbre 84
.formalités imposées aux exportateurs 84
.imposition de certaines articles somptuaires 84
.industries exportatrices . . 84
.prélèvement temporaire . . 82
.versement sur les réserves . 83
Taux
.sociétés anonymes 17
Taxes
.assimilées au timbre 12, 78, 79, 141, 225
.augmentation de la T.V.A.. . 83
.de consommation 13, 19, 142, 226, 229
.sur le chiffres d'affaires . . . 17
Versement sur les reserves de sociétés 83

III Articles written in German — Articles écrits en allemand

Abgaben Rechtsmittel . . . 11
.Befreiung saarländischer Waren von Eingangsabgaben . 15
Abkommen
.Deutschland-Schweden . . 14
.Deutschland-Schweiz . . . 14
.Deutschland-Südafrikanische Union 227
.Oesterreich-U.S.A. 11
.Frankreich-Schweiz. Vermögensbesteuerung 28
Aufsichtsratsteuer 17
.Aufhebung 17, 240
Ausgleichsteuerungsänderung 14
Biersteuer 14
Finanzausgleichnouvelle . . 78
Gewerbesteuergesetz 14
Gratisaktien italienischer Gesellschaften 29
Grundsteuer 11
Körperschaftsteuer 14
Lastenausgleichgesetz . 14, 80, 142
Lizenzeinkünfte (für Filmunternehmer) 16
.Besteuerung 16
.Steuerbare Leistung . . . 16
Lohnsteuerdurchführungsverordnung 142, 143
Mineralölgesetz 14
Steuerrechtliche Vereinbarungen 16
.Steuererhöhung 123
.Steuersenkung 346
.Steuermässigung 123
Steuerprogramm 18
Steuerreform 85
Tabaksteuer 11
Tarif 15, 80, 86, 123, 342
.Umsatzsteuer 14, 15, 141, 142, 143, 227, 228
.auf Einkommen
Vermögensteuer 14
Vermögensbesteuerung vom Mobilair 28
Wehrsteuer bei Gratisaktien . 29
Zolltarif 141
.Gesetz 141
.Verordnungen . . . 15, 80, 143

REVIEWS

Abeln, G. H. J. 269
Acosta, Julio Cesar 110
Adm. Fédérale des Contrib. (Suisse) 274
Aiyar, A. N. 266, 361
Aktiengesellschaft, die Schweiz 273
Allan, Herbert J. 276
Albers, Willi 254
Alloy, Ray Areste 268
Amati, Nicola d' 268
American Management Ass. . 174
Amerijckx, F. 32, 157, 354
Amonn, Kurt 108
Andrea, Fernando Rivero de 171
Angel, Montgomery B. . . . 275
A.N.S.A. . . . 35, 36, 98, 254, 255
A.N.S.A., Section Algérienne 37, 98
Aronsohn, Alan J. B. 113
Arrigoni A. L. 268
Ass. fra le Soc. Italiane p/Azioni 362
Ass. Bancaria Ital. 363
Avezza, Gino 166
Azzini, Juan Eduardo 277
Baan, D. de 106, 168
Balasubrahmaniam V. . . . 364
Balter, Harry Graham . . . 114
Barlow, E. R. 111
Barkay, R. M. 267
Barnes, William Sprague . . 166
Bayly Jr., Charles B. . . . 115, 173
Beattie, C. N. 105
Beck, Ernst 160, 360
Berg, Karl 256
Berge, W. H. van den 46, 169, 271, 368
Bergen, J. v/d 168
Bibl. de Derecho y Ciencias Soc., Montevideo 277
Bierlaagh, K.A.J. 168
Blancher, René 252
Blom, A. 105, 167
Blümich, Walter 259
Board of Inland Revenue . . 265
Bogaards, P. 45
Boidi, Aldo 267
Bono, Costantino de 165
Bosshardt, Oskar 108
Böttcher, Conrad 262
Bouman, A. 167
Bours, Edouard 33
Bower, Frank 361
Boxem, J. 47, 269
Boyens, Walter 259, 262
Brautigam, J. 272

COMPTES RENDUS

Bris, Marcel le 36, 159, 355
Brismee, L. 97
Broët, Louis . . 37, 98, 255, 356
Brudno, Walter W. 361
Brüll, D. 167
Bubenser, Fritz 258
Buisseret, Albert 32, 33
Bujanda, Fernando Sainz de . 273
Bühler, O. 357
Bundesverlag der Deut. Ind. 360
Bundeswirtschaftsministerium 59
Canadian Tax Foundation 34, 354, 355
Campet, Charles 251
Cardijn, Charles 249
Carmichael, K. S. 265
Carter, Roger N. 40
Cauwenbergh, J. 156
Centr. Board of Revenue, Karachi 107
Centr. Board of Revenue, New Delhi 41
Chacho, K. C. 266
Champion, Pierre 34
Closon, Jules 33, 156
Colthoff, A. Rom 271
Cons. de l'Em. de la Docum. . 251
Corner, C. M. 163
Council, Nat. of Appl. Econ. Research, India 266
Cour, Jacob la 251
Cunningham, H. A. . . . 169, 366
Dairaines, Serge 36
Dept. of the Treasury, San Juan 107
DePodwin, Horace J. 115
Deutsche Gesellschaft f. Betriebswirtschaft 358
Diedenhofen, Hans 38
Dijk, A. M. 45, 271, 365
Dober, W. 274
Drees, F. 261
Dries, v/d H. A. M. 366
Drost, H. L. 47
Drukker, M. 270
Dubois, H. F. R. 270
Due, John F. 164
Dulk, A..C. den 45
Durand, Francis L. 174
Dürr, K. 172
Dus, Angelo 269
Dymond, Robert 163
Ebiard, H. 252
Eckhardt, Walter 102
Edwards, Alan M. 40
Edwards, H. 40
Eidg. Steuerverwaltung . . 109

Escher, Hans 357
Esser, J. 255
Everding, K. F. 261
Fachinstitut der Steuerberater 262
FED 46, 169, 271, 365
Federation of British Ind. . . 41
Felix, Günther 257, 261, 262, 360
Fellner, Karl 248
Felmy, T. 262
Feye, Marcel 249
Fiduciaire Fiscomptoi, La . . 110
Finanzen und Steuern, Institut 38
Finanz und Zolldept. - Eidgenössisches 273
Flick, H. J. 261
Fontaneau, Pierre 38
Foulke, Roy A. 115
Fray, J. A. 167
Friedli 103
Fritsch, Ernst 32
Fritsch, Robert 262
Gallen, Kanton St. 109
Gerloff, Wilhelm 163
Gerstel, D. F. 110
Gesano, Erminia G. 362
Giannini A. D. 269
Gnazzo, Edison 277
Goedhart 272
Gohres, H. A. 46
Görbing 102
Gorren, A. C. 365
Gottschling, Helmut 256
Grabower, Rolf 160, 362
Griswold, Erwin N. 114
Groot, W. E. C. de . 169, 271, 366
Guissart, Joseph 33, 156
Gumpel, Henry J. 166
Gunn, J. A. L. 31
Gunston, C. A. 163
Gürsching, Lorenz 38, 261
Haller, Heinz 104
Harding, C. D. 264
Harmening, Rudolf . . . 100, 358
Harrison, Esward R. 105
Hartz, Wilhelm 103, 258
Heinemann, Ernst Peter . . 257
Heining, Arnold 256
Hellema, H. J. 106
Hensbergen, H. van 364
Hepp, Ernst 256
Herbert P. 258
Herrmann, Carl 38, 256
Herrmann, Theodor . . 100, 262
Heuer, Gerhard 38, 256
Heyne, A. J. P. W. 167
Hijzen, Th. C. 168, 271
Hof, J. J. 270
Hofstra, H. J. 45
Holland, Daniel M. 275
Hoogeveen, W. 364
Houtte, Jean van 352
Hubschmann, Dr. 360
Hughes, Perey F. 361
Ingrosso, Gustavo 165
Ind. Development Centre Panama 107
Inst. Belge de Fin. Publiques . 97
Inst. d'Emission de l'Afrique Occidentale française . . . 160
Inst. „Finanzen und Steuern" 259, 260
Inst. für Steuer & Recht . . 257
Inst. der Wirtschaftprüfer 209, 357
Int. Bureau of Fisc. Doc. . . 44
Jansen, G. 45, 271, 365
Jandolo, Massimo 268
Jaroy, Jacob 106, 170
Jiresch, Roderich 248
Johns, Reginald K. 163
Jong, J. F. de 167
Jonge, L. J. M. de 46
Journal of Taxation, The .114, 174
Juris-Classeur Fiscal 356
Kaldor, Nicholas 265
Kalthoff, Rudolf 260
Kämzig, E. 274
Käpp, Reinhard 161, 262
Karamete, Hakki 274
Karmelk, P. . 45, 47, 169, 271, 272, 365, 366
Kärsten 102
Kauffmann J. R. 252
Kayra, Cahit 110
Kellenberger, E. 171
Kellerhals, Rudolf 109
Kelly, F. N. 267
Kerscher, Wilhelm 255
Kieft, G. A. 106, 168
Klein, Otto 259
Klein, R. 39, 264
Kloosterman, J. B. . . . 169, 366
Kluwer AE. E. N.V. 269
Koch, Carl 260
Köhler, Dieter 256
Kotter 257
Koudijs, J. 364
Krause 102
Krekeler 104
Krollmann, H. 261
Kuipers, F. 106, 168, 364
Kummer, Herbert 258
Kuna, August 258
Kunkel, Manfred 256
Lanza, Francesco 362
Laeyendecker, G. 366

Larcier, Les Codes 33, 156
Lasser, J. K. 111, 174
Lauré, Maurice 37
Law Book Company 31
Lawick, H. Baron van . . . 168
Leblond, Jean 252
Leest A. van der 156, 354
Lefebvre, Editions Francis 159, 160, 355
Lemeunier, Francis . . 36, 37, 252
Lenski, Edgar . . . 255, 262, 360
Lenz, Otto 101
Locher, Kurt 108
Loreto, Luis 110
Lotte, René 159
Maier, Günther 258
Margain, Hugo B. 166
Marionètti, Antonio 362
Mazetti, R. 269
Martinenghi, Francesco . . 43, 165
Martinez, Francisco 31
Martinstetter, Hermann . . . 256
MacCormick, Eleanor . . . 174
McDonald, John G. 34, 158, 250
Meade, James E. 98
Meering, A. 45, 168
Meihuizen, J. H. 45
Ministère des Finances, Paris . 159
Ministry of Fin. Jerusalem . 42
Ministry of Finance, Tokyo . 43
Moore, H. Milton 34
Moroni, Silvio 268
Morselli, Emanuele 362
Munoz. Federico Silva . . . 170
Musselman, Robert M. 276
Napolitano, Luigi 42
National Tobacco Tax Ass. . 113
Neumark, Fritz 163
Neuner, Kurt 248
Nosewer, L. J. M. 167
Nouwens, A. C. J. 47
O.E.E.C. 251
Oermann, Josef 262
Office Belge du Comm. Ext. . 354
Office, Her Majesty's Stationery 264
O'Neill, R. E. 31
Oswald, Franz 262
Over, Josef 103, 258
Owen, James M. 276
Parparcen, Réné Lepervanche 110
Päulick, Heinz 252
Pauwels, Viktor 33, 156
Paymans, F. W. A. M. . . . 364
Pedemonte, Eugenio 362
Pericles, Jaime 157, 250
Pestalozzi-Henggeler, A. . . 108
Peter, Karl 98
Pigeon, Raymond 159
Pirola 268, 269
Plaisant, Robert 252
Plagnol, E. P. 356
Plantenga, W. B. 44
Poel, J. van der 168
Poli, Osvaldo 42
Post, Kurt 100
Postner, Stanly I. 276
Potter, D. C. 163
Preiser, Erich 161
Prentice-Hall, Inc. 111, 113, 173, 275
Putta, J. Della 273
Ramachandran, T. A. . 266, 361
Reinhard 249
Reuvers, M. R. 167
Rezende, Tito 157, 250
Ricci, Denis, de 355
Ritter 258
Rivard, Eugène 34
Roberts, I. M. 169
Robson, Thomas B. 40
Röchling, Herrmann 103
Rohner H. 274
Roos, F. D. 168, 271
Ross, William D. 113
Rössler, Rudolf 104
Rothstein, Jean H. 359
Rotondi, Aster 267
Santaniello, Giuseppe . . . 268
Schäfer, Adolf 99
Schaub, M. A. 274
Scheltens, J. P. 167, 363
Schendstok, B. 46, 106, 169, 271, 366
Schilling, Otto von 256
Schlumpf, Arnold 172
Schmitz, R. C. 263
Schmölders, G. 99
Scholtens, H. 44
Scholz, Franz 255, 262
Schreiber, Horst 357
Schreuder, Edgard 156
Schroot, J. C. 45, 271, 365
Schuttevaêr, H. 46, 106
Senftleben 102
Senn, Jean-Patrice 158
Shannon, F. John 114
Shiomi, Sauro 363
Sikkelerus, W. P. van . . . 44
Silcock, T. H. 108
Silke, A. S. 251
Slot G. 365
Smeets, M. J. H. . . . 45, 47, 167
Smidt, Otto 256
Smith, Henry E. 164
Smits, R. M. . . . 45, 272, 366
Soc. Lyonn d'Edit. Fiscal . . 35

Soc. per lo studio dei probl. fisc. 42
Soest, A. J. van 106
Soest, C. van 45, 168
Spaanstra, J. 364
Spinelli, Giuseppe 267
Spitaler, Armin . 256, 260, 262, 359
Spresny, Karl 102
Stanford, David R. 105
Staples, Charles A. 170
Staples, Ronald 40
Steenbergen, van 46
Steinberg, Wilhelm . . . 255, 360
Steinbring, Werner . . 259, 262
Stenger, Alfons . . . 38, 261, 262
Strack, Ernst 97, 248
Streng, Felix von 171
Stil, L. 167
Sundaram, V. S. 41
Sturm, H. C. M. 255
Sweet and Maxwell . . 265, 363
Taylor, Malcolm G. 98
Taylor, Milton C. 108
Tax Institute, Princeton 115, 275, 276
Terstegen, W. O. W. 357
Theis, Jacob . . 101, 160, 260, 261
Themmen, P. H. 105
Thioreau, André . . . 44, 166, 363
Thiry, Edouard 157
Thompson, M. I. 169
Tiberghien, A. 156, 249
Tiggelman, J. 45, 272, 366
Tolley, Chas. H. 35, 39
Treurniet, W. C. 44
Troost, Herbert 99
Troll, Max 104
Toso, Agostino 165
Tuk, C. P. 46, 169, 366
Tulane Tax Instituter 275
Uckmar, Viktor 362
Udink, B. J. 47, 269
Uhlich, Martin 104
Union Belge des Cons. Fisc. . 32
U.N.O. 111, 173, 276
U.S. Dept. of Commerce . 158, 164, 166, 170, 172
Velde, van der 258
Vereniging voor Belastingwetenschap 106
Vermeulen, H. W. 45, 46, 169, 271, 366
Verlag C. H. Beck 258
Verlag der Steuertarife 100, 161, 262, 359
Verlag Dr. Otto Schmidt 261, 262, 359
Verlagsbuchhandl. des Inst. der Wirtschaftsprüfer . 99, 100
Verstegen, F. 271, 365
Visser, Tj. S. 167, 365
Vogt, Fritz Johs. 359
Völlmar, H. E. A. 47, 269
Waard, J. C. de . . . 45, 272, 366
Wachernagel, Jakob 172
Wacke, Gerhard 99
Wallis, Hugo von . . . 160, 360
Wardenier, H. G. M. 45, 46, 169, 271, 366
Wass, Axel 251
Weise, Herbert 40
Weisfelt, H. 166
Well 262
Wender, Ira T. 111
Westerfelhaus, Herwarth . . 99
White, John McKellar . . . 31
Williams, R. Glynne 40
Williams, R. H. 164
Wilke, Otto 256, 359
Wilmotte, G. 97
Wilson, H. A. R. 265, 267
Wolter, Björn 260
Zappala, Lelio 362
Zapletal 248
Zechmeister, Oskar 248
Zimmer, Viktor 97

INDEX OF AUTHORS

TABLE DES AUTEURS

N. D. Ashley 220
Chas. W. Aston 1
A. Dale 65
Douglas, Sholto 48
A. W. Duesterwald-Doroth . 197
Fadden, Sir Arthur 55
Herbert, H. F. 117
Hoorn, van J., Jr. 193
Sandström, C. O. . . . 129, 211

INDEX OF COUNTRIES

TABLES DES PAYS

Algeria 98, 255
Argentina 31, 355
Australia . . . 21, 31, 48, 55, 144
Austria . 11, 16, 32, 78, 97, 123, 129, 141, 225, 249, 296, 340, 344
Allemagne 17, 38, 80, 85, 94, 98, 142, 160, 205, 227, 230, 255, 290, 296, 342, 348, 356, 370
Allemagne (orientale) 104
Belgique 11, 32, 78, 91, 97, 141, 153,

Portugal 89
Puerto Rico 107
Rhodesia (Southern) 351
Saarland 39, 264
Scandinavia 149
Serawak 108, 149
Spain 89, 171, 273
Sweden . 25, 129, 149, 211, 296, 346
Switzerland 28, 29, 108, 171, 194, 233, 234, 238, 247, 273, 340
Tunis 110
Turkey 110, 274
Union of South Africa . . 172, 344
United Kingdom 1, 7, 23, 25, 39, 50, 57, 65, 94, 105, 163, 175, 205, 220, 224, 233, 234, 264, 280, 283, 290, 313, 359, 361
United Nations . . 173, 275, 313
U.S.A. 17, 20, 25, 27, 49, 57, 63, 90, 111, 150, 173, 190, 196, 205, 223, 232, 295, 359
Uruguay 355
Venezuela 347, 355

Pérou 88, 148, 170, 355
Philippines 148, 170
Portugal 89
Puerto Rico 107
Rhodésie du Nord et du Sud 158, 251
Rhodésie du Sud 351
Sarre 39, 262
Scandinavie 149
Serawak 108, 149
Suède . 25, 129, 149, 211, 296, 346
Suisse 28, 29, 108, 171, 194, 233, 234, 238, 247, 273, 340
Tunésie 110
Turquie 110, 274
Union Sud-Africaine . . 172, 344
Uruguay 355
Vénézuela 347, 355

Belgium . 11, 32, 78, 91, 97, 141, 370, 153, 156, 225, 245, 249, 340, 354
Belgian Congo 157
Benelux 98, 330
Brazil 144, 157, 250, 355
Bolivia 355
Canada 19, 23, 34, 82, 98, 117, 145, 158, 223, 236, 250, 354, 359
Ceylon 22
Chili 355
Colombia 145, 355
Common market . . 321, 362, 362
Commonwealth 5, 7, 22, 48, 51, 55,67
Cuba 158
Denmark . . . 251, 296, 341, 343
Ecuador 355
Egypt 17, 154
Europe 193, 223, 251, 292
European Coal & Steel community . 79, 81, 330, 333, 339, 343
Federation of Rhodesia-Nyasaland 158, 251
France 12, 17, 28, 35, 78, 82, 98, 142, 151, 158, 226, 252, 296, 330, 355, 368
Germany 17, 38, 80, 85, 94, 98, 142, 160, 205, 227, 230, 255, 290, 296, 342, 348, 356, 370
Germany (Eastern Zone) . . 104
India . 41, 87, 147, 266, 344, 361
Indonesia 164
Ireland 35, 71, 94, 230, 240, 267, 283 290
Israel 42, 197, 267
Italy 29, 42, 165, 267
Japan 43, 166, 363
Kenya 289
Korea 289
Luxembourg 15, 43, 80, 143, 228, 296, 340, 342
Malaya (Federation of) . 289, 345
Mexico 166, 232, 291, 305
Morocco 44, 166, 363
Netherlands 15, 44, 67, 80, 87, 105, 143, 153, 166, 229, 234, 269, 296, 342, 343, 363
New Zealand 18, 27, 125, 169, 345, 366
Nigeria 148, 170
Norway 170, 194, 296
O.E.E.C. 193, 291, 338
Overseas 279
Pakistan . . . 107, 148, 196, 231
Panama 107
Paraguay 355
Peru 88, 148, 170, 355
Philippines 148, 170
156, 225, 245, 249, 340, 354, 368
Benelux 98, 330
Bolivie 355
Brésil 144, 157, 250, 355
Canada 19, 23, 34, 82, 98, 117, 145, 158, 223, 236, 250, 354, 359
Ceylan 22
Chili 355
Colombie 145, 355
Commonwealth 5, 7, 22, 48, 51, 55, 67
C.E.C.A. . . 79, 81, 330, 339, 343
Congo Belge 157
Coréa 289
Cuba 158
Dinamarque . . 251, 296, 341, 343
Egypte 17, 154
Equateur 355
Espagne 89, 171, 273
Etats-Unis 17, 20, 25, 27, 49, 57,63, 90, 111, 150, 173, 190, 196, 205, 223, 232, 295, 354, 359
Europe 193, 223, 251, 292
France 12, 17, 28, 35, 78, 82, 98, 142, 151, 158, 226, 252, 296, 330, 355, 368
France d'Outre-Mer 160
Grande Brétagne 1, 7, 23, 25, 39, 50, 57, 65, 94, 105, 163, 175, 205, 220, 224, 233, 234, 264, 280, 283, 290, 313, 359, 361
Indonésie 164
Indes . . 41, 87, 147, 266, 344, 361
Irelande 35, 71, 94, 230, 240, 267, 283, 290
Israél 42, 197, 267
Italie 29, 42, 165, 267
Japon 43, 166, 363
Kenya 289
Luxembourg 15, 43, 80, 143, 228, 296, 340, 342
Marché Commun . 321, 360, 362
Maroc 44, 166, 363
Malakka 289, 345
Méxique . . . 166, 232, 291, 305
Nations Unies . . . 173, 275, 313
Nigéria 148, 170
Norvège 170, 194, 296
Nouvelle Zélande 18, 27, 125, 169, 345, 368
O.E.C.E. 193, 291, 338
Outre-Mer 279
Pakistan . . . 107, 148, 196, 231
Panama 107
Paraguay 357
Pays-Bas 15, 44, 67, 80, 87, 105, 143, 153, 166, 229, 234, 269, 342, 343, 363