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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.

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a. founding a library on fiscal legislation, books, periodicals and other publications;
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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."

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

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

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VII

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I

AUSFÜHRUNGSBESTIMMUNGEN ZUR DEUTSCHEN STEUERERMÄSSIGUNG BEI AUSLÄNDISCHEN EINKÜNFTEN

Dr. jur. HANS FLICK, Recklinghausen

Die im Jahre 1956 in das deutsche Steuerrecht eingeführte Steuerermässigung bei ausländischen Einkünften, die ich in Vol. XI Nr. 5 S. 257 ff. des Bulletin kurz skizziert habe, ist in der Zwischenzeit durch Gesetzesergänzungen, Durchführungsverordnungen und Richtlinien näher umschrieben worden.

Durch das Gesetz zur Änderung steuerrechtlicher Vorschriften auf dem Gebiete der Steuern vom Einkommen und Ertrag und des Verfahrensrechtes vom 18. Juli 1958 (Bundesgesetzblatt - BGBl. 1958, Teil I, Seite 473 = Bundessteuerblatt - BStBl. 1958 Teil I, Seite 412) ist die volgende Bestimmung als Absatz 4 in den § 34c deutsches Einkommensteuergesetz (EStG) eingeführt worden:

(4) Bei ausländischen Einkünften unbeschränkt Steuerpflichtiger aus dem Betrieb von Handelsschiffen im internationalen Verkehr können die obersten Finanzbehörden der Länder mit Zustimmung des Bundesministers der Finanzen und im Benehmen mit dem Bundesminister für Wirtschaft die Einkommensteuer in einem Pauschbetrag festsetzen. Dabei gelten 50 vom Hundert der Einkünfte aus dem Betrieb von Handelsschiffen im internationalen Verkehr als ausländische Einkünfte im Sinn des Satzes 1; Absatz 2 findet keine Anwendung. An Stelle der Pauschalierung nach den Sätzen 1 und 2 kann der Steuerpflichtige die Anwendung des Absatzes 1 verlangen.

Dementsprechend wurde der bisherige Absatz 4 zum Absatz 5 und Absatz 5 zum Absatz 6. Die Regelung gilt erst ab 1.1.1959. Diese Änderung ist in der Neufassung des Einkommensteuergesetzes 1958 (EStG 1958) v. 29.9.1958 (BStBl 1958, Teil I, Seite 661) berücksichtigt.

Durch die zweite Verordnung zur Änderung der Einkommensteuerdurchführungsverordnung (EStDVO) vom 7. Februar 1958

(BGBl 1958 Teil I, S. 70 = BStBl 1958, Teil I, S. 32) wurden die §§ 68a - 68g eingefügt:

§ 68a EStDVO umgrenzt den Begriff der ausländischen Einkommensteuer, § 68b EStDVO definiert die ausländischen Einkünfte. § 68c EStDVO regelt die Anrechnung bei Einkünften aus mehreren Staaten. § 68d EStDVO behandelt den Nachweis über die Höhe der ausländischen Einkünfte und Steuern; § 68e EStDVO regelt die nachträgliche Festsetzung oder Änderung ausländischer Steuern. § 68f EStDVO gibt die Möglichkeit des Abzuges ausländischer Steuern vom Gesamtbetrag der Einkünfte. § 68g EStDVO schreibt vor, in welchen Fällen bei Doppelbesteuerungsabkommen ausländische Steuern zu berücksichtigen sind.

Die Verwaltungsanordnung über die Änderung und Ergänzung der Einkommensteuer-Richtlinien für das Kalenderjahr 1955 (EStER 1956/57) vom 26. März 1958 (Bundesanzeiger - BA Nr. 63 vom 1. April 1958 = BStBl 1958, Teil I, S. 86) brachte die Einfügung der Abschnitte 213a - 213c. Abschnitt 213a verweist für die Frage, ob ausländische Steuern der deutschen Einkommensteuer entsprechen, auf die Liste Anlage 12 der Richtlinien. Abschnitt 213b betrifft die Umrechnung ausländischer Steuern. Abschnitt 213 c regelt die Anrechnung ausländischer Steuern bei Steuerpflichtigen, die einem oder mehreren fremden Staaten angehören oder staatenlos sind. Staaten, welche deutschen Staatsangehörigen entsprechende Steuervergünstigungen gewähren, sind in Anlage 13 der Richtlinien aufgezählt.

Der durch die Verordnung zur Änderung und Ergänzung der Lohnsteuerdurchführungsverordnung (LStDVO) 1955 vom 21.12. 1956 (BGBl 1956, Teil I, Seite 979 = BStBl 1957, Teil I, S. 34) eingeführte § 32b wurde durch die zweite Verordnung zur Änderung und Ergänzung der LStDVO 1955 vom 26. März 1958 (BGBl. Teil I, Seite 157 = BStBl, Teil I, Seite 134) neugefasst.

Die Richtlinien für die Anwendung der Steuerermässigung bei ausländischen Einkünften sind für die Lohnsteuer in dem durch die zweite Verwaltungsanordnung über die Änderung und Ergänzung der Lohnsteuer-Richtlinien 1955 (2. LStER 1957) vom 22. August 1958 (BA Nr. 164 vom 28. August 1958 = BStBl. 1958, Teil I, S. 530) neugefassten Abschnitt 62a enthalten.

Die Ermächtigung des § 34c Abs. 3 EStG wurde teilweise durch

den Erlass des Finanzministers des Landes Nordrhein-Westfalen vom 9.7.1958 - S 2227 - 3227/VB - 2 betr. steuerliche Behandlung des Arbeitslohnes, der an Arbeitnehmer für eine im Ausland ausgeübte Tätigkeit gezahlt wird, ausgefüllt (BStBl 1958, Teil II, Seite 109 - die Finanzminister und = senatoren der anderen Bundesländer haben gleichlautende Erlasse bekanntgegeben).

Durch den Erlass des Finanzministers des Landes Nordrhein-Westfalen vom 9. Mai 1958 - S. 1301 - 1942 B/VB - 1/S 2106 betreffend die steuerliche Behandlung inländischer Interessen an Unternehmen im Ausland (BStBl 1958 Teil II, Seite 71 - die anderen Finanzminister und = senatoren haben gleichlautende Erlasse bekanntgegeben) wurden die früheren Erlasse des Reichsministers der Finanzen, die die internationale Organschaft aufhoben, für ausländische Einkünfte Steuerbefreiung gewährten und ausserdem Erlass oder Pauschalierungsmöglichkeiten boten, mit Wirkung vom 1. Januar 1957 aufgehoben. In Ausnahmefällen können diese steuerlichen Erleichterungen auch für den Veranlagungszeitraum 1957 noch gewährt werden.

Die neuen einseitigen deutschen Massnahmen haben in der Zwischenzeit auch einen gewissen Niederschlag in der Literatur gefunden:

HEINING in HERRMANN = HEUER, Kommentar zum Einkommensteuergesetz und Körperschaftssteuergesetz, Erläuterungen zu § 34c EStG und § 19a KStG, KORN = DIETZ, Doppelbesteuerung, A 14,

LENSKI, Die Behandlung ausländischer Einkünfte bei der Veranlagung zur Einkommensteuer, Deutsche = Steuer-Rundschau 1958, S. 457,

VOGEL, Anrechnung und Abzug ausländischer Steuern, Aussenwirtschaftsdienst des Betriebsberaters, Heft 3/1958.

WEBER, Steuerermässigung bei ausländischen Einkünften, Internationale Wirtschaftsbriefe Fach 3, Gruppe 3, Seite 85, ferner

FLICK, Problematik des § 34c EStG, Vortrag gehalten am 9. Dezember 1957 in Köln, veröffentlicht von der deutschen Vereinigung für Internationales Steuerrecht (IFA).

—, Anrechnung ausländischer Landes=Provinz= und Gemeindeeinkommensteuern auf die deutsche Einkommensteuer, Aussenwirtschaftsdienst des Betriebsberaters; 6 1958 S. 124

—, Die einkommensteuerlichen Bestimmungen über Auslandsbeziehungen, Internationale Wirtschaftsbriefe, Fach 3, Gruppe 3, Seite 105.

In der Frage des *persönlichen Anwendungsbereiches* werden meine Bedenken gegen die Gültigkeit der Vorschrift des Absatzes 4 in § 34c und ihre Vereinbarkeit mit Diskriminierungsverboten von VOGEL nicht geteilt. Nach seiner Ansicht rechtfertigt das Prinzip der Gegenseitigkeit in den Handels- und Konsularverträgen diese Massnahme. Ich bin jedoch nach wie vor der Ansicht, dass Absatz 4 in § 34c EStG eine (unzulässige) völkerrechtliche Retorsion darstellt und den Grundsatz der gleichmässigen Besteuerung aller Steuerpflichtigen verletzt. Der Grundsatz der Gegenseitigkeit in internationalen Verträgen setzt nach meiner Meinung bei steuerlichen Diskriminierungsverboten voraus, dass der ausländische Staat die Steuerpflichtigen deutscher Nationalität nicht schlechter behandelt als seine Staatsbürger, nicht aber dass er ihnen die gleichen Steuervergünstigungen gewährt wie die Bundesrepublik seinen Staatsbürgern. Abschnitt 213c EStER 1957 regelt den persönlichen Anwendungsbereich für Steuerpflichtige, die einem oder mehreren fremden Staaten angehören. Die Voraussetzung der Gegenseitigkeit ist danach auch erfüllt, wenn der ausländische Staat fremde Einkünfte nicht oder mit einem niedrigeren Steuersatz besteuert. Im Verhältnis zu Staaten mit denen ein Doppelbesteuerungsabkommen besteht, ist die Gegenseitigkeit immer gewahrt.

Mit Recht ist VOGEL der Ansicht, die Anrechnung wirke sich bei der deutschen Kirchensteuer aus. Dies ist jedoch nicht eine unmittelbare Folge der Anrechnung, sondern nur die Konsequenz der Abhängigkeit der deutschen Kirchensteuer vom Betrag der deutschen Einkommensteuer.

Eine Kernfrage der Anwendung des § 34c EStG verspricht die Anrechnung bei Einkünften aus Kapitalvermögen zu werden. Mit LENSKI bin ich gegen VOGEL der Ansicht, dass in den Fällen, in denen die von der ausländischen Gesellschaft zu zahlende Steuer als Vorauszahlung auf die den Aktionären treffende Einkommensteuer behandelt wird, die von der Körperschaft gezahlte ausländische Steuer auf die deutsche Einkommensteuer des Aktionärs angerechnet werden kann. Ebensowenig wie man in diesem Zu-

sammenhang die britische Profits Tax mit der Körperschaftsteuer und die Income Tax mit einer Kapitalertragsteuer vergleichen kann, ist die Income Tax hier mit der deutschen Körperschaftsteuer zu vergleichen. Entscheidend wird die Frage nach der Identität des Steuersubjektes sein. Ob eine ausländische Körperschaftsteuer beim deutschen Anteilseigner — wie in Grossbritannien und in den Vereinigten Staaten bei einer gewissen Beteiligung anrechenbar ist, entscheidet sich, wenn man den Gewinn der ausländischen Körperschaft dem Aktionär zurechnet. LENSKI und VOGEL halten dies mit dem System des deutschen Steuerrechts nicht vereinbar. Allein im Interesse der freien Wahl der Organisationsform ausländischer Niederlassungen deutscher Gesellschaften erscheint jedoch eine der anglo-amerikanischen Regelung entsprechende Handhabung der deutschen Vorschriften wünscheswert.

Mit mir gegen LENSKI und VOGEL vertritt HEINING die Ansicht, dass auch die Steuern ausländischer Gebietskörperschaften anrechenbar sind.

Wenn auch § 68a EStDVO etwas anderes vorschreibt, so erscheint dies, weil dieser Vorschrift — wie auch LENSKI zugibt — eine ordnungsgemässe Ermächtigung fehlt, unbeachtlich. Ausschlaggebend wird sein, ob massgeblich die Identität des Abgabenobjektes oder die Gleichheit der Gesetzgebungsbefugnis für den Begriff der „entsprechenden Steuer" ist.

HEINING ist — ebenfalls in Übereinstimmung mit mir — der Ansicht, dass § 68b EStDVO nicht eine erschöpfende Aufzählung der ausländischen Einkünfte enthält. Hier wird es darauf ankommen, ob eine Bestimmung der ausländischen Einkünfte nach dem System des deutschen Einkommensteuerrechts, die auf einer ordnungsgemässen Ermächtigung beruhende Vorschrift der Durchführungsverordnung auf die Seite schieben kann. Auf jeden Fall wäre es ausserordentlich bedauerlich, wenn gerade die Indienfälle, im Blickpunkt auf die § 34c EStG eingeführt wurde, nun nicht unter diese Regelung fallen sollten.

Zum Schluss sei daruaf hingewiesen, dass eine generelle Richtlinie für die Anwendung des § 34c Abs. 3 EStG, welcher einen Erlass (der sich nach deutschem Steuerrecht auch auf die Bemessungsgrundlage beziehen kann) oder eine Pauschalierung der auf die ausländischen Einkünfte entfallenden deutschen Einkommen-

steuer erlaubt, abgesehen von dem erwähnten Erlass betr. Arbeitseinkommen, noch nicht ergangen ist.

Hat so die Einführung der Steuerermässigung bei ausländischen Einkünften schon eine ganze Reihe von Durchführungsbestimmungen hervorgebracht, so wird die bevorstehende Veranlagung 1957 und die damit verbundene erstmalige praktische Anwendung des § 34c EStG zeigen, in welchem Masse noch weitere Regelungen notwendig sind.

Summary

The new German unilateral relief, which was introduced in 1956, has already born a lot of regulations. Points of discussion in literature are: Is it right, that unlimited liable persons of foreign nationality are only allowed to credit foreign taxes, if their country fulfills the similar-credit-requirement? Are indirect taxes (taxes paid by a corporation on behalf of the shareholder) to be credited? Is it right, that taxes of foreign political subdivisions shall not be credited? Are foreign taxes, which depend not on a permanent establishment (f. e. trade=within) excluded from credit?

It is acknowledged, that § 34c Abs. 3 EStG gives the possibility for an exemption.

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II

STATUTE LAW — LEGISLATION

ANGLO-FRENCH AGREEMENT ON TAXATION OF ROYALTY PAYMENTS

The following is the text of the exchange of letters between the British and French Governments incorporating the Agreement under which those who can prove 'inventor status' may be exempted from the incidence of Turnover tax in France (see *Board of Trade Journal* of December 5, 1958, page 1175).

With reference to the consulations which have taken place between representatives of the United Kingdom and French Governments concerning the application of Article 2 of the French Finance Act of April 10, 1954, I have the honour to inform Your Excellency that the Government of the United Kingdom of Great Britain and Northern Ireland, desiring that United Kingdom licensors may in certain cases be relieved from taxation on royalties received from licensees in France, and having regard to the expressed intention of the French Government to extend to United Kingdom licensors the same reliefs from turnover taxes as are at present enjoyed by French interests, are prepared to conclude an Agreement with the Government of the French Republic in the following terms:

1. The taxes referred to in this Agreement are those commonly known as 'turnover taxes', that is to say as far as licensors are concerned: 'the tax on the performance of services, transactions tax, and local tax up to June 30, 1955; the tax on the performance of services as from July 1, 1955'.

2. The provisions governing the position of United Kingdom licensors shall in general terms be as follows:

(i) The turnover taxes shall not be levied on royalties paid by French licensees to United Kingdom licensors who have the status of 'inventor', in the terms laid down by French law and established by the French courts; this exemption applies retrospectively and for the future. Where such taxes on royalties have been paid they shall be refunded by the French authorities within the limits of the three years' period of stutory limitation, reckoned from the payment of taxes, as laid down by the General Code of French taxes;

(ii) for United Kingdom licensors who do not satisfy the conditions required by French law to establish 'inventor' status, the special rules set out in paragraphs 10 and 11 shall apply, subject to the provisons of paragraph 7 in relation to licensors who satisfy those conditions in respect of some of but not all their inventions.

3. The term 'invention' includes the following whether registered or not: patents, trade marks, and manufacturing processes, techniques and formulas and copyright.

This agreement does not apply to film rentals. The exemption from turnover tax shall cover not only royalties paid in consideration of the licensing of the right to exploit inventions, but also payments for the whole group of processes necessary to the practical utilization of the invention, for the protection of the invention, and for such technical assistance as is indispensable to the exploitation of the invention (for instance, the making available

of United Kingdom technicians for the supervision of construction, the utilization of blue-prints, the installation and starting of the invention, the instruction of the licensee, and the supervision of initial manufacture). The exemption shall not cover payments relating to accessory operations such as providing labour, furnishing supplies, and advertising carried out in French territory.

4. The status of inventor shall be determined in accordance with the criteria established by French law and by the findings of the Council of State. It shall therefore be subject to proof, which must be furnished by the United Kingdom licensor, that the invention in question is the result of research carried out by him or by people working under his control and acting on his behalf, under his supervision and direction and for his account. The status of inventor would thus appertain to a United Kingdom licensor who entrusted research to a third person, provided that a prior contract was concluded by the licensor with the third person defining the purpose of the research, and stipulating that the research would be undertaken for his account, regardless of the name under which a patent on account of the invention or inventions resulting from this research may be registered in the United Kingdom.

5. United Kingdom licensors shall nevertheless be entitled to draw the attention of the French tax administration to those cases in which they have acquired, from one or more companies whether or not British with whom they have close relations either by reason of capital held in common or with whom they form an economic group, the right to patent an invention. If the associated companies can furnish evidence of their capacity of 'inventor' as defined above, the French tax administration will examine in a liberal spirit the possibility of recognizing the said capacity of 'inventor' in the United Kingdom licensors themselves. While the result of that examination is being awaited, the French tax administration shall be entitled to take all legal steps with a view to the collection of the tax, it being understood that this action can in no way impair the rights held by United Kingdom licensors under French laws and regulations.

6. In the case of a merger of undertakings, carried out either by the creation of a new undertaking, or by the absorption of one or more undertakings by a previously existing undertaking, through the granting to the shareholders of the undertakings which are absorbed of rights in the capital of the absorbing undertaking and in the case of the reorganization or transformation of undertakings not involving the creation of any new entity and in the case of a division of an undertaking or undertakings into smaller entities the undertakings resulting from these operations shall enjoy, for the inventions included among the assets of the previous undertakings, and to the extent that the new undertakings succeed to the rights of the previous undertakings, the exemptions in respect of these inventions which were enjoyed by the previous undertakings or to which they would have been entitled under the provisions of the present agreement.

7. In the case where a licence granted by a United Kingdom licensor relates both to inventions for which he fulfils the conditions of 'inventor' status as defined above and to inventions for which he does not fulfil such conditions, exemption from turnover taxes shall in principle be granted only in respect of royalties relating to those inventions for which he does fulfil the conditions; the necessary division of the total royalty to be carried out by the licensor subject to the right of verification by the French tax authorities. However, if the invention for which the licensor fulfils the conditions of 'inventor' status is clearly of preponderant importance in comparison with the other inventions covered by the licence exemption may be claimed for the total royalty.

8. Proof of 'inventor' status shall be furnished directly to the French tax authorities by the United Kingdom licensor; such proof shall take the form of a statutory declaration made before a Notary Public in the United Kingdom, declaring that the licence fulfils the conditions necessary to establish 'inventor' status as defined above, to which declaration shall be attached copies of such supporting documents (i.e. patents, contracts, etc) as are referred to in the declaration. The form of statutory declaration to be used in claiming 'inventor' status shall be the appropriate form annexed to this note. The French tax authorities may require the production of such further evidence as they deem to be necessary. When requested to do so, the United Kingdom Government shall provide such further information as they may possess or are entitled under United Kingdom Law to procure, provided that such information does not involve the disclosure of industrial or commercial secrets or compromise the security of the United Kingdom.

9. In any case where a United Kingdom licensor fulfilling the conditions of 'inventor' status as described in paragraphs 3 to 7 inclusive, has nevertheless already paid tax on the royalties received, or where a French licensee has paid tax acting on such licensor's behalf, such tax shall be refunded by the French tax authorities to the payer, within the limits of the three years' period of statutory limitation, reckoned from payment of the taxes, as laid down by the General Code of French Taxes.

10. The liability to turnover taxes of United Kingdom licensors not meeting the conditions described above for qualifying for 'inventor' status, shall be settled as follows:

(i) In the case of royalties paid before July 1, 1954, and agreed in the relevant contract at a fixed sum, no claim shall be made by the French authorities for turnover taxes;

(ii) If it is a question of royalties paid before July 1, 1954 which have been calculated on the basis of turnover, the taxes are payable. However, the taxes shall only be payable — where appropriate — as from the date on which written demands were sent to the United Kingdom licensors or to the accredited representatives in France, in all those cases where the French tax administration has been in a position, in the course of its inspections, to establish that the French licensee has paid royalties to United Kingdom licensors without having raised the question of whether these taxes were payable.
On this point the French administration states that it considers that inspections have normally been made in the case of most French concerns working patents granted by United Kingdom licensors and that the only cases that might still be raised are cases of fraud or evasion in which the person liable to the taxes might be involved.

(iii) In the case of royalties paid after July 1, 1954, turnover taxes shall be liable to be paid by United Kingdom licensors under the conditions prescribed by French law.

11. In any of the cases described in paragraph 10 the French authorities shall waive all pains and penalties for non-payment or late payment of taxes, provided that the United Kingdom licensors concerned have regularized their position within six months from the date of this note, and except in cases where deliberately false statements are proved to have been made for the purpose of evading taxation, when the normal processes of law shall apply.

12. The French authorities shall raise no objection to the insertion of provisions in a royalty agreement, whether a new agreement or a revision of an existing agreement, between a United Kingdom licensor and a French

lincensee, whereby the licensee will himself pay the turnover taxes due upon royalties paid under such an agreement.

13. The tax on the performance of services, paid by the United Kingdom licensors or for their account shall create, in favour of the French licensees, a right to deduction within the framework of the legislation governing the French tax on added value.

14. The United Kingdom licensors shall be allowed to enjoy any more extensive advantage which may be granted by France to French or foreign licensors.

15. The Government of the United Kingdom will use their best endeavours to bring the provisions of this agreement to the notice of the persons concerned.

If the Government of the French Republic are prepared to accept the foregoing proposals, I have the honour to suggest that the present Note together with Your Excellency's reply shall constitute an agreement between the two Governments, which shall enter into force on the day of your reply and remain in effect indefinitely subject to the right of either Government to terminate the Agreement by giving six months' written notice to the other, except in the event of termination being dictated on the part of the French Government by a change in French fiscal legislation; in that case the effective date of the termination of the present agreement may not be later than the date of entry into force of the new French tax regulations.

Source: *Board of Trade Journal*, Dec. 12th, 1958.

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SURVEYS OF TAX LEGISLATION
APERÇUS DE LEGISLATION FISCALE

AUSTRIA

Period from November 1st until December 31st, 1958.

Turnover tax

Verordnung des BM für Finanzen vom 4.12.58 über die Festsetzung von Durchschnittsätzen bei der Ermittlung des Umsatzes und des Gewinnes: BGBl. 30.12.58, p. 2185.

Bundesgesetz vom 17.12.58, betreffend die Vorschriften über die Besteuerung der Umsätze (Umsatzsteuergesetz 1959). BGBl. 31.12.58, p. 2189.

BELGIUM

Period from November 1st until December 31st, 1958.

Taxes assimilées au timbre

Arrêté royal du 22 nov. '58 modifiant le Code et le règlement général sur les taxes assimilées au timbre. Mon. Belge, 30 nov. '58. p. 8624.

Arrêté royal du 24 nov. '58 modifiant l'arrêté royal du 11 mars '53 majorant le taux de la taxe de transmission à l'importation. Mon. Belge, 30 nov. '58, p. 8626.

Arrêté royal du 24.12.58 modifiant l'arrêté royal du 11.3.53 majorant le taux de la taxe de transmission à l'importation. Mon. Belg. 31.12.58, p. 9334.

Droits d'accise

Arrêté royal du 27 nov. '58 relatif au régime d'accise des huiles minérales, Mon. Belg, 30 nov. '58, p. 8626.

Arrêté ministériel du 28 nov. '58 réglant l'exécution de l'arrêté royal du 27 nov. '58, relatif au régime d'accise des huiles minérales. Mon. Belge, 30 nov. '58, p. 8628.

Arrêté ministériel du 3.11.58 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. 9.11.58, p. 8213.

Droits de douane

Arrêté royal du 3.11.58 établissant un droit spécial à l'importation de certains produits laitiers. Mon. Belg. 9.11.58, p. 8215.

Arrêté royal du 17.12.58 concernant les douanes et les accises. Mon. Belge 25.12.58, p. 9197.

BENELUX

Period from November 1st until December 31st, 1958.

Excise duty

Third protocol re agreement between the Netherlands and Belgium and Luxembourg to attain a unification of excise duty. Tract. bl. 11.12.58.

FRANCE

Period from November 1st until December 31st, 1958.

Conventions

Ordonnance no. 58-1320 du 23.12.58 autorisant la ratification des conventions signées le 25.8.58 entre la France et la Finlande et tendant: 1°. à

éviter les doubles impositions et à établir des règles d'assistance administrative réciproque en matière d'impôts sur les revenus et la fortune; 2°. à éviter les doubles impositions et à prévenir les évasions fiscales en matière de droits de mutation par décès. J.O. 26.12.58, p. 11839.

Ordonnance no. 58-1324 du 23.12.58 autorisant la ratification de la convention conclue le 29.10.58 entre la France et l'Italie et tendant à éviter les doubles impositions et à régler certaines autres questions en matière d'impôts directs sur les revenus et la fortune. J.O.26.12.58, p. 11840.

Ordonnance no. 58-1350 du 27.12.58 autorisant la ratification des conventions signées le 1er avril 1958 entre la France et le G-D du Luxembourg et tendant à éviter les doulbes impositions et à établir des règles d'assistance administrative réciproque en matière d'impôts. J.O. 29.12.58, p. 11966.

Ordonnance no. 58-1370 du 27.12.58 portant ratification et promulgation de la convention conclue à Paris et à Dzaoudzi, les 13.10 et 12.11.58 entre le Gouvernement français et le Gouvernement des Comores et tendant à éliminer les doubles impositions et à établir des règles d'assistance mutuelle administrative pour l'imposition des revenus de capitaux mobiliers. J.O. 31.12.58, p. 12032.

Impôts sur les revenus

Ordonnance no. 58-1113 du 22 nov. '58 relative au régime fiscal applicable en métropole et dans les départements d'outre-mer aux distributions de bénéfices faites par les sociétés se livrant à la recherche, à l'exploitation ou au transport des hydrocarbures dans les zones de l'Organisation commune des régions sahariennes. J.O. 23 nov. '58, p. 10537. (Rectificatif) 19.12.58, p. 11528.

Décret no. 58-1212 pris pour l'application du § 2 (A. 2e alinéa, a) de l'art. unique de la loi no. 57-1263 du 13.12.57 relatif aux modalités de calcul du prélèvement temporaire sur les suppléments de bénéfices dû par les banques, les établissements financiers et les organismes publics et semi-publics de crédit (rectificatif). J.O. 31.12.58, p. 12128.

Chiffre d'affaires

Décret no. 58-1022 du 30.10.58 fixant les modalités d'application de l'article 3 de l'ordonnance no. 58-653 du 31.7.58 relatif à l'institution, pour 1958, d'une contribution extraordinaire de 2% sur les bénéfices des sociétés. J.O. 31.10.58, p. 9928.

Décret no. 58-1079 du 12.11.58 relatif aux taux majorés des taxes sur le chiffre d'affaires. J.O. 13.11.58, p. 10199.

Décret no. 58-1212 du 13 déc. 1958 pris pour l'application du paragraphe 2 (A. 2e alinéa, a) de l'article unique de la loi no. 57-1263 du 13 déc. 1957 relatif aux modalités de calcul du prélèvement temporaire sur les suppléments de bénéfices dû par les banques, les établissements financiers et les organismes publics et semi-publics de crédit. Journal Officiel, 14 déc. 1958, p. 11255.

Décret no. 58-1379 du 30.12.58 relatif aux taux majorés des taxes sur le chiffre d'affaires. J.O. 31.12.58, p. 12128.

Taxes de consommation

Arrêté du 3.11.58 fixant les cours moyens de certaines eaux-de vie pendant le troisième trimestre 1958 et les nouveaux taux de la redevance prévue à l'article 384 du code général des impôts. J.O. 14.11.58, p. 10266.

Droits de douane

Arrêté du 15 nov. '58 fixant les conditions d'importation en exemption des droit de douane des pâtes à papier blanchies destinées à la fabrication des fibres artificielles ou de la cellulose régénérée de la viscose. J.O. 29 nov. '58, p. 10694.

Arrêté du 1 déc. '58 modifiant certaines dispositions de l'arrêté du 18 nov. '50 fixant les conditions d'application des articles 175 et 189 du code des douanes. J.O. 4 déc. '58, p. 10874.

Ordonnance no. 58-1170 du 5 déc. '58 modifiant l'article 417 du code des douanes. Journal Officiel 8 et 9 déc. '58, p. 11022.

Décret no. 58-1175 du 2 déc. 1958 portant prorogation des dispositions du décret no. 58-585 du 11 juillet 1958 concédant les droits de douane d'importation du tarif minimum en faveur de certaines marchandises originaires du Japon, Journ. Officiel, 8 et 9 déc. 1958, p. 11059.

Ordonnance no. 58-1188 du 10 déc. 1958 relative: 1° à la convention sur les facilités douanières en faveur du tourisme; 2° au protocole additionnel à la convention sur les facilités douanières en faveur du tourisme relatif à l'importation de documents et de matériel de propagande touristique; 3° à la convention douanière relative à l'importation temporaire des véhicules routiers privés; 4° à l'acte final de la conférence des Nations Unies sur les formalités douanières concernant l'importation des véhicules de tourisme et le tourisme. Journal Officiel 12 déc. 1958, p. 11167.

Ordonnance no. 58-1238 du 17 déc. 1958 modifiant le code des douanes. Journal Officiel, 18 déc. 1958, p. 11375.

Décret no. 58-1251 du 18 déc. 1958 relatif à diverses dispositions d'ordre douanier. Journal Officiel, 19 déc. 1958, p. 11438.

Ordonnance no. 58-1261 du 19 déc. 1958 portant ratification du décret no. 58-1251 du 18 déc. 1958 relatif à diverses dispositions d'ordre douanier. Journal Officiel, 20 déc. 1958, p. 11459.

Ordonnance no. 58-1316 du 29.12.58 complétant le titre V du code des douanes relatif aux régimes douaniers suspensifs et aux exportations temporaires. J.O. 30.12.58, p. 12035.

Décret no. 58-1364 du 29.12.58 complétant l'article 411 du code des douanes. J.O. 30.12.58, p. 12041.

Décret no. 58-1295 du 22.12.58 portant incorporation dans le tarif des droits de douane d'importation de mesures tarifaires résultant des traités instituant les communautés européennes. J.O. 23.12.58 (rectificatif p. 11942), p. 11631.

Ordonnance no. 58-1302 du 23.12.58 ratifiant le décret no. 58-1295 du 22.12.58 portant incorporation dans le tarif des droits de douane d'importation de mesures tarifaires résultant des traités instituant les communautés européennes. J.O. 24.12.58, p. 11771.

Décret no. 58-1377 du 30.12.58 portant réduction provisoire de certains droits de douane d'importation, en régime de droit commun, en tarif minimum. J.O. 31.12.58, p. 12123.

Matières diverses

Décret du 4.11.58 approuvant trois délibérations fixant en Afrique équatoriale française le point de départ et la durée applicable à la Société des pétroles de l'Afrique équatoriale française J.O. 5.11.58, p. 10038.

Ordonnance no. 58-1074 du 7.11.58 complétant l'ordonnance no. 58-653 du 31.7.58 relative à diverses mesures d'ordre fiscal. J.O. 11.11.58, p. 10159.

Ordonnance no. 58-1111 du 22 nov. '58 relative à la recherche, à l'exploitation, au transport par canalisations des hydrocarbures et au régime fiscal de ces activités dans les zones de l'Organisation commune des régions sahariennes. J.O. 23 nov. '58, p. 10526.

Décret no. 58-1159 du 2 déc. '58 pris pour l'application de l'ordonnance no. 58-1111 du 22 nov. '58 relative à la recherche, à l'exploitation, au transport par canalisations des hydrocarbures et au régime fiscal de ces activités dans les zones de l'Organisation commune des régions sahariennes. J.O. 4.12.58, p. 10881.

Arrêté du 4 déc. '58 portant agrément au bénéfice des dispositions de l'article 32 de la loi no. 53-1336 du 31 déc. '53 relatif à l'institution des régimes fiscaux de longue durée dans les territoires d'outre-mer. J.O. 6 déc. '58, p. 10948.

Ordonnance no. 58-1171 du 5 déc. '58 ratifiant des ordonnances prises en application de la loi no. 58-520 du 3 juin 1958. Journal Officiel, 8 et 9 déc. 1958, p. 11022.

Ordonnance no. 58-1264 du 20 déc. 1958 relative aux pouvoirs du Gouvernement en matière de droits compensateurs et de droits antidumping. Journal Officiel, 21 déc. 1958, p. 11487.

Ordonnance no. 58-1374 du 30.12.58 portant loi de finances pour 1959. J.O. 31.12.58, p. 12071.

GERMANY

Period from November 1st until December 31st, 1958.

Direct taxes

Verordnung über die Jahreslohnsteuertabelle. Bundesgesetzbl., Teil I, p. 773. 29. Nov. '58.

Zweite Verordnung über die Verlängerung der Geltungsdauer der Verordnung über die Mitwirkung des Bundes bei der Verwaltung der Einkommensteuer und der Körperschaftsteuer. Bundesgesetzbl. Tl. I, 23. Dez. 1958, p. 967.

Verordnung zur Ueberleitung des Lohnsteuerverfahrens auf die Vorschriften des Gesetzes zur Aenderung steuerlicher Vorschriften auf dem Gebiet der Steuern vom Einkommen und Ertrag und des Verfahrensrechts. Bundesgesetzbl. Tl. I, 23. Dez. 1958, p. 969.

Verordnung über den Lohnsteuer-Jahresausgleich. Bundesgesetzbl. Tl. I, 23. Dez. 1958, p. 972.

Equalization of burden law

Verordnung zur Aenderung der dritten Verordnung über Ausgleichsleistungen nach dem Lastenausgleichsgesetz. Bundesgesetzbl., Tl. I, 10.12.58 p. 910.

Neunte Verordnung über Aenderung der Ausgleichsteuerordnung. Bundesgesetzbl. Tl. I, 22. Dez. 1958, p. 920.

Business tax

Neufassung der Körperschaftsteuergesetzes. BGBl. I, 21 Nov. '58, p. 747.

Neufassung des Gewerbesteuergesetzes. BGBl. I, 21 Nov. '58, p. 754.

Turnover tax

10. Verordnung 15.10.58 zur Änderung der Durchführungsbestimmungen zum Umsatzsteuergesetz Hinweis auf Verkündungen im Bundesanzeiger. BGBl., I, 17.10.58, p. 721.

Elfte Verordnung zur Aenderung der Durchführungsbestimmungen zum Umsatzsteuergesetz. Bundesgesetzbl. Tl. I, 1958, p. 968.

Excise duties

Neufassung des Schaumweinsteuergesetzes. BGBl. I, 21 Nov. '58, p. 764.

Durchführungsbestimmungen zum Schaumweinsteuergesetz. BGBl. I, 21 Nov. '58, p. 766.

Gesetz zur Aenderung des Kaffeesteuergesetzes. Bundesgesetzbl. Tl. I, 24 Dez. 1958, p. 991.

Gesetz zur Aenderung des Teesteuergesetzes. Bundesgesetzbl. Tl. I, 24. Dez. 1958, p. 992.

Customs

Verordnung zur Änderung der allgemeinen Zollordnung und der Post-Zollordnung. BGBl. I, 21 Nov. '58, p. 741.

Achtzehnte Verordnung über Zolltartänderungen zur Durchführung des Gemeinsamen Marktes der Europäischen Gemeinschaft für Kohle und Stahl. Bundesgesetzbl. Tl. I, 22. Dez. 1958, p. 947.

Neunzehnte Verordnung über Zolltarifänderungen zur Durchführung des Gemeinsamen Marktes der Europäischen Gemeinschaft für Kohle und Stahl. Bundesgesetzbl. Tl. II, 30. Dez. 1958, p. 769.

LUXEMBOURG

Period from November 1st until December 31st, 1958.

Impôt sur le revenu

Arrêté grand-ducal du 8 nov. '58 règlementant l'exécution de l'art. 5, al. 3 de la loi du 11 avril 1950, autorisant la majoration des plafonds prévus pour certaines dépenses spéciales en matière d'impôt sur le revenu. Mémorial, 17 nov. '58, p. 1463.

Arrêté ministériel du 27 nov. 1958 portant fixation de la valeur moyenne des rémunérations en nature au point de vue de l'application de la loi du 17 déc. 1925 sur les assurances sociales et en matière de retenue d'impôt sur les salaires. Mémorial, 13 déc. 1958, p. 1526.

Droits d'accise

Arrêté ministériel du 11 nov. '58 modifiant le règlement établi pour la perception du droit d'accise sur les tabacs fabriqués. Mémorial, 22 nov. '58, p. 1489.

Droits de douane

Arrêté ministériel du 24 déc. 1958, concernant les douanes et les accises. Mémorial, 24 déc. '58 p. 1581.

NETHERLANDS

Period from November 1st until December 31st, 1958.

Income tax

Act of Dec. 31, 1958 re temporary increase of some direct taxes as well as measures concerning the accelerated depreciation and the investment allowance. Stbl. 603, p. 1234.

Sales tax

Decree of Dec. 18, 1958 containing a modification of the executive decree sales tax 1954. Stbl. nr. 597, p. 1225.

Act of Dec. 31, 1958 to extend the temporary increase of some taxes as well as the temporary exemption of sales tax on cigars. Stbl. 651, p. 1390.

Decree of Dec. 30, 1958 amending the Royal Decree of Dec. 21, 1954 (Stbl. 1957, 391) concerning list of goods for which the sales tax on imports is being increased. Stbl. 655, p. 1397.

Customs

Acts of Nov. 19, 1958 re approvals of a number of Royal Decrees as regards import duties and the Coals and Steel Community. Stbl. nr. 515/519.

Decree of Dec. 19, 1958 re extension of the suspension and lifting of the levy of some import duties. Stbl. nr. 601, p. 1233.

Decree of Dec. 19, 1958 re extenison of the suspension of the levy for import duties in connection with the execution of the Treaty to establish the European Coal and Steel Community. Stbl. nr. 602, p. 1233.

Decree of December 19, 1958 re provisional date of inactment of some changes in the tariff of import duties agreed on with the governments of Belgium and Luxemburg. Stbl. nr. 604, p. 1235.

Decree of Dec. 29, 1958 re provisional inactment of some modifications of import duties' tariff in relation to the execution of the treaty to establish the European Community for Atomic Energy. Stbl. 646/647, p. 1375.

Decree of December 29, 1958 re suspension of import duty taxes in connection with the execution of the Treaty to establish the European Community for Atomic Energy. Stbl. 647/648, p. 1378.

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MISCELLANEOUS — FAITS DIVERS

AFRICA

Destructive Taxation in East Africa

The Tanganyika Sisal Growers' Association held their annual dinner recently and in the course of his speech, the chairman, Sir Eldred Hitchcock, C.B.E., said: "The East African Income Tax (Management) Act, 1958, has now been published. It is an admirably drafted document, and has much to commend it technically, but I consider it in parts one of the most destructive pieces of legislation presented in East Africa in terms of our future economic development.

"Fundamentally, the rate of taxation and basis of assessment, especially of productive agriculture and industry in East Africa, are too high for the economy to sustain without jeopardizing sound management and development. Put in another way, the rate of public expenditure is too high in relation to our developing economy. As the head of this industry I feel bound to make this comment and this protest. We are passing on a very sad legacy to the future rulers of this country.

"This legislation, if passed, will make it virtually impossible in many cases for businesses to repay loans or to plough back adequate profits to build up the capital structure of business—the time-honoured essential method in all pioneering countries."

Source: *Taxation*, October 25th, 1958.

ECUADOR

Extension and increase of income tax

With decree of July 26, 1958 nr. 28 income tax surcharges levied for 1956 and extended last year have now been extended until the end of 1961. Surcharge rates on income from capital have been substantially increased. Income from employment (wages, salaries) will be subjects to higher normal income tax rates.

Source: *Foreign Commerce Weekly*, December 22, 1958.

EGYPT

Nouvelles précisions sur l'impôt additionnel des administrateurs

L'Administration Fiscale a donné à ses différents départements des instructions selon lesquelles l'impôt additionnel frappant le montant total des rémunérations que perçoit le membre du conseil d'administration dans les sociétés anonymes ne s'applique pas aux rémunérations que touche le membre du conseil d'administration dans les sociétés en commandite et les sociétés à responsabilité limitée.

L'impôt additionnel susvisé ne s'applique pas non plus aux revenus que perçoivent les membres du conseil d'administration d'autres sources que les sociétés anonymes, tellesque, par exemple, une pension servie par l'Etat.

Quant à l'assiette de l'impôt la loi, en sus des rétributions honoraires, jetons de présence et autres revenus assujettis à la loi No. 14 de 1939, vise également les traitements, rémunérations, salaires et autres revenus analogues.

En ce qui concerne les rétributions que perçoivent les membres des conseils d'administration des sociétés étrangères dont le siège principal et la grande partie de l'activité se trouvent à l'étranger, elles sont assujetties à l'impôt additionnel prévu par la présente loi que les dits membres soient de nationalité étrangère ou égyptienne.

Source: *L'Informateur,* 28 novembre 1958.

EIRE

Tax Incentives for Investment

The publication of the third report of the Eire Capital Investment Committee contains a proposal that the Eire Government should ask the Taxation Commission, now in session, to report as a mattter of urgency on the possibility of encouraging private enterprise by changes in taxation and of increasing tax incentives for investment.

Source: *Taxation,* December 13th, 1958.

FAR EAST

Heavy Taxation in the East

"Taxation in the East is becoming heavier and heavier," said Mr. John Brooke, chairman, at the annual general meeting of Brooke, Bond & Co. Ltd. "In the last few years," Mr. Brooke continued, "in addition to increases in rates of existing taxation our businesses have become liable to new taxation in India — wealth tax, agricultural income tax; Pakistan — business profits tax; Ceylon — the proposed dividend tax. The effect is that profits tax distributed to us this year in the form of dividends in these countries are now bearing or will bear taxation at the following rates:
India — 63 % (income tax, supertax and wealth tax).
Pakistan — 70 % (income tax, supertax and business profits tax).
Ceylon — 70 % (if the proposed Budget is adopted)."

Source: *Taxation,* December 13th, 1958.

INTERNATIONAL

Conventions relatives aux doubles impositions conclues par la France

Une convention franco-italienne a été signée à Paris le 29 octobre 1958, en vue d'éviter les doubles impositions et de régler certaines autres questions en matière d'impôts directs sur le revenu et sur la fortune. Cette convention est appelée à se substituer à celle du 16 juin 1930, au protocole du même jour, à l'avenant et au protocole du 16 novembre 1931.

Source: *Droit Fiscal,* 21 novembre 1958.

Double Taxation Treaty

A draft convention has been prepared by the delegations of the Government of Pakistan and the Government of Denmark for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income between Pakistan and Denmark. The draft convention will be presented to the two Governments for ratification.

Source: *Taxation,* December 20th, 1958

International Double Taxation

It is to the mutual advantage of all countries that the exchange of goods, capital and services in international trade be not unduly discouraged by taxation. Even if other conditions are favorable escessive taxation by a single country of the same property or income will leave no adequate incentives for incurring the risks involved.

Our government should increase its efforts through its own legislation and through treaties with other countries to eliminate double taxation. Except

as income of our citizens and enterprises earned abroad may be recognized as exempt from our income taxes, our system of credits for foreign taxes should be broadened, with full relief from any burden of double taxation. Fair rules should be adopted for apportionment of income earned partly in different countries. There should be exemption from income taxation of nonresidents, including foreign corporations except as to the income derived from businesses permanently established, services performed and property located within the taxing country.

Our government should refrain from providing administrative assistance for the enforcement of the taxes of foreign countries and from seeking such assistance from other countries in enforcement of our taxes.

In negotiating commercial treaties or agreements with other nations, our government should adopt as standard practice inclusion of safeguards against excessive taxation and general provisions for elimination of international double taxation and fiscal discrimination, as well as specific undertakings to enter into separate agreements needed to implement such general provisions. (1956)

Source: *World Affairs* — Chamber of Commerce of the United States, 1958-59.

MALAYA

Malayan Company Tax Raised

It has been announced that both Singapore and the Federation of Malaya are to increase company tax from 30% to 40% as from January 1st. Non-residents will also pay 40%. In Singapore, personal income tax is being increased; the new maximum being 50% for chargeable incomes in the £6,000 range. The Federation is not changing personal income taxation but it is putting another 20 cents on petrol.

Source: *The Accountant,* December 13th, 1958.

PAKISTAN

Pakistan Encourages Minerals Extraction

Special tax concessions to encourage the prospecting for and extraction of essential minerals have been announced by the Government of Pakistan according to the local press.

This decision indicates the growing realization of the importance of attracting private capital to explore and promote the country's potential mineral wealth. Concessions will apply only to the extraction of minerals considered essential to national requirements, but no specific minerals have been mentioned. It is believed concessions would apply to all important minerals, including coal and chromite.

To encourage the setting up of refining plants, new concessions offered include:

Permission to treat all expenditures on prospecting and exploration as a loss to be set off over a 10-year period against income after the start of commercial production.

All capital expenditures on machinery and equipment needed for extraction can be set off against future earnings from commercial production.

A 5-year exemption of profits from refining plants up to 5 percent of the capital employed.

The period of 5 years is to be computed from the first year in which there is a taxable profit, and after expenditures on exploration and cost of machinery referred to in the first and second concessions listed have been fully utilized.

These concessions will affect income earned from April 1, 1958, and will apply to new concerns established on or after that date. Business firms already engaged in the exploration and mining of minerals will be eligible for the concessions only in respect to new deposits which they might explore or work subsequent to April 1.

Source: *Foreign Commerce Weekly*, Sept. 22, 1958

SWEDEN

Levelling-out of Incomes for Tax Purpose

For several years now the operators of small businesses, and to some extent other persons whose incomes tend to fluctuate considerably from year to year, have expressed the wish to be allowed to level out their incomes over a number of years. As regards the state income tax payable by private persons, the progressive scale of taxation has hitherto meant that the tax levied on one and the same amount for a given number of years is higher in the case of persons with fluctuating incomes than for those receiving a relatively stable income. This system is particularly hard on persons and firms whose net incomes vary so much that certain years show either a loss or such a low income that no benefit is gained from general deductions. The 1957 Tax Investigation Committee has now presented a proposal that will, to some extent, eliminate these difficulties. The new scheme proposes that losses may be balanced against profits if the deficit during one year cannot be set off against a surplus for the same year. It is recommended that the deficit be deductible during any one of the six following years.

However, the right to set off losses against profits will not provide any relief for people with widely fluctuating incomes. To solve this problem the committee proposes that, in the event of income for one year exceeding that for the previous year by at least 12,000 kronor, the two years may be balanced against each other. For exemple, if a person received 10,000 kronor one year and 22,000 kronor the next year, the total amount of tax payable will be the same as if the income had been 16,000 kronor for each year. To avoid any unjust borderline treatment the committee suggests that tax relief may be granted in certain cases where the difference is less than 12,000 kronor.

Source: *Index,* October 1958.

UNITED KINGDOM

The Chancellor and the Shipping Tax

At the United Kingdom Chamber of Shipping dinner held in London last week, Mr. Heathcoat-Amory, Chancellor of the Exchequer, spoke of the downward trend of world trade, which might go further, and the consequent relatively low demand for shipping services. He continued: "The fall in rates during the past twenty months has, we all realize, made it difficult for many owners to continue to operate some of their ships economically. The Government do recognize the very special position of the shipping industry, its paramount importance to the nation, and the unique way in which it is exposed to international competition". The Chancellor considered that a "substantial contribution" was being made to the alleviation of their difficulties in the special 40 per cent investment allowance. But this was of only eighteen months' standing and experience alone could show its long-term benefits.

Mr. Heathcoat-Amory added: "I will certainly be looking at the position of the shipping industry along with that of all taxpayers when I am considering my Budget in the early months of next year."

Source: *Taxation,* October 25th, 1958.

Personal Incomes

Mr Lewis asked the Chancellor of the Exchequer whether he will publish in *Hansard* a table of figures giving the net income received by a man claiming normal tax reliefs for a wife and two children, after deduction of normal income tax and surtax charges, for each financial year from April 1950 to April 1958-59, in the wage and salary scales £400, £600, £750, £1,000, £10,000 and £20,000 per annum, respectively.
Mr Amory: Yes.

NET INCOME AFTER DEDUCTION OF INCOME TAX AND SURTAX, OF MARRIED MEN WITH TWO CHILDREN (BOTH UNDER ELEVEN YEARS OF AGE) INCOME ALL EARNED

Gross Income	Net Income																	
	1950-51			1951-52			1952-53			1953-54			1954-55			1955-56			1956-57			1957-58			1958-59		
£	£	*s*	*d*	£	*s*	*d*	£	*s*	*d*	£	*s*	*d*	£	*s*	*d*	£	*s*	*d*	£	*s*	*d*	£	*s*	*d*	£	*s*	*d*
400	397	10	0	400	0	0	400	0	0	400	0	0	400	0	0	400	0	0	400	0	0	400	0	0	400	0	0
600	561	5	0	565	0	0	587	0	0	589	3	4	589	3	4	597	0	0	597	0	0	597	0	0	597	0	0
750	671	5	0	678	0	0	706	11	8	711	13	4	711	13	4	723	9	2	723	9	2	723	9	2	723	9	2
1,000	831	5	0	833	0	0	888	6	8	898	5	7	898	5	7	914	10	0	914	10	0	914	10	0	914	10	0
10,000	3,683	15	0	3,465	10	0	3,534	5	0	3,763	10	0	3,763	10	0	4,000	15	0	4,000	15	0	4,580	15	0	4,580	15	0
20,000	4,408	15	0	3,940	10	0	4,009	5	0	4,488	10	0	4,488	10	0	4,975	15	0	4,975	15	0	5,593	5	0	5,593		0

Hansard, Volume 595, No. 16, cols 124, 125 and 126.

Source: *Taxatation,* December 6th, 1958.

URUGUAY

Taxes on royalties

With Law of October 23rd., 1958 (Diario Oficial, Nov. 5th, 58) the rates of the special tax on royalties and other payments received for the use of trademarks, patents, copyrights etc., have been increased from 10 to 12.5 percent when the income recipient is resident in Uruguay, and from 5 to 10 percent in case of nonresident recipients.

The exemption from this tax for individuals and companies subject to the Uruguayan excess profits tax, has been eliminated, the result being a considerable increase of tax burden.

Source: *Foreign Commerce Weekly,* December 22, 1958.

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III

AUSTRALIA

ROYALTIES

Income Tax — Assessable income — Non Resident — Royalty — Not payable in Australia — Grants of manufacturing rights in Australia to Australian company — Assistance in manufacture given in America — Grant of right to use trade mark registered in Australia — Whether royalty "derived directly or indirectly from ... sources in Australia" — Income Tax and Social Services Contribution Assessment Act 1936-1951, s. 25 (1) (b).

An Australian company entered into an agreement with the taxpayer, a resident of the United States of America, whereby in return for the right to manufacture a particular article in Australia and for assistance given in its manufacture it undertook to pay in America to the taxpayer by way of royalty an amount representing five per cent, of the gross sales of the article. The agreement was entered into in America, and assistance in the manufacture of the article was given by the taxpayer to a representative of the Australian company when the latter visited America. The article was the subject of a registered trade mark in the Department of Patents in Australia which had been assigned to the D company, a company incorporated and resident in the United States of America, of which the taxpayer was president and a majority shareholder. The D company appointed the taxpayer a registered user of the trade mark.

Held, the amounts received as royalties under the agreement were not income of the taxpayer "derived directly or indirectly from ... sources in Australia" within the meaning of s. 25 of the *Income Tax and Social Services Contribution Assessment Act* 1936-1951.

Federal Commissioner of Taxation v. United Aircraft Corporation applied.
Reported in full in T.B.R.D., Vol. 7, Case No. G 70, p. 372.

OVERSEAS TRAVELING EXPENSES

Income Tax — Deductions — Travelling expenses overseas — Directors of company — Company carrying on business on laundry — Study of methods of operation of laundries — Course of study undertaken by director — Whether expenses of course of capital nature — Whether expenses claimed allowable deductions of company — Income Tax and Social Services Contribution Assessment Act 1936-1952 s. 51 (1).

A, his wife B, and their son C were the directors and the only shareholders of the taxpayer company which carried on the business of a laundry and dry cleaner. In 1951, A, B and C visited England and the Continent where they inspected a large number of laundries and studied their methods of operation. They also spent approximately three weeks in Scandinavia, and although they inspected some laundries there it was conceded that the visit was primarily a sight-seeing tour. A and B returned to Australia and C went to the United States of America, where he attended two courses conducted by the American Institute of Laundering. At the completion of the second course A and B arrived from Australia and during the next two months A, B and C visited

laundries and allied businesses in the United States of America, although the evidence of B's activities on this visit was somewhat vague. A and B then returned to Australia and C attended a further course in laundering which lasted about 12 weeks, after which he returned to Australia. Before the Board the Commissioner's representative contended *inter alia* that the expenses of the courses attended by C in America were of a capital nature.

Held, that with the exception of the cost of the trip to Scandinavia and certain of the expenses in relation to B's visit to the United States of America, all the expenses claimed of the taxpayer company were an allowable deduction pursuant to s. 51 (1) of the *Income Tax and Social Contribution Assessment Act* 1936-1952.

Reported in full in T.B.R.D., Vol. 7, Case No. G 72, p. 380.

Source: *The Taxpayers' Bulletin*, November 1957.

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FRANCE

TERRITORIALITE DU BENEFICE

Impôt sur les personnes morales. — Bénéfice imposable. — Condition de territorialité du bénéfice imposable. — Bénéfices retirés d'opérations exécutées matériellement a l'étranger mais sous la direction d'un établissement situé en France.

Conseil d'Etat. — 3 mars 1958. — Requête n° 41.135. — Section du Contentieux. — 7e sous-section.

Considérant qu'il résulte des dispositions de l'article 34 du Code général des Impôts que l'impôt est dû à raison des bénéfices industriels et commerciaux réalisés dans les entreprises exploitées en France; qu'aux termes de l'article 209 dudit Code: «Les bénéfices passibles de l'impôt sur les sociétés sont déterminés d'après les règles fixées pour l'établissement de l'impôt sur le revenu des personnes physiques . . . en ce qui concerne les bénéfices des professions industrielles et commerciales»; qu'enfin l'article 218 du Code dispose: «l'impôt est établi sous une cote unique au nom de la société pour l'ensemble de ses activités imposables en France, au siège de la direction de ses entreprises ou, à défaut, au lieu de son principal établissement»;

Considérant que si la société anonyme . . ., dite «Société . . .» possède hors de France son siège social et à . . . (France) le siège de sa direction, il résulte de l'instruction que ladite société n'a en fait audit siège ni local spécial, ni préposé, ni document comptable ou commercial, et que nulle affaire n'y est traitée; qu'au contraire à . . . (France) sont installés les services techniques administratifs et commerciaux, le contentieux et la comptabilité, ainsi que les services de direction; que, dès lors, il résulte de l'ensemble des textes susrappelés que la cotisation à l'impôt sur les sociétés, de l'entreprise en cause, doit être établie à..... (France), pour l'ensemble des activités de la société;

Considérant d'autre part, qu'il résulte de l'instruction que si toute l'activité de la société . . . entreprise de transports maritimes, ne s'exerce pas en France, ladite société ne possède à l'étranger ni agents ni succursales: que lorsqu'elle traite des opérations de frêt par l'intermédiaire d'entreprises étrangères, celles-ci n'ont pas qualité pour engager la société, et gardent une personnalité commerciale indépendante de la sienne; qu'elles ne peuvent dès lors être regardées comme exploitant un établissement de ladite société; qu'au surplus ces opérations de transports effectuées par les navires de la société, qui, bien qu'immatriculés à . . . (étranger) sont exploitées par l'établissement de . . . (France) ne se détachent ni par leur nature ni par leur importance des autres opérations de l'entreprise et ne constituent pas l'exercice habituel à l'étranger d'une activité commerciale; que, dans ces conditions, et bien qu'il puisse s'agir de transports s'effectuant parfois d'un port étranger à un autre port étranger et que le prix en soit payé à l'étranger, ladite société ne saurait être regardée comme ayant possédé une exploitation et réalisé des bénéfices hors de France; que par suite c'est à tort que le tribunal administratif de . . ., après avoir décidé qu'il y avait lieu de dégrever la société requérante de

l'impôt correspondant aux bénéfices non imposables en France, a ordonné un supplément d'instruction à l'effet d'établir le montant dudit dégrèvement;

Décide(art. 1er. — Le jugement susvisé du Tribunal administratif de . . . en date du 22 février 1957 est annulé.

Art. 2. — La société . . . sera imposée à . . (France) à raison de l'ensemble de ses résultats.

Art. 3. — L'affaire est renvoyée devant le Tribunal administratif de . . . pour qu'il soit statué sur le surplus de la requête de la société.

La condition de territorialité des opérations commerciales, déjà examinée récemment sous un autre angle (Cons. d'Etat, 6 déc. 1957, req. n° 30.650), conduit à reconnaître imposables les bénéfices retirés d'opérations exécutées matériellement à l'étranger mais sous la direction d'un établissement situé en France.

La société X . . . est une société anonyme tunisienne créée en 1939. Elle n'a à T . . . qu'un siège rudimentaire: en fait, c'est une adresse chez un tiers. Le siège de la direction de l'entreprise est à M . . . (France) où se, trouve l'ensemble de ses services. Elle exploite des navires, soit pour son compte, soit pour le compte de tiers qui les lui remettent en gérance. Ceux qui lui appartiennent sont immatriculés à T . . . et battent pavillon de ce pays.

La société a cru pouvoir s'abstenir, dans ces conditions, de payer l'impôt sur les sociétés au titre des années 1950 à 1952. Elle n'a pas non plus produit de déclaration pour lesdits exercices lorsque l'Administration l'y invita en février 1954. Celle-ci procéda à une vérification de la comptabilité de l'entreprise et la taxa d'office.

La société a contesté devant le Tribunal administratif le principe de l'imposition et, subsidiairement, l'évaluation des bénéfices.

Le Tribunal administratif a jugé que l'imposition n'était que partiellement justifiée. Seuls seraient imposables les bénéfices retirés des opérations traitées par l'établissement de M . . . à l'exclusion des opérations réalisées dans les ports étrangers où ses navires font escale.

Le Tribunal administratif a ordonné un supplément d'instruction en vue de déterminer la part des bénéfices à imputer à l'établissement de M . . .

Le Ministre vous défère cette décision.

La loi (C. gén. Imp. art. 34, auquel renvoie, pour l'impôt sur les sociétés, l'art. 209) pose le principe de la territorialité de l'impôt dans les termes suivants:

«Sont considérés comme bénéfices industriels et commerciaux . . ., les bénéfices réalisés . . . dans les entreprises exploitées en France.»

— Cette définition ne se réfère pas, pour les sociétés, à la notion de siège social;

— Il n'est même pas nécessaire que l'entreprise ait un établissement en France;

— Il suffit qu'elle y ait une exploitation, c'est-à-dire une activité commerciale.

Votre jurisprudence confirme qu'une entreprise étrangère peut être imposée en France à raison de l'exercice d'une activité commerciale, alors même qu'elle n'y possèderait pas d'établissement (21 juin 1948, req. n° 93.775: *R.O.* p. 63).

Inversement, une entreprise française qui, de manière distincte, ferait des actes de commerce, exclusivement traités à l'étranger, ne serait pas imposable en France à raison de ces profits, bien qu'elle n'ait d'établissement qu'en France (14 fév. 1944, req. n° 67.442: *R.O.* p. 38).

Un premier point est certain: l'entreprise a un établissement en France, elle n'en possède pas à l'étranger.

La société défenderesse soutient que les navires pourraient être regardés comme des établissements mobiles: ils représentent l'unité d'exploitation, réunissant le matériel et le personnel nécessaires sous l'autorité d'un préposé spécial, le capitaine.

Cette définition serait valable, Messieurs, en matière de patente, à supposer que le préposé ait qualité pour traiter avec les tiers. Mais du point de vue de l'impôt frappant les bénéfices industriels et commerciaux, le navire n'est qu'un élément d'exploitation. Peu importe à cet égard la nationalité du navire. Si on le rattache à un établissement, ce ne peut être que le siège de la direction de l'entreprise à M . . .

On doit cependant examiner un second aspect de la question: l'entreprise n'exerce-t-elle pas à l'étranger une activité détachable de celle de son établissement de M . . .?

Votre jurisprudence envisage à cet égard la nature ou le mode d'exécution des opérations (5 fév. 1945, req. n° 68.348: *R.O.* p. 233; 24 mai 1948, req. n° 85.542: *Rec. Lebon,* p. 229) ou encore le caractère de l'importance de l'activité exercée à l'étranger (14 fév. 1944, req. n° 67.442: *R.O.* p. 38; 6 juill. 1957, req. n° 40.035). Ces conditions ne sont pas remplies en l'espéce. Il y aurait encore activité distincte si les auteurs des opérations exécutées à l'étranger agissaient comme des représentants autonomes de l'entreprise.

La société défenderesse soutient que des opérations de cette nature sont réalisées à bord de ses navires dans les ports étrangers. Mais le dossier nous apprend que les opérations sont traitées par l'intermédiaire de correspondants qui ont une personnalité juridique et commerciale indépendante de la société requérante.

Dans ces conditions, les opérations relèvent des rapports entre le siège de la direction à M . . ., et ces tierces entreprises (24 janv. 1934, req. n° 32.530: *Rec. Lebon,* p. 110; 24 mai 1948, req. n° 85-542: *Rec. Lebon,* p. 229). Les bénéfices afférents à ces opérations se rattachent donc encore à l'activité exercée par l'établissement unique de M . . .

Ils sont donc imposables en France pour leur intégralité.

La société défenderesse signale qu'elle est imposée aux impôts tunisiens pour la totalité de ses bénéfices également. De tels cas de double imposition sont précisément de ceux qui provoquent la négociation d'accords entre les deux pays intéressés. Dans l'attente de traités ayant cet objet, le juge fiscal ne peut qu'appliquer la loi interne.

Le Ministre est fondé à demander l'annulation du jugement. Il y a lieu de renvoyer la société requérante devant le Tribunal administratif pour y être statué sur la partie de sa demande tendant à une réduction des bases d'imposition.

Source: *Droit Fiscal,* 13 juin 1958.

SCHWEIZ

EINKOMMEN NATÜRLICHER PERSONEN

— Einheit des Einkommens (Art. 44 WStB). — Die der Bestimmung des Steuersatzes dienende Einbeziehung des in Deutschland steuerpflichtigen Erwerbseinkommens des im Inland wohnhaften Steuerpflichtigen ist mit dem schweizerisch-deutschen Doppelbesteuerungsabkommen vereinbar. Diese der wirtschaftlichen Leistungsfähigkeit des Steuerpflichtigen Rechnung tragende Ordnung bezieht sich ausschliesslich auf die Besteuerung des der Wehrsteuer unterliegenden Einkommens; das übrige (ausländische) Einkommen wird dadurch nicht erfasst.

Die Steuerberechnung nach Art. 44 WStB wird von der sich bei Besteuerung durch den ausländischen Staat ergebenden Gesamtbelastung des Pflichtigen nicht beeinflusst.

Aus dem Tatbestand:

A. Der Beschwerdeführer wohnt in S. und war bis zum Frühling 1955 Professor an der dortigen Hochschule; daneben und auch seither lehrte er noch an der Universität M. (Westdeutschland). Für die Wehrsteuer VIII wurde er zunächst auf Grund seines in der Schweiz erzielten Einkommens von Fr. 28 900 zum Satze von 6,045 % (entsprechend seinem Gesamteinkommen von Fr. 44 100, d. h. unter Berücksichtigung seines ausländischen Einkommens von Fr. 15 200) veranlagt. Infolge seiner Pensionierung wurde für die Zeit nach dem 1. April 1955 eine Zwischenveranlagung gemäss Art. 96 WStB vorgenommen, auf Grund seines nunmehrigen schweizerischen Einkommens von Fr. 24 300 und zum Satze von 5,475 % (entsprechend einem Gesamteinkommen von Fr. 39 500) . . .

B. Mit der Verwaltungsgerichtsbeschwerde beantragt H.N. die Festsetzung des Steuersatzes ausschliesslich nach Massgabe seines schweizerischen Einkommens. Er macht geltend, bei der Anwendung des Art. 44 WStB und des schweizerisch-deutschen Doppelbesteuerungsabkommens seien die Grundsätze der Besteuerung nach der wirtschaftlichen Leistungsfähigkeit, der Rechtsgleichheit und von Treu und Glauben zu beachten. Danach gehe es im vorliegenden Falle nicht an, den Satz des Gesamteinkommens in Rechnung zu stellen. Der Steuerpflichtige dürfe durch die ausländischen und schweizerischen Steuern zusammen nicht stärker belastet werden, als wenn er sein gesamtes Einkommen in der Schweiz zu versteuern hätte.

Erwägungen:

1. Hinsichtlich der Steuerfaktoren des Beschwerdeführers besteht keine Differenz, weder mit Bezug auf die ordentliche Veranlagung für die Wehrsteuer VIII noch auf die Zwischenveranlagung für die Zeit ab 1. April 1955. Der Streit betrifft ausschliesslich den anwendbaren Steuersatz, nämlich die Frage, ob für dessen Bestimmung auch das in Deutschland erzielte und in der Schweiz nach Art. 5 des schweizerisch-deutschen Doppelbesteuerungsabkommens nicht steuerbare Einkommen des Beschwerdeführers von Fr. 15 200 zu berücksichtigen ist. Hierüber bestimmt Art. 44, Abs. 1 WStB: Für Steuerpflichtige, die nur von einem Teil ihres Einkommens die Wehr-

steuer zu entrichten haben, richtet sich die Klasseneinteilung nach dem gesamten Einkommen. Die Steuer ist jedoch nur von dem der Wehrsteuer unterliegenden Einkommen zum Satze des Gesamteinkommens zu berechnen.

Der Wortlaut dieser Bestimmung ist eindeutig. Er enspricht auch dem ganzen System der Wehrsteuer und insbesondere der in Art. 40 WStB und den dazu gehörenden Tarifen festgelegten progressiven Ausgestaltung der Steuersätze. Wie der Beschwerdeführer zutreffend ausführt, beruht diese auf dem Gedanken, dass die Steuerbelastung der wirtschaftlichen Leistungsfähigkeit der Pflichtigen angepasst sein soll und dass diese mit steigendem Einkommen nicht nur proportional, sondern progressiv anwächst. Das gilt auch mit Bezug auf Steuerpflichtige, die nur für einen Teil ihres Einkommens die Wehrsteuer zu entrichten haben: Ihre wirtschaftliche Leistungsfähigkeit wird nicht nur durch diesen Teil, sondern durch ihre gesamtes Einkommen bestimmt; deshalb ist für den Satz der Steuer — die nur auf einem Teileinkommen erhoben wird — das Gesamteinkommen massgebend. Art. 44, Abs. 1 WStB bezieht sich ausschliesslich auf die Besteuerung des der Wehrsteuer unterliegenden Einkommensteils: das übrige Einkommen wird dadurch nicht erfasst, noch entsteht irgend eine Beziehung zu dessen allfälliger Besteuerung von einer anderen Seite, namentlich durch einen fremden Staat. Für die Wehrsteuer spielt weder eine solche anderweitige Besteuerung an sich ein Rolle noch die Gesamtbelastung, die sich mit deren Einschluss für den Pflichtigen ergibt. Sie erfasst ihn für das ihr unterliegende Einkommen nach Massgabe seiner Leistungsfähigkeit gemäss seinem Gesamteinkommen — ganz gleichgültig, ob und wie hoch er für sein übriges Einkommen anderweitig besteuert wird.

Der Wehrsteuerbeschluss hat Gesetzeskraft und ist daher gemäss Art. 114bis, Abs. 3 BV für das Bundesgericht verbindlich. Es hat deshalb Art. 44, Abs. 1 WStB nicht auf seine Verfassungsmässigkeit zu überprüfen. Diese wird übrigens vom Beschwerdeführer nicht bestritten. Er beruft sich zwar beiläufig auch auf die durch Art. 4 BV gewährleistete Rechtsgleichheit, aber lediglich als Grundlage für die gleichmässige Besteuerung nach der wirtschaftlichen Leistungsfähigkeit. Dieser Grundsatz, auf dem auch Art. 44, Abs. 1 WStB beruht, wird durch den angefochtenen Entscheid nicht verletzt.

2. Zwar nicht ausdrücklich, wohl aber dem Sinne nach behauptet der Beschwerdeführer eine Verletzung des schweizerisch-deutschen Doppelbesteuerungsabkommens, indem er geltend macht, es beruhe auf dem Grundsatz der Besteuerung nach der wirtschaftlichen Leistungsfähigkeit und dieser sei hier missachtet worden.

Bei der Anwendung von Doppelbesteuerungsabkommen hat das Bundesgericht stets die Auffassung vertreten, dass die Bestimmung des Satzes der Einkommenssteuer nach Massgabe des Gesamteinkommens keine Doppelbesteuerung begründet, wenn der so ermittelte Satz nur auf das der Besteuerung durch die Schweiz unterliegende Einkommen angewendet wird (so zuletzt mit Bezug auf das Abkommen mit den Vereinigten Staaten in BGE 82 I 7. E. 5 b[1]). Zum schweizerisch-deutschen Abkommen hat es in BGE 62 I 99, E. 3 [2]) ausgeführt: „Dieser (d.h. der dem Gesamtvermögen und -einkommen entsprechende) Satz wird nur angewandt auf das in der Schweiz steuerbare Vermögen und Einkommen. Der Rekurrent wird für sein schweizerisches Grundeigentum und dessen Erträgnisse nicht deshalb schwerer belastet, weil er noch einer andern Steuerhoheit unterliebt; es wird lediglich bei ihm, wie bei allen andern Steuerpflichtigen, der Steuersatz angewandt, der seiner wirtschaftlichen Leistungsfähigkeit entspricht. Er hat nur die Steuer aufzubringen, die er für sein schweizerisches Grundeigentum und dessen Erträgnisse unter sonst gleichen Vermögens- und Einkommensverhältnissen auch

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1) Archiv Bd. 25. S. 132 ff.
2) Archiv Bd. 5. S. 299 ff.

zu bezahlen hätte, wenn er ausschliesslich der schweizerischen Steuerhoheit unterstände." Entgegen der Auffassung des Beschwerdeführers ist mit der aufzubringenden Steuer, von der in diesem letzten Satze die Rede ist, nur die schweizerische gemeint. Das ist selbstverständlich; denn für das schweizerische Grundeigentum und dessen Erträgnisse kommen nach dem mit Deutschland geschlossenen Abkommen andere als schweizerische Steuern gar nicht in Frage. Der von der Schweiz von jeher gemachte Vorbehalt der Gesamtprogression ist nun in Z. 14 des Zusatzprotokolls vom 9. September 1957 zu diesem Abkommen auch von Deutschland ausdrücklich anerkannt worden (BBl. 1957 II 614).

Aus dem dieser Ordnung zugrunde liegenden Prinzip der Besteuerung nach der wirtschaftlichen Leistungsfähigkeit ergibt sich, dass jeder beteiligte Staat den seiner Steuerhoheit unterliegenden Einkommensteil des Pflichtigen nach dem Satze besteuern darf, der dem Gesamteinkommen entspricht, weil hierin die Leistungsfähigkeit zum Ausdruck kommt. Keineswegs aber lässt sich daraus eine maximale Belastung ablesen, welche durch die Gesamtheit der Steuern in beiden Staaten nicht überschritten werden darf. Jeder Staat beurteilt die wirtschaftliche Leistungsfähigkeit des Pflichtigen nach seinem eigenen Recht, unabhängig von dem andern Staate und ohne Rücksicht auf die von diesem erhobenen Steuern. Das schweizerisch-deutsche Abkommen teilt die Steuerobjekte unter die beteiligten Staaten auf; jeder darf nur die seiner Steuerhoheit unterliegenden erfassen; in der Art ihrer Erfassung — und dazu gehört die Bestimmung des Steuersatzes — ist er frei und braucht keine Rücksicht auf die Gesamtbelastung zu nehmen, die sich daraus ergibt, dass beide Staaten die ihnen im Abkommen zugewiesenen Objekte nach Massgabe der Landesgesetzgebung besteuern. Die Auffassung des Beschwerdeführers hätte zur Folge, dass derjenige Staat, der die Leistungsfähigkeit milder beurteilt und daher niedrigere Steuern erhebt, diese im Einzelfalle noch weiter herabsetzen müsste, weil der andere Staat gestützt auf seine strengere Auffassung von der Leistungsfähigkeit höhere Steuern bezieht und dadurch die Gesamtbelastung schwerer wird. Das zeigt gerade der vorliegende Fall deutlich: Deutschland hat höhere Steuern als die Schweiz und belastet den Beschwerdeführer für sein deutsches Einkommen stärker, als ihn die Schweiz für ein gleiches Einkommen belasten würde; seine gesamte Steuerlast in beiden Staaten ist deshalb höher, als wenn er für sein ganzes Einkommen in der Schweiz, aber niedriger, als wenn er dafür in Deutschland allein steuerpflichtig wäre. Aber weder der einen noch der andern Gesetzgebung noch dem Abkommen lässt sich ein Maximum entnehmen, das durch die Summe der Steuern in beiden Staaten nicht überschritten werden dürfte. Selbst wenn man sagen könnte, die gesamte Steuerlast übersteige die nach schweizerischem Recht beurteilte wirtschaftliche Leistungsfähigkeit des Beschwerdeführers, so läge der Grund nicht in den schweizerischen, sondern in den deutschen, auf einem strengeren Begriffe der Leistungsfähigkeit beruhenden Steuern, und es könnte keine Rede davon sein, dass die Schweiz mit Rücksicht hierauf die sich nach ihrem Rechte ergebenden Steuern herabsetzen müsse. Umgekehrt würde ja seine nach deutschem Recht beurteilte Leistungsfähigkeit nicht erreicht, weil er für sein schweizerisches Einkommen weniger Steuern entrichtet, als er in Deutschland dafür zu bezahlen hätte. Dadurch, dass er zwei Steuerhoheiten untersteht, stellt er sich einerseits schlechter, als wenn er nur der schweizerischen, aber anderseits besser, als wenn er nur der deutschen unterstünde. Weder aus der Rechtsgleichheit noch aus Treu und Glauben noch aus dem Grundsatz der Besteuerung nach der wirtschaftlichen Leistungsfähigkeit lässt sich herleiten, dass die Schweiz wegen der höheren Belastung seines deutschen Einkommens durch Deutschland den Beschwerdeführer für sein ihrer Hoheit unterliegendes Einkommen nicht in der Höhe besteuern dürfe, die sich aus ihrem eigenen Recht ergibt. Eine solche Beschränkung würde vielmehr ein unzulässiges Uebergreifen des

deutschen Rechtes in die schweizeriche Steuerhoheit darstellen, das mit der im Doppelbesteuerungsabkommen getroffenen Ausscheidung der Steuerobjekte nichts zu tun hat.

(Abweisung der Beschwerde.)

Bundesgericht. 2. Mai 1958, i. S. H. N. gegen Rekurskommission des Kantons St. Gallen.

Source: *Archiv für schweizerisches Abgaberecht,* Okt, 1958.

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INDIA

[In the Calcutta High Court.]

P. C. ROY & CO. (INDIA) PRIVATE LTD.

v.

A. C. MUKHERJEE AND ANOTHER.

Sinha, J.

December 12, 1956.

Indian Income-tax Act (XI of 1922), sec. 18(3B), (7)—Deduction of tax at source—Charterer of ship—Hire payable outside India—Payment in India of advance under charterparty to be adjusted against hire—Charterer whether liable to deduct tax on payment of advance—Failure to deduct tax—Tax whether can be recovered from charterer:

The petitioner company which had exclusive rights to exploit certain area of forests in North Andamans, chartered a ship from a company in Honkong, for carrying timber from the Andamans to Indian ports. Under the charterparty the charterers had to pay an agreed hire per month which, in accordance with a subsequent variation of the terms agreed upon, was payable in cash in London or Honkong. Clause 14 of the charterparty provided: "The charterers or their agents to advance to the master, if required, necessary funds for ordinary disbursements for the vessel's account at any port, charging only interest at 6 per cent. per annum, such advances to be deducted from hire." The petitioner paid to the master of the vessel certain moneys in India as advance for disbursement in accordance with clause 14 which were later deducted from the hire when the hire was paid at London. The Income-tax Officer held that the petitioner should have, before making the payments, deducted and paid tax under section 18 (3B) of the Indian Income-tax Act and as it had not done so, it was liable for payment of such tax under section 17(7):

Held, *that the provisions of the charterparty had to be read as a whole, and so read, the charterparty contemplated that part of the hire would be payable in places other than London,* viz., *at places where money would be required for ordinary disbursements; the payments could not therefore be deemed to be made at London, they were not mere loans, but they were payments in India of hire in terms of the charterparty by the petitioner to the owners of the vessel; the payments amounted to income chargeable to tax under the Act as income arising within the taxable territories; therefore, the petitioner was under a liability to deduct the tax under section 18 (3B), and was not exempt from liability merely on the ground that the net income of the owners of the vessel could not be determined until after the final adjustment of the credits and debits and an account was taken: the duty to deduct arose at the moment of payment of the advance.*

Anglo-Indian Jute Mills Co. Ltd. *v.* S.K. Dutt [1956] (30 I.T.R. 525; A.I.R. 1956 Cal. 450).

Commissioners of Inland Revenue *v.* Gordon [1952] (33 Tax Cas. 226; [1952] 1 All E.R. 866; [1952] 1 T.L.R. 913).

Grainger *v.* Gough ([1896] A.C. 325; 3 Tax Cas. 462; 65 L.J. Q.B. 140).

Keshav Mills Ltd. *v.* Commissioner of Income-tax [1953] (23 I.T.R. 230; A.I.R. 1953 S.C. 187; [1953] S.C.R. 950).

Nielsen, Anderson and Co. *v.* Collins Muller ([1928] A.C. 34; 13 Tax Cas. 91; 96 L.J. K.B. 4).

Trinidad Lake Asphalt Operating Co. Ltd. v. Trinidad and Tobago Income-tax Commissioner ([1945] A.C. 1; 13 I.T.R. Suppl. 14).

Turner Morrison and Co. Ltd. *v.* Commissioner of Income-tax [1953] (23 I.T.R. 152; A.I.R. 1953 S.C. 140; [1953] S.C.R. 420).

Matter No. 84 of 1956.

Sukumar Mitra, for the petitioner.

E. R. Meyer, for the respondent.

JUDGMENT

SINHA J.—The facts in this case are shortly as follows:

The petitioner is a company incorporated in India under the Indian Companies Act, 1956, and has its registered office situate in Calcutta. In 1954, the petitioner came to have exclusive right to exploit some 700 sq. miles of forests in North Andamans from the Government of India. In order to carry out the exploitation, it was found necessary for the company to charter a ship for carrying timber from the Andamans to Indian ports. By a charterparty dated August 25, 1954, executed in London, the petitioner company chartered from Messrs. Newland Steamship Co. Ltd. of Hongkong, a vessel called "Eastern Venture", on terms and conditions contained in the said charterparty.

The charter was in the standard form known as the "Uniform Time Charter", whereby the owners let and the company hired the said vessel for a period of six months in the first instance. The charterparty agreement was renewed from time to time. A copy of the charterparty agreement is annexed to the petition and marked with the letter 'A'. The clauses in the said charterparty agreement, which are important for our purposes are set out below:

"6. The charterers to pay as hire: 16s. (sixteen shillings) per ton on vessel's deadweight of 5,250 tons, per 30 days commencing in accordance with clause (1) until her re-delivery to the owners.

Payment of hire to be made in cash, in Calcutta, without discount, every 30 days in advance . . .

14. The charterers or their agents to advance to the master, if required, necessary funds for ordinary disbursements for the vessel's account at any port, charging only interest at 6 per cent. per annum, such advances to be deducted from hire.

25. The owners to pay a commission of 3 per cent. to Clegg, Cruickshank and Co. Ltd., Calcutta, also 1½ per cent. to Harris and Dixon and a brokerage of 1 per cent. to Lambert Bros. Ltd., on any hire paid under the charter . . ."

On or about the 25th August, 1954, the parties agreed to a variation of the terms, and clause 26 was introduced which is as follows:

"26. Hire in accordance with clause 6 to be payable by telegraphic transfer to London; chartereres' application for exchange control; approval for such telegraphic transfer to be filed with bank by the due date."

By a sixth addendum dated the 5th September, 1955, the payment of hire was made payable in cash in London or Honkong.

It is alleged that sometime in December, 1955, the vessel was sold by the owners to Messrs. Pan Norse Steamship Co. of Panama. The petitioner however has not produced sufficient evidence of the transfer before the Income-tax authorities and this application has proceeded on the footing that the original charterparty agreement is in force.

The petitioner has been paying the owners in terms of the charterparty agreement, at London. During the relevant period it has also made disburse-

ments in terms of clause 14 of the charter by advancing funds by way of disbursements on the vessel's account. The particulars of disbursements are contained in a statement furnished by the petitioner itself to the Income-tax Officer and a copy thereof is to be found at pages 48-49 fo the annexure to the petition (annexure exhibit 'E'). Upon receipt of the statement, the Income-tax Officer wrote to the petitioner company that it was apparent that Rs. 52,109 and Rs. 69,678 were constructively received in India by the non-resident owner of the above-mentioned vessel during 1954-55 and 1955-56 respectively. It was stated that the petitioner should have, before making the payment, deducted and paid tax under section 18(3B) of the Indian Income-tax Act and that, as it had not done so, it was liable for payment of such taxes under section 18(7) of the Income-tax Act. The petitioner was therefore called upon to make payment of such taxes. The petitioner protested against the payment of taxes, but had ultimately to pay the same under protest. It is said that this was done because the ship could not be moved from port without such payment.

The point that arises for determination is in a very short compass. It is admitted that moneys have been paid under clause 14 by the petitioner in India, and they have been deducted from hire. The amount also is not in dispute. Mr. Mitra appearing on behalf of the petitioner argues that section 18(3B) has no application to the facts of this case and no tax is payable by the petitioner. He argues that the hire which is payable to the owner, is payable in London, and, therefore, is not liable to Indian Income-tax Act. In fact, as he points out, the income-tax authorities have not sought to impose any tax on the hire as such. He then proceeds to argue that the amounts that have been advanced in terms of clause 14 are loans made to the owner at interest at the rate of 6 per cent. per annum, and loans cannot be treated as income. He says that even assuming that it becomes income when it is deducted from hire, it must be deemed to be income which has arisen in London, the stipulated venue of payment. Next he argues that on the facts and circumstances of this case, it does not follow that the amount that has been so advanced, even when it becomes hire, becomes the income of the non-resident foreigner, because income has to be determined after taking into account the disbursements, etc., that is to say, before one can tax the income, it will have to be determined not on the gross hire but on the nett amount available to the owner after deducting the outgoings.

The relevant provisions of section 18 (3B) are as follows:

"Any person responsible for paying to a person not resident in the territories any interest not being 'interest on securities' or any other sum chargeable under the provisions of this Act shall, at the time of payment, unless he is himself liable to pay any income-tax and supertax thereon as an agent deduct income-tax at the maximum rate and super-tax at the rate applicable to a company or in accordance with the provisions of sub-clause (b) of sub-section (1) of section 17, as the case may be . . ."

The whole question is whether the amounts advanced under clause 14, and then deducted from the hire are chargeable under the provisions of this Act. I have already indicated that Mr. Mitter bases his argument on the fact that the advance was by way of loan bearing 6 per cent. interest. There can be no doubt that so far as the loan is considered by itself, it cannot be considered as income, nor has it been argued that it is so. But the matter does not rest there. If the payment remained in the nature of a loan, then there would be no question of paying income-tax thereon. But by the agreement itself, it is to be deducted from hire. According to the terms of the charterparty agreement, the hire is payable every month in advance. It is obvious that at the point of time, when the advance is made, no hire has actually become payable and, therefore, it is a payment in advance towards

hire. The petitioner would be entitled to deduct it from hire which will be payable in advance at the commencement of the next month of hire.

Mr. Pal appearing on behalf of the respondent has pointed out that while it is true that the charterparty contract does lay down the venue of payment of hire, which in the first instance was Calcutta and then London, it also lays down how advances were to be made for local disbursements, and further provides that such advances are to be treated as hire. Therefore, it is contemplated by the agreement itself that part of the hire shall be payable, or might become payable in accordance with clause 14. I have already indicated that so far as Mr. Mitra's argument is concerned, namely, that a loan as such is not chargeable to income-tax, there can be no difficulty. I think however that to determine the application of section 18 (3B) simply by treating the payment as a loan would be an over-simplification of the issue. It is not as if a loan is made and then the parties agree to treat it as hire, apart from the charterparty agreement. The charterparty agreement has to be considered as a whole. It lays down how and where the hire is to be paid, and it also lays down that advances would have to be made under clause 14 and such advances would be deductible as hire. The provisions of the charterparty agreement must be taken as a whole, and considered from this point of view, it appears to me to contemplate that part of the hire would be payable in places other than London, that is to say, payable where money would be required for local disbursement. It has been held that the expression "constructive payment" is not a happy one. Either a payment is made, or it is not made, and where it is made in a particular place, it is incorrect to consider it as being made somewhere else constructively. In this particular case, payment has been made under clause 14, of the sums in question, in Calcutta. The charterparty agreement contemplates that such payment shall be deemed as payment of hire. It is impossible to hold that the payments were made elsewhere than in Calcutta. Is is argued that the mere advance of the money will not do, because the petitioner would have to adjust its books and debit the hire to the owners. Now, so far as that operation is concerned, there can be no doubt that it happened in Calcutta. What is then argued is that if it is a constructive payment of hire, the hire being payable under the contract in London, the constructive payment must be deemed to be in London. I am unable to accept this argument. It is true that the hire was agreed to be paid in London. But it was also agreed that part of the hire might have to be made in a place other than London, by way of making advances for defraying local disbursements. It is impossible to deem the payment as having been made in London, where in fact it has never been made. The payments have been made in Calcutta, and when made, the parties had agreed to treat it as payments of hire. It is, therefore, a payment of hire in terms of the contract by the petitioner to the owners, in Calcutta.

Reference has been made by Mr. Mitra to a number of cases which have dealt with the question of the venue of payment. They are, in my opinion, of not much use in deciding this case. The cases cited have depended on their own facts, and the decisions also are not uniform. The first case cited is *Trinidad Lake Asphalt Operating Co. Ltd.* v. *Trinidad and Tobago Income-tax Commissioner*.

The facts in that case were shortly as follows:

The Barber Asphalt Corporation of New Yersey, U.S.A., were the holders of 499,992 shares out of 500,000 shares in the Trinidad Lake Asphalt Operating Co. Ltd. In a particular year, a dividend of over a million dollars was declared. On that date, the Barber Co. owed to the Trinidad Co. a sum of over a millon dollars for asphalt purchased by it. A resolution was passed whereby the dividend payable to the Barber and Co. was adjusted by cancellation of the liabilities of the Barber and Co. for a like amount. Barber and Co. was, of

course, at all material times a non-resident of the colony. It carried on business at its head office in Barber, New Yersey, United States. The transaction was carried out by each party making corresponding entries in its books. Under a Trinidad Ordinance, any person who "transmitted" any monies from Trinidad was liable for payment of tax. The question was whether the amount of dividend would be taken to have been transmitted by the Trinidad Co. to Barber and Co. to New York. Lord Wright considered the facts and the law and held that the transaction did amount to a transmission. The learned Judge further held that the amount was to be deemed to have been transmitted to New York. This decision was doubted in the House of Lords case. *Commissioners of Inland Revenue* v. *Gordon*. Lord Cohen pointed out that in the Trinidad case, payment could be certainly deemed to be a transmission, but he did not agree that it was a transmission to New York. In *Gordon's* case, it appears that he was a partner in a firm carrying on business in Ceylon. He had an account with the Colombo branch of a bank which had its head office in London. He came to the United Kingdom in 1940 and opened an account at the head office of his bank in London. By arrangement he was allowed to overdraw his account, the overdrafts being transferred to the Colombo branch whenever is reached £500. At the Colombo branch, they were converted into rupees and satisfied by periodic payment into the Colombo account from the respondent's firm, representing his share of the business profits. It was held that there was no remittance of income from foreign possession to the United Kingdom and accordingly there was no liability to tax. Another case that was cited was *Nielsen, Anderson and Co.* v. *Collins Muller*. There again, on the facts of that case, it was held that the Danish company would be assessable to income-tax in the name of certain agents, in respect of the profits resulting from cargoes shipped from England through the agents. A decision of the Supreme Court was also cited: *Keshav Mills Ltd.* v. *Commissioner of Income-tax, Bombay*. In that case, a non-resident company manufactured textile goods in Petlad in Baroda State, and sold the goods ex-mills. The firm R and Co. carrying on business within British India, guaranteed the sale price of goods sold by the company ex-mill, to purchasers at Ahmedabad within British India. The company debited R and Co. with the price of goods sold and credited the sales account with the amount of the bills. R and Co. collected the amounts of the bills from the purchasers on behalf of the company and credited the sums realised in the company's account with banks at Ahmedabad and also disbursed them to creditors of the company in British India. These payments were credited by the company to R and Co. The question was whether certain sums so adjusted, were sale proceeds of the goods sold by the assessees to merchants in British India and whether they were received in British India and could be included in the assessable income of the company in British India. It was held that they were neither received by the company nor could be deemed to have been received by it, when the entries were made in the books of account at Petland outside British India, but had merely accrued or arisen to it there, and that they were first received by R and Co. and by the banks through whom the railway receipts were negotiated on behalf of the company in British India, and that they were therefore liable to tax under section 4(1) (a) of the Indian Income-tax Act, as having been received in British India on its behalf.

It will thus be seen that the decisions in the cases cited above, turn on their own facts. It appears however that mere adjustment of entries in a book does not necessarily decide the question. If no actual payments were made within the taxing territory, then the tendency is not to treat it as an income accrued within the taxing territory. On the other hand, when such payments have been made within the taxing territory, then the tendency is to treat it as made where it was made, and not by notionally treating it as being made

where the books were adjusted or where it should have been made. So far as the *Trinidad Asphalt* case is concerned, it really turned on the particular wordings of the Trinidad Ordinance, and the question was whether it could be said to have been "transmitted" according to the words used in the Ordinance. In this particular case, we are concerned with the question as to whether the amount in dispute is chargeable to Indian income-tax. That depends on the question as to whether the income arose within the taxing territory. In my opinion, it did so. The actual payment was made in the territories of India and it cannot be notionally considered to be made anywhere else. Not only has it been made in India, but it was contemplated by the charterparty agreement that it should be so made. Thus, there is no injustice in enforcing the provision of section 18(3B) of the Indian Income-tax Act. Of course, this might give rise to certain practical difficulties. It was pointed out by Mr. Mitter that if advances are made to masters of ships, then how could tax be deducted therefrom? In other words, he says that if a master of a ship requires Rs. 10,000 for urgent repairs, it would not do to advance the said sum, less the tax due thereon. There is considerable force in what he says, but then, the difficulty of book-keeping cannot avoid the liability. One way of doing it would be to adjust the payment of hire by including the tax payable, that is to say, adding the same to the advance made under clause 14, and treating the hire deducted as including the taxes paid. Then, again, there is section 18(3C) in the Act, which provides that where a person responsible for paying, be in doubt, then he could make an application for determination of the liability. The petitioner could have made such an application and safeguarded itself.

The next point to be dealt with is the point made by Mr. Mitter that the amount advanced should not be considered as an income, without final adjustments of the credits and debits. This is a very vexed question, and the matter has been elaborately dealt with in the case of *Turner Morrison and Co. Ltd.* v. *Commissioner of Income-tax, West Bengal.* I have also referred to this point in the *Anglo-Indian Jute Mills Co. Ltd.* v. *S. K. Dutt.* In *Turner Morrison's* case Mr. Mitra had himself advanced the very same argument before the Supreme Court but Das, J., (as he then was), did not accept the argument, holding that the income, profit or gain was lying dormant, or hidden, or otherwise embedded, in the gross income. It is easy to see that if in every case the taxing authorities have to wait until the net profit has been determined, then it would be extremely difficult to make the provision of section 18 (3B) applicable. In *Nielsen, Anderson and Co.* v. *Collins,* Lord Hanworth, M. R., has dealt with this aspect of the matter at pages 115 and 116. He said as follows:

"It is said that the meaning of these words 'receipt of any profits or gains arising as herein mentioned' must indicate the net profits or gains on which the tax would actually be imposed, and does not include gross profits or gains which on examination and when proper deductions have been made fade away and leave nothing upon which the tax itself can be payable. But I do not think that is the right interpretation to be put upon these words. I think it is made plain by what was said by Lord Justice Fry, as affirmed in the case of *Grainger* v. *Gough,* that the meaning of these words 'factor or agent having the receipt of any profits or gains' is gross profits or gains in which there may be wrapped up some net profits or gains ultimately to be found chargeable to income tax . . . ."

"Now, holding that view of section 41, it appears that both these agents can be assessed, because upon the very statement of the case they do receive sums in the way of freight which will include, may include, or probably do include profits or gains in respect of their business of ship owners . . . ."

It will thus be seen that the consensus of opinion does not exempt the

petitioner from liability of deducting the Indian income-tax, simply on the ground that the net income of the owner cannot be determined until an account is taken of the entire disbursement. At the moment of payment, the income-tax must be deducted in terms of section 18(3B) and the relative sections of the Indian Income-tax Act. It is not necessary for me to indicate how this will ultimately be adjusted between the petitioner and the owner.

In my opinion, therefore, the income-tax authorities have rightly taken steps under section 18(3B) of he Indian Income-tax Act, and the petitioner has not been able to satisfy me that any interference is called for. That being so, this application must fail. The rule must be discharged but there will be no order as to costs.

Rule discharged.

Source: *The Income Tax Reports*, 9th June 1958.

THE TAX CONVENTIONS BETWEEN THE UNITED STATES AND ITALY

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IV

REVIEWS — COMPTES RENDUS

AUSTRALIA

Thirty-sixth Report of the Commissioner of Taxation.

Published for the Government of the Commonwealth of Australia by A. J. Arthur, Commonwealth Government Printer, Canberra, 1958, 361 pp.

This Report reviews the workings of the various Taxation Acts up to the 30th June, 1958. The statistics published in the text of the Report refer mainly to collections in the financial year 1955-56.

AUSTRIA

Bundesministerium für Finanzen. Die öffentlichen Abgaben in Österreich. Stand vom 1. Jänner 1957. Wien 1957.

Dieses Werk bietet uns eine Übersicht und eine knappe Darlegung des gesamten österreichischen Steuerrechts. Es werden nicht nur die Steuern behandelt, sondern auch die Gebühren, Verwaltungsabgaben und Beiträge, wobei auch die Kammerumlagen (Handelskammer, Landwirtschaftskammer u.s.w.) berücksichtigt wurden. Groszenteils sind es alte und neue österreichische Gesetzesvorschriften, einige deutsche sind noch wirksam. Neu sind die Steuern auf den Rechtsverkehr und einige besondere Abgaben. Die Gliederung ist systematisch; mit einem alphabetischen Register der vielen behandelten Abgaben wird das Werk abgeschlossen.

Dr. ERNST STRACK: *Das Umsatzsteuerrecht in Theorie und Praxis. 4 Nachtrag,* Juni 1958 Wirtschaftsverlag Dr. Anton Orac, Graben 17, Wien I.

Eine Besprechung dieses Werkes wurde in „Bulletin" Bd.XII S. 97 veröffentlicht. Der 4. Nachtrag bringt jetzt Blätter zum auswechseln, aufzukleben Hinweismarken und einige handschriftlich vorzunehmen Berichtigungen.

HANS MUSGER und FRIEDRICH SCHULZ: *Das neue Einkommensteuerrecht.* Buchdruckerei und Verlag Hermann Schmerzeck & Co., Herzog-Ernst-Gasse 1, Bruck a.d. Mur.

Ziel und Aufbau dieses Werkes wurden in der Besprechung in „Bulletin" BD.XI S. 122 gewürdigt. Seitdenn sind verschiedene *Ergänzungslieferungen* erschienen.

Die *VI. Lieferung* brachte das neue Einkommensteuerrecht auf den Stand von Mai 1957 und die *VII Lieferung* brachte diese Ausgabe auf den Stand von Januar 1958.

Die *VIII Lieferung* bringt jetzt das Werk durch Berücksichtigung der zwischenzeitig herausgekommenen einschlägigen BMfF-Erlässe und VwGH-Erkenntnisse auf den Stand vom August 1958. Der Lieferung sind auch das Inhaltverzeichnis hinsichtlich der Gesetze, Erlässe und VwGH-Erkenntnisse sowie das Sachregister für die VII. und VIII. Ergänzungslieferung angeschlossen.

Dr. RUDOLD REINHARD: *Das neue Grundsteuerrecht.* Schriftenreihe der „Österreichischen Steuer- und Wirtschaftskartei" Nr. 8, Herausgeber: Dr. Erns Fritsch. Industrieverlag Peter Linde, Dominikanerbastei 10, Wien I, 1958, 78 S.

Mit diesem Buch wird eine Lücke in der Fachliteratur gefüllt. Der Verfasser hat das neue Grundsteuergesetz nicht nur allgemeinverständlich erläutert, sondern auch alle Vorschriften, die bei der Bemessung und Einhebung der Grundsteuer eine wichtige Rolle spielen (Abgabenordnung, Abgabeneinhebungsgesetz, Abgabenrechtsmittelgesetz, Steueranpassungsgesetz, Finanzausgleichsgesetz, Grundsteuereinhebungsgesetz usw.) mit eingebaut. Wo es für das Verständnis der Grundsteuer notwendig war, wurden auch die Bestimmungen des Bewertungsgesetzes mit einbezogen.

BELGIUM

L. Brismee et G. Wilmotte: *Les Taxes sur les transmissions commerciales.* 281 Avenue de Roodebeek, Schaerbeek.

In "Bulletin" Vol. XII p. 97 a review of these loose-leaf volumes on the Belgian Sales Tax was published. *Supplement nr. 5* has appeared. It contains 19 new pages to be exchanged.

Recueil des lois fiscales sous la surveillance de F. Amerijckx. Union Belge des Conseillers Fiscaux, Secrétariat: A. van der Leest, Avenue des Pagodes 343, Bruxelles.

In "Bulletin" Vol. XII p. 32 we published a review of this loose-leaf work on Belgian taxation and pointed out its merits. Several supplements have appeared since then containing reprints of the coordinated income tax Acts, the Code of registration duties, hypotheek- en griffierechten, the Code of stampduties, the Code of Succession Duties.

Yearbook of International Organizations. Annuaire des Organisations Internationales. 1958-59. 7th edition. Published in official collaboration with the United Nations. Union of International Associations, Palais d'Egmont, Brussels, 1958, 1269 pp.

The Yearbook is published by the Union of International Associations, Brussels, with the official collaboration of the Secretariat of the United Nations. It describes in detail, in a standardized presentation, all intergovernmental and non governmental international organizations now in activity, that is to say approximately 1,200 bodies.

The entry for each organization gives its name, addresses, regional secretariats, representatives at the United Nations in New York and Geneva, history, aims, members, structure, staff, working languages, name and nationality of officers, budget, consultative or organic relations with other international organizations, activities (including congresses, past and future) and publications.

Jurisprudence Fiscale et Sociale. Documentation juridique et Fiscale A. van der Leest, 343, Avenue des Pagodes, Bruxelles II.

Les *suppléments 8-12* consistent de 60 fiches numerotées de 87 à 146.

Victor Pauwels: *Le nouveau Code des Impôts sur les Revenus.* Les Editons Excelsior, Bvd. de Smet de Naeyerlaan 255, Bruxelles.

Les *suppléments 1958 nos. 1 à 4* ont paru contenant des modifications qui mettent à jour ce livre, un compte rendu duquel a été publié dans le Bulletin Tome XII, p. 33.

BENELUX

Benelux Douanetarief 1959. N. Samsom n.v., Alphen aan de Rijn, 1958, 256 pp.

On January 1st, 1959, a new tariff of import duties for the Benelux countries will come into force. The description of the items of this new tariff

will be drawn up according to the nomenclature as drawn up in the conferences of Brussels. In this brochure the nomenclature has been developed, as it will be applied by the Benelux countries.

BRAZIL

TITO REZENDE e CASTRO VIANA, Junior: *Novo Regulamento do Impôsto de Renda.* (2. a edição - Decreto 40.702, de 31-12-56) Vol. XXVIII da Biblioteca da Revista Fiscal e de Legislação de Fazenda, Av. Graça Aranha, 19-10°, andar-Grupo 1004, Rio de Janeiro, 1957, 264 pp.

This is a one-volume condensation of Impôsto de Renda, the Brazilian Income Tax. It contains many explanatory notes and case law on important questions. Many examples and an alphabetical index facilitate the use of the book.

TITO REZENDE e CASTRO VIANA JÙNIOR: *Consolidação das Leis do Impôsto de Renda.* Tomo I - II. Vol. XXIX da Biblioteca da ,,Revista Fiscal e de Legislação de Fazenda'', Av. Graça Aranha, 19-10°. andar - Grupo 1004, Rio de Janeiro, 1955, 572 pp.

These volumes contain the Brazilian Income Tax Act (Decreto no. 36.773, of 13 January 1955) with annotations per article, numerous examples and all the case law of the period 1952-1954, as well as the most important cases of previous years. The extensive alphabetical index is of much assistance for readers to find their way.

Revista Fiscal e de Legislação de Fazenda. Avenida Graça Aranha, 19-10-Grupo 1004. Rio de Janeiro.

This is a bi-monthly publication edited by *Tito Rezende* in which statutes, articles, decisions, and rulings in the field of taxation are currently reproduced. 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, numbered consecutively for each year.

CANADA

GWYNETH MCGREGOR: *Business deductions under the income tax.* Canadian Tax Papers No. 13. Canadian Tax Foundation, 154 University Avenue, Toronto 1, Ontario, 1958, 35 pp.

The present study is an attempt to set out some of the background of theory, statute law and jurisprudence that is essential for an understanding of the issues at stake. It provides a basis for an intelligent consideration of the problem.

Canadian Fiscal Facts. Principal statistics of Canadian Public Finance. *1958 Supplement.* Canadian Tax Foundation, 154 University Avenue, Toronto, 1958, 29 pp.

In 1957 the first edition of Canadian Fiscal Facts made its appearance and a review of it was published in *Bulletin* Vol. XI, p. 124. In this *1958 supplement* recent data are given for the tables in the original edition and in the frequent instances where several of the later years have been revised, all the new material has been supplied. The new information is that available up to September, 1958.

JOHN G. MCDONALD: *Canadian Income Tax. Tenth and eleventh (cumulative) supplements.* Butterworth & Co. (Canada) Ltd., 1367 Danforth Avenue, Toronto, 1958.

A review of this loose-leaf work on Canadian Income Tax was published in Bull. Vol. XI, p. 23. The present *supplements* incorporate all current amendments to the statute law and bring the case law up to date to September 30, 1958. Moreover Chapter V, Income from natural resources has been revised and rewritten. It now states the law as on October 1, 1958. Further supplements will be cumulative and will replace those which preceded them.

EUROPE

ASSEMBLÉE PARLEMENTAIRE EUROPÉENNE: *Le Marché Commun.* Bibliografie. Vol. 2. Division Etudes, Information et Documentation, Luxembourg, 1958, 217 pp.

Le tome 2 cite, dans l'ordre alphabétique, les ouvrages, les monographies, les articles de revues et de périodiques, publiés depuis la signature des Traités de Rome (25 mars 1957) jusqu'à leur entrée en vigueur (1er janvier 1958). Le tome 1 a été publié en décembre 1957.

Verdrag tot oprichting van de Europese Economische Gemeenschap. (Euromarkt) Edited by Dr. G. H. J. Abeln. a.o. AE. E. Kluwer, Deventer. *Release no. II.*

A review of this loose-leaf work on the European market was published in Bull. XII p. 269. This *Release no. II* contains a new title page, a reprint of the introduction and two pages for replacement.

De Euromarkt in de praktijk. (The European market in practice). EDITED BY DRS. TH. C. HIJZEN o.a. N. Samson N.V. Alphen aan den Rijn. *Supplements 1-7.*

A review of the first supplement to this loose-leaf book on the European market was published in Bull. XII p. 271. *Supplement no. 2* consists of a time table indicating the dates on which various measures have to be carried out. *Supplements 3* contains the combined tariffs and a list of literature on the European market. *Supplements 4 and 5* bring to subscribers new tabcards, the Euratom treaty with annexes and pages on social security. *Supplements 6 and 7* contain combined tariffs and pages for the department on agriculture.

Der Gemeinsame Markt. Experten-Vorträge der Wirtschafts-Konferenz von Königswinter einberufen von der Europa-Union am 22. und 23. März 1957. Europa-Union, Stockenstr. 1-5, Bonn, 1957, 126 pp.

Dieses Werk enthält ua. die folgende Aufsätze: Inhalt des Vertrages über den Gemeinsamen Markt, Annäherung der Rechtssysteme für den Gemeinsamen Markt, insbesondere auf dem Gebiet der Wirtschafts-, Finanz- und Steuerpolitik, Finanzielle Probleme des Gemeinsamen Marktes, Die Angleichung der sozialen Lasten im Rahmen des Gemeinsamen Marktes.

Zone de libre-échange. Bibliografie, Vol. 1. Assemblée Parlementaire Européenne, Division Etudes, Information et Documentation, Luxembourg, 1958, 173 pp.

Poursuivant l'édition de bibliographies consacrées à l'intégration économique européenne, la Division Etudes, Information et Documentation du Sécretariat de l'Assemblée Parlementaire Européenne présente le tome 1er d'une bibliographie traitant de la «Zone européenne de libre-échange». Cette publication suit et complète la bibliotraphie «Le marché commun».

FEDERATION OF RHODESIA AND NYASALAND

A. S. SILKE: *The 1958 Income Tax Legislation in the Federation of Rhodesia and Nyasaland.* Juta & Co., P.O. Box 30, Cape Town, 1958, 25 pp.

The Income Tax Amendment Acts passed by the Federal Assembly of the Federation of Rhodesia and Nyasaland in 1958 have brought about some important changes in the Income Tax Act, 1954, particularly in regard to the trafficking in assessed losses of companies and the liability to undistributed profits tax in respect of dividends from foreign sources accruing to Federal companies. The effect of the new legislation is discussed in this booklet. The text of the 1958 legislation has been included. A review of the main work: *Income tax in the Central African Federation* by A. S. Silke, was published in Bulletin Vol. V, p. 112/113.

FRANCE

LOUIS TROTABAS et JEAN CÉRÈZE: *L'imposition forfaitaire des bénéfices industriels et commerciaux*. Librairie Générale de Droit et de Jurisprudence, 20 rue Soufflot, Paris, 1958, 226 pp.

"La fiscalité est une science paradoxale". The "Avant propos" opens with these words. The layman uses the material with ease while the theoretician doubts more as he increases his knowledge of the mertial! Still a synthesis is possible. Although only the taxation of small and medium enterprises is investigated, the problem is a general one: taxation according to a controlled declaration or according to data from outside. («par la voie de parfait»). After the indroduction the taxation of industrial and commercial profits is treated in the first chapter. The second and the third chapters are about different methods of estimation of profits: After the conclusion a number of appendices has been added. In the conclusion it is said that this study is "un compte rendu, un bilan".

Documentation Pratique des Taxes sur le Chiffre d'Affaires, et des Contributions Indirectes. Publiées par Les Publications Francis Lefebvre, 15, rue Viète, Paris (17e).

Les Supplements 1957 no. 3 - 1958 no. 3 ont paru.

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

The *second supplement of 1958* to this practical handbook has appeared. A review of this loose-leaf work was published in "Bulletin" Vol. XII, p. 36.

Juris-Classeurs, Droit Fiscal, Impôts directs. Editions Techniques, 18 rue Séguier, Paris (6e).

La mise au courant qui fait l'objet de la livraison 1958, no. 20 couvre une période de législation s'étendant du 19 janvier au 20 avril 1958 et correspond à une période de publication du bulletin «Droit fiscal» comprenant les numéros 5 à 17 inclus de 1958. Les études consacrées dans le traité au droit fiscal international sont complétées par une série de fascicules dans lesquels est étudié le droit fiscal international français en l'absence de conventions sous ses aspects généraux et particuliers. L'institution d'un versement sur les réserves en 1958 a donné la matière d'un fascicule qui, fait la synthèse complète et détaillée des règles et des solutions applicables aux deux versements de 1957 et 1958.

Juris-Classeurs, Droit Fiscal, Chiffre d'affaires. Editions Techniques, 18 rue Séguier, Paris (6e).

La mise au courant qui fait l'objet de la livraison 1958 no. 22 contient un fascicule consacré aux aspects internationaux du droit fiscal français en l'absence de conventions et qui introduit dans le traité des taxes sur le chiffre d'affaires un élément nouveau. Un autre fascicule est constitué par un tableau alphabétique des produits agricoles indiquant d'une façon précise et complète la situation de ces produits au regard des taxes sur le chiffre d'affaires.

La contribution des patentes. Association Nationale des Sociétés par Actions, 15, Place Malesherbes, Paris (XVIIe), 1958, 192 pp.

Le nouveau régime de patentes est entré en vigueur le 1er janvier 1957, dans l'ensemble du territoire métropolitain. La réforme se caractérise essentiellement par une meilleure adaption des droits aux conditions actuelles de fonctionnement des entreprises et par un rétablissement partiel de l'équilibre, qui existait à l'origine de la patente entre le droit fixe et le droit proportionnel. Tel est l'objet de la présente brochure.

JEAN MICHEL†: *Tarif fiscal*. 23e édition à jour au 1er Novembre 1958. Association Nationale des Sociétés par Actions, 15, Place Malesherbes, Paris-17e.

Il s'agit d'une édition des impôts de la France sur une feuille pliée: Taxe proportionnelle, surtaxe progressive, impôt sur les sociétés, T.C.A., timbre, enregistrement, successions et donations, revenus des capitaux mobiliers.

Mémento pratique du contribuable. A jour au 15 août 1958. Mode de calcul en 1958 des Publications Francis Lefebvre, 15, Rue Viète, Paris-17e, 1958, 893 pp.

Comme les années précédentes, les quatre premières parties du memento sont consacrées respectivement aux impôts directs, aux taxes sur le chiffre d'affaires, aux impôts directs et aux droits d'enregistrement. Une cinquième partie est réservée à l'exposé de certaines grandes questions de Securité sociale et de Législation du travail. Le présent «Mode de calcul» tient compte de tous les textes intervenus jusqu'au 15 août 1958.

ALGERIA

LOUIS BROET et YVES LAYE: *Tarif fiscal algérien*. Cinquième édition à jour au 15 juillet 1958. Association Nationale des Sociétés par Actions, Section Algérienne, 4-6, Boulevard Saint-Saëns, Alger.

Ce guide pratique contient le tarif fiscal algérien des impôts sur les capitaux mobiliers, des impôts sur les revenus, des droits de timbre, des droits de l'enregistrement, des droits de donations et de successions et des taxes diverses.

GERMANY

Dr. WILHELM HARTZ und JOSEF OVER: *A B C - Führer Lohnsteuer*. Fachverlag für Wirtschafts- und Steuerrecht Schäffer & Co., Hackländerstr. 33, Stuttgart O.

Die Lieferung 25 dient vornehmlich der Anpassung an den Rechtsstand, der durch das Änderungsgesetz vom 18. Juli 1958 geschaffen wurde und insbesondere durch die Begriffe Neuregelung der Ehegattenbesteuerung, Splittingverfahren und Reformtarif gekennzeichnet ist. Die Bezieher werden durch einen Sonderanhang über die Anordnungen unterrichtet, die zur Anwendung der neuen Vorschriften beim Steuerabzug vom Arbeitslohn ab 1. September 1958 und hinsichtlich der Lohnsteuerkarten für das Kalenderjahr 1959 ergehen. Enthalten ist ausserdem noch Anhang 1, der die lohnsteuerlichen Vorschriften des Einkommensteuergesetzes in der neuen Fassung wiedergibt.

Die Lieferung 26 vom November 1958 enthält die neuen Lohnsteuer-Richtlinien in der Fassung vom 23. September 1958 mit einem Umfang von 140 Seiten, die Anpassung der Stichworte „Abfindungen", „Arbeitslohn" und „Aussergewöhnliche Belastungen" an die neue Rechtslage.

Weiter enthält diese Lieferung im Sonderanhang die Ausführungen über nicht ausgeschöpfte Teile der Freibeträge und des Pauschalbetrags für Sonder-

ausgaben bei Ehegatten, die beide in einem Dienstverhältnis stehen und daher ab 1. September 1958 in die Steuerklasse IV übergeleitet worden sind, sowie die Anordnungen der Finanzbehörden der Länder wie die Arbeitgeber bei der Durchführung des Lohnsteuer-Jahresausgleiches 1958 verfahren können.

Steuergesetze. Textsammlung mit Verweisungen und Sachverzeichnis. 2. *Ergänzungslieferung* (3. Grundlieferung) zur Neuausgabe. November 1958. 958 Seiten. In Schlaufe DM 6.40 *Gesamtwerk* (Vollständige Neuausgabe) 14. Auflage Stand: 30. November 1958, 1620 Seiten. In Leinenordner DM 25.— Verlag C. H. Beck, München und Berlin.

Mit dieser Ergänzungslieferung ist die Umstellung auf das grosse Format abgeschlossen. Im neuen Band ist nunmehr alles zu finden, was im alten, kleinen Ordner enthalten war, mit Ausnahme solcher Titel, die nur für zurückliegende Zeiträume noch Geltung und Bedeutung besitzen. Ein erheblicher Teil der Ergänzungslieferung enthält Austauschblätter mit Textänderungen gegenüber dem letzten Stand vom 15.9.1958. 132 Seiten stark ist der Anteil der Jahreslohnsteuertabelle 1958, die als Anlage zu der VO vom 21. November 1958 bekanntgemacht wurde.

Dr J. Esser: *Die Gliederung der Gewinn- und Verlustrechnung in internationaler Sicht.* Heft 56. Institut „Finanzen und Steuern". Markt 14, Bonn am Rhein, 1958, 131 S.

Dieses Heft enthält eine von Herrn Dr. J. Esser, Duisburg, erarbeitete Zusammenstellung der wichtigsten Vorschläge für die Ausgestaltung der Gewinn- und Verlustrechnung und die hiermit verbundene vergleichende Darstellung der kaufmännischen Übung in anderen Ländern.

Hubschmann-Hepp-Spitaler: *A-O Kommentar.* 1. - 3. Auflage. *Lieferung 28* (Aug. 1958). Verlag Dr. O. Schmidt, Köln.

Diese Lieferung enthält die Erläuterungen von *Prof. Dr. Spitaler* zu den §§ 170-174 AO. Im übrigen werden in dieser Lieferung bereits vorhandene Erläuterungen, insbesondere zum Steuerstrafrecht, auf den neuesten Stand gebracht.

Carl Herrmann, Dr. Ferhard Heuer, Dr. Arnold Heining und Otto von Schilling: *Kommentar zur Einkommensteuer einschl. Lohnsteuer und Körperschaftsteuer.* 7. Auflage. Verlag Dr. O. Schmidt, Köln.

Die *Lieferung 37* (Sept. 1958) liegt eine weitere Einbanddecke bei, die die Texte und Register aufnehmen soll und deshalb eine neue Aufteilung der Bände erforderlich macht. Diese Lieferung enthält ein völlig neubearbeitetes Sachregister und die überarbeiteten Erläuterungen zu §§ 9 und 33 EinkStG.

Die *Lieferung 38,* Dez. 1958 bringt die 8. Auflage des Werkes. Sie berücksichtigt die infolge der StReform 1958 eingetretenen Änderungen unter gleichzeitiger Überarbeitung der Erläuterungen zu den betreffenden Vorschriften. Das Urteilsregister wurde auf den neuesten Stand gebracht. Dieser Lieferung ist der Text des EinkStG 1958 und der EinkStDVO 1956/57 beigefügt worden.

Dr. Rudolf Korn und Dr. Georg Dietz: *Doppelbesteuerung.* Sammlung der zwischen der Bundesrepublik Deutschland und dem Ausland bestehenden Abkommen über die Vermeidung der Doppelbesteuerung mit den hierzu anwendbaren inlandischen Gesetzesvorschriften. Mit einer systematischen Einführung and ausführlichen Erläuterung. *3. Ergänzungslieferung,* Juni 1957; *4. Ergänzunglieferung* Juli 1958. C. H. Beck'sche Verlagsbuchhandlung, Wilhelmstrasse 9, München 23.

Eine Besprechung dieser übersichtliche und für den Praktiker nützliche

Sammlung wurde in „Bulletin" Bd.XI, S.222 veröffentlicht. Die *3. Ergänzungslieferung* umfasst das Doppelbesteuerungsabkommen mit Kanada vom 4.6.56, die deutschen Richtlinien vom 21.2.57 zum Abkommen mit den USA, das Abkommen mit Schweden zum Lastenausgleich, sowie Ergänzungen und Überarbeitungen in den Vorbemerkungen. wie in Abkommen mit einzelnen Ländern. *Die 4. Ergänzungslieferung* umfasst das deutsch-schweizerische Zusatzprotokoll vom 6. 7. 1956 zum Lastenausgleich, das deutsch-schweizerische Zusatzprotokoll vom 9.9.1957 über Änderungen und Neufassung des Abkommens vom 15.7.1937 über die direkten Steuern und Erbschaftsteuern (noch nicht ratifiziert), Ergänzungen der Vorbemerkungen (insbesondere zur Steueranrechnung nach §§ 34c EStG 1957 und 68a - 68g EStDV 1957), Ergänzungen und Überarbeitungen in einzelnen bestehenden Abkommen.

Für die weiteren Lieferungen sind die in Vorbereitung befindlichen neuen Abkommen mit den Niederlanden, Indien, Luxemburg, der Südafrikanischen Union und die Neufassung des deutsch-schweizerischen Abkommen von 1931 nach dem Zusatzprotokoll vom 9.9.57 zu erwarten.

Reichsabgabenordnung. Steueranpassungsgesetz, Finanzverwaltungsgesetz, Nebengesetze. Erläutert von Dr. Rolf Kühn. Fünfte (ergänzte) Auflage. Fachverlag für Wirtschafts- und Steuerrecht, Hackländerstrasse 33, Stuttgart-O, 1958, 825 S.

Der Kommentar zur Abgabenordnung von Kühn hat sich unter den Erläuterungswerken zum Allgemeinen Steuerrecht einen festen Platz im Steuerschrifttum errungen. Die besonderen Vorzüge des Kühn'schen Kommentars bestehen einmal in der ausgewogenen Objektivität der vertretenen Auffassung. Zum anderen ist die Übersichtlichkeit und Prägnanz der knappen und dennoch vollständigen Erläuterungen hervorzuheben. Der Verfasser hat es verstanden, der Gefahr einer uferlosen Ausweitung der Kommentierung wirksam zu begegnen, was allerdings den Verzicht auf eine rechtswissenschaftlich vertiefte Erörterung mancher Probleme bedingte, desgleichen eine gewisse Beschränkung auf das wesentliche Schrifttum. Die jetzt vorliegende 5. (ergänzte) Auflage des Werkes berücksichtigt den Stand der Rechtsentwicklung zur Jahresmitte 1958, insbesondere die Rechtsänderungen auf dem Gebiet der Finanzgerichtsbarkeit aufgrund des sog. Vorschaltgesetzes vom 22.10.1957, die Änderungen der §§ 6 und 7 StAnpG durch das Steuerreformgesetz vom 18.7.1958 und die Neuerungen im Kostenrecht aufgrund der Gesetze vom 26.7.57, ferner die seit der letzten Auflage vom September 1956 ergangene wesentliche Rechtsprechung der Finanzgerichte und des Bundesfinanzhofes und schliesslich eine Reihe wichtiger Ministerialerlasse. Der Aufgabe, die sich das Werk gesetzt hat, ein zuverlässiger Helfer der Steuerpraxis auf einem Rechtsgebiet zu sein, das gesetztechnisch aufgespalten und nicht leicht zugänglich und verständlich ist, wird die neue Auflage mit bestem Erfolg gerecht werden.

Dr. Dr. Ernst Heissmann: *Die betrieblichen Ruhegeldverpflichtungen*. 3. völlig neu bearbeitete und erweiterte Auflage. Verlag Dr. Otto Schmidt, Köln, 1958, 496 S.

Diese Ausgabe umreisst in einem einleitenden, gross angelegten Ausblick die Entwicklung, den Stand und die Zukunftsaufgaben der betrieblichen Altersversorgung. Sie enthält Schwerpunkte besonders eingehender Behandlung aktueller Fragen, wie: Anpassung von Ruhegeldverpflichtungen an die Rentenreform, Anrechnung der Sozialrente, Widerruf, Vorbehalte, Berücksichtigung der Fluktuation. Die 3. Auflage dieses Buches erleichtert das Verständnis und die praktische Anwendung durch zusätzliche Aufnahme weiterer Beispiele und graphischer Tafeln.

GUNTHER SCHMIDT-WEYLAND: *Das neue Ehegüterrecht.* Titz Verlag, Beckerstrasse 3, Berlin-Friedenau, 1958, 48 S.

In dieser Schrift werden die allgemein wissenswerten Vorschriften des Gleichberechtigungsgesetzes dargestellt. Hierbei ist auch auf das bisher geltende Recht eingegangen und wird insbesondere einen Überblick der früher gesetzlich geregelten Güterstände gegeben, um die Änderungen, die durch das Gleichberechtigungsgesetz eingetreten sind, leichter verständlich zu machen.

Dr. F. ROEPKE: *Deutsch-Französisches Glossarium finanzieller und wirtschaftlicher Fachausdrücke.* 2. neu bearbeitete und stark erweiterte Auflage. Fritz Knapp Verlag, Frankfurt a.M., 1955, 288 S.

Das äussere Vorbild dieses deutsch-französischen Glossars ist das in demselben Verlag erschienen „Deutsch-englische Glossarium". Das Wortmaterial wurde um eine Anzahl Ausdrücke erweitert. Es handelt sich in diesem Buch darum, deutsche Fachausdrücke und namentlich Neubildungen zu definieren und für sie eine sinngemässe, sprachlich einwandfreie und gebräuchliche Wiedergabe zu finden. Die deutsche Aufbau ist auch von französischer Seite aufmerksam beobachtet und in zahlreichen Aufsätzen der Wirtschaftspresse erläutert worden.

HELMUT NIES: *Pensionsrückstellungen und Steuerrecht.* Spezialfragen im Steuerrecht, Herausgeber Bundesrichter Dr. Wilhelm Hartz. Fachverlag für Wirtschafts- und Steuerrecht Schäffer & Co., Hackländerstr. 33, Stuttgart O, 1958, 112 S.

Der vorliegende Band gibt einen Überblick über die massgeblichen Grundsätze der betriebliche Altersversorgung und behandelt zahlreiche in der Praxis auftretende Zweifelsfragen unter Verarbeitung der neuesten Rechtsprechung, der gesetzlichen Bestimmungen und der ergangenen Verwaltungsanordnungen. Neben vielen Einzelfragen sind ausführlich behandelt: Von welchem Zeitpunkt an können steuerwirksame Rückstellungen gebildet werden? — Auswirkungen einer verdeckten Gewinnausschüttung — Anpassung an die steuerlichen Vorschriften — Auswirkungen der Rentenreform — Bestimmung der Sozialversicherungsrenten.

Dr. ANTON GLADE: *Angemessene Vergütungen an Gesellschafter — Geschäftsführer von Kapitalgesellschaften.* Eine steuerrechtsliche und betriebswirtschaftliche Untersuchung. Spezialfragen im Steuerrecht, Herausgeber Bundesrichter Dr. Wilhelm Hartz. Fachverlag für Wirtschafts- und Steuerrecht Schäffer & Co., Hackländerstr. 33, Stuttgart O, 1958, 119 S.

Hauptzweck dieser Schrift ist es, durch Darstellung aller bis in die jüngste Zeit bekannt gewordenen Grundsätze und Verfahren zur Bestimmung angemessener Vergütungen Wege aufzuweisen, um von einem drohenden Schematismus abzukommen. Eine klare und weitestgehende Gliederung gewährleistert den erforderlichen Überblick und ein schnelles Zurechtfinden. Mit dieser Schrift eröffnet sich daher für Berater, Gesellschafter und Geschäftsführer wie auch für die Finanzverwaltung eine wertvolle Fundstelle zu einer bedeutenden Einzelfrage des Steuerrechts.

Dr. jur. WILHELM HENRICHS: *Artikel 113 des Grundgesetzes.* Heft 55. Institut „Finanzen und Steuern", Markt 14, Bonn am Rhein, 1958, 136 S.

Im Einvernehmen mit dem Verfasser veröffentlicht das Institut in diesem Heft eine gekürzte Fassung der von ihm über Artikel 113 des Grundgesetzes der Rechts- und Staatswissenschaftlichen Fakultät der Universität Bonn vorgelegten Dissertation.

Dipl.-Kfm. Dr. WOLFRAM KUNTZE: *Signalwirkungen der Einkommen- und Körperschaftsteuer.* Heft 18. Finanzwissenschaftliches Forschungsinstitut an der Universität zu Köln. Duncker & Humblot, Berlin, 1958, 73 S.

Mit der vorliegende Untersuchung legt das Finanzwissenschaftliche Forschungsinstitut einen Beitrag zur Steuerwirkungslehre vor, in dem dargelegt wird, welche Bedeutung gerade auch denjenigen Wirkungen der Besteuerung zukommt, die nicht als Kaufkraftentzug, sondern als Modifikationen des menschlichen Verhaltens angesichts erwarteter oder geltender steuerlicher Bestimmungen auftreten. Die vorliegende Arbeit zeigt an einer Fülle von Beispielen und reichem Zahlenmaterial die Bedeutung dieser Signalwirkungen der Einkommen- und Körperschaftsteuer.

Dr. Peter Böhmer: *Erfüllung und Umgehung des Steuertatbestandes*. Verlachsbuchhandlung des Instituts der Wirtschaftsprüfer, Cecilienallee 36, Düsseldorf, 1958, 144 pp.

In dieser Monographie wird auf die Beurteilung von Tatbeständen nach wirtschaftlicher Betrachtungsweise und auf die Vorschriften, nach denen Versuche, Steuern durch Missbrauch von Formen und Gestaltungsmöglichkeiten bürgerlichen Rechts zu umgehen, eingegangen. Es wird dabei der Versuch unternommen, die Anwendungsbereiche der Tatbestandsbeurteilung und der Umgehungsvorschriften gegeneinander abzugrenzen.

Schnellkartei des deutschen Rechts. Verlag Dr. Otto Schmidt, Köln.

Erschienen sind in Reihe III: die *Lieferung 85* Inhalt: Einkommen-Steuer-Ges. 1958, Körperschaft-Steuer-Ges. 1958, Änderungen zum LAG, StAnpG, BewG, NOG, KraftStG, BefStG und GewStG.
Lieferung 86 Inhalt: 5, ASpG-DVO und Änderungen versch. DVOen zum WAG und ASpG, ESt-Tab. 1958, Änderungen der BefStDVO u.a.m.
Lieferung 87 Inhalt: Lohnsteuer-Richtl. 1957, Änderungen der UStDB. u.a.m.
Lieferung 88 Inhalt: Amtliche Lohnsteuer-Tabellen 1958.

Dr. Lorenz Gürsching, Dr. Alfons Stenger und Hans Diedenhofen: *Kommentar zum Bewertungsgesetz und Vermögensteuergesetz*. Verlag Dr. Otto Schmidt, Köln.

Die *8. Lieferung* (Sept. 1958) berücksichtigt ua. die Änderung des § 67 BewG durch das Gesetz v. 24.7.1958 und bringt die Erläuterungen zu verschiedenen anderen Vorschriften auf den neuesten Stand. Das Sachregister ist völlig neu bearbeitet worden.

Steuerrechtsprechung in Karteiform. Verlag Dr. Otto Schmidt, Köln.

Die *Lieferungen 80-83* sind erschienen.

Dr. Edgar Lenski und Dr. Wilhelm Steinberg: *Kommentar zum Gewerbesteuergesetz*. Verlag Dr. Otto Schmidt, Köln.

Die *Lieferung 5*, Dez. 1958 ist erschienen.

GHANA

Ghana Handbook of Commerce and Industry. Published by the Ministry of Commerce and Industry, P.O. Box, Accra 1527, 1957, 100 pp.

This Handbook contains brief sections covering foreign trade, export and import control, exchange control, labour, land tenure, *taxation*, and industrial development. Appendixes provide a map of Ghana, lists of business firms and newspapers and the Prime Minister's statement on capital investment. Copies may be obtained without charge on request to the Ghana Embassy, 2139 R Street N.W., Washington 8, D.C.

INDIA

The Gift Tax Act, 1958 and the Gift Tax Rules, 1958 with explanatory notes and statement of principles derived from American, Australian and Indian

decisions. Prepared under the guidance of A. N. AIYAR, B. A., B. L. by T. A. RAMACHANDRAN, B. A., B. L., and Mrs. T. A. RAMACHANDRAN, B. A., LL. B. Company Law Institute of India Private Ltd., 21 Thyagaraya Road, Madras 17, 1958, 200 pp.

The introduction to this book gives a brief resume of the provisions of the act. The main part of the book contains the provisions of the act and the rules with explanatory notes and the principles derived from decisions of Indian, English, American and Australian courts which have a bearing on the provision of the act. Extracts from allied statutes to which reference has been made in the Gift tax act and from the U.S. Code pertaining to gift tax and the Gift duty assessment act of the Commonwealth of Australia are given in the appendix.

ITALY

Testo unico delle leggi sulle Imposte Dirette. Collezione Legale Pirola N. 1203. Luigi di G. Pirola, Via Cavallotti 16, Milano, 1958, 110 pp.

This volume N. 1203 of the legal series Pirola contains the text of the Decreto del Presidente della Repubblica 29 gennaio 1958 n. 465 with tabels and explanatory notes.

JAPAN

MOTOKAZU KIMURA: *Conditions for direct taxation and other essays*. The Science Council of Japan, Division of Economics, Commerce & Business Administration, Economic Series No. 17. 1958, 130 pp.

In this volume the author presents a collection of six essays written during a period of six years from 1951 to 1956: Conditions for direct taxation, Taxation and capital accumulation, Fiscal policy and industrialization in Japan 1868-1895, Un projet inachevé: La taxe sur la valeur ajoutée, The economic development and the Western impact in Japan, Recent developments in Government expenditures in Japan. This collection has appeared in the Economic Series of the Science Council of Japan.

MALTA

The Corporate Accountant. Published by the Malta Corporation of Accountants G.P.O. Box 391, Merchants Street, Valletta, Malta.

This is the first number of The Corporate Accountant, the Official Journal of the Malta Corporation of Accountants and the first of its kind in Malta. Through this publication the Corporation wants to provide another medium for the fulfilment of one of its objects, namely, the advancement of the accountancy profession.

NETHERLANDS

W. SCHOLTEN and J. E. NIEMEIJER: *Auto en fiscus*. Fiscale Monografieën, Geschrift No. 11. AE. E. Kluwer, Deventer, 1959, 204 pp.

This book orientates the motorcar-owner about his personal taxes (income tax, corporation tax, property tax) and about the motor-vehicle-tax, sales taxes and special taxes when importing motor-vehicles and motorfuel. Thus this monograph has a special character as it elucidates the fiscal aspects of a special subject.

Dr. H. F. A. VÖLLMAR, J. BOXEM and B. J. UDINK - *Vennootschappen, Verenigingen en Stichtingen* (V.V.S.) (Corporations, Associations and Foundations) - Civielrechtelijke en fiscale handleiding voor studie en practijk.

Band A. - Supplement 4 - Price f 6.17. N.V. Uitgeversmaatschappij AE. E. Kluwer, Deventer.

A review of this loose-leaf work on corporations, associations and foundations was published in "Bulletin" Vol XI, p. 37.

The Supplement 4 consists of new pages for the section "Naamloze Vennootschap" (Limited Liability Company) and a reprint of the index. The publisher of this book *Kluwer* at Deventer, has started a new periodical also entitled "Vennootschappen, Verenigingen en Stichtingen" of the editorial board of which the authors of this book are members. The important tax articles of this new periodical will be referred to in the fortnightly publication of the "International Bureau of Fiscal Documentation": *Documentation Service.*

J. J. VERSEPUT: *Fiscaal Fundament. De Hoge Raad spreekt.* Een verzameling samenvattingen van belangrijke arresten op fiscaal gebied ten behoeve van studie en praktijk. AE. E. Kluwer, Deventer, 1958, 316 pp.

Case law is an important aspect of taxation. This publication gives the reader the opportunity to get acquainted with the decisions of the Netherland High Court on a number of important points as regards Income Tax, Dividend Tax, Corporation Tax and Property Tax. The author generally gives the juridical considerations which have led to the decision as well.

Tarieven inkomstenbelasting voor gehuwden en ongehuwden (Sätze Einkommsteuer für Verheiratete und Ledige) — Geschrift nr. 95 van de Vereniging voor Belastingwetenschap. N. Samsom N.V., Alphen aan den Rijn 1958, 13 S.

Dies ist ein Interim-Bericht des von der Niederländischen Vereinigung für Steuerwissenschaft eingesetzten Ausschusses für Statistik.

In dem kurzgefassten Bericht werden, nach einer Einleitung, in der u.a. auf die Aktualität des Problems hingewiesen wird, behandelt: die theoretischen Grundlagen, die Weise in der bestimmt werden kann wann ein Lediger eine ähnliche Befriedigung seiner Bedürfnisse hat wie jedes Glied des Ehepaars, während schliesslich Betrachtungen angestellt werden über die geltenden Verhältnisse zwischen den Sätzen für Ledige und Verheiratete. In einer Beilage wird ein Versuch gemacht ein Budget für Ledige, dass betreffs die Befriedigung der Bedürfnisse mit dem Budget für Verheiratete ohne Kinder zu vergleichen ist, aufzustellen. Es bezieht sich hier auf ein Problem mit dem man in vielen Ländern zu kämpfen hat.

Prof. J. VALKHOFF: *De nieuwe pachtwet.* (Das neue Pachtgesetz). Gesetzestext mit kurzer Erklärung. 2. Auflage. N.V. Uitgeverij FED, Amsterdam, 1958, 42 S.

Das neue Pachgesetz enthält für einen bedeutenden Teil zwingendes Recht. Die Pächter nahmen auch jetzt wieder eine starke Position ein, aber der Gesetzgeber hat auch über die billigen Interessen des Verpächters gewacht. In diesem Buch ist der Gesetzestext vollständig aufgenommen worden. Prof. Valkhoff hat eine Erklärung dazu geschrieben in der er neben der historischen Entwicklung auch die Übereinstimmungen und Differenzen mit dem vorigen Pachtgesetz angibt.

De commanditaire vennootschap in het private en fiscale recht, door A. M. VROOM, notaris te Amsterdam en J. P. SCHELTENS, Candidaât-notaris en inspecteur der belastingen te Haarlem, 1957. (Die Kommanditgesellschaft im Privat- und Steuerrecht).

Diese ist die neueste Veröffentlichung der Stiftung zur Förderung der notariellen Wissenschaft zu Amsterdam. Die vorige, verfasst von *P. L. Dijk,*

bezog sich auf die Steuererhebung, siehe Bull. XI. S 150, die vorliegende befasst sich mit einem Thema von zivilrechtlicher und steuerrechtlicher Seite aus betrachtet. Diese zwei Seiten hangen eng miteinander zusammen, da die Rechtsprechung des „Hoge Raad" (höchster Gerichtshof in den Niederlanden) in den letzten Jahren starken Zweifel hervorgerufen hat, betreffs der Rechtsposition des Kommanditisten, ins besondere soweit es sich um Miteigentum in dem Gesellschaftsvermögen handelt. Notar *Vroom,* der die Kommanditgsellschaft als eine schwer entbehrliche Unternehmungsform betrachtet, ist der Ansicht, dass ein gemeinsames Vermögen wohl möglich ist, wenn dies mit ebensoviel Worten zum Ausdruck kommt. Die Steuerprobleme bespricht Herr *Scheltens,* der im Gegensatz zu Herrn Vroom auch die Kommanditgesellschaft auf Aktien behandelt. Diese Betrachtungen beziehen sich namentlich auf die Einkommen- und Körperschaftsteuer: die anderen Steuern kommen nur vereinzelt zur Sprache, Man findet hier eine klare Darlegung der vielen Fragen, die sich hier ergeben, unter Erwähung von Rechtsprechung und Literatur.

L. ZIJP: *De Lijfrenteclausule.* Dissertation „Vrije Universiteit", Amsterdam, 1958, 166 pp.

Under the Dutch Income Tax Act. 1941 premiums for life-insurance are deductable to a certain maximum. The author of this thesis at the Protestant University of Amsterdam investigates the significance of this clause. He examines its usefulness, technique and its influence on other taxes.

A. J. VAN SOEST: *Het fiscale aspect van overdracht van bedrijven en uittreden van firmanten in het bijzonder met het oog op daarmede samenhangende verzorgingsmaatregelen.* Praeadvies voor de Jaarlijkse Algemene Vergadering van de Broederschap der Notarissen in Nederland. Rotterdam, 1958, 42 pp.

A recent decision of the Netherlands Supreme Court has placed the fiscal aspects of the transfer of companies in the centre of interest. The author elucidates the different aspects of this problem stystematically.

Prof. Dr. A. I. DIEPENHORST: *Het fiscaal-economisch aspect van de voorraadwaardering* - A. J. VAN SOEST: *Het fiscaal-juridisch aspect van de voorraadwaardering.* Voordrachten gehouden op de Belastingconsulentendag 1958 georganiseerd door de Ned. Federatie van Belastingconsulenten. FED, Amsterdam, 1958, 79 pp.

The Netherlands Federation of Tax Consultants organises yearly a tax consultants' day. The lectures held there are published by the Publisher FED in Amsterdam. The 1958 lectures were about the economic and the legal aspects of the evaluation of stock. The text and the discussion have appeared as number 3 in the Series: Tax Consultants' Days.

Fiscaalrechtelijke toepassing der theorie van de vervangingswaarde. Inleiding gehouden door Prof. Dr. H. J. VAN DER SCHROEFF en J. KOOIMAN in de vergadering van 25-1-58. Geschriften van de Vereniging voor Belastingwetenschap No. 97 and No. 98. N. Samsom N.V., Alphen a/d Rijn, 58, 43 pp.

Booklet No. 97 contains the speeches held by *Prof. Dr. H. J. van der Schroeff and J. Kooiman* on the "application of the theory of replacement value in taxation" before the General Assembly of the Association for Tax Law in the Netherlands. The discussions have been published in booklet No. 98.

P. KARMELK: *Bierwet 1917.* 3rd edition, *Supplement 5,* December 22nd, 1958. De Belastingwetgeving Serie I. & A. No. 6. J. Noorduijn en Zoon N.V. Gorinchem, Netherlands.

VAN STEENBERGEN-SCHUTTEVAER: *De Zegelwet 1917*. (Stamp Duty Act, 1917) Bewerkt door G. LAEIJENDECKER. 7th edition. *13th supplement*. N. Samsom N.V., Alphen aan den Rijn.

W. E. KREMER: *Wet op de Grondbelasting*. (Ground-tax Act). Edited by A. C. GORREN. 2nd edition. Supplement 4, october 21st, 1958. De Belastingwetgeving Serie D.B. No. 9. J. Noorduijn en Zoon N.V., Gorinchem, Netherlands.

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* 27-30 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* 23 has appeared.

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

Nos 656-665 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 issue nr. 16 has been received.

Dr. W. H. VAN DEN 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, no 35-1959 no. 4 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 *no. 139 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 29-36 to these loose-leaf volumes have been published.

NIGERIA

Nigeria. Report of the fiscal commission. London, Her Majesty's Stationery Office, 1958, 69 pp.

The Fiscal Commission for Nigeria was set up in September 1957. The present report contains a description of the system and the criticism on it with details on the regional fiscal mechanism, national fiscal policy, customs, excise and sales tax jurisdiction, company tax jurisdiction, taxation of

mining and minerals. The recommendations of the Committee consist of 62 points. In the Appendices can be found i.a. the preliminary report and a survey of the present system of direct and personal income taxation.

NEW ZEALAND

CHARLES A. STAPLES: *A Guide to New Zealand income tax practice* (incorporating PAYE Legislation). 1958 Edition. (18th year of publication). Financial Publications Ltd., P.O. Box 6387, Welli Wellington, C.2., 1958, 392 pp.

This edition incorporates amending taxation legislation passed by Parliament since the 1957 edition was published, including the Income Tax Assessment Act, 1957, known as the PAYE legislation. This Act has brought about fundamental changes in the method of collection of taxation on income and, due to the fusion of income tax and social security charge, many important alterations to the law were necessary. A very useful book.

PORTUGAL

DR. RALPH VON GERSDORFF: *Massnahmen zur Förderung der privaten Kapitalbildung im Portugiesischen Reich*. 265 S. (*Measures to promote private capital formation in the Portuguese Empire*. Saving possibilities and financing methods in economically less developed areas). Polygraphischer Verlag, Zürich, 1958, 265 S.

The author, expert for economically less developed countries (country studies) in the Hamburg Archives of World Economy, gives an almost complete collection of all forms of capital formation and financing methods together with his own proposals; he shows how capital can be accumulated and supplied. This book will not only be of interest for those, who are inquiring into the problems of the so called "underdeveloped countries" (economically less developed areas), but also for all businessmen and theoreticians who want to inform themselves generally about subjects as: policy of the Salazar Government, banking, co-operatives, index-, corporative-, credit-, savings- and profit sharing-systems, insurances, production of Port wine, tourism, tax system. A very detailed index has been written in order to facilitate the use of the book as a reference book.

SARRE

Dr. R. KLEIN: *Das Recht des Saarlandes*. Blätter für die Praxis der Justiz, Verwaltung und Wirtschaft. *Teil 6: Steuerrecht*. Saarländische Verlagsanstalt und Druckerei, Ursulinenstrasse 1, Saarbrücken.

In „Bulletin" Bd. XII S. 29 haben wir eine Besprechung dieses Loseblattwerkes veröffentlicht. Er sind jetzt erschienen die *Lohnsteuer-Durchführungsverordnung 1957* vom 3. Juni 1958, die *Lohnsteuerrichtlinien* vom 1. August 1958 und Vorschriften die Lohnsteuer betreffend im Einkommen steuergesetz, in der Einkommensteuer-Durchführungsverordnung und in den Einkommensteuer-Richtlinien.

Dr. jur. HANS HEROLD: *Praxis der Umsatzsteuerrechts. Lieferung 26. stand von Ende August 1958*. Verlag für Recht und Gesellschaft, Bundesstrasse 15, Basel.

Diese Lieferung enthält die neue Blätter die durch den neuen Verfassungsartikel und die dazu ergangenen Ausführungsgesetze notwendig geworden sind. Da nur noch eine Steuerkategorie mit 2 Ansätzen für Engros- und Detaillieferungen besteht, sind alle den Warenkatalog betreffenden Anmerkungen aus Art. 19 in Art. 14 hinübergenommen worden. Eine ganze Anzahl, Blätter, die sich auf seither befreite Lebensmittel bezogen, können weggelegt werden.

SWITZERLAND

Dr. jur. HANS HEROLD: *Praxis des Umsatzsteuerrechts. Lieferung 26.* Stand von Ende August 1958. Verlag für Recht und Gesellschaft, Bundesstrasse 15, Basel.

Die Lieferung 26 kommt eine besondere Bedeutung zu durch den Bundesbeschluss vom 31. Januar 1958/11. Mai 1958 über die verfassungsmässige Neuordnung des Finanzhaushaltes des Bundes die die verfassungsmässige Grundlage der Warenumsatzsteuer wesentlich verändert. Im Hinblick auf die Änderungen nimmt diese Lieferung den vollständigen Text des Warenumsatzbeschlusses nach dem Stand vom 15. Juli 1958 auf. Die Verfügungen sind dort abgedruckt wo sie sachlich hingehören.

JURG NIEHANDS: *Probleme einer konjunkturgerechten Steuerpolitik.* Schriften zum schweizerischen Steuerrecht, herausgegeben von der Schweizerischen Vereinigung für Steuerrecht, Heft 3.
Verlag für Recht und Gesellschaft, Bundesstrasse 15, Basel, 1958, 37 S.

In *Bulletin* Bd.XI, S.43 wurden die Hefte 1 und 2 dieser Reihe besprochen. Die Probleme die in Heft 3 zur Diskussion gestellt werden lassen sich in zwei Gruppen teilen: Im ersten Teil wird von den Wirkungen einer Veränderung der Steuersätze auf die jeweils gegebene Konjunktur, auf Preise, Produktion und Beschäftigung gesprochen. Darauf aufbauend wird im zweiten Teil die Frage aufgeworfen, wie das Steuersystem im Hinblick auf die Schwankungen der Konjunktur gestaltet werden sollte.

EIDGENÖSSISCHE STEUERVERWALTUNG: *Die Steuern der Schweiz.* I. Teil: Einkommens- und Vermögenssteuern natürlicher Personen, *Nachtrag 21* von 1958. II. Teil: Ertrags- und Kapitalsteuern juristischer Personen, *Nachtrag 19* von 1958. III. Teil: Erbschafts- und Schenkungssteuern, Vermögens-verkehrssteuern, Verbrauchs- und Aufwandsteuern, *Nachtrag 18* von 1958. Verlag für Recht und Gesellschaft, Bundesstrasse 15, Basel.

Ueber die Ziele und Art des Aufbaus dieses Werkes orientiert die Besprechung in *Bulletin* Bd. XI S.154. *Nachtrag 21* des ersten Teils bringt in den allgemeinen Uebersichten, die jährlichen Steuersätze 1958 der Kantone und Gemeinden und Uebersichten über die Aenderungen in der kantonalen Gesetzgebung von Graubünden. *Nachtrag 19* des zweiten Teils gibt ebenfalls eine Uebersicht über die Steuersätze 1958 der Kantone und Gemeinden; ferner orientiert er über die Neuerungen in Schwyz, Schaffhausen, Chur, Davos und Genève. *Nachtrag 18* des dritten Teils enthält allgemeine Bemerkungen zu der Abteilung Wertzuwachssteuern und die in Bern getroffenen Aenderungen.

Rechtsbuch der schweizerischen Bundessteuern. Begründet von Dres. J. und E. HENGGELER, fortgeführt von Dr. ANTON PESTALOZZI. Verlag für Recht und Gesellschaft, Bundesstrasse 15, Basel.

Ziel und Aufbau dieser Sammlung der eidgenössischen Steuergesetzgebung, die auch die internationale Steuerabkommen enthält, wurden in der Besprechung in Bull. XI, S. 153 gewürdigt. Seitdem sind die Nachträge 23 bis 29 erschienen. Die *Nachträge 23 und 24* erweiteren den Abschnitt betr. internationale Verträge, zum Teil durch die erlassenen Ausführungsbestimmungen zu den französischen und englischen Doppelbesteuerungsabkommen. Die *Nachträge 25 und 26* bringen auch Neuerungen des internationalen Doppelbesteuerungsrechts: zum französischen Abkommen Instruction No. 647 aux intermédiaires agréés, zum Abkommen mit USA zwei Kreisschreiben der Eidg. Steuerverwaltung von 1952 und 1953, das Zusatzprotokoll zum deutschen Abkommen, das Erbschaftsteuerabkommen mit Grossbritannien und Nordirland und eine Reihe von Ausführungsvorschriften. Das interne Recht

betreffen Kreisschreiben und Mitteilungen der Eidg. Steuerverwaltung zu Wehrsteuer, Stempelabgaben, Warenumsatzsteuer und Quellensteuern. Der Wehrsteuerbeschluss wurde in vollständigem Text neu aufgenommen. Auch die *Nachträge 27 und 28* beziehen sich in der Hauptsache auf internationales Steuerrecht. Sie enthalten den Text der Abkommen mit Dänemark, Norwegen und Finnland. Zum amerikanischen Abkommen wird ein Auszug aus amerikanischen Ausführungsvorschriften und ein einzelner Entscheid gebracht. Weiter enthält Nachtrag 28 eine Liste steuerrechtlicher Sonderregelungen in einzelnen Abkommen, ein Schreiben der eidg. Steuerverwaltung vom 1.7.1957 an die kantonalen Steuerverwaltungen betr. Steuerprivilegien des Personals internationaler Organisationen, eine Übersicht über Rückerstattung ausländischer Quellensteuern, Neuerungen und erstmalige Normierung des zwischenstaatlichen Steuerrechts mit Deutschland, Frankreich, Dänemark, Norwegen, Finnland, Iran, Libanon und Belgien. Dem Abschnitt über die Wehrsteuer werden im Zusammenhang mit dieser Steuer stehende Vorschriften beigefügt. *Nachtrag 29* enthält den 11. Mai 1958 angenommene Bundesbeschluss vom 31. Januar 1958 über die verfassungsmässige Neuordnung des Finanzhaushaltes des Bundes. Dann folgt der vollständige Wehrsteuerbeschluss in der neuen Fassung. Auch der Warenumsatzsteuerbeschluss wird in der Fassung, wie sie ihm der Bundesratbeschluss vom 15. Juli 1958 gegeben hat, vollständig wiedergegeben. Für die Luxussteuer mussten die Uebergangsbestimmungen zum Wegfall aufgenommen werden.

UNION OF SOUTH AFRICA

A. S. SILKE: *The 1958 Income Tax Legislation.* Being a supplement to "Silke on South African Income Tax". Juta & Co., P.O. Box 30, Cape Town, 1958, 176 pp. Distribution in Europe by: Sweet & Maxwell, 2-3 Chancery Lane, London, W.C.2. In Canada and United States by: Carswell Co., 145-9 Adelaide Street West, Toronto 1.

One of the main purposes of this work is to discuss fully the effects of the 1958 Income Tax Act. This Act contains some important concessions to taxpayers and numerous important amendments to the Income Tax Act 1941. Since the publication of *Silke on South African Income Tax* a review of which was published in *Bulletin,* Vol. XI, p. 339, there have been various court decisions and numerous departmental rulings affecting the law, incidence and practice of income tax. The effect of these court decisions and departmental rulings is considered in this supplement, thereby ensuring that the main volume is up to date. A special part of the book is devoted to South-West African Income Tax. In addition to the inclusion of handy tables showing at a glance the rates of tax and rebates and the taxes payable in the Territory, there is also an invaluable summary showing the main differences between the system of income tax in South-West Africa and that of the Union.

A. S. SILKE: *Tax avoidance and tax reduction* within the framework of the South African Income Tax legislation, with special reference to the effect on the fiscus and to current anomalies and inequities. Juta & Co., P.O. Box 30, Cape Town, 1958, 593 pp.

To his many works on taxation in the Union of South Africa and the Central African Federation, the author, lecturer in Taxation at the University of Cape Town and Co-editor of "The Taxpayer" the South African journal devoted to the law, practice and incidence of income tax and death duties, has added this thesis, which is the first work of its kind in South Africa. The writer's approach has generally been, firstly to set out the effect of the law in the light of the court decisions, the departmental practice and his own interpretations; secondly, to consider and discuss the extent to which tax-

payers can arrange their affairs within the letter of the law in order to avoid or reduce tax, and the prejudicial effect on the public revenue; and finally, to offer his criticism, suggestions and recommendations. The work is a critical analysis of the South African Income Tax Act and deals fully with the numerous loopholes, tax avoidance devices, pitfalls, anomalies, inequities and obscurities in the law. It clarifies many aspects of the law which up till now have received scant thought. Constant reference has been made to the tax laws of the United Kingdom and other Commonwealth countries.

UNITED KINGDOM

"Taxation" Manual. Compiled by barristers and experts under the direction of PERCY F. HUGHES. Ninth edition. Taxation Publishing Company Ltd., 98 Park Street, London, W.1, 1958, 455 pp.

In this latest edition of this book, the opportunity has been taken to revise much of the original text and to incorporate changes in the law and practice that have arisen since the publication of the last edition in 1955. Since that time there have been four Finance Acts, and the changes thus imposed have been given particular consideration in the preparation of this new edition. The present edition also includes a comprehensive Table of Statutes which adds to the usefulness of "Taxation" Manual as a work of reference.

Taxation in the proposed European Free Trade Area. Second (Revised) Edition. Federation of British Industries, 21 Tothill Street, London S.W.1, 1958, 164 pp.

In this reprint the Federation has taken the opportunity of making a number of corrections of emphasis or fact as published in the first edition. At the same time, an account has been included of the tax system of Luxembourg. This second edition shows the tax position of the various countries as at 30th April, 1958. A review of the first edition was published in *Bulletin* Vol. XIII. p. 41.

W. T. DENT: *A guide to auditing.* Gee and Company (Publishers) Ltd., 27-28 Basinghall Street, London, EC2, 1958, 144 pp.

As in the author's book Accountancy Explained (review in Bull. Vol. XI, p. 146) the emphasis is on simple language which avoids the use of unnessary technical terms. The early chapters explain the purpose and principles of auditing. In later chapters the special position of the auditor of a limited company is fully dealt with. Throughout the book the author has given special attention to practical problems.

"Current Law" Income Tax Acts Service. Sweet & Maxwell, 3 Chancery Lane, Londen 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 49: Nov. 17, 1958. This Release reflects the changes introduced by The Finance Act, 1958.

UNITED NATIONS

Reclassification of Government Expenditures and Receipts in selected countries. United Nations, Department of Economic and Social Affairs, New York, 1958, 124 pp.

This document attempts to make generally available the experiences of countries engaged in economic classifications of government transactions and in attempts to find a proper basis for accounting of their trading and production activities.

Economic Developments in the Middle East 1956-1957. Supplement to World Economic Survey, 1957. United Nations, Department of Economic and Social Affairs, New York, 1958, 163 pp.

This report forms part of the survey of the world economic situation prepared by the Secretariat of the United Nations and is a supplement to World Economic Survey, 1957. It is a continuation of studies on the Middle East, of which the most recent is Economic Developments in the Middle East, 1955-1956. Unlike its predecessor, the present report is not limited to an analysis of current economic developments. As the World Economic Survey, 1957 presents a study of inflation, attention has been devoted to the economic forces in the region covered by this report which have given rise to inflationary or disinflationary pressures over the past few years.

Yearbook of National Accounts Statistics 1957. (Annuaire de Statistiques des comptabilités nationales). Statistical Office of the United Nations, Department of Economic and Social Affairs, New York, 1958, 236 pp.

Le présent *Annuaire* est le premier d'une nouvelle série que le Bureau de statistique consacre aux statistiques des comptabilités nationales. Il remplace la publication intitulée *Statistics of National Income and Expenditure* dont dix numéros ont paru jusqu'à présent. On trouvera dans l'*Annuaire* les estimations détaillées de la comptabilité nationale de 70 pays et territoires. Le Bureau de statistique a présenté les estimations des divers pays sous une forme qui facilite les comparaisons internationales.

Economic Bulletin for Latin America. Vol. III, No. 1. United Nations, New York, March 1958.

This number of the Economic Bulletin for Latin America contains articles on the Latin American regional market, Latin America's trade with the Common Market countries of Europe and Development policies and programmes.

Public Finance (Finances Publiques). United Nations, New York, 1958, 53 pp.

This is an extract from United Nations Statistical Yearbook 1957 containing the tables concerning Public Finance.

U.S.A.

PRENTICE-HALL: *Federal Tax Treaties and Related Matters.* Prentice-Hall, Inc., Englewood Cliffs, New Yersey, Loose leaf.

In "Bulletin" Vol. XII p. 173, 275 we published reviews of this excellent loose-leaf work on U.S. Federal Tax Treaties. Since then Supplements 9-11 have appeared containing a.o. the Norwegian supplementary treaty, withholding regulations (Austria), added references (Greece), amendments to United Kingdom treaty.

Working with the Revenue Code — 1957. Edited by JAMES J. MAHON Jr. American Institute of Certified Public Accountants, 270 Madison Avenue, New York 16, 1957, 192 pp.

For nearly three years (July 1954 to July 1957) leading tax men have been submitting their ideas and experiences with the 1954 Code to The Journal of Accountancy's Tax Clinic. All this material has been thoroughly re-examined in the light of current value and interest. The result is this handy volume of nearly 200 items arranged by Code sections number and subject and cross-indexed for quick reference. Accountants and executives will find this work useful as an aid in answering specific tax questions.

The FEDERATION OF TAX ADMINISTRATORS, 1313 East Sixtieth Street, Chicago 37, Illinois has issued the following publications:

Revenue administration 1955 and *Revenue administration 1956* containing a.o.: Recent developments in the Internal Revenue Service programs, Recent fiscal developments in Canada, Washington's sales tax program.

National Tobacco Tax Association 1956. Proceedings of the 30th annual meeting, consisting of various contributions about tobacco taxes.
North American Gasoline Tax Conference 1956. Thirtieth Annual Report. A few titles: The new federal highway Act, Federal refund and exemption procedures, Tax-license designations.
Estimated State cigarette tax evasion in 1956. This memorandum is concerned with the extent of cigarette evasion in 1956.

DAVID A. LINDSAY and S. FRANKLIN BURFORD: *Items of Gross Income*. Revised to June 1958. Practising Law Institute, 20 Vesey Street, New York 7. 72 pp. Series Fundamentals of Federal Taxation, Robert Anthoine, Executive Editor.

Gross income is the starting point in determining the tax base, or taxable income, on which the Federal income tax is levied by the Internal Revenue Code. It is the total of all those items which must be reported as income. This monograph is concerned mainly with what is included in or excluded from gross income.

JOSEPH TRACHTMAN: *Estate Planning*. Revised to January 1958. Current Problems in Federal Taxation. Practising Law Institute, 20 Vesey Street, New York 7, 1958, 178 pp.

After the first edition (1945) this book has been greatly enlarged. Much attention is devoted to life asurance, testamentary trusts, transfer during life in contemplation of death and many other subjects. Attention is likewise paid to special problems in this field for businessmen and to gifts to charitable institutions. In conclusion it is pointed out that it is the duty of legal advisers to keep their clients posted up of any change in the law which might defeat the client's testamentary purpose as expressed in his Will. A very important work for those desirous of being sure that their testamentary provisions are adequate.

American Federal Tax Reports. Second Series. Vol. I. Prentice-Hall, Inc., Englewood Cliffs, New Jersey, 1958, 1979 pp.

American Federal Tax Reports contains unabridged texts of court decisions from state and federal courts that settle problems arising under the federal tax law. American Federal Tax Reports (Second Series), cited "AFTR 2d" covers late cases decided under the 1939 Code and most cases decided under the 1954 Code. Two volumes will be issued each year; one will cover cases published as AFTR 2d advance sheets in *P-H Federal Taxes* (review in Bull. Vol. XII, p. 173) for the first half of a calendar year, and the other will cover cases published in *P-H Federal Taxes* in the second half of a calendar year.

URUGUAY

Prolemas de legislacion y tecnica tributaria nacionales. Ganancias elevadas, Ventas y Transacciones. Cuaderno No. 20. Instituto de la Hacienda Pública, Tristán Narvaja 1546, Montevideo, 1957, 50 pp.

En el presente Cuaderno se recogen dos investigaciones que abarcan problemos concretos relativos a dos tributos de gran significación en el systema fiscal en el Uruguay.

V

CANADA

INCOME TAX ADMINISTRATION

An unusually comprehensive statement on the workings of the Department of National Revenue was recently made in the House by the Minister, Hon. George Nowlan, and appeared in Hansard for August 27, 1958, pages 4180/2. Because of its general interest we reproduce it below.

By any standards, the taxation division operates a large-scale business. Last year collections in this division exceeded $3 billion. Individuals paid about one-half of that amount and corporations roughly the balance, with succession duties of about $65 million being thrown in as a sort of balancing item.

The detail work is tremendous. For instance, in 1957 returns were received from 5½ million taxpayers. That figure included about 100,000 corporations.

Ledger accounts are maintained for about 130,000 instalment payers and 200,000 employers remitting tax deductions. In addition, accounting action has to be taken or was taken last year in about 700,000 cases where taxpayers declare tax owing and find that additional sums have to be assessed. Really, when one considers these figures, he gets some idea of the detail work which has to be done by the officers of this division.

The division employs 6,200 regular personnel in its 29 district offices and its head office. These figures are rather interesting. In 1937 the division had 1,214 employees and it handled 439,000 returns or an average of 362 returns for each employee. In 1947, the division had gone up to 7,400 employees and it handled 3,338,000 returns or about 450 per employee. By 1957 the number of employees was reduced, came down to 6,195 with an increase in work lead, with 5,428,000 returns or an average of 876 per employee as compared with 362 to which I referred 20 years previously. Of course, accounting machinery and improvements procedures accounted to a substantial degree for those changes.

I want to give full credit to the taxation officers for their continuing efforts to reduce expenditures and for the efficiency of this department. If time permitted I could give the figures. I put them on the record once before, showing the cost today of collecting $100 as compared with the cost a few years ago. A comparison is really amazing.

I have one qualification to make on this question of efficiency. I think it is fairly well known—it is no secret— that I have been very critical of the public relations of this department. I was critical when I sat on the opposite side of the house and I have been critical since I came over to this side of the house. When I say "of this department" I am speaking specifically of this division. It was my feeling and it is my feeling that in their zeal for efficiency they have tended sometimes to lose sight of the individual and I think there is a natural pressure to look upon the taxpayers en masse impersonally, not as people. Perhaps it is difficult or impossible to look upon them as persons, but I still think that something in that direction can be accomplished. As a result, as is well known to the officials here in front of me and the senior officials in the department, we have had many conferences on this score.

Some very frank talking has been done and much thought has been given to this matter. I have received much co-operation from the officials and I think that real progress has been made, or at least I hope so. Reports would indicate that at least some progress has been made in that direction. I have at least told my officials that progress should be made in it and I know that they are attempting to make and I believe have made effective changes in that direction.

Having said that by way of criticism, I think this also should be said about the efficiency of the department. I do not know but I suppose every employee may feel this, whether he is an employee of a bank or what position he may hold. I do not know of any employees who have greater pressure brought to bear on them than have the employees of the Department of National Revenue generally and perhaps particularly the taxation division where they have to go out to people's homes, go to people's offices, interview them, conduct investigations and often are in a position in which, if they wanted to take advantage of it or of the opportunities which are presented to them, there could be a marked impairment of the efficiency of the department and a reflection on the character of the officers themselves. I think it is a real source of satisfaction—it certainly is to me as minister, and I am sure it must be to members of parliament and of Canadians generally—that so little has ever happened which could indicate in any way any dereliction of duty or any impairment of efficiency on the part of the thousands of officials who are, as I say, conducting these onerous, responsible and unpleasant tasks, often under conditions which present difficulties in connection with efficient operation.

Canada can be very proud of the calibre of its public servants, their integrity and their efficiency. There have been minor derelictions of duty in the past, as is well known, but these have usually been publicized and have been rigorously dealt with. If, as and when any occur in the future the same thing will happen, but they are so insignificant in number and in frequency compared with the operations which are carried on that I think it is worthy of comment and should be put on the record.

As I have already indicated, we receive over 5½ million returns a year, and most of these come in just before April 30. All of them are immediately scrutinized with priority being given to refund claims, although sometimes the complaints would indicate that there is some dissatisfaction in that respect. It is, however, amazing to note what is done during that period. This work is done quickly; we employ roughly 1,500 casual or temporary employees to help carry the peak load. At the peak point, the committee will be interested to know, we process in the offices across Canada over 100,000 returns a day. In view of the fact that the staff we have today is much smaller than it was a few years ago and that they are able to process 100,000 returns a day, there is no wonder that an occasional error may creep in and that the occasional complaint may arise as to something which has gone wrong. In addition to this processing, we have 750,000 inquiries a year, including letters coming in which have to be answered, and we handled in 1957 over 4 million refund cheques.

In the initial scrutiny of returns at the rate of 100,000 a day some errors are found, and last year of over 5 million returns which were received, 581,000 were corrected. Four hundred and twenty-three thousand of these were for tax increases, involving a little over $13 million and 158,000 were for tax decreases, involving $3.5 million which money was refunded to the surprised taxpayers.

Of course, a percentage of these returns are earmarked for closer scrutiny and that percentage is just about 5 per cent of the total processed by the division. We have about 2,000 people who are engaged in examining these returns, of whom a little more than half have sufficient technical qualifica-

tions to make field examinations. The others are made at the desk and as a result of these reviews we received approximately $90 million in additional revenue in 1956, $78 million in 1957, and in 1958 the additional revenue received was approximately $73 million. Those are relatively small figures compared with $3 billion, but they are very substantial when looked at by themselves.

During that same period it cost $26 million to operate the department in the first year mentioned, $28 million in the second year and $31 million last year, namely, 1957-58.

There are of course bound to be differences of opinion between the taxpayer and the department and that is why there has been set up an income tax appeal board to try to resolve as many of these difficulties as possible. In speaking of the income tax appeal board I know the committee would expect me, and I certainly wish to do so, to pay a tribute to the late chairman of that board, Mr. Fabio Monet, Q.C., who died so suddenly last December. His death deprives this board and the Canadian public serice of a very loyal, a very conscientious and able servant. He brought to his important duties an experience and a record of courtesy and imparitiality in his profession which had earned him the respect of all.

To deal for a moment with the actual estimates before us, the taxation division is asking this year for $32,481,564. This reflects an increase of $801,000; in round figures, over last year. Of this $675,000 is required for the two salary allotments and the principal factor in this increase is the provision of approximately $450,000 to recruit 175 additional assessors in order to bring our district offices more closely up to strength again. We have the same problem as that which I mentioned this morning in dealing with customs and excise—the fact that it was impossible to get qualified assessors during the preceding years. A real drive has been made during the past year to recruit additional qualified staff and that is getting results. We believe we will have the 175 additional assessors to deal with more of this review work to which I referred a few moments ago. The balance of this increase is largely accounted for by the statutory increases in the civil service and by promotions.

In order to provide better supervision and enforcement in the administration side of the division, we have reclassified upwards of about 260 positions. However, the values of these reclassifications have been offset by the elimination of 308 full-time positions. This is the result of a three-year program which has now reached its completion. In these estimates the increase in salary costs of seasonal employees is $510,000, which increase covers higher rates of pay plus longer retention. The total payroll provided by these estimates is $28,659,010. The regular staff as of April 1 this year was 6,172 and the seasonals numbered 1,434. Last year at the same time we had a regular staff of 6,195 and 1,303 casuals.

Other types of expenditure show a net increase amounting to $162,000. The major increases are as follows:

Travelling expenses	$60,000
Telephone and telegrams	$40,000
Public forms which have to be printed	$72,000

In regard to the income tax appeal board, there is an increase of $14,220 in the appropriation for administration purposes. The increase in the volume of work which must be handled by the board is indicated by the following statistics:

	1956	1957
Number of appeals filed . . .	373	486
Number of appeals disposed of	312	371

The number of appeals outstanding as of March 31, 1957 was 306, and the number outstanding as of March 31, 1958, 446.

In considering these main estimates of the taxation division and the income tax appeal board it is important to note that the volume of business which we are being required to transact is increasing at an accelerated rate. This is principally substantiated by the increase in the number of income tax returns being processed. The number of returns during the last four calendar years was as follows: In 1954, 4,940,000; in 1955, 5,058,000, or an increase of 2.4 per cent; in 1956, 5,243,000 or an increase of 3.4 per cent and in 1957, 5,542,000, or an increase of 5.7 per cent. That roughly gives a picture of what has been done by this division and the kind of business that has been transacted, together with an indication of the expenditures and the reasons for the increases.

EFFECTS OF HIGH TAXES

Chancellors are sometimes persuaded by their economic advisers to increase taxation on the supposed grounds that this is the best way of mopping-up surplus purchasing power. Such action may sometimes indeed be unavoidable. But at best it is a short-sighted approach. After a year or two, taxation carried beyond reasonable economic limits begins to have the opposite effect, and to cause a rise in prices. The reasons can be simply stated. By discouraging effort and enterprise, it keeps down the supply of goods and services available for sale: by encouraging businessmen to spend comparatively extravagantly on anything which can be charged to a business expense account, it increases the amount of purchasing power competing for the limited supply of goods, and finally, it brings about a subtle change in parliamentary and public opinion, which can be relied upon to put up a resistance to inflationary proposals under normal circumstances, but under circumstances of excessive taxation come to think that inflation might be lesser evil, believing that it may help to reduce the real burden of government expenditure.

Taxation which falls on the manual worker, whether income tax or indirect taxes, may also have quite as discouraging an effect upon his willingness to work and to produce more as does the taxation which falls upon his employer. There are many men who might be willing to take on more arduous and difficult jobs than they are performing at present, perhaps to work longer hours, if they thought that they would thereby be enabled to buy and to run a car. If we first impose a substantial income tax on their additional earnings, and then impose still heavier taxes on the car and the petrol which they want to buy, should we be surprised that so many men are content to stay as they are, and not make any additional effort?

High taxation is sometimes defended on the grounds that it weakens powerful monopolies. Those who speak in this way really should think again. It has exactly the opposite effect. Wealthy and powerful monopolies no doubt dislike the present rates of taxation. But at any rate they survive. The businesses which are killed, or more frequently, indeed, prevented from being born, are the vigorous, successful, smaller and growing businesses which in the past have played such a vital role in economic development. Such businesses always had to finance themselves to a large degree by reinvested profits. This is an exceptionally difficult thing to do at present rates of taxation. So these are the businesses whose growth is checked, or who have to sell out to larger businesses. The old-established monopolies reap the benefit of comparative freedom from competition, and are able to charge high prices.

The Cost of Living, by Colin Clark.

Source: *Canadian Tax Journal,* Sept-Oct., 1958.

Die neue Geschäftsordnung des Bundesfinanzhofes

von
Rechtsanwalt Dr. Franz Oswald, Weissenhorn

Die Verfassung des Bundesfinanzhofes (BFH) ist geregelt einerseits in der Abgabenordnung (AO), andererseits in dem Gesetz über den BFH vom 29.6. 1950. Danach ist der BFH das obere Bundesgericht für das Gebiet der Finanzgerichtsbarkeit, welches zuständig ist für Streitfragen über alle Abgaben, die von den Hauptzollämtern, von den Finanzämtern oder von den Oberfinanzdirektionen verwaltet werden. Diese gesetzlichen Regelungen finden ihre Ergänzung in der Geschäftsordnung, die der BFH kürzlich beschlossen und die der Bundesminister der Finanzen unter dem 22.11.1957 bekanntgemacht hat (Bundesanzeiger vom 28.11.1957, Nr. 229).

Danach hat der BFH mehrere Organe. Zunächst die Vollversammlung, welcher alle Mitglieder des BFH angehören und die beschlussfähig ist, wenn mindestens ¾ der Mitglieder anwesend sind; ihr ist die Beschlussfassung über die Geschäftsordnung vorbehalten. — Das nächste Organ ist das Präsidium. Es besteht aus dem Präsidenten, dem Vizepräsidenten, sämtlichen Senatspräsidenten und den drei ältesten anwesenden Bundesrichtern und ist beschlussfähig, wenn ¾ seiner Mitglieder anwesend sind. Ihm obliegt die Geschäftsverteilung, eine ausnehmend wichtige Massnahme. Sie ist gemäss § 59 AO vor Beginn des Geschäftsjahres vorzunehmen und dient dem Zweck, dem Rechtsuchenden den gesetzlichen Richter zu sichern. Diese Massnahme, zu der nicht nur die Aufteilung der Geschäfte unter die Senate gehört, sondern auch die Bestimmung der ständigen Mitglieder der einzelnen Senate sowie ihr regelmässiger Vertreter, hat grundsätzlich Geltung für das ganze Geschäftsjahr; sie kann im Laufe desselben nur dann geändert werden, wenn es wegen Überlastung eines Senates oder wegen Wechsel oder dauernder Verhinderung einzelner Mitglieder erfordert wird. — Des weiteren hat das Präsidium zu entscheiden, wenn für die Bearbeitung einer Sache mehrere Senate zuständig sind oder wenn die Zuständigkeit strittig ist. Somit obliegen dem Präsidium Funktionen von grösster Bedeutung.

Weniger weitreichend sind die Befugnisse des Präsidenten. Ihm obliegt die Verteilung der Geschäfte lediglich unter die nichtrichterlichen Beamten, überdies weist er den Angestellten und den Arbeitern die Aufgeben zu, er hat Bestimmungen zu erlassen über Register, Listen und dgl. — Was die Rechtsprechung betrifft, so hat der Präsident zunächst den Vorsitz in dem Senat, dem er sich anschliesst — meist ist es der IV. Senat, der für die Einkommensteuer zuständig ist ebenfalls hat er den Vorsitz im Grossen Senat, im Präsidium und in der Vollversammlung. Überdies leitet und beaufsichtigt er den Geschäftsgang, soweit nicht die Senatspräsidenten zuständig sind, und schliesslich steht ihm die Entscheidung in allen Verwaltungsangelegenheiten zu.

Jeder Senat wird von einem Senatspräsidenten geleitet. Bis vor kurzem waren es fünf Senate, zur Zeit sind es sechs und dem Vernehmen nach ist mit der Errichtung eines siebten zu rechnen, der für Zollsachen aus dem fünften

Senat abgezweigt werden soll. Innerhalb der Senate regelt der jeweilige Vorsitzende die Verteilung der Geschäfte und den Geschäftsgang. Im Besonderen bestimmt der für jede einzelne Streitsache den Berichterstatter und den Mitberichterstatter, auch kann er jede dieser Funktionen selbst übernehmen.

Wie sorgfältig die Entscheidungen vorbereitet werden, ergibt sich aus der folgenden Regelung: Der Berichterstatter verfasst zunächst einen schriftlichen Bericht, das gleiche obliegt dem Mitberichterstatter, dem der Bericht des Berichterstatters zugeleitet wird, worauf er der Mitberichterstatter eine schriftliche Stellungnahme ausarbeitet. — Ist auf diese Weise die Sache vorbereitet, so trägt in der Sitzung der Berichterstatter den Streitfall vor und macht einen Vorschlag für die Entscheidung; hierzu äussert sich bei der Beratung als erster der Mitberichterstatter. — Hat der Senat seinen Beschluss gefasst, so arbeitet der Berichterstatter die Entscheidung aus, überdies hat er den Rechtssatz derselben, sowie das Stichwort für die Zentralkartei abzufassen. — Zur Vorbereitung der Sitzung kann der Senatspräsident anordnen dass die Akten mit dem Bericht und dem Mitbericht noch vor der Sitzung bei den einzelnen Senatsmitgliedern in Umlauf gegeben werden.

Beratung und Abstimmung werden vom Vorsitzenden geleitet. Bei Stimmengleichheit wird die Stimme des dem Dienstalter nach und bei gleichem Dienstalter der Geburt nach jüngsten Bundesrichters nicht mitgezählt; die Stimmen des Berichterstatters und des Mitberichterstatters werden jedoch immer mitgezählt. Ergeben sich Meinungsverschiedenheiten, so entscheidet der Senat.

Der Senat als solcher beschliesst auch bei jeder Entscheidung, ob sie nach § 64 AO zu veröffentlichen ist („S"), ob sie zum Umlauf innerhalb des Bundesfinanzhofes und damit zur Bekanntgabe frei gegeben wird („U") oder ob — bei den anderen Entscheidungen („KU") — ein Stichwort für die Zentralkartei zu bilden ist.

Zu beachten ist, dass über den Gang der Beratung und der Abstimmung eine Niederschrift nicht gefertigt wird, ferner, dass die Abstimmung der einzelnen Mitglieder auch nicht in anderer Weise festgehalten werden darf; nur eine Ausnahme ist vorgesehen: der Richter, der überstimmt wurde, hat bei Unterfertigung des Urteils das Recht, seine von der Beschlussfassung des Senates abweichende Ansicht durch einen Vermerk zum Ausdruck zu bringen.

Source: *Der Wirtschaftstreuhänder*, 15 Mai 1958

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II

COMMUNAUTÉ EUROPÉENNE DU CHARBON ET DE L'ACIER

HAUTE AUTORITÉ

Décision N° 4-59

du 21 janvier 1959

modifiant la décision n° 2-52 fixant les conditions d'assiette et de perception des prélèvements visés aux articles 49 et 50 du traité

LA HAUTE AUTORITÉ,

vu les articles 49 et 50 du traité;

vu la décision n° 2-52 du 23 décembre 1952[1]) fixant les conditions d'assiette et de perception des prélèvements visés aux articles 49 et 50 du traité *(Journal Officiel de la Communauté n° 1 du 30 décembre 1952, page 3)*, modifiée par la décision n° 30-54 du 25 juin 1954 *(Journal Officiel de la Communauté n° 18 du 1er août 1954, page 469)* et par la décision n° 31-55 du 19 novembre 1955[2]) *(Journal Officiel de la Communauté n° 21 du 28 novembre 1955, page 906)*;

considérant que, dans la décision n° 2-52; la Haute Autorité a fixé les conditions d'assiette et de perception des prélèvements visés aux articles 49 et 50 du traité de telle manière que ceux-ci doivent être payés mensuellement en fonction des tonnages produits, et indépendamment de leur écoulement;

considérant que, en raison des conditions de production et d'écoulement propres à certains des secteurs d'activité assujettis au paiement du prélèvement, l'évolution du marché peut entraîner la constitution de stocks importants.

considérant que, dans de tels cas, la Haute Autorité doit pouvoir modifier, au besoin avec effet rétroactif, les conditions de paiement du prélèvement de telle manière que, lorsque le montant des stocks excède le niveau habituel, les entreprises intéressées puissent bénéficier d'un paiement différé non majoré d'intérêts;

après consultation du Conseil de Ministres

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[1]) Voir ce *Bulletin*, Vol. VI (1952) p. 317.
[2]) Voir ce *Bulletin*, Vol. X (1956) p. 234.

Décide:

Article premier

L'article 4 *bis* suivant est inséré dans la décision n° 2-52:

«La Haute Autorité peut décider, au besoin avec effet rétroactif, que les entreprises de secteurs industriels déterminés, chez lesquelles se sont constitués des stocks inhabituels eu égard aux conditions de production et d'écoulement qui leur sont propres, bénéficieront, pour le règlement du prélèvement dû sur les produits mis en stock, d'un paiement différé non majoré d'intérêts.»

Article 2

La présente décision entrera en vigueur à l'intérieur de la Communauté le 1er février 1959.

La présente décision a été délibérée et adoptée par la Haute Autorité au cours de sa séance du 21 janvier 1959.

Par la Haute Autorité Le président
PAUL FINET

Décision N° 5-59

du 21 janvier 1959
relative à la possibilité pour les entreprises charbonnières de différer le paiement de sommes dues au titre du prélèvement

LA HAUTE AUTORITÉ,

vu la décision n° 2-52 du 23 décembre 1952[1]) fixant les conditions d'assiette et de perception des prélèvements visés aux articles 49 et 50 du traité *(Journal Officiel de la Communauté n° 1 du 30 décembre 1952, page 3)*, modifie par la décision n° 30-54 du 25 juin 1954 *(Journal Officiel de la Communauté n° 18 du 1er août 1954, page 469)*, par la décision n° 31-55 du 19 novembre 1955 *(Journal Officiel de la Communauté n° 21 du 28 novembre 1955, page 906)*, et par la décision n° 4-59 du 21 janvier 1959 (voir le présent numéro du *Journal Officiel des Communautés européennes)*;

considérant que les entreprises charbonnières connaissent actuellement de sérieuses difficultés d'écoulement qui ont entraîné dans plusieurs bassins de la Communauté une accumulation exceptionnelle de stocks de houille, coke de houille et agglomérés de houille;

considérant dès lors que, conformément au principe posé par

[1]) Voir p. 65 du présent fascicule, note[1]).

l'article 4 *bis* de la décision n° 2-52, modifiée par la décision n° 4-59, il y a lieu de prévoir la possibilité pour les entreprises intéressées d'obtenir en fonction des tonnages stockés un paiement différé, jusqu'au moment de la reprise aux stocks, des sommes dues au titre du prélèvement;

considérant qu'en raison des difficultés d'écoulement qui se sont déjà manifestées pendant l'année 1958, les mesures envisagées doivent prendre effet à partir du 31 décembre 1957 et le paiement différé du prélèvement doit donc s'appliquer aux quantités stockées qui dépassent celles existant au 31 décembre 1957;

considérant que, pour l'application d'un tel système, les entreprises doivent être tenues de faire des déclarations relatives aux tonnages stockés; que, si une entreprise, après avoir obtenu un paiement différé, ne continue pas à donner des indications sur l'évolution des stocks, elle doit être considérée comme ayant repris les tonnages mis en stock;

Décide:

Article premier

(1) Jusqu'à nouvel ordre, les entreprises charbonnières peuvent, sur leur demande, différer le paiement du prélèvement sur leur production taxable stockée après le 31 décembre 1957, dans la mesure où le total des quantités en stock excède le stock existant au 31 décembre 1957. Pour la fixation des quantités en stock, sont pris en considération la houille, le coke de houille et les agglomérés de houille à l'exception des schlamms. Le coke de houille est converti en son équivalent houille dans le rapport 1 : 1,33.

(2) Aucun intérêt n'est perçu jusqu'à l'échéance pour les montants dont le paiement a été différé.

(3) Si des montants dont le paiement est différé sont déjà payés, ces montants seront remboursés sur demande.

Article 2

Lorsqu'il y a reprise de quantités mises en stock, le montant du prélèvement afférent à ces quantités est dû le 25 du mois suivant.

Article 3

Les demandes visant à différer le paiement du prélèvement sur les productions stockées jusqu'au 31 janvier 1959 doivent parvenir au plus tard le 30 avril 1959 au bureau du prélèvement de la Haute

Autorité. Les demandes devront indiquer les tonnages en stock au 31 décembre 1957 et au 31 janvier 1959.

Article 4

(1) Les demandes visant à différer le paiement du prélèvement sur les productions stockées après le 31 janvier 1959 doivent parvenir le 20 de chaque mois pour le mois précédent, et pour la première fois le 20 mars 1959, au bureau du prélèvement de la Haute Autorité. Ces demandes doivent comprendre:

— les quantités en stock au dernier jour du mois précédent,
— les quantités en stock au dernier jour de l'avant-dernier mois.

(2). L'entreprise est autorisée à déduire le montant dont elle demande de différer le paiement des sommes dues par elle au titre du prélèvement le 25 du même mois.

Article 5

(1) Aussi longtemps que le paiement de sommes dues au titre du prélèvement se trouve différé en vertu de la présente décision, l'entreprise doit déclarer le 20 de chaque mois au bureau du prélèvement de la Haute Autorité les quantités en stock au dernier jour du mois précédent.

(2) En l'absence de telles déclarations, la Haute Autorité pourra considérer qu'il y a eu reprise aux stocks au sens de l'article 2 cidessus.

Article 6

Les fausses déclarations donnent lieu à l'application des sanctions prévues au 3ème alinéa de l'article 47 du traité.

Article 7

La présente décision entrera en vigueur à l'intérieur de la Communauté le 1er février 1959.

La présente décision a été délibérée et adoptée par la Haute Autorité au cours de sa séance du 21 janvier 1959.

Par la Haute Autorité Le président
PAUL FINET

Source: *Journal Officiel des Communautés Européennes* du 27 janvier 1959.

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UNITED KINGDOM — THE INCOME TAX AND PROFITS TAX OVERSEAS TRADE CORPORATION REGULATIONS 1958

Part IV of the Finance Act 1957, provides for certain relief from income tax and profits tax to Overseas Trade Corporations, that is, broadly, companies which, though managed and controlled in the United Kingdom, carry on all their trading activities overseas.[1])

The present Regulations make provision, in the main on procedural points, for giving effect to the provisions of part IV of the Finance Act '57.

Part II of the Regulations lays down the procedure by which a company may qualify as an Overseas Trade Corporation and may appeal against assessments made upon it.

Part III. The relief from income tax and profits tax accorded by the Overseas Trade Corporation scheme applies only to undistributed trading profits. Sections 26 and 27 of the Act require companies to account to the Revenue for tax on sums distributed from such profits. Part III of the Regulations requires a company which is or has been an Overseas Trade Corporation, or a liquidator of such a company, to make returns to the Inspector of sums distributed by way of dividends, grants, loans, etc., out of exempt trading income.

Part IV: Section 23 of the Finance Act 1957, entitles companies which qualify to be trated as Overseas Trade Corporations to elect that they should not be so treated. This part of the Regulations lays down the procedure for the making of such claims.

Part V sets out the particulars to be given on dividend warrants issued by a company which is or has been an Overseas Trade Corporation.

Part VI lays down rules for the determination of the amount of credit to be allowed to a company in computing its liability to tax on sums distributed out of exempt trading income, for tax paid

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[1]) See Bulletin Vol. XII Nr. 2 p. 65.

overseas on the profits out of which those distributions are deemed to have been made.

Part VII. Section 33 of the Finance Act 1957, provides that where a direction is made by the Special Commissioners under Section 245 of the Income Tax Act, 1952 that the income of an Overseas Trade Corporation should, for a particular period, be deemed for the purposes of surtax to be income of the members of the company, the exempt trading income of that period should also be charged to income tax. This part of the regulations provides certain rules for the determination of the amount of the exempt trading income of the company where such a direction is made.

Part VIII lays down rules for computing, for the purposes of allocation of dividends, the income of a company which has been, but has ceased to be, an Overseas Trade Corporation.

Source: Statutory Instruments, 1958, No. 392

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SURVEYS OF TAX LEGISLATION
APERÇUS DE LEGISLATION FISCALE

AUSTRIA

Period from January 1st until February 28th, 1959

Turnover taxes

Verordnung des Bundesministeriums für Finanzen vom 2.1.1959, womit die Zollfreizonen teilweise von der Anwendung des Umsatzsteuergesetzes ausgenommen werden. BGBl. für die Rep. Oesterr., 8.1.59, p. 329.

Verordnung des Bundesministeriums für Finanzen vom 2.1.1959, mit der die Gegenstände bestimmt werden, für die eine Ausgleichsteuer nicht eingehoben wird (Freiliste 1). BGBl. für die Rep. Oesterr., 8.1.59, p. 323.

Consumption taxes

34. Kundmachung des Bundeskanzleramtes vom 31.1.1959 über die Aufhebung des § 9 Abs. 2 der Hausbesorgerordnung 1957 durch den Verfassungsgerichthof. BGBL. Rep. Österreich, 13.2.59, p. 404.

Excise duties

Kundmachung des Bundeskanzleramtes vom 26.1.59 über die Aufhebung des § 5 Abs. 2 des Bundesgesetzes über die Mineralölsteuer. BGBl. für die Rep. Oesterr. 6.2.59, p. 390.

Miscellaneous

32. Verordnung des Bundesministeriums für soziale Verwaltung vom 12.12.1958 über den Kreis der Personen, denen die Grundsteuerzuschläge auf Antrag nach § 18 Abs. 8 des Landwirtschaftlichen Zuschussrentenversicherungsgesetzes zurückerstatten sind. BGBL Rep. Österreich, 13.2.59, p. 403.

BELGIUM

Period from January 1st until February 28th, 1959

Income taxes

Arrêté royal du 24.12.1958 relevant la limite au-delá de laquelle les revenus des dépots d'épargne, autres que ceux confiés à la Caisse générale d'Epargne et de Retraite, sont soumis à la taxe mobilière suivant le droit commun. Moniteur Belge, 7.1.1959, p. 95.

Droit d'enregistrement

Loi du 23.12.1958 modifiant le Code des droits d'enregistrement, d'hypothèque et de greffe, le Code des droits de succession et le Code des droits de timbre, Moniteur Belge, 7.1.1959. p. 86.

Arrêté ministériel du 5.1.1959 mettant en vigueur certaines dispositions de la loi du 30 avril 1958 concernant les douanes et le accisses. Moniteur Belge, 10.1.1959, p. 151.

Arrêté royal du 5.1.1959 relatif au tarif des droits d'entrée, Moniteur Belge, 11.1.1959, p. 170.

Loi du 3.2.59 modifiant le Code des droits d'enregistrement, d'hypothèque et de greffe. M. Belge, 14.2.59, p. 926.

Taxes assimiliées au timbre

Arrêté royal du 8.1.59 modifiant le Code et le Règlement général sur les taxes assimilées au timbre. Mon. Belge, 17.1.59, p. 314.

FRANCE *Period from January 1st until February 28th*

Généralités

Ordonnance no. 59-246 du 4.2.59 portant loi de finances rectificative pour 1959. J.O. 8.2.59, p. 1751.

Arrêté du 9.2.59 portant création d'un groupe d'études fiscales. J.O. 11.2.59, p. 1874.

Impots sur les revenus

Décret no. 59-289 du 14.2.59 fixant de nouveaux coefficients de réévaluation pour l'application de la revision des bilans prévue à l'art. 45 du code géneral des impôts. J.O. 15.2.59, p. 2024.

Décret no. 59-303 du 18.2.59 modifiant l'art. 44 de l'annexe III au code général des impôts J.O. 19.2.59, p. 2119.

Droits d'enregistrement

Décret no. 58-1424 du 31.12.58 fixant les modalités d'application de l'article 1371 du code général des impôts tel qu'il résulte de l'article 48 de l'ordonnance no. 58-1374 du 30.12.58. J.O. 1.1.59, p. 111.

Chiffre d'affaires

Décret no. 58-1426 du 31.12.58 relatif à l'application de l'article 271.10 du code général des impôts. J.O. 1.1.59, p. 112.

Décret no. 58-1423 du 31.12.58 fixant les modalités d'application du régime des déductions pour les biens et les services visés à l'article 267-B du code général des impôts. J.O. 1.1.59, p. 110.

Décret no. 58-1425 du 31.12.58 relatif aux taux majorés des taxes sur le chiffre d'affaires J.O. 1.1.59, p. 112.

Ordonnance no. 59-78 du 7.1.59 relative à la taxe locale sur le chiffre d'affaires. J.O. 8.1.59. P. 564.

Ordonnance no. 59-122 du 7.1.1959 portant réforme du régime des taxes sur le chiffre d'affaires en ce qui concerne le gaz. Journal Officiel, 9.1.1959, p. 639, 1 p.

Décrets no. 59-298 et no. 59-299 du 17.2.59 relatifs aux taux majorés des taxes sur le chiffre d'affaires. J.O. 18.2.59, p. 2092. 1 p.

Taxes de consommation

Décret no. 58-1422 du 31.12.58 relatif au régime fiscal de certains produits de large consommation. J.O., 1.1.59, p. 110.

Ordonnance no. 59-80 du 7.1.59 portant réorganisation des monopoles fiscaux des tabacs et allumettes. J.O. 8.1.59, p. 564.

Ordonnance no. 59-118 du 7.1.1959 portant modification de diverses dispositions relatives à la taxation des carburants. Journal Officiel 9.1.1959, p. 638.

Arrêté du 7.1.1959 fixant les conditions d'application de l'article 20 de l'ordonnance no. 59-109 du 7.1.1959 portant réforme du régime fiscal et douanier des pétroliers. Journal Officiel, 11.1.1959, p. 768. 2 pp.

Arrêté du 7.1.1959 fixant les conditions d'application de l'article 3 de l'ordonnance no. 59-118 du 7.1.1959 portant modification de diverses dispositions relatives à la taxation des carburants. Journal Officiel, 11.1.'59 p. 770.

Droits de douane

Ordonnance no. 58-1382 du 31.12.58 ratifiant le décret no. 58-1377 du 30.12.58 portant réduction provisioire de certains droits de douane d'importation, en régime de droit commun, en tarif minimum. J.O. 1.1.59, p. 4.

Décret no. 59-91 du 7.1.59 portant rétablissement des droits de douane d'importation sur les animaux vivants de l'espèce bovine destinés à la boucherie et sur les viandes. J.O. 8.1.59, p. 582.

Ordonnance no. 59-120 du 7.1.1959 portant rétablissement des droits de douane d'importation sur les animaux vivants de l'espèce bovine et leurs viandes. Journal Off. 9.1.1959, p. 639.

Ordonnance no. 59-109 du 7.1.1959 portant réforme du régime fiscal et douanier des produits pétroliers. Journal Officiel, 9.1.1959, p. 627.

Arrêté du 31.12.58 portant fixation pour le premier semestre 1959 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. J.O. 13.1.59, p. 812.

Décret no. 59-268 du 7.2.59 rétablissant la perception des droits de douane d'importation sur certaines fontes et ébauches en rouleaux pour tôles. J.O. 10.2.59, p. 1802.

Décret no. 59-270 du 7.2.59 portant concession des droits de douane d'importation du tarif minimum en faveur de certaines marchandises originaires de Libye. J.O. 10.2.59, p. 1803.

Arrêté du 10.2.59 portant fixation pour l'année 1959 du contingent et des conditions d'importation en suspension du droit de douane d'importation de la dolomie frittée. J.O. 11.2.59, p. 1875.

Arrêté du 10.2.59 portant fixation pour l'année 1959 du contingent et des conditions d'importation en suspension du droit de douane d'importation de certaines graisses et huiles de baleine. J.O. 11.2.59, p. 1874.

Matières diverses

Décret no. 58-1418 du 29.12.58 fixant les modalités d'application de la taxe, instituée par l'article 1er (§1-1°) de l'ordonnance no. 58-653 du 31.7.58, à la charge des propriétaires de résidences secondaires. J.O. 1.1.59, p. 105. 1 p.

Décret no. 58-1417 du 29.12.58 fixant les modalités d'application de la taxe, instituée par l'article 1er (§ 1-2°) de l'ordonnance no. 58-653 du 31-7.58, à la charge des personnes possédant ou ayant à leur disposition des yachts ou bateaux de plaisance. J.O. 1.1.59, p. 105.

Décret no. 58-1415 du 31.12.58 portant répartition des dotations applicables aux comptés spéciaux du Trésor. J.O.1.1.59, p. 97. 8 pp.

Décret no. 58-1420 du 31.12.58 complétant et modifiant le nouveau tarif des patentes et tendant à faciliter l'extension de ce tarif à l'ensemble du territoire. J.O.1.1.59, p. 106. 1 p.

Décret no. 58-1421 du 31.12.58 relatif à l'introduction de la réforme de la patente dans le département de la Guadeloupe. J.O. 1.1.59, p. 109. 1 p.

Décret no. 58-1416 du 29.12.58 fixant les modalités d'application de la taxe, instituée par l'article 1er (§1-3°) de l'ordonnance no. 58-653 du 31.7.58, à la charge des propriétaires de chevaux de course. J.O. 1.1.59, p. 105. 1 p.

Ordonnance no. 59-12 du 3.1.1959 autorisant la ratification: 1° de la convention relative au régime fiscal des véhicules routiers à usage privé en circulation internationale; 2° de la convention douanière relative à l'importation temporaire des véhicules routiers commerciaux; 3° de la convention douanière relative à l'importation temporaire pour usage privé des embarcations de plaisance et des aéronefs; 4° de la convention douanière relative aux containers, ainsi que des protocoles annexes signés à Genève le 18.5.56 J.O. 5 et 6.1.159, p. 309.

Ordonnance no. 59-121 du 7.1.1959 portant réforme du régime fiscal de l'électricité. J.O. 9.1.1959, p. 639.

Décret no. 59-177 du 17.1.59 portant modification du taux de la taxe d'encouragement à la production textile. J.O. 22.1.59, p. 1149.

Arrêté du 31.1.59 fixant pour le mois de févr. 1959 les taux de la redevance compensatoire instituée par l'art. 1er de l'arrêté du 7.1.59 pris en application de l'art. 20 de l'ordonnance no. 59-109 du 7.1.59. J.O. 1.2.59, p. 1501.

GERMANY *Period from January 1st until Februay 28th, 1959*

Conventions

Bekanntmachung über das Inkrafttreten des Abkommens 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, 21.1.59, p. 1.

Gesetz zu dem 4. Zusatzabkommen vom 1. November 1957 zum Zollvertrag zwischen der Bundesrepublik Deutschland und der Schweizerischen Eidgenossenschaft. BGBl. II, 7.2.59, p. 41.

Equalization of burden law

14. Verordnung über Ausgleichsleistungen nach dem Lastenausgleichsgesetz. BGBl. I, 16.1.59, p. 22.

23. Durchführungsverordnung über Ausgleichsabgaben nach dem Lastenausgleichsgesetz. BGBl. I, 24.1.1959, p. 27.

Consumption taxes

Verordnung zur Anpassung von Verbrauchsteuergesetzen und von Durchführungsverordnungen zu Verbrauchsteuergesetzen an den Deutschen Zolltarif 1959: BGbl. I, 8.1.59, p. 5.

Customs

Minerallzoll-Vergütungsordnung 1959 (MZVergO 1959). BG bl. I, 8.1.59, p.l.

Verordnung über Erläuterungen zum Deutschen Zolltarif 1959. BGBl. II, 7.2.59, p. 68.

4. Verordnung zur Änderung des deutschen Zolltarifs 1959 (Kohlenzoll). BGBl. II, 13.2.59, p. 117.

LUXEMBOURG *Period from January 1st until February 28th, 1959*

Droits de douane

Arrêté ministériel du 8.1.59 relatif au tarif des droits d'entrée. Mémorial, 10.1.59, p. 2.

Arrêté ministériel du 13.1.1959, concernant les douanes et les accises. Mémorial, 22.1.1959, p. 17.

NETHERLANDS *Period from January 1st until February 28th, 1959*

Turnover taxes

Re modification of the decree concerning the refund of turnover tax.. Ned. Stsct. 2.1.59, p. 5.

Decree of 26.1.1959 modifying the decree for the execution of the turnover law 1954 (Stb. 560) Stbl. 1959 nr. 9.

Customs

Decree of 19.2.1959. Decrease of import duties for goods circulating between member countries of the European Economical Community. Ned. Staatscrt. nr. 36 of 20.2.59, p. 3.

Decree of 7.1.59. Suspension of import duties as a result of the European Common Market Treaty. Stbl. 1959, nr. 1. p. 1.

MISCELLANEOUS — FAITS DIVERS

AUSTRALIA

Minor Tax Reliefs

The only tax relief measures in the Australian Federal Budget were the extension for a further three years of depreciation allowances to farmers and an increase in zone allowances to residents in remote areas.

Source: *International Accountants Journal,* September 1958.

BRAZIL

Tax Allowances for Royalties

The Minister of Finance has issued Ordinance no. 436 of 30th December establishing maximum percentages for the deduction of royalties under art. 74 of the new income tax law, no. 3470 of 28th November 1958.

For this purpose, industries have been divided into six groups according to their degree of essentiality and the maximum deductions allowed range from 5 to 1 per cent.

Source: *Bank of London and South America Ltd. Fortnightly Review,* 31st January, 1959.

CEYLON

Tax increase

New direct and indirect taxes, together constituting major changes in Ceylon's taxation structure, were announced by the Finance Minister in his Budget Speech.

The Minister proposed new taxes on net wealth, personal consumption, expenditure and gifts, and the inclusion of capital gains in income for tax purposes.

As regards limited liability companies, the Minister proposed to replace the present dual system of non-refundable income tax and profits tax by a single non-refundable tax on companies at 45 per cent on the whole of the profits of the year. On distributed profits, the companies should deduct and pay one third on gross dividends distributed. This tax would be credited against income tax liability of shareholders.

The same rate of 45 per cent applies to non-resident companies, plus 6 per cent now existing in lieu of estate duty. In the case of these companies, one third of profits earned will be deemed to have been distributed as dividends, and dividends will be subject to dividend tax.

The tax on capital gains will be levied on resident and non-resident companies in the same way as with individual income tax.

Source: *International Accountants Journal,* September 1958.

FRANCE

Impôt sur les sociétés

Dans l'arrêt du Conseil d'Etat 7e sous-section, 3 mars 1958, no. 41135 il est décidé comme suit: Une entreprise de transports maritimes ayant à l'étranger son siège social où elle ne possède ni local spécial ni préposé et où elle ne traite aucune affaire alors qu'elle a en France le siège de sa direction où sont

installés ses services techniques, administratifs et commerciaux, ainsi que ceux de contentieux et de la comptabilité, doit être assujettie à l'impôt sur les sociétés en France pour l'ensemble de ses activités.

Le fait que les navires de l'entreprise, immatriculés hors de France, effectuent d'un port étranger à un autre port étranger des transports dont le prix est payable à l'étranger ne caractérise pas une activité détachable des autres opérations réalisées en France.

Quoique l'arrêt soit fortement motivé il faut remarquer qu'en l'espèce, la société réquérante exerçait bien, semble-t-il, un cycle complet d'opérations commerciales à l'étranger. Aussi bien il parait rigoureux qu'il ait été décidé que la totalité de ses bénéfices était impossible.

Source: *Revue des impôts,* octobre, 1958.

Double imposition en cas de certificats pétroliers

Solution du 8 décembre 1958 — Bull. Enreg. no. 7795.

Compte tenu de la nature et des caractéristiques des certificats pétroliers telles qu'elles résultent de l'article Ier, § III, de la loi institutive no. 57-716 du 26 juin 1957 (Annexe I) et du décret no 57-1025 du 10 septembre 1957 pris pour son application, et plus particulièrement, des termes de la loi précitée du 26 juin 1957 qui dispose que l'existence ces certificats n'entraînera aucune imposition supplémentaire sur les produits distribués, il a été décidé d'admettre au bénéfice des dispositions des conventions internationales sur les doubles impositions, les porteurs domiciliés dans les pays ayant conclu avec la France des accords de cette nature.

Source: *Bulletin d'Information Impôts et Sociétés* du 26 janvier 1959.

Conventions fiscales

Par trois ordonnances, en date des 23 et 27 décembre 1958 sont autorisées les ratifications des conventions suivantes: Les deux conventions conclues le 25 août 1958 entre la France et la Finlande pour éviter les doubles impositions, d'une part en matière d'impôts sur le revenu et sur la fortune, d'autre part en matière d'impôts sur les successions.

La convention conclue le 29 octobre 1958 entre la France et l'Italie pour éviter les doubles impostions et régler certaines autres questions en matière d'impôts directs sur le revenu et sur la fortune.

Les conventions conclues le 1er avril 1958 entre la France et le Grand-Duché de Luxembourg pour éviter les doubles impositions, d'une part en matière d'impôts sur le revenu et sur la fortune, d'autre part en matière d'impôts extraordinaires sur le capital.

En outre, une ordonnance du 27 décembre 1958 ratifie et promulgue la convention conclue à Paris et à Dzaoudzi les 13 octobre et 12 novembre 1958 entre le Gouvernment français et le Gouvernement des Comores, tendant à éliminer les doubles impositions et à établir des règles d'assistance mutuelle administrative pour l'imposition des revenus de capitaux mobiliers.

Source: *Droit Fiscal* du 9 janvier 1959.

GHANA

Tax reduction for companies

Changes in Ghana's tax structure were features of the Budget presented to the National Assembly by the Finance Minister. The general rate of company tax is to be reduced to 8 s from 9 s in the £, but at the same time an additional tax of 6 d in the £ is to be imposed on profits of companies incorporated outside Ghana, except for profits retained in the country.

A withholding tax of 6 d in the £ is to be imposed on dividends and interest paid to non-residents by companies incorporated in Ghana.

Source: *International Accountants Journal,* September 1958.

INDONESIA

Structural tax reform

A committee has been appointed by presidential decree of 31st March, 1958, to study the existing tax system in order to ascertain if that tax system satisfies the national wants. Moreover alterations will be proposed if necessary. Also advices will be given to the Minister of Finance.

Source: *Official Gazette of 23rd May 1958 No. 41).*

ISRAEL

The Income Tax Bill 1958 of Israel announces the following changes:

1. The Defence Levy, a special tax on income, expenditure and licences introduced in 1956[1]) is not to be continued.
2. A reduction on the companies' income tax by means of the deduction of the companies' profits tax in computing the income tax. This reduction results in an effective rate of 42.5 % companies' income tax.
3. The re-introduction of the so-called "obsolescence allowance", a special deduction with regard to the renewal of machinery and equipment.
4. An everlasting carry-forward of losses with the restriction that a loss may only be set off against income from the same source.

These amendments are the most important ones.

Of a special administrative importance is section 19 of the Bill, which reads a follows:

"The Commissioner intends to obtain permission, henceforth to investigate any employee, agent or other person closely connected with a taxpayer's business in connection with the investigation of definite offences (hitherto such investigation was possible only with the consent of the employee). (the clause will not affect the professional secrecy of accountants or lawyers)

Source: *Business Diary,* 9th April, 1958.

Income Tax Regulations (depreciation)

Regulations have been issued with regard to the possibility of an additional depreciation, according to the Depreciation of Business Assets Law, 1958. To this end the taxpayer has to submit to the Assessing Officer a special declaration for every tax year for which the deduction is claimed. This declaration has to contain i.a. details of the assets for which the deduction is claimed.

Source: *Business Diary,* 30th October, 1958.

FEDERATION OF MALAYA; SINGAPORE

Tax increase

The tax legislation calls for a company tax of 40 percent in both Singapore and the Federation, an increase from the present rate of 30 percent. Individual income taxes for non-residents earning income in Malaya are also scheduled to go up from 30 to 40 percent. Individual income taxes for Singapore residents are to be increased on a sliding scale, up to a maximum of 50 percent on chargeable incomes of M$ 50.000 or more. No increase in personal income taxation for residents is contemplated by the Federation.

Source: *Foreign Commerce Weekly,* December 29, 1958.

NEW ZEALAND

Tax increase.

Large increases in taxation were announced by the Finance Minister of

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[1]) See *Bulletin Vol XI* p. 101.

New Zealand when introducing his Budget recently. Income tax, company tax, estate duty and duties on petrol, beer and spirits are all substantially increased. The heaviest increases of all are in company taxation.

The result is that the profits of a New Zealand company will be liable to a maximum income tax of 8s 6d plus a social security charge of 1s 6d.

Dividens are lialbe to a further charge of 7 s in the £ in the hands of recipients, though there is a personal allowance, which will cover most foreign shareholders.

There is also a new company tax on retained earnings, if they are regarded as excessive, as the case may be when less than 60 percent of profits are distributed. Such excessive retained profits are liable to a further tax with a maximum rate of 7 s in the £.

In personal income tax there is an increase in the rate and on the other hand large increases in family allowances and in old age benefits.

Source: *International Accountants' Journal,* September, 1958.

ÖSTERREICH

Erbschaftsteuer und Einkommensteuer

Das Institut für Betriebswirtschaft, Steuerrecht und Organisation wird demnächst ein grosses Gutachten über die mit dem Erbgang zusammenhängenden Steuerfragen herausbringen. Ohne diesem Gutachten irgendwie vorgreifen zu wollen, kann man schon folgendes sagen.

Im allgemeinen schliessen Erbschaftsteuer und Einkommensteuer einander aus. Unter die Erbschaftsteuer fallen unentgeltliche Erwerbe von Toden wegen (Erbteile, Vermächtnisse, Pflichtteile usw.) oder unter Lebenden (Schenkungen, Zweckzuwendungen usw.). Unter die Einkommensteuer fallen grundsätzlich nur entgeltliche Vorgänge, Vorgänge des Erwerbslebens im allerdings weitesten Sinn. Weil diese gegenseitige Ausschliessung durchaus keine vollständige ist, möchten wir auf einige Grundsätze besonders hinweisen:

a) Der *Erbanfall* als solcher unterliegt nicht der Einkommensteuer, weil er nicht unter eine der sieben Einkunftarten fällt. Wegen nachträglich einfliessender Einkünfte des Erblassers Hinweis auf das oben Gesagte.

b) Wird ein Erbteil, Vermächtnis oder Pflichtteil verspätet ausbezahlt oder hat der Erblasser seine *Verzinsung* vorgeschrieben, so sind die Zinsen von dem Erbteil, Vermächtnis, Pflichtteil usw. steuerpflichtige Einnahmen (in der Regel solche nach § 20 EStG) des Bedachten (und abzugsfähige Ausgaben des damit Beschwerten).

c) Die *Erbschaftsteuer* und sämtliche *Kosten* des Abhandlungsverfahrens sind weder Betriebsausgaben noch Werbungskosten noch Sonderausgaben, sondern — wie der Erbenfall selbst — privater Natur. Man erbt eben sozusagen um diese Beträge weniger, sie sind aus dem Erbanfall zu leisten. Da sie niedriger sind als der Erbanfall — sonst würde der Erbe ja die Erbschaft gar nicht annehmen —, kommen sie auch als aussergewöhnliche Belastung nicht in Betracht.

d) *Lasten,* die der Erbe zusammen mit dem Erbteil, Vermächtnis usw. auf sich nimmt, sind gleichfalls weder Betriebsausgaben noch Werbungskosten, sie können auch nicht als Betriebsschulden ausgewiesen und verrechnet werden. Wohl aber sind sie vom Gesamtvermögen oder Inlandvermögen als Ganzem abzugsfähig, mindern also die Vermögensteuer des Erben. Und soweit es sich um laufende Zuwendungen an Dritte (insbesondere um Renten) handelt, sind sie Sonderausgaben nach § 10 EStG und mindern als solche das Gesamteinkommen.

Source: *Österreichische Steuer- und Wirtschaftskartei,* 10. Februar 1959

PERU

Tax changes

The following acts were promulgated on 31st December 1958: No. 13049, modifying the tax payable by cotton producers. Beginning this year, producers will make, on delivery of ginned cotton, a prior payment towards their profits tax. No. 13051 modifying the profits tax and eliminating the excess profits tax. The new scale begins with a tax of 5 per cent on profits up to 10.000 soles increasing gradually until a maximum of 35 percent on profits exceeding 5 million soles.

The act also increases to 25 percent and 16 percent, respectively the tax on dividends on bearer shares and interest on bearer bonds. Under the law a committee is to be created to consider future modifications to the present taxation system.

No. 13053 cancelling the recidence tax payable by foreigners that came into effect in 1958. The new law reinstates the fee of 200 soles for initial registration and that of 100 soles for each annual renewal, which were in force before last year's increase.

Source: *Bank of London and South America Ltd. Fortnightly Review,* January 31 st, 1959.

SOUTH AFRICA

Bonus Shares

When the Minister of Finance announced the concession in his budget speech in 1958 whereby capitalization shares (bonus shares) would no longer be regarded as "dividends" for income tax purposes, he said that this concession would be subject to certain conditions, without indicating the nature of these conditions.

The recently published Income Tax Act, no. 36 of 1958 (sections 4 and 11-13), now shows that this proviso is much broader than many people were originally led to believe, since private companies are excluded from the concession except insofar as share premiums are capitalized in a capitalization issue.

The procedure of super-taxing capitalization shares at the time of issue has thus been only partially removed. Where the past trading profits of private companies have been ploughed back in the form of fixed assets essential to the business, it is indeed anomalous not to allow these companies to issue supertax-free capitalization shares to acknowledge this fact, particularly when public companies are allowed to do just this in otherwise identical circumstances. It is to be hoped that this anomaly will be removed in future legislation.

Source: *The Foreign Tax Law Weekly Bulletin,* December 10, 1958.

U.S.A.

Technical Amendments Act of 1958

In the area of federal taxation, the most important development of the past year was the adoption of the Technical Amendments Act of 1958. Some of the major provisions cover adjustments required by changes in accounting; improvements on leased property; election permitting the income of closely held corporations to be taxed to their shareholders. The Act also permits small businesses to reduce their taxable income by deducting an extra percentage for depreciation of an asset in the year of purchase.

Source: *The Journal of Accountancy,* January 1959.

TAX AGREEMENTS

Belgium - Union of South Africa

The last of the formalities required to give the Double Taxation Agreement between Belgium and the Union of South Africa. The force of law in the Union and in Belgium and the Belgian Congo including Ruanda-Urundi, was completed on 1st January 1958. The Agreement consequently came into force on that date in terms of Article 3 thereof, which further provides that the Agreement shall have effect in respect of all income derived during taxable periods ending after the 30th December 1950.

Source: *The Taxpayer,* October 1958.

Japan - Pakistan

A draft convention between Pakistan and Japan for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income was recently finalized in Tokyo by the delegations of the two countries.

Source: *Taxation,* January 24th, 1959.

U.K. - U.S.A.

The existing agreement between Great-Britain and the United States for the avoidance of double taxation and the prevention of fiscal evasion has been extended to include Cyprus and Jamaica.

Source: *Taxation,* January 3rd, 1959.

III

BELGIQUE — CONVENTION FRANCO-BELGE DU 16 MAI 1931

L'économie de l'article 7 de la convention franco-belge du 16 mai 1931 repose sur la division des revenus selon le lieu ou ils sont produits, dès lors que cette division est réalisable et la taxe professionnelle frappe les revenus de l'exploitation dès leur origine, c'est-à-dire dès leur production.

D'autre part, les terres, fussent-elles dépendantes d'autres situées à l'étranger, doivent etre considérées comme des installations fixes de caractère productif, au sens de l'article 7, § 3, de la convention, cet article ne faisant pas de distinction entre les installations dépendantes et les installations autonomes.

Dès lors, le revenu de ces terres est soumis à la taxe professionnelle en Belgique.

Vu l'arrêt attaqué, rendu le 8 janvier 1957 par la cour d'appel de Gand;

Sur le moyen, pris de la violation des articles 7, §§ 1er et 3, de la convention franco-belge du 16 mai 1931, approuvée par la loi du 28 décembre 1931, 110 de la Constitution, 28, § 4, et 13, 2°, de l'arrêté royal du 22 septembre 1937, en ce que, après avoir constaté que le demandeur exploite une ferme située en territoire français, dont des terres d'une superficie de 13 hectares sont sises et exploitées en territoire belge, l'arrêt attaqué n'en décide pas moins que la taxe professionnelle a été établie à bon droit sur les revenus afférents à l'exploitation de ces 13 hectares, au motif que les terres situées en Belgique doivent être considérées comme une installation fixe, alors que la possession de quelques hectares dans un pays déterminé ne peut être considérée comme une installation au sens de l'article 7 susvisé, celle-ci visant une industrie, une usine ou une exploitation et non des dépendances et que, d'ailleurs, en l'espèce, l'exploitation n'était pas possible indépendamment de la masse des biens immobiliers et mobiliers situés en territoire français:

Attendu qu'aux termes de l'article 7, § 1er, de la convention franco-belge du 16 mai 1931 dans le but d'éviter les doubles impositions, approuvée par la loi du 28 décembre 1931, les exploitations industrielles, minières, commerciales ou agricoles sont imposables dans chacun des Etats au prorata des revenus produits par les établissements stables y situés: que sont considérés comme établissements stables, en vertu du § 3 du même article, les sièges de direction effective, succursales, fabriques, usines, ateliers, agences, magasins, bureaux, laboratoires, comptoirs d'achat ou de vente, dépôts, ainsi que toutes autres installations fixes de caractère productif;

Attendu, d'une part, que l'économie de l'article 7 de la susdite convention repose sur la division des revenus, selon le lieu où ils sont produits, dès lors que cette division est réalisable, la taxe professionnelle frappant les bénéfices de l'exploitation dès leur origine, c'est-à-dire dès leur production; que, se basant sur des circonstances de fait, le juge du fond constate que l'administration a déterminé exactement les revenus produits par les terres situées en territoire belge;

Attendu, d'autre part, que les terres, fussent-elles dépendantes d'autres situées à l'étranger, doivent être considérées comme des installations fixes de caractère productif, au sens de l'article 7, § 3, de la convention, cet article ne faisant aucune distinction entre les installations dépendantes et les installations autonomes;

Que le moyen manque en droit;
Par ces motifs, la Cour; rejette le pourvoi; condamne le demandeur aux frais.

Du 22 octobre 1957. — Cour de cassation. — 2e ch. — *Prés.:* M. Vandermersch. — *Rapp.:* M. Delahaye. — *Min. publ. :* M. Dumon.

Source: *Journal Pratique de Droit Fiscal et Financier*, March 1958.

THE TAX CONVENTIONS BETWEEN THE UNITED STATES AND ITALY

BY

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BELGIQUE — ENTREPRISES ETRANGERES ETABLISSEMENT SITUE EN BELGIQUE

Taxe professionnelle. — Matière imposable. - Entreprises étrangères. - Etablissement situé en Belgique (art. 27, § 4, et 70, § 2 L. C.). - Notion. - Société néerlandaise n'ayant pas de siège d'exploitation au Pays-Bas. - Société belge assurant le service financier de la société néerlandaise. - Encaissant les loyers, finançant l'entretien et payant l'impot foncier de ses immeubles en Belgique. - Constitue une agence en Belgique de la société néerlandaise (articles 27, §4 et 70, § 2 L. C.). - Bénéfices de la société néerlandaise taxables en Belgique.

Lorsqu'une société néerlandaise n'est pas taxée aux Pays-Bas à défaut d'y posséder un siège d'exploitation, et que son service financier a toujours été assuré par une société anonyme belge, qui encaisse les loyers, finance l'entretien et paye les impôts fonciers afférents aux immeubles de la société néerlandaise situés en Belgique, la société belge doit être considérée comme constituant une agence en Belgique de la société néerlandaise, les conditions exigées par les articles 27, § 4 et 70, § 2 des lois coordonnées relatives aux impôts sur les revenus se trouvent réunies, et la société néerlandaise est en principe redevable de la taxe professionnelle. Le fait que l'activité d'une société étrangère en Belgique consiste uniquement à y percevoir des loyers, à payer des frais de réparation et la contribution foncière relatifs aux immeubles lui appartenant en Belgique, ne constitue pas un obstacle à ce qu'elle soit assujettie à la taxe professionnelle.

Attendu que le recours, régulièrement déposé au greffe de cette Cour le 7 septembre 1955, en même temps que l'original de sa dénonciation au Directeur des contributions directes à Bruxelles (1re direction) est dirigé contre la décision rendue par celui-ci le 2 août 1955;

Attendu que le litige concerne les cotisations mises à charge de la société requérante sous les articles 9421 du rôle de l'exercice 1953 (par rappels de droits de 1951) et 7693 du rôle de l'exercice 1953, rôles formés pour la ville de Bruxelles;

Attendu qu'il s'agit de cotisations établies d'office pour absence de déclaration en ce qui concerne l'exercice 1951 et pour déclaration tardive en ce qui concerne l'exercice 1953;

Attendu que la société requérante prétend: 1°) n'être pas redevable de la taxe professionnelle en Belgique;.2°) que les revenus de ses immeubles situés en Belgique ne peuvent être imposés à la taxe professionnelle;

I. - Quant au premier grief:

Attendu que la société requérante a été constituée aux Pays-Bas le 10 mars 1932 et a pour but de prendre des participations, tant aux Pays-Bas qu'à l'étranger, dans des entreprises commerciales, industrielles et agricoles et d'accomplir toutes opérations commerciales, mobilières ou immobilières se rapportant à cette activité;

Attendu que la société a acquis trois immeubles situés à Bruxelles, 22, rue des F . . ., 366 et 368, avenue L . . .;

Attendu que depuis 1940, au moins, l'immeuble de la rue des F . . . est loué à la société anonyme «L. R. d. S.» dont l'administrateur délégué, le Baron de M . . . est un des fondateurs de la société requérante et créancier

de celle-ci à concurrence de 11.924 florins; que son épouse en est également créancière à concurrence de 185.014 florins (situations au 31 décembre 1951);

Attendu que l'immeuble situé 366, avenue L . . . a été occupé, moyennant un loyer peu important, par le Baron de M . . . qui, à ses frais, y a fait des transformations; qu'en 1950, l'immeuble sis 368, avenue L . . . a été démoli, puis reconstruit par les soins de cette personne la société requérante ne conservant que la propriété du sol et renonçant à l'accession;

Attendu que le 13 août 1952, ces deux immeubles ont été acquis par la Baronne de M . . . pour 1.200.000 frs;

Attendu que l'Administration a été amenée à rechercher quelle était l'activité de la société requérante en Belgique;

Attendu que l'enquête effectuée a révélé que la société requérante n'était pas taxée aux Pays-Bas à défaut d'y posséder un siège d'exploitation et que le service financier de la société a toujours été assuré par la société anonyme «L. R. d. S.» à Bruxelles;

Attendu que celle-ci encaissait les loyers, finançait l'entretien et payait les impôts fonciers afférents aux immeubles de la société requérante situés à Bruxelles (pièce 40);

Attendu que, dans ces conditions, la société anonyme «L. R. d. S.» doit être considérée comme ayant constitué une agence en Belgique de la société requérante;

Attendu, en outre, que la société requérante a, durant les exercices litigieux, été dirigée effectivement de Bruxelles par le Baron de M . . ., son actionnaire et créancier d'une part, directeur puis commissaire d'autre part;.

Attendu que les conditions exigées par les articles 27, § 4 et 70, § 2 des lois coordonnées relatives aux impôts sur les revenus se trouvent réunies en l'espèce et que la société requérante est, en principe, redevable de la taxe professionnelle;

II. - Quant au deuxième grief:

Attendu que certes, l'activité de la société en Belgique consiste uniquement à y percevoir des loyers, à payer des frais de réparation et la contribution foncière relatifs aux immeubles lui appartenant à Bruxelles;

Attendu que cette activité de la société ne constitue pas un obstacle à ce qu'elle soit assujettie à la taxe professionnelle;

Attendu, en effet, qu'une société anonyme est un être moral créé exclusivement en vue de l'exercice d'une activité lucrative et ne possédant rien qui ne soit affecté è cette fin; que tout ce qu'elle recueille en dehors du capital réuni en vue de l'exploitation, constitue un profit de son activité professionnelle et, éventuellement, après déduction des charges, un bénéfice professionnel soumis à la taxe professionnelle, sauf déduction eventuelle de la partie nette des éléments déjà taxés, tels les revenus fonciers, qui se retrouve dans les dits revenus professionnels, d'où il suit que tout ce qui est le fruit des immeubles de la société constitue un produit de son activité sociale, donc professionnelle, auquel s'applique l'article 25, § 1er, 1° des lois coordonnées (cfr. Cassation 28 février 1956, Pas. 675);

Attendu que les deux griefs ne sont donc pas fondés;

Par ces motifs, la Cour,

Statuant contradictoirement;

Entendu en audience publique le rapport de Monsieur le Conseiller Mahaux et l'avis conforme de Monsieur l'Avocat Général Gevers;

Reçoit le recours tel qu'il a été limité; le déclare mal fondé; en déboute la société requérante et la condamne aux dépens.

Cour d'Appel de Bruxelles, 11e Ch. A. - *Prés.*: M. Drapier. - *Rapp.*: M. Mahaux. - *Min. publ.*: M. Gevers, Avocat Général. 14 mai 1957.

Source: *La Revue Fiscale, jan-fév.* 1958.

BELGIQUE — REDEVANCES PAYÉES PAR UNE SOCIÉTÉ BELGE A UNE SOCIÉTÉ FRANÇAISE

Taxe mobilière. — Matière imposable. - Produit de la concession de tous biens mobiliers (art. 14, § 1er, 4°, al. 4, L. C.). - Convention franco-belge du 16 mai 1931, préventive de la double imposition. - Redevances payées par une société belge à une société française. - Rémunérant la concession de la fabrication et de la vente des produits de celle-ci. - Absence de brevet. - Convention franco-belge visant exclusivement les redevances pour licences de brevets. - Inapplicable à des redevances pour la concession de procédés non brevetés. - Redevances taxables en Belgique.

Taxe mobilière. — Matière imposable. - Produit de la concession de tous biens mobiliers (art. 14, § 1er, 4°, al. 4, L. C.). - Concession du droit d'exploiter un procédé de fabrication et de vendre un produit. - Contrôle de la fabrication et de la vente par le concédant. - Redevances rémunérant cette concession. - Taxables.

Taxe mobilière. — Matière imposable. - Adjonction du montant de l'impôt au revenu pour le calcul de la taxe (art. 14, § 2, L. C.). - Société payant des redevances pour la concession de biens mobiliers. - Ne retenant pas la taxe sur les redevances versées. - Administration ne prouvant pas que la société entendait ainsi supporter la taxe. - Montant de l'impôt ne pouvant être ajouté au revenu. - Qualité de débitrice de la taxe dans le chef de la société (art. 20, § 1er, L. C.). - Indifférente.

Lorsqu'il est impossible de considérer que les redevances payées par une société belge à une société francaise, pour la concession d'un bien mobilier, constituent la rémunération d'un brevet d'invention, l'application de l'article 9, § 2 de la convention franco-belge du 16 mai 1931 doit être écartée.

La convention par laquelle une société s'est bornée à concéder à une autre le droit d'exploiter un procédé de fabrication qui lui appartient, fabrication et vente étant faites de surcroit sous le contrôle et sous la surveillance de la société concédante, constitue une simple concession d'un droit mobilier, opération visée par l'article 14, § 1er, 4°, alinéa 4 des lois coordonnées, aux termes duquel la taxe mobilière s'applique également, c'est-à-dire indépenedamment 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».

Si l'article 20, § 1er, des lois coordonnées dispose que ceux qui paient les revenus spécifiés au 4° du paragraphe 1er de l'article 14 des mêmes lois ou qui en sont débiteurs, sont tenus de payer la taxe mobilière, et si l'article 20, § 2 précise que ces mêmes personnes ont le droit de retenir sur les revenus imposables les taxes y afférentes, nonobstant toute opposition des bénéficiaires, quelle que soit la nationalité de ceux-ci, il n'en résulte pas nécessairement qu'il faille dans tous les cas où une taxe mobilière est due, faire application, pour le calcul de cette taxe, de la règle dérogatoire inscrite dans l'article 14, § 2, celui-ci requérant l'existence entre le débiteur et le bénéficiaire du revenu d'un accord, exprès ou tacite, en vertu duquel le premier accepte de supporter à la décharge du second le montant de l'impôt.

Vu le recours régulièrement déposé au greffe le 21 octobre 1955 contre la décision rendue le 13 septembre 1955 par le Directeur des contributions de la province de Hainaut (région Ouest);

Vu les conclusions des parties;

Attendu que le litige est limité à l'examen des cotisations à la taxe mobilière mises à charge de la société requérante les 7 et 9 décembre 1953 sous les articles 14 et 15 des rôles de l'exercice 1953, par rappel de droit des exercices 1951 et 1952;

Attendu que ces cotisations — établies d'office pour absence de déclaration — ont été calculées de la manière suivante:

		Exercice 1951	Exercice 1952
Redevances litigieuses		162.993 frs	160.209 frs
Base imposable	$\frac{162.993 \times 100}{82}$	198.770 frs	
Base imposalbe	$\frac{160.209 \times 100}{82}$		195.380 frs
Taxe enrôlée	198.700 × 18%	35.779 frs	
Taxe enrôlée	195.380 × 10%		35.168 frs

Attendu que l'Administration a fait en l'espèce application tant de l'article 14, § 1er, 4°, alinéa 4 que de l'article 14, § 2 des lois coordonnées relatives aux impôts sur les revenus;

Attendu que la requérante conteste ces impositions en soutenant — en ordre principal — que les revenus taxés étaient exempts de la taxe mobilière en vertu de l'article 9, § 2 de la convention franco-belge du 16 mai 1931 approuvée par la loi belge du 28 décembre 1931 et en prétendant — en ordre subsidiaire — qu'il n'y avait pas lieu d'ajouter en l'espèce, pour le calcul des taxes litigieuses, le montant de l'impôt à celui des revenus imposables;

Quant à la demande principale:

Attendu que par convention du 1er juillet 1949, prorogée après le 31 décembre 1950, la société à responsabilité limitée de droit français F . . . à Paris a concédé à la société requérante la fabrication et la vente en Belgique d'une peinture anti-rouille dénommée «B . . .»;

Attendu que ce contrat prévoyait notamment que la requérante fabriquerait les peintures «B . . .» suivant les formules indiquées par la société «F . . .» sous le contrôle des techniciens de celle-ci; que la vente des produits fabriqués aurait lieu sous le contrôle du service commercial de la société «F . . .»; que les prix de vente des formules «B . . .» seraient établis de commun accord par les deux sociétés avant toute offre à la clientèle; que la requérante tiendrait une comptabilité spéciale des ventes des peintures «B . . .» et qu'enfin la société «F . . .» recevrait pendant la durée du contrat une redevance égale à tant pour cent du montant des ventes des peintures concédées;

Attendu que cette convention a reçu son exécution durant les exercices présentement litigieux; qu'il n'est pas contesté que les redevances payées par la requérante à la société «F . . .» ont atteint la somme de 162.993 frs pour l'exercice 1951 et la somme de 160.209 frs pour l'exercice 1952;

Attendu que si la requérante produit devant la Cour un acte du 20 mars 1952 attestant que la marque «B . . .» a été déposée au greffe du tribunal de commerce de Paris, en renouvellement d'un dépôt antérieur du 21 mai 1937, rien ne prouve, à part l'affirmation intéressée de la société «F . . .» dans une lettre au contrôleur du 29 septembre 1953 (pièces 118 et 119 du dossier administratif) que le procédé «B . . .» aurait fait l'objet, ne fût-ce qu'en territoire français d'un brevet en bonne et due forme;

Attendu qu'il n'est fait allusion dans la convention précitée du 1er juillet 1949 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 29 septembre 1953, précisent uniquement «que les relations d'affaires entre la société requérante et la société «F . . .» se limitent à la concession de la fabrication et de la vente des produits «F . . .», la société requérante fabriquant selon les procédés de l'entreprise française et revendant 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 «F . . .» constituent la rémunération d'un brevet d'invention, ce qui écarte l'application —revendiquée par la requérante — de l'article 9, § 2 de la convention franco-belge du 16 mai 1931;

Attendu qu'il apparaît donc qu'il s'agit en l'espèce de l'exécution d'une convention par laquelle la société «F . . .» s'est bornée à concéder à la societé 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'article 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»;

Attendu que c'est dès lors à juste titre que l'Administration a retenu le texte considéré comme le fondement légal des impositions litigieuses;

Quant à la demande subsidiaire:

Attendu que l'article 14; § 2 des lois coordonnées prévoit que l'impôt éventuellement supporté par le débiteur à la décharge du bénéficiaire des revenus est ajouté au montant de ceux-ci pour le calcul de la taxe mobilière;

Attendu que la décision entreprise justifie l'application de ce texte par la seule considération que la société requérante n'a retenu aucun impôt aux époques où elle a payé les redevances litigieuses à la société «F . . .»;

Attendu que si l'article 20, § 1er des lois coordonnées dispose notamment que ceux qui paient les revenus spécifiés au 4° du paragraphe 1er de l'article 14 des mêmes lois ou qui en sont débiteurs sont tenus de payer la taxe mobilière et si l'article 20, § 2 précise que ces mêmes personnes ont le droit de retenir sur les revenus imposables les taxes y afférentes, nobobstant toute opposition des bénéficiaires, quelle que soit la nationalité de ceux-ci, il n'en résulte pas nécessairement qu'il faille dans tous les cas où une taxe mobilière est due faire application, pour le calcul de cette taxe, de la règle dérogatoire inscrite dans l'article 14, § 2 précité;

Attendu que celui-ci requiert l'existence entre le débiteur et le bénéficiaire du revenu d'un accord, exprès ou tacite, en vertu duquel le premier accepte de supporter à la décharge du second le montant de l'impôt;

Attendu que la preuve de pareil accord n'est pas rapportée en l'espèce;

Qu'il échet, dans ces conditions, de faire droit à la demande subsidiaire de la société requérante;

Par ces motifs, la Cour.

Entendu en audience publique le rapport de Monsieur le Conseiller Drapier, ff. de Président et l'avis conforme de Monsieur l'Avocat Général Gevers;

Statuant contradictoirement;

Reçoit le recours; le déclare partiellement fondé;

Dit pour droit que c'est à juste titre que les redevances litigieuses ont été assujetties à la taxe mobilière en exécution de l'article 14, § 1er, 4°, alinéa 4 des lois coordonnées, mais que c'est à tort que, pour le calcul de l'impôt, l'Administration a fait application à la société requérante de la règle inscrite dans l'article 14, § 2 des mêmes lois;

Annule les cotisations litigieuses uniquement dans la mesure où elles ont

été calculées en ajoutant le montant de la taxe mobilière au montant des revenus imposables;

Condamne l'Etat belge (Département des Finances) à rembourser à la société requérante, toutes sommes qui auraient été indûment perçues sur base des cotisations ainsi annulées, et ce avec les intérêts moratoires conformément à l'article 74 des lois coordonnées;

Condamne chacune des parties à la moitié des dépens.

Cour d'Appel de Bruxelles, 11e Ch. A.: *Prés.* et *rapp.*: M. Drapier. - *Min. publ.*: M. Gevers Avocat Général, 14 mai 1957.

Note d'observation: La Cour de Cassation, dans sont arrêt du 26 septembre 1957 en cause «S.A. Etablissements Gilbeer» c/ Etat belge, a énoncé d'une manière définitive le principe selon lequel le montant de l'impôt ne peut être ajouté au revenu taxable pour le calcul de la taxe, lorsque l'Administration n'établit pas que le contribuable débiteur du revenu s'était obligé envers le bénéficiaire de supporter la taxe à la décharge de celui-ci. L'Administration s'est ralliée à ce point de vue.

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BELGIQUE — ÉTABLISSEMENTS BELGES D'ENTREPRISES ÉTRANGÈRES

Taxe professionnelle. — Matière imposable. - Établissements belges d'entreprises étrangères. - Notion. - Contribuable domicilié au Congo et y exploitant des salles de cinéma. - Possédant en Belgique un bureau chargé de choisir, vérifier et expédier au Congo des films loués en Belgique et du matériel acheté et d'assurer le règlement financier de ces opérations - Bureau constituant un établissement au sens de l'article 27, § 4.

Taxe professionnelle. — Matière imposable. - Bénéfices des établissements belges d'entreprises étrangères. - Contribuable exploitant au Congo belge. - Ayant un établissement stable en Belgique. - Bénéfices réels ou présumés de cet établissement au cours d'un exercice. - Taxables. - Exploitation congolaise ayant subi des pertes pendant le même exercice. - Indifférent.

Le bureau qui a pour mission en Belgique de choisir, vérifier, emballer et expédier vers la Colonie les films pris en location auprès de sociétés distributrices installées en Belgique, de rechercher et expédier à un contribuable le matériel et les pièces de rechange indispensables à son exploitation congolaise et d'assurer le règlement financier des opérations traitées en Belgique pour le compte du dit contribuable tombe sous le coup de la définition, conçue en termes très généraux, de l'article 27, paragraphe 4, des lois coordonnées.

Il est sans pertinence au regard de l'application de l'article 27, paragraphe 4, aux bénéfices d'un établissement belge d'un contribuable congolais que les exploitations congolaises du dit contribuable aient fait apparaître des pertes durant les exercices fiscaux considérés.

Vu le recours régulièrement déposé au greffe le 16 septembre 1953 contre la décision rendue le 7 août 1953 par le Directeur des contributions à Bruxelles (2e direction);

Vu les conclusions des parties;

Attendu que le requérant postule l'annulation des cotisations aux impôts sur les revenus (taxe professionnelle, contribution nationale de crise et impôt complémentaire personnel) enrôlées d'office à sa charge pour absence de déclaration sous les articles 68476, 68542, 68615 et 27305 des rôles de l'exercice 1952, formés par rappels de droits des exercices 1948 à 1951, pour la commune de Schaerbeek;

Attendu que le requérant était domicilié et résidait au Congo belge pendant les périodes imposables considérées; qu'il y exploitait plusieurs salles de cinéma; qu'il possédait également en Belgique (Schaerbeek) un bureau dont il entretenait le personnel et dont il supportait les frais généraux;

Attendu que ce bureau avait pour mission: 1°) de choisir, de vérifier, d'emballer et d'expédier vers la Colonie les films pris en location auprès de sociétés distributrices installées en Belgique; 2°) de rechercher et d'expédier au requérant le matériel et les pièces de rechange indispensable à son exploitation congolaise; 3°) d'assurer le règlement financier des opérations traitées en Belgique pour le compte du requérant;

Attendu que l'Administration a considéré le bureau dont s'agit comme un établissement belge d'un étranger opérant en Belgique au sens de l'article

27, paragraphe 4 des lois coordonnées relatives aux impôts sur les revenus et qu'elle a assujetti le requérant à la taxe professionnelle sur les bénéfices résultant des opérations traitées par cet établissement;

Attendu que les dits bénéfices ont été — à défaut de la comptabilité spéciale requise par la loi — présumés à l'aide de la méthode prévue tant par l'article 28, alinéa 2 des lois coordonnées que par l'article 13, paragraphe 1er, 9° de l'arrêté royal du 22 septembre 1937, modifié par l'article 1er de l'arrêté du Régent du 12 mars 1949 (minimum de 50.000 frs par employé et ouvrier);

Attendu que le requérant ne discute pas les bases imposables ainsi déterminées par l'Administration;

Que sa thèse consiste à soutenir: que son bureau de Schaerbeek n'a pas eu de 1947 à 1950 le caractère d'une exploitation au sens de l'article 27, paragraphe 2, 7° des lois coordonnées; que c'est à tort que l'Administration invoque pour justifier ses taxations l'article 27, paragraphe 4 des mêmes lois; que cette disposition légale ne définit les établissements belges d'une entreprise étrangère opérant en Belgique qu'au seul point de vue de la déductibilité des dépenses faites dans de tels établissements; que l'application de l'article 27, paragraphe 4 présuppose qu'il soit d'abord établi que l'entreprise étrangère possède en Belgique une exploitation au sens de l'article 27, paragraphe 2, 7°, ce qui n'est pas le cas en l'espèce;

Attendu que par ce raisonnement le requérant paraît ériger en principe que le 7° du paragraphe 2 de l'article 27 et le paragraphe 4 du même article sont des dispositions intimement liées au point que l'application de la seconde exigerait la réunion des conditions requises par la loi en vue de l'application de la première;

Attendu que ce soutènement ne peut être accueilli;

Attendu que le 7° du paragraphe 2 de l'article 27 tend, tel qu'il est issu de l'article 5, paragraphe 1er de la loi du 28 juillet 1938, à faire ajouter aux bénéfices des exploitations ou entreprises établies en Belgique, les profits et avantages qu'une entreprise établies à l'étranger retire, directement ou indirectement, sous quelque forme ou par quelque moyen que ce soit, d'exploitations établies en Belgique qui sont sous sa dépendance ou sous son contrôle ou d'entreprises ou exploitations en Belgique qui la contrôlent ou sous la dépendance de qui elle se trouve;

Attendu qu'il ne s'agit nullement en l'espèce d'ajouter des bénéfices à d'autres bénéfices: qu'il importe uniquement de rechercher à quel régime fiscal doit être assujetti l'étranger opérant en Belgique relativement aux bénéfices que l'intéressé retire ou est censé retirer de l'établissement qu'il possède sur le territoire national;

Attendu que cette hypothèse — toute différente de la première — a été réglée par la même loi du 28 juillet 1938 dont l'article 5, paragraphe 2 a inséré entre les premier et deuxième alinéas anciens du paragraphe 4 de l'article 27 les textes qui sont devenus depuis lors les deuxième et troisième alinéas de ce même paragraphe 4;

Attendu que cette réforme a tendu, d'une part, à faire disparaître toute controverse relative à la représentation capable d'engager l'entreprise étrangère opérant en Belgique et, d'autre part, à définir une fois pour toutes ce qu'il convenait d'entendre par «établissements belges» d'étrangers opérant en Belgique par l'entremise de ceux-ci;

Attendu qu'il est indifférent pour l'interprétation du paragraphe 4 de l'article 27 de considérer la place qu'occupe dans cette disposition la définition dont s'agit;

Que cette définition conçue en termes très généraux s'applique adéquatement en l'espèce au bureau que le requérant possédait à Schaerbeek en vue d'assurer la bonne exploitation de ses entreprises installées au Congo;

Attendu qu'à partir de 1938 le fait pour un étranger de posséder en Belgi-

que l'un des établissements visés par la loi le rend passible de la taxe professionnelle sur les bénéfices nets de cet établissement, sans qu'il soit, dans cette hypothèse, nécessaire de rechercher la nature des relations existant entre l'entreprise étrangère et son établissement en Belgique;

Attendu que le paragraphe 4 de l'article 27 forme donc un tout qui ne dépend en aucune manière de la réunion des conditions exigées dans un tout autre cas par le 7° du paragraphe 2 du même article;

Qu'il en résulte que c'est à juste titre que l'Administration s'est prévalue de la première de ces dispositions pour taxer le requérant sur les bénéfices de l'établissement par l'intermédiaire duquel il a, comme étranger, opéré en Belgique;

Attendu que le requérant n'apporte aucun élement quelconque en vue d'administrer la preuve qui lui incombe en vertu de l'article 56 des lois coordonnées; qu'il échet dès lors de maintenir le montant présumé des revenus imposables, déterminé par l'Administration à l'aide de présomptions légales dont la régularité ne fait l'objet d'aucune contestation;

Attendu qu'il est sans pertinence pour la solution du litige que les exploitations congolaises du requérant auraient fait apparaître des pertes durant les exercices fiscaux 1950 et 1951;

Qu'il s'agit là d'une question qui ne relève pas de la compétence de la Cour et demeure sans influence sur la détermination — forfaitaire en l'espèce — des bénéfices nets d'un établissement belge dont l'activité peut seule provoquer l'application de l'impôt professionnel;

Par ces motifs, la Cour,

Etendu en audience publique le rapport de Monsieur le Conseiller Drapier, ff. de Président et l'avis conforme de Monsieur Convent. Substitut du Procureru Général;

Statuant contradictoirement;

Reçoit le recours; le déclare mal fondé; en déboute le requérant et le condamne aux dépens.

IIe Ch. A. - *Prés.* et *Rapp.*: M. Drapier. - *Min. publ.*: M. Convent, Substitut du Procureur Général.

Source: *La Revue Fiscale,* Janv.-Févr. 1958

FEDERATION OF RHODESIA AND NYASALAND

SOURCE OF INCOME

Income Tax of Southern Rhodesia - income - source - profits from purchasing and selling securities, belonging to Rhodesian Company, outside the federation

M. Ltd. v. Commissioner of Taxes, 1958 (3) S.A. 18 (S.R.)

The main activity of the taxpayer, as set out in its memorandum, is the business of mining for, smelting and refining of copper. It was incorporated in the United Kingdom in 1930 and until the end of June, 1953, was managed and controlled by a directorate in London. It is one of the subsidiary group of companies controlled by the Rhodesian Selection Trust Limited. As from 1st July, 1953, the management and control of the taxpayer was, with the consent of the United Kingdom Treasury, transferred to Lusaka in Northern Rhodesia, from which time all directors' meetings were held, all dividends declared, and all the management and control of its business conducted in the Federation. Its mining operations have been and are carried on in the Federation. As from 1st July, 1954, and by virtue of an Act of the Imperial Parliament (2 & 3 Eliz. II, c. 12) it, as well as certain other members of the above group, is deemed to be incorporated in the Federation and the necessary certificate of incorporation under the laws of Northern Rhodesia has been issued to it. In 1955 its head office was transferred to Salisbury where it is still situate and where its principal register of shareholders is kept.

Since the transfer of its management to the Federation in 1953, all contracts for the sale of its products have been decided upon and entered into in the Federation, but have been carried out in London by the Anglo Metal Company which acts as the sales agent for it and associated companies on instructions from the taxpayer's head office in the Federation. The selling agent receives offers which it transmits to the head office in the Federation, and the offers are accepted and the sales concluded in the Federation by the company's officers. In terms of the sale contracts payment of the price is made in each case by the purchaster to the selling agent in London, which pays that price over to the Selection Trust Ltd. in London, the taxpayer company's financial agent. The latter in turn credits these funds to the taxpayer company. They are, in the first place, put to the taxpayer company's current account in London and thereafter any sums over a specified minimum were originally placed to its deposit account with a bank in London. The taxpayer's business requires the retention in London of substantial sums necessary to meet heavy commitments falling due for discharge there from time to time (e.g. for purchase of mining machinery, supplies, payment of dividends, redemption of debentures and, under arrangement with the Federal Government, occasional payment there of portion of its income tax due to this Government).

The company in about 1952, instead of leaving unrequired balances in some interest bearing investment or on deposit, as had previously been done, adopted the procedure of purchasing shortterm United Kingdom Govern-

ment securities with the object of reselling them at a profit. It was advised that under the United Kingdom tax practice, the profit on this form of dealing would not be subject to United Kingdom taxation, and in consequence a better return than an interest one would be derived by purchasing such securities, holding them until their conversion into cash was necessary for its business and then resselling them at a profit before maturity. When purchased and paid for in London by the taxpayer company these securities were registered in the name of a nominee in London, providing a readily negotiable instrument, and were there retained until a decision to sell was made, and the sale and receipt of the price also took place in London.

By arrangement with the Commissioner in terms of section 33(3) of the Act, the taxpayer company's accounts for each year ending 30th June are accepted as its accounts for assessment for the fiscal year ending on the following 31st March. In its accounting year ending 30th June, 1953, the taxpayer disclosed a profit of £2,817 on the sale of such securities, and in respect of the year of assessment ending 31st March, 1954, the Commissioner charged to tax $\frac{9}{12}$ths of that sum, viz. £2,113. The reason for this reduction was that the taxpayer's residence in the Federation extended for only nine months in that year of assessment, viz. from 1st July, 1953, when its management was transferred to Lusaka. In respect of the following year of assessment, viz. that ending 31st March, 1955, the Commissioner charged to tax the sum of £4,176, being the taxpayer's profit on sale of certain such securities as disclosed in its accounts for its business year ending 30th June, 1954. The taxpayer objected to the inclusion in its taxable income for the fiscal years ending 31st March, 1954, and 31st March, 1955, of the sums of £2,113 and £4,176 respectively. The objection having been disallowed, the taxpayer appealed. The taxpayer, however, abandoned one of the objections taken by it, viz. that these receipts were of a capital character, and relied only on the remaining objection, viz. that they did not arise from a source within the Federation (section 8 of Act 16 of 1954.) It was not contended by the Commissioner that section 10 of the Act applied and required them to be deemed to be such. The appeal was upheld.

Murray, C. J., who delivered the judgement, Morton, J., concurring, pointed out that the problem of locating the source of income was a matter which presented considerable difficulty and went on to say:

'The source of income according to the authorities is not a legal concept, nor does the Statute contain any definition of the term:

"Source means something which the practical man would regard as a real source of income. The ascertainment of the actual source is a practical hard matter of fact."

Rhodesia Metals Ltd. v. *Commissioner of Taxes,* 1940 A.D. 432, where Lord Atkin in the Privy Council quoted with approval an extract to this effect from the dissenting judgment of de Villiers, J.A., in the court below, such extract being a quotation from *Nathan* v. *Federal Commissioner of Taxes,* 25 C.L.R. 183. Income, as pointed out by Schreiner, J.A., in *C.I.R.* v. *Lever Bros. & another,* 1946 A.D. 441 at 458, is earned by a taxpayer from other persons (*a*) because he renders them services or (*b*) because they have the use of his property or (*c*) because he carried on in the world of commerce and industry profit-producing activities involving in various combinations the transfer of the ownerschip in property or the grant of its use or the rendering of services. The word "source" in the Act does not denote the quarter from which the money is received by the taxpayer, but the originating cause of the receipt, i.e. the particular activity of the taxpayer which earns the money. (*Overseas Trust Co., Ltd. v. C.I.R.,* 1926 A.D. 444, as explained by Watermeyer, C.J., in *Lever's* case, *supra,* at 453.) And it would seem that approval was there

given by Watermeyer, C.J., to the following statement from the Australian textbook writer Rydge:

"The source of income may be said to be the business, capital or service which is responsible for the earning of the income. If the capital or service be located in Australia, then the particular income has been earned within the Commonwealth."

The Commissioner based his contention that the source of the profit on these transactions in United Kingdom Government securities was located in the Federation on the following facts—

(1) The appellant company is registered in the Federation where its head office, at which it conducts its basic business, is situate. In terms of its Articles of Association, as amended after the enactment of 2 & 3 Eliz. II, c. 12, its business and affairs and all acts in relation thereto must be controlled and managed exclusively outside the United Kingdom (article 2(*a*)) and no meetings of its Board or of a committee thereof (articles 92, 98) or of its shareholders may be held in the United Kingdom.

(2) Its main object, as set out in its memorandum, is that of mining, its other objects being merely ancillary thereto: it possesses no power to conduct the business of buying or selling securities or shares for profit, and its investment powers as set out in object U of the memorandum are— "To invest and deal with any of the moneys of the company not immediately required for the purposes hereof upon such securities and investments and in such manner as may be thought fit, and from time to time to vary or realize such securities or investments."

(3) The decisions as to when in the company's interest it was advisable to buy or to sell United Kingdom securities in London, and which particular securities should be bought or sold, were all made at the company's head office in the Federation, after consideration there of all information and advice obtained from brokers in London for it by its London financial advisers. Until 1955 these matters were considered and decided upon in the Federation by the witness B (who is the controller of Rhodesian Selection Trust Services Limited, and public officer of the appellant), and his chief accountant, Beeton, they making recommendations to Lascelles, the company's executive director in the Federation. After October, 1955, these functions were discharged also in the Federation by a high-powered finance committee set up and meeting regularly to consider all questions arising out of the profitable employment of the funds of members of the Group.

(4) The profits arising from these transactions go into the company's general funds in London, fundamentally created by its receipt in London of the purchase price for its products mined in the Federation and disposed of by sales entered into in the Federation; the dealings with these securities were of a temporary character and merely ancillary to the conduct of its mining business.

The Act does not levy tax basically upon residence in the Federation and the fact that the appellant company has at all material times been resident in the Federation is not relevant in the present circumstances to determine the question of the source of its income. As stressed by Schreiner, J.A., in *C.I.R.* v. *Epstein,* 1954 (3) S.A. 689 (A.D.)[1] at 700, it is equally irrelevant "... where the taxpayer generally speaking carries on business or where his principal place of business is situate. What is very relevant and may be crucial is where he carries on the business from which the income in question is derived. And since a business may be carried on through partners or other agents the place where the taxpayer's income originates is not where he personally exerts himself (assuming that he does so) but where the business profits are realized."

If the profits now under consideration are taxable it is on the ground that the taxpayer has made "a gain by an operation of business in carrying out a

scheme for profit making" by securing revenue from capital productively employed. Every such scheme obviously involves two factors, the decision of the taxpayer (based on his own knowledge or that of his servants, or on information acquired by them) to embark on the scheme, and the ensuing employment of his capital in furtherance thereof. The present problem appears to be whether the source of the present profits is attributable to the deliberations and decisions made in the Federation to carry on in London through agents in London certain forms of business activity, rather than to the actual carrying into effect of those decisions in London in the particular circumstances of this case. It is not necessary to dismiss as negligible, as appellant company's counsel asked the Court to do, the value of the financial investigations and deliberations in the Federation prior to the issue to its London agents of buying or selling instructions. They may have involved the exercise of financial and business acumen and may have preceded, as a *causa sine qua non,* the embarkation upon the scheme which eventually produced a taxable profit. Various contributory factors, various causes, come into play, and possibly at different places, before income is earned. To regard these investigations and deliberations, however, as "the originating cause" of the taxpayer's income would I think involve the consequence that in every instance the location of consideration and decision must be the local source of the income, no matter what activities take place elsewhere. The reported cases quoted in argument to this Court do not lay this down as a conclusive and universal test. Each case depends upon its own facts. For example, in *Rhodesian Metals, Ltd* v. *Commissioner of Taxes,* 1938 A.D. 282; 1940 A.D. 432, the taxpayer was held liable to tax, though its head office where its business was conducted and presumably its policy determined was in the United Kingdom, inasmuch as the profit-earning operations were carried out in Rhodesia. The present case is, I think, clearly distinguishable on its facts from *Millin* v. *C.I.R.,* 1928 A.D. 207, where the Court held that the source of royalties received by a South African novelist from her publishers in England was a Union one being the employment of her faculties within the Union in writing the novels and in there making contracts with them for publication. Similarly there is distinction between the facts of the present case and those of *C.I.R.* v. *Epstein,* 1954 (3) S.A. 689 (A.D.), where the taxpayer was held chargeable for Union income tax on the ground that the facts disclosed that all the activities from which profit was earned were carried on in the Union. And, again, in *Overseas Trust Corporation, Ltd.* v. *C.I.R., supra,* Innes, C.J., after referring to the fact that in *Commissioner of Taxes* v. *William Dunn & Co., Ltd.,* 1918 A.D. 607, the Appellate Division had found the source of income at the place where the taxpayer's capital was employed to earn an interest income, based the Court's judgment in the *Overseas Trust Corporation* case against a Union company taxpayer not on the sole ground that it was a Union company but on the ground that it carried on no business outside the Union and had earned the profit in question from the employment within the Union of its capital for the acquisition of shares in foreign companies with the object of profit-making. In his concurring judgment in the *Overseas Trust Corporation* case, Solomon, J.A., also after referring to the decision in *Dunn's* case, relied (at 457) on the fact that the actual purchase of these shares took place in Cape Town "and that is where the capital was employed for the purpose of earning this profit".

As I see the position the essential facts in the present case (as stressed by the appellant company's counsel) are that the company (1) having idle capital in London, (2) there employed it to purchase United Kingdom securities with the object of profit on resale, (3) effected the actual contracts of purchase and of resale in London and (4) there received its profits on resale. It does not appear relevant that the capital in question had previously come into its possession in the form of income earned from a Federation

source, nor that it had not been sent to London for the special purpose of employment in the present scheme of profit-making; nor, again, that after the profit had been realized, it went into the appellant company's general pool and was thereafter employed—at any rate in part—in discharging obligations connected with the appellant company's dominant business of mining. The cardinal facts lead me to the conclusion that the *causa causans* of the earning of the profits now in question must be located in London, where the activities there conducted are properly characterized as "the originating cause of the receipt (i.e. the particular activity of the taxpayer which earns the money)" to use the words of Watermeyer, C.J., in *Lever Brothers'* case, *supra,* at 453.

Emphasis was laid by counsel for the Commissioner on the fact that in the correspondence between the parties the appellant company, in a letter by B dated 27th February, 1956, had contended that neither the earnings of interest in London on the funds there nor the making of profit on realization of the form to which the funds were put, constituted a trade separate from the mining business. This contention cannot be regarded as an admission of fact binding upon the appellant company. All the actual facts had been disclosed by the company to the Commissioner and tne denial of the existence of a separate business was merely the argument on the effect of those facts, and, incidentally an argument addressed not to the question of source of income but to the submission that the profits in question were not income, but a capital accrual. The word "business", which probably includes a trade, has a wide meaning varying with the context and was generally defined by Jessel, M. R., in *Smith* v. *Anderson,* 15 Ch. 258, as "anything which occupies the time and attention of a man for the purpose of profit". If a taxpayer, having capital funds not immediately required for use in his main business temporarily employs them in a profit-making scheme distinct therefrom, he is carrying on a separate activity. It may be subordinate or ancillary to his main business in the sense that he intends that the profit when earned will be added to the capital of the main business, but it has been earned not by the conduct of his main business but by the exercise of this separate activity. If this separate activity (whether dignified by calling it a business or not) is conducted in its entirety at a place outside the location of the taxpayer's main business, or if, as in the present case, the dominating factors in its conduct are so located, the profit earned by it has a local situation of its own.

It was not argued before this Court that the appellant company, by embarking on this London activity, was acting *ultra vires,* or that (if it was) its liability to tax was affected thereby.

The case of *C.I.R.* v. *Black,* 1957 (3) S.A. 536 (A.D.), was discussed in argument before this Court: the actual decision was sought on the Commissioner's behalf to be distinguished on the ground that the special Court having there made a finding of fact in the taxpayer's favour, such finding could be reversed on appeal only on proof that the only true and reasonable conclusion was one in favour of the Commission, viz. that the "dominant or main or substantial or real and basic cause" of the accrual of income was to be found in Johannesburg. That case was concerned with a situation where the taxpayer who carried on business as a stockbroker in Johannesburg sent capital to a London firm of stockbrokers with which to deal on his behalf with shares on the London Stock Exchange, sometimes on his instructions, sometimes at the London firm's own discretion. While holding that it was a reasonable view for the Special Court to hold this to constitute a separate London business, with profits not taxable as coming from a Union source, the learned Acting Chief Justice (Schreiner, A.C.J.) indicated the possibility that in somewhat different circumstances it might well be that the London transaction might be really one part of the Johannesburg business:

"The purchases and sales in London might, I apprehend, be so linked up with similar transactions in Johannesburg as to lead to the view that there was only one business located where the taxpayer was personally controlling operations."

In the instant case however it seems to me fundamental that the taxpayer does not conduct any business in the Federation concerned with the purchase and resale of securities as a profit-making scheme. Its London transactions of share buying and selling are an independent matter, an activity for the profitable use in London of what is capital, which it could have employed, but for a limited period did not wish to employ, in its business of mining. They were not linked up with similar transactions in the Federation.

If (despite the doubt expressed of its entire correctness by Atkin, L.J., in the *Rhodesia Metals* case, *supra,* at 436) the statement of Innes, C.J., in the *Overseas Trust Corporation Limited* case, *supra,* that the place of employment of the capital used to make a profit is, according to *Dunn's* case, the source of the income, this would answer the present question in favour of the appellant company. Had the appellant company, instead of pursuing the present activity, put its capital out in London merely to earn interest, the above statement would indicate that the source of the interest income was in London and I find it difficult to see that the position is in any way different because the appellant company, instead of earning interest, bought and sold securities with the object of making a profit on resale.

In addition, there is the further factor in its favour that the contracts of purchase and sale were all entered into in London. In the *Lever Brothers* case, *supra,* which was concerned with tax claimed on interest due under contract, Watermeyer, C.J., referred at p. 452 to a number of English and Australian decisions and quoted without disapproval the following passage from *Lovell & Christmas, Ltd.,* (1908) A.C. 46:

"The trade or business in question . . . ordinarily consists in making certain classes of contracts and in carrying those contracts into operation with a view to profit; and the rule seems to be that where such contracts, forming as they do the essence of the business or trade are habitually made there a trade or business is carried on within the meaning of the Income Tax Acts."

And the decision in *Lever Bros.'* case, favourable to the taxpayer, rested (*vide* pp. 456, 457) on the facts that it was in terms of contracts entered into outside the Union, viz. in London and Holland (at 455), that the interest in question accrued to the taxpayer.

"It was the agreement between the parties that interest should be paid, and the performance by Levers of their obligations under it, which created the right of Levers to receive the money and the corresponding obligation of Overseas Holdings to pay it. So it could more properly be said that it was the making and carrying out of the agreement relating to the £11,000,000 by the taxpayer, which earned the income for him, rather than the existence of the debt resulting from that agreement."

While I feel the same difficulty expressed by Watermeyer, C.J., in *Lever's* case, loc. cit. at 457, in differentiating the practical man—with hypothetical views on the subject (*vide* Schreiner, J.A., loc. cit. at 463)—from the theoretical lawyer, I venture to express the view that the ordinary man of business would probably express the rough and ready opinion that the appellant company, having once made profits in the Federation from its main business, proceeded to make subsequent profits from a source in London by a separate activity there.

I have come to the conclusion that the appellant company is correct in its contention that these profits were received or accrued from a source outside the Federation. This conclusion renders unnecessary a consideration of whether the appelland was entitled to raise a separate ground of appeal

in regard to the profits of the earlier of these two years and if so whether that separate ground was well founded.'

In allowing the appeal the Court ordered that the Commissioner's inclusion in the company's taxable income of the two sums of £2,113 and £4,176 for the years of assessment ending 31st March, 1954 and 31st March, 1955, respectively, should be set aside.

NOTE

After traversing all decisions of the Appellate Division on source, from *Dunn's* case (*supra*) (1918) to *Black's* case (*supra*) (1957), the learned Chief Justice came to the conclusion that, considering that the taxpayer had idle capital in London, there employed it to purchase United Kingdom securities with the object of profit on resale, effected the actual contracts of purchase and of resale in London and there received its profits on resale, the *causa causans* of the earning of the profits had to be located in London. The ordinary man of business, too, would in the view of the learned Chief Justice, probably express the rough and ready opinion that the taxpayer, having once made profits in the Federation from its main business, proceeded to make subsequent profits from a source in London by a separate activity there. As, then, these profits had not been received nor had accrued from a source within the Federation, it followed that the appeal of the taxpayer had to be upheld.

E. Sp.

Source: *The Taxpayer, July 1958.*

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FRANCE

Impôt sur les sociétés. — Territorialité. — Société ayant son siège en France et son exploitation commerciale hors de France. — Profits financiers du siège non imposables.

Une société qui, ayant son exploitation commerciale à l'étranger, se borne à gérer à son siège social en France, un portefeuille de devises et de valeurs mobilières provenant du rapatriement au siège social de revenus précédemment réalisés à l'étranger, ne saurait être regardée comme exerçant en France une activité distincte dont les profits seraient imposables en France.

Conseil d'Etat, 7e sous-section,
6 décembre 1957, n° 30.650.

M.M. Heilbronner, *Prés.*; — Schmeltz, *Rapp.*; — Poussière, *Com. Gouv.*

Considérant qu'il résulte de l'instruction que la sté . . . 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 sté . . . ne saurait être regardée, comme ayant exercé simultanément en France une activité distincte dont les profits puissent constituer au sens de l'art. 2 susmentionné du C.G.I.D. des bénéfices réalisés dans une entreprise exploitée en France; que dès lors, le S.E.B. n'est pas fondé à soutenir que la sté dont s'agit était redevable, à raison de ces bénéfices, de l'impôt sur les bénéfices industriels et commerciaux;

Rejet.

Observations. — Pour l'application du principe de la territorialité de l'impôt, d'après lequel seuls sont imposables en France les bénéfices réalisés par des entreprises exploitées en France, le Conseil d'Etat a eu à se prononcer, à diverses reprises, sur le cas de sociétés qui, ayant leur siège en France mais exerçant leurs exploitations industrielles ou commerciales à l'étranger, se bornent à gérer, au lieu de leur siège social, leurs intérêts financiers et spécialement leur portefeuille de valeurs mobilières.

Dans l'étude publiée sous l'art. 8409 de notre Revue, nous avons exposé la jurisprudence intervenue sur ce point.

Nous rappelons que par un premier arrêt du 31 mai 1937, req. n° 55.308 (*R.I.* 5046), le Conseil d'Etat avait jugé que lorsqu'une société industrielle qui a son siège en France consacre exclusivement son activité à l'exploitation d'établissements situés à l'étranger et que la gestion du portefeuille de valeurs

mobilières qu'elle possède en France est liée à l'exploitation desdits établissements, les profits réalisés par cette gestion ne sauraient être regardés comme provenant d'une entreprise exploitée dans notre pays et ne peuvent, dès lors, y faire l'objet d'aucune imposition.

Cependant, plus récemment, un arrêt du 20 juin 1953 (req. n° 77.693, Gaz. Pal. 23 oct. 1953), confirmé par les arrêts des 21 déc. 1953. req. 14.622, Lebon, 1953, p. 571 et 13 juil. 1954, *R.I.* 8.126), avait paru marquer un certain revirement de la jurisprudence antérieure.

L'arrêt du 20 juin 1953 a, en effet, décidé que lorsqu'une société ayant pour objet l'exploitation de mines situées à l'étranger; effectue dans notre pays où elle a son siège social, des opérations répétées d'achat et de vente de valeurs mobilières, ces opérations doivent être regardées comme constituant l'exercice en France d'une activité commerciale distincte, alors d'ailleurs que les profits obtenus, s'ils sont le produit de capitaux précédemment investis ou de bénéfices réalisés à l'étranger, ne sont pas destinés à faire face aux besoins de l'établissement exploité hors de France. Les profits dont il s'agit ont, par suite, été reconnus passibles en France de l'impôt frappant les bénéfices industriels et commerciaux.

Mais ultérieurement, il a été jugé par un arrêt du 11 mai 1956 (req. n° 30.946, *R.I.* 8.330) que les plus-values réalisées par une société ayant son siège social en France, à l'occasion de la cession d'un certain nombre d'actions et de parts d'une société chérifienne reçues par elle en contre-partie de l'apport à ladite société de la plus grande partie de son actif — comprenant un certain nombre de permis de recherche de pétrole au Maroc, le bénéfice des travaux de prospection entrepris en vertu de ces permis, ainsi que l'outillage y afférent — ne sauraient être regardées comme provenant d'une entreprise exploitée en France et soumises à l'impôt français, dès lors qu'il n'est pas établi que l'entreprise ait uilisé ces titres pour réaliser, d'une manière habituelle, des opérations de bourse ou pour exercer une activité distincte de gestion d'un portefeuille de valeurs mobilières et qu'en réalité ladite société n'a aliéné les titres dont il s'agit qu'en vue de se procurer le fonds nécessaires pour participer à une augmentation de capital de la société chérifienne.

L'arrêt du 6 déc. 1957, ci-dessus rapporté, paraît faire une mise au point définitive de la jurisprudence en la matière.

Il s'agissait, dans l'affaire qui a donné lieu à cet arrêt, d'une société anonyme ayant son siège en France et qui avait pour objet le transport de marchandises sur le Danube.,

La société gérait en France un portefeuille de devises et de valeurs mobilières.

Mais ce portefeuille était uniquement composé 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 improductives de revenus d'une société de transports dont l'activité s'exerçait dans un pays riverain du Danube.

Dans cette situation de fait, le Conseil d'Etat a considéré que la société ne devait pas être regardée comme ayant exercé en France une *activité distincte* dont les profits pouvaient constituer des bénéfices réalisés dans une entreprise exploitée en France.

Par cette décision le Conseil d'Etat a suivi les conclusions du Commissaire du Gouvernement, M. Poussière.

Il résulte de ces conclusions — qui ont été publiées dans «Droit Fiscal» (n° 6 de 1958) — qu'une société qui, ayant des exploitations à l'étranger, se borne à gérer à son siège social en France un portefeuille de valeurs mobilières, n'est imposable en France à raison des profits réalisés dans la gestion de ce portefeuille que si, d'une part, cette gestion caractérise l'exercice d'une activité commerciale, c'est-à-dire si elle se traduit essentiellement par des

achats et ventes répétées de valeurs mobilières et si, d'autre part, le produit des opérations n'est pas destiné à faire face aux besoins de l'exploitation à l'étranger.

Source: *Revue des impôts sur le commerce et l'industrie* août-sept. 1958

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INDIA — NON-RESIDENT COMPANY

Non-Resident carrying on Business with Resident who is producing no profits

The Supreme Court of India (May 12, 1958).
Mazagaon Dock Ltd. v. Commissioner of Income Tax and Excess Profit Tax.

The appellant company which carried on business as marine engineers and shop repairers was resident and ordinarily resident for the purpose of the Income tax Act. Two non-resident British companies engaged in the business of plying ships beneficially owned the entire share capital of the appellant company.

Under an agreement entered into with the non-resident companies, the appellant company repaired their ships at cost and charged no profits. The question was whether the appellant company was chargeable to tax under section 42(2)[1]) of the Income tax Act on the profits which it would ordinarily have made out of this business activity.

Held, (i) it was the appellant company that was chargeable to tax under section 42 (2) in respect of the profits which it would have made, and not the non-resident companies;

(ii) the activities of the non-resident companies in sending their ships for repairs to the appellant company under an agreement that the repairs should be done at cost were trading activities organized and continuous in character, and constituted business;

(iii) the fact that the non-resident companies carried on their business in such a manner that no profits could accrue to them was irrelevant;

(iv) the appellant company was, therefore, chargeable to tax under section 42 (2).

Source: *The Income Tax Reports,* September 15tn, 1958.

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[1]) Section 42 (2), *Indian Income Tax Act* reads:

Where a person not resident or not ordinarily resident in the taxable territories carries on business with a person resident in the taxable territories and it appears to the Income-tax Office that owing to the close connection between such persons the course of business is so arranged that the business done by the resident person with the person not resident produces to the resident either no profits or less than the ordinary profits which might be expected to arise in that business, the profits derived therefrom, shall be chargealbe to income-tax in the name of the resident person who shall be deemed to be, for all the purposes of this Act, the assessee in respect of such income-tax.

IV

REVIEWS — COMPTES RENDUS

BELGIUM

Le Guide Fiscal Permanent. Publié sous la direction de GASTON van den AVYLE Editions Vioburo, 7, Cantersteen, Bruxelles 1. Avec mises à jour mensuelles.

Cet ouvrage pratique est tenu constamment à jour par la publication régulière de mises à jour. Les mises à jour paraissent tous les mois. Elles contiennent les changements survenant aux lois et règlements, les décisions administratives et les décisions des tribunaux en matière fiscale. Les éditeurs ne reproduisent seulement les textes légaux ou administratifs; chaque fois que la chose est nécessaire ils les condensent, les coordonnent et les commentent de manière à en faire saisir l'esprit, le principe ou les directives. Le présent ouvrage répond bien aux nécessités de tous ceux qui, professionnellement, doivent connaître des questions fiscales.

Institut International de Finances Publiques: *Les distortions économiques d'origine fiscale*. Congrès de Vienne, Septembre 1957. XIIIe session. Établissements Emile Bruylant, 67 Rue de la Régence, Bruxelles, 1958, 271 pp.

This book contains in the first part the speech of *Fritz Neumark* the president of the Institut International de Finances Publiques. The second park consists of the general report by MAURICE LAURÉ on «Les distortions économiques d'origine fiscale». The third part contains the national reports of PROF. DR. KARL BRÄUER, PROF. DR. GÜNTHER SCHMÖLDERS (Germany), CARL S. SHOUP, STANLEY S. SURREY (U.S.A.), RAYMOND PULINCKX, PAUL BULTYNCK (Belgium), CHARLES CAMPET (France), PROF. GAETANO STAMMATI, ANTONIO BERLIRI, CESARE COSCIANI (Italy), PROF. DR. B. SCHENDSTOK (Netherlands), PROF. E. AZZINI (Uruguay). In the fourth part the same subject is treated from the point of view of fraud and fiscal evasion by the same authors except for France: DESMYTTERE and the Netherlands: J. E. A. M. VAN DIJCK. The fifth part consists of a synthesis of the discussions while the sixth contains data from the administrative report of the secretary director-general PROF. MASOIN. He discusses in his synthesis a few points among which the one that the economic and social consequences are not so serious as is sometimes supposed, because social life corrects much. A most interesting publication.

DENMARK

V. SPANG-THOMSEN: *Skattetabeller 1958-1959*. 13. udgave. Nyt Nordisk Forlog Arnold Busck, København, 1958, 67 pp.

This booklet contains the rates of income and property tax in Denmark for the period 1958-1959 with examples and explanations.

FRANCE

The elimination of double taxation. Report of the Fiscal Committee of the O.E.E.C. Published by the Organisation for European Economic Co-operation, 2 Rue André-Pascal Paris-XVIe, 1958, 63 pp.

The report stresses that because of the lack of uniformity in double tax conventions a good deal of uncertainty and difficulties arise. The Fiscal Committee has been working on a model draft convention and has reached agreement on four important articles for inclusion in the model. These deal respectively with the listing and definition of the taxes to be covered by the convention, the definition of the concept of permanent establishment, the concept of fiscal domicile and the prohibition of tax discrimination on the grounds of nationality. The model articles are set out in extenso and are accompanied by detailed commentaries.

At a meeting held in July 1958 the Council of O.E.E.C. recommended member countries to adopt the articles drafted by the Fiscal Committee. The report has appeared in French also.

WILLIAM GARCIN et FRANÇOIS HEPP: *Recueils pratiques du droit des affaires dans les pays du marché commun*. Tome I Régime des Sociétés. Collection Jupiter. Editions Jupiter, 23 Rue du Mont-Thabor, Paris 1er, 1958.

La publication de ce premier *Recueil pratique du droit des affaires dans les pays du Marché Commun* marque une étape de la construction de l'Europe. Le travail juridique entrepris par MM. François Hepp et William Garcin comble une lacune en donnant satisfaction au besoin d'information exacte et précise que fait naître l'application du Marché Commun. Les auteurs avaient le choix entre deux méthodes: soit isoler les questions, et, pour chacune d'elles, marquer les particularités des diverses législations; soit considérer successivement l'ensemble de la législation de chaque pays. C'est la seconde méthode qui a été adoptée. Ce procédé permet de dégager les idées-forces qui inspirent chaque législation. Etant donné qu'il faut permettre la comparaison entre six législations différentes, les auteurs ont employé une numérotation décimale uniforme, la même question étant, pour tous les pays traitée sous un numéro identique. Les Recueils sont établis sur feuillets mobiles.

Code annoté de l'enregistrement. Les Editions d'Impôts et Sociétés. Seteca, 14, rue Clapeyron, Paris. Sur feuillets mobiles.

Cet oeuvre mette à la disposition des non-professionnels un travail accessible à tous et qui contient l'exposé des principes indispensables à la compréhension du mécanisme des droits d'enregistrement. Les autres buts du présent ouvrage sont faciliter l'usage de cette documentation, en donnant d'abord le dernier état de la législation, de la doctrine et de la jurisprudence accompagné des références utiles, puis en établissant des tables de recherche complètes; et permettre aux spécialistes une critique juridique qui s'impose en leur fournissant les éléments dont ils peuvent avoir besoin pour juger du bien-fondé d'une perception: pour cela, citer d'abord les sources, autant que possible, textuellement; distinguer dans la règle appliquée ce qui est légal, jurisprudentiel ou purement doctrinal de ce qui n'est qu'une simple tolérance administrative; enfin souligner, en toute probité, ce qui n'est que l'opinion personnelle du commentateur. Le Code Annoté n'a pas la prétention de remplacer les oeuvres doctrinales. Il s'efforce, au contraire, d'en mettre la riche substance à la portée du plus grand nombre, en multipliant les références qui faciliteront les confrontations. Le choix du plan suivi dans la Codification, comme cadre aux commentaires constitue, au surplus, le procédé le mieux approprié à une mise à jour rapide.

Le régime fiscal des successions. Manuel théorique et pratique par les Rédacteurs du Journal des Notaires et des Avocats. Librairie du Journal des Notaires et des Avocats, 6, rue de Mézières, Paris-VIe, 1958, 483 pp.

Les droits de mutation par décès, appelés plus généralement droits de succession, forment actuellement un impôt dont l'application et la liquidation

sont extrêmement complexes. Non seulement la fixation de l'assiette de l'impôt fait appel aux règles des régimes matrimoniaux et de la dévolution héréditaire tant en droit interne que, de plus en plus souvent, en droit international privé, mais la liquidation des droits met en jeu fréquemment la détermination d'abattements, de réductions, d'exonérations ou de régimes spéciaux que la réforme réalisée par la loi du 14 mars 1942, tendant à unifier l'ensemble des liquidations effectuées sur les mutations à titre gratuit émanant d'une même personne a encore rendue plus compliquée. Les rédacteurs du *Journal des Notaires* présentent un ouvrage clair et aussi simple que possible, permettant aussi bien à l'étudiant qu'au praticien de trouver rapidement l'exposé des principes généraux applicables au règlement fiscal des successions et la solution de difficultés concrètes. Dans ce but, les auteurs ont été amenés à exposer un grand nombre de solutions, administratives ou judiciaires, rendues sur des cas particuliers. L'ouvrage est complété par de nombreux modèles de déclarations.

JURIS-CLASSEURS, Droit Fiscal, *Impots directs*. Editions Techniques, 18 rue Séguier, Paris (6e). Mises au courant 1958, nos. 25-26.

Les mises au courant qui font l'objet des présentes livraisons couvrent une période de législation s'etendant du 20 avril au 29 juin 1958 et correspondent à une période de publication de la Revue «Droit Fiscal» comprenant les numéros 18 à 26 inclus de 1958. Elles comportent de nombreuses et importantes refontes qui ont eu pour objet d'intégrer dans le Traité les fiches de mise à jour devenues trop nombreuses par suite de l'évolution incessante de la matière fiscale et de son accroissement.

JURIS-CLASSEURS, Droit Fiscal, *Chiffre d'affaires*. Editions Techniques, 18 rue Séguier, Paris (6e). Mises au courant 1958, nos. 27-28.

La mise au courant qui fait l'objet de la livraison 1958 no. 28 comprend un fascicule refondu, un fascicule nouveau et des fiches de refonte. Cette mise au courant correspond à une période de publication du Bulletin «Droit Fiscal» comprenant les numéros 18 à 26 inclus de 1958.

Association Nationale des Sociétés par Actions (A.N.S.A.), 15, Place Malesherbes, Paris (XVIIe).

Ont paru les brochures suivantes:

No. 116 Septembre 1958, *Le nouveau bilan type*. Décret du 7 Août 1958. Ce décret a été pris pour tenis compte des modifications apportées par le Conseil national de la Comptabilité au «Plan comptable général» dont la révision a été approuvée par arrêté ministériel du 11 mai 1957.

No. 117 Novembre 1958, *Les charges fiscales et sociales des sociétés*. Cette brochure contient des extraits de rapports des conseils d'administration et d'allocutions des présidents aux assemblées d'actionnaires.

No. 118 Décembre 1958, *L'achèvement des regroupements d'actions*. Annulation des actions anciennes non présentées au regroupement. Vente des actions nouvelles non réclamées. Loi du 2 août 1957, article 9, décrets Nos. 1152 et 1153 du 25 novembre 1958.

No. 119 Janvier 1959, *Statut juridique des valeurs mobilières*, 296 pp. Cette étude constitue la mise à jour de la brochure no. 81 de 1949: Le nouveau régime des valeurs mobilières. Depuis cette époque, des modifications ont été apportées à ces textes et de nombreuses solutions ministérielles en ont éclairé la portée. Sa refonte s'imposait d'autant plus qu'une loi du 2 août 1957 a autorisé une nouvelle procédure qui permet de mener à leur terme les regroupements d'actions.

No. 120 Janvier 1959, *Aperçu du régime des sociétés par actions en Italie,* 39 pp.

L'A.N.S.A. va préparer, sous forme de brochure, pour chacun des six pays du Marché Commun, des résumés contenant l'essentiel du régime des sociétés, des pratiques commerciales, de la législation sociale et de la fiscalité. La présente brochure qui est la première de cette série est consacrée au droit italien des sociétés par actions. Elle est due à M. FRANÇOIS HEPP, Docteur en droit, Expert près de la Cour de Paris.

ROGER DEBLED: *Comment sauvegarder et recouvrer vos créances.* Collection «Ce qu'il vous faut savoir». Editions Delmas, 13 rue de l'Odéon, Paris-VIe, 1959.

Il s'agit d' un code pratique de la sauvegarde et du recouvrement des créances, qui tient compte des réformes les plus récentes. Cet ouvrage, 23ème titre de la Collection «CE QU'IL VOUS FAUT SAVOIR», se présente avec les qualités de méthode et de clarté qui font la valeur de cette Collection. L'auteur, M. Roger DEBLED, Docteur en droit, diplômé de l'École Libre des Sciences Politiques, a composé un guide précis et accessible à tous, éminemment utile tant aux créanciers qu'aux débiteurs. L'auteur a déjà fait paraître, dans la même Collection trois ouvrages: «L'achat et la vente d'un Fonds de commerce», «L'achat et l'administration d'un immeuble» et «Tous les problèmes de la copropriété».

Codes Annotés d'Impots et Sociétés publiés sous la direction de M. RENÉ-LOTTE. Les Editions d'Impots et Sociétés, 23 Rue Chauchat, Paris-9e.

Des comptes rendus de ces tômes excellents sur le système fiscal français ont paru dans le *Bulletin* Tome XI, p. 126 et 332. Le Bulletin no. 17 qui a été publié récemment contient des pages nouvelles pour les tomes I, II, III, V et VII. Compte tenu de ces 234 feuillets de refonte les tomes indiqués du Code annoté sont à jour au 1er Septembre 1958.

GERMANY

Dr. jur. GERHARD MATTERN: *Treu und Glauben im Steuerrecht.* Ein Beitrag zur Lehre von der Besteuerungsmoral unter besonderer Berücksichtigung der Rechtsprechung. Fachverlag für Wirtschafts- und Steuerrecht Schäffer & Co., Hachländerstrasse 33, Stuttgart O, 1958, 56 S.

Das Fragengebiet Treu und Glauben hat im Steuerrecht stetig wachsende Bedeutung gewonnen. Dem Verfasser lag daran, die grundsätzlichen Gesichtspunkte herauszuschälen und sie mit Beispielen aus der Rechtsprechung zu befestigen, die Frage „Treu und Glauben" systematisch zu erörtern und gewisse Grundsätze — auch hinsichtlich der Grenzen — herauszuarbeiten

HÜBSCHMANN-GRABOWER-BECK-VON WALLIS: *Kommentar zum Umsatzsteuergesetz. Lieferung 11,* Dez. 1958. Verlag Dr. Otto Schmidt, Hohenzollernring 78, Köln.

Die vorliegende Lieferung enthält ua. neben den Gesetzsänderungen durch das Urteil des BVerfG zu den §§ 8 und 18 UmsStG, durch die 10. ÄndVO zu den UmsStDB und die 8. Änd VO zur AusglStO umfangreiche Erläuterungen zu § 5 UmsStG und eine völlige Überarbeitung der Erläuterungen zu § 6 UmsStG.

Steuergesetze. Textsammlung mit Verweisungen und Sachverzeichnis. 3. Ergänzungslieferung. Januar 1959. 80 Seiten. In Schlaufe DM 2.— Gesamtwerk: *Steuergesetze.* 14. Auflage. Stand 15. Januar 1959. 1640

Seiten. In Leinenordner DM 25.—, Verlag C. H. Beck, Wilhelmstrasse 9, München.

Mit dieser Ergänzungslieferung wird die Sammlung auf den Stand vom 15. Januar 1959 gebracht.

JAN BERTLINGS: *Die Ehegattenbesteuerung bei der Vermögensteuer im Bewertungsgesetz und bei der Vermögensabgabe.* Verlagsbuchhandlung des Instituts der Wirtschaftsprüfer, Cecilienallee 36, Düsseldorf, 1958, 70 S.

Der Verfasser untersucht die praktische Bedeutung des Beschlusses des Bundesverfassungsgerichts vom 17.1.1957 für das Vermögensteuergesetz, das Bewertungsgesetz und das Lastenausgleichsgesetz. Er hat die gesamte Literatur und die einschlägige Judikatur zusammengetragen und in einer sonst nur selten anzutreffenden Gründlichkeit und Gewissenhaftigkeit ausgewertet.

Im *Verlag des Instituts der Wirtschaftsprüfer,* Cecilienallee 36, Düsseldorf sind erschienen: Dr. jur. GÜNTHER FELIX: *Die Rechtsfolgen der Steuersäumnis,* 1958, 72 S.

Die Erörterungen in diesem Buche werden von dem Leitgedanken getragen, dass bei der Auslegung steuerlicher Rechtsvorschriften insbesondere der Zweck des Gesetzes bestimmend ist.

WILLI WEINSHEIMER: *Die Auslegung gegen den Wortlaut im Steuerrecht.* Schriftenreihe des Instituts für Steuerrecht der Universität zu Köln, herausgegeben von Prof. Dr. Armin Spitaler, Band 2, 1958, 106 S.

Die Darlegungen des Autors machen uns damit vertraut wann eine Auslegung des Steuergesetzes gegen den Wortlaut nicht nur möglich, sondern geboten ist. Im Steuerrecht sind diese Fälle nicht gerade besonders selten. Der Autor hält sich an die Rechtsprechung und an das massgebende Schrifttum.

HELMUT KNOPPE: *Pachtverhältnisse gewerblicher Betriebe im Einkommen- und Körperschaftssteuerrecht.* Schriftenreihe des Instituts für Steuerrecht der Universität zu Köln, herausgegeben von Prof. Dr. Armin Spitaler, Band 3, 1958, 114 S.

Die vorliegende Arbeit bringt u.a. eine genaue Darstellung der Besteuerung der Pachteinnahmen, ferner behandelt sie die wichtige Frage der Bilanzierung von verpachteten Betriebsanlagen bei den Vertragspartnern. Der Autor widmet sich auch der Frage der Angemessenheit des Pachtzinses bei Betriebsaufspaltungen.

WILLI FETTWEISS: *Steuerermässigung wegen aussergewöhnlicher Belastung,* 1958, 128 S.

Diese Monographie gibt eine vollständige und systematische Übersicht über die neuere Rechtsprechung in ABC-Form. Der Autor hat sich bemüht Vollständigkeit des Inhalts mit leichtsverständlicher Darstellungsweise zu verbinden.

OTTO BREDT: *Anpassung der Methoden der Betriebsführung an die Gegebenheiten eines Gemeinsamen Europäischen Marktes,* 1958, 46 S.

In diesem Beitrag zum III. Kongress der Union Européenne des Experts Comptables Economiques et Financiers (U.E.C.) vom 23. — 26-9-1958 in Nizza zeigt der Verfasser dem Unternehmer die eminent wichtige Bedeutung des gemeinschaftlichen Marktes für Produktion und Absatz.

Ergänzende Vorschläge zur Aktienrechtsreform der Ausschüsse Sonderprüfung und Konzernfragen im Institut der Wirtschaftprüfer in Deutschland e.V., 1958, 76 S.

Diese Vorschläge sind keine abschliessende Stellungnahme, sondern eine Diskussionsgrundlage für einen weiteren Meinungsaustausch im Berufsstand sowie zwischen diesem und der interessierten Öffentlichkeit.

Die Veranlagung zur Einkommensteuer für 1957, 1958, 656 S.

Dieses Buch enthält das Einkommensteuergesetz mit Durchführungsverordnung und Richtlinien, 45 Anlagen, ein ausführliches Stichwortverzeichnis und die Einkommensteuer-Tabelle.

Dr. Jan Bertlings: *Die Ehegattenbesteuerung bei der Vermögensteuer im Bewertungsgesetz und bei der Vermögensabgabe*, 1958, 70 S.

Der Verfasser hat die gesamte Literatur und die einschlägige Judikatur sorgfältig zusammengetragen und gründlich und gewissenhaftig ausgewertet.

Charles H. Beecher: *Wills and estates under German law*. A comparative treatise of civil and common law. Titz Verlag, Berlin, 1958, 82 S.

This book has been written to bridge the differences of two legal systems. Germany is a civil law country, the United States is a common law country. The approach to wills and estates is basically different in the two countries. Common law legal terms, such as probate, life tenancy, joint tenancy, trusts are used as chapter headings, and it is shown how they are being replaced under German civil law. Special chapters deal with estate planning, international private law and double taxation.

Dr. Conrad Böttcher und Dr. Heinz Meilicke: *Umwandlung und Verschmelzung von Kapitalgesellschaften*. 5. völlig neubearbeitete Auflage. Verlag Franz Vahlen.

Dieser Standardkommentar verbindet die handelsrechtliche und steuerrechtliche Darstellung auf dem gesamten Gebiet der Umformung von Kapitalgesellschaften einschliesslich der bergrechtlichen Gewerkschaften. Eine eingehende Behandlung haben u.a. gefunden: die übertragende Umwandlung nach dem Umwandlungsgesetz 1956, die steuerrechtlichen Auswirkungen ohne Steuererleichterungen und nach dem Umwandlungssteuergesetz 1957 mit Steuererleichterungen. Das Umwandlungssteuergesetz ist bis 1959 befristet. Das Werk erläutert aber auch die Umwandlung und Verschmelzung ohne Steuererläuterungen. Es ist damit auch für alle die Fälle verwertbar, die vor dem Inkrafttreten der Bestimmungen über die steuerbegünstigte Umwandlung zu Auseinandersetzungen mit der Finanzverwaltung geführt haben, und für solche, die nach dem Ausserkrafttreten dieser Vergünstigungen praktisch werden. Kartellrechtliche, betriebsverfassungsrechtliche, arbeitsrechtliche sowie montanunionrechtliche Fragen des Umwandlungs- und Verschmelzungsrechts werden ebenso wie die Fragen des bürgerlichen Rechts behandelt. Die Verfasser haben besonderen Wert auf eine übersichtliche Gliederung und auf eine klare, verständliche Darstellungsform gelegt, so dass sich auch der mit dieser Materie weniger Vertraute leicht unterrichten kann.

Dr. Bernhard Gübbels: *Handbuch der steuerlichen Abschreibung*. 2. völlig überarbeitete und ergänzte Auflage. Verlag Dr. Otto Schmidt, Köln, 1958, 426 S.

Dieses Handbuch, das jetzt in einer zweiten völlig überarbeiteten und ergänzten Auflage erscheint, stellt die wesentlichen Abschreibungsprobleme

der vergangenen und gegenwärtigen Veranlagungszeiträume mit ihren Möglichkeiten und Grenzen dar. Die inzwischen ergangene Rechtsprechung und die Auffassung der Finanzverwaltung ist überall berücksichtigt. Ausserdem wurden die bisherigen Darlegungen an vielen Stellen durch Hinweise erläutert und eine Anzahl von Spezialfragen zusätzlich erörtert. Auch die betriebswirtschaftlichen Aspekte und die gesetzlichen Regelungen im Ausland sind in die Darstellung mit einbezogen.

FRITZ BAADE: *Gesamtdeutschland und die Integration Europas*. GÜNTHER SCHMÖLDERS: *Ökonomische Verhaltensforschung*. Westdeutscher Verlag, Ophovener Strasse 1-3, Oplade, 1957, 69 pp.

Die Arbeitsgemeinschaft für Forschung des Landes Nordrhein-Westfalen hat in Ihrem Heft 71, diese zwei Aufsätze veröffentlicht die in Ihrer Sitzung am 22.Mai 1957 in Düsseldorf besprochen worden sind.

WILHELM GERLOFF † und FRITZ NEUMARK: *Handbuch der Finanzwissenschaft*. 2. Auflage. 26/27. Lfg. J. C. B. Mohr (Paul Siebeck), Tübingen, 1958, 120 pp.

Die 26/27. Lieferung ist die letzte des dritten Bandes des *Handbuch der Finanzwissenschaft*. Die Lieferung enthält die folgenden Aufsätze: Perry, Staatshaushalt und Finanzsystem Kanadas; Sur, Staatshaushalt und Finanzsystem der Türkei; Misra, Staatshaushalt und Finanzsystem Indiens; Alexander-Katz, Staatshaushalt und Finanzsystem Israëls; Kurowski-Szawlowski, Das Finanzsystem und der Staatshaushalt Polens. Weiter sind das Personenregister und das Sachregister des dritten Bandes zugefügt.

ZIEMER-KALBHENN-FELIX: *Steuer-Fundhefte*. Leitsätze der Entscheidungen - Literaturübersicht - Nachweis der Verwaltungsvorschriften. Von *Herbert Ziemer,* Regierungsdirektor im Bundesfinanzministerium; *Heinz Kalbhenn,* Amtsrat im Bundesfinanzministerium; *Dr. Günther Felix,* Wissensch. Assistent des Instituts für Steuerrecht an der Universität Köln. *Band V: 1957*. Mit Gesamtregister für alle fünf Bände. 380 Seiten in Ganzleinen DM 32.— Gesamtpreis für Band I-V DM 132.—, Vorzugspreis DM 115.— Verlag C. H. Beck, München.

Die Fundhefte enthalten die Leitsätze von sämtlichen in über 130 Fachzeitschriften veröffentlichten steuerrechtlichen Entscheidungen, Nachweise der gesamten in der Fachpresse veröffentlichten Aufsätze und der besprochenen Bücher sowie Nachweise der Fundstellen aller Gesetze, Verordnungen, Erlasse, Verfügungen, Verwaltungsanordnungen und Richtlinien. Das Material ist systematisch geordnet, d.h. Entscheidungen, Literatur, Erlasse, Verfügungen usw. sind unter dem Gesetz und Paragraphen zu finden, zu dem sie gehören. Ausserdem ermöglicht ein ausführliches Sachverzeichnis das Auffinden des gesuchten Materials nach Stichworten. *Das Sachverzeichnis in Band V erschliesst alle fünf Bände*. Man braucht deshelb nur in diesem Gesamtregister nachzuschlagen, um alle auf das betreffende Stichwort bezüglichen Stellen in sämtlichen fünf Bänden nachgewiesen zu finden. Rund 9000 Entscheidungssätze, Nachweise von Erlassen, Büchern und Aufsätzen sind verarbeitet in einer Darstellung, die auf Grund eines wohldurchdachten, von Jahr zu Jahr ausgestalteten Aufbaues ein Höchstmass in Übersichtlichkeit bietet.

Der Benützer kann sich in den Fundheften wie in einem sehr neuen, sehr aktuellen Kommentar über den Stand der Rechtsprechung zu einem Rechtsproblem orientieren und in vielen Fällen ohne weiteres bereits die Antwort auf die ihn beschäftigende Frage finden. Die Fundhefte stellen ferner eine lückenlose, immer wieder ergänzte, also stets aktuelle Bibliographie dar, aus der ersichtlich ist, welche Buch- und Zeitschriftenliteratur es zu einem

Rechtsgebiet oder einem Rechtsproblem gibt. Schliesslich geben die Fundhefte Aufschluss über den Gesetzesstand, über alle Novellen, Verordnungen, Erlasse, Verfügungen usw., so dass einem nichts entgehen kann. Auch über die Entwicklung des ausländischen Rechts und der einschlägigen Literatur vermitteln die Fundhefte einen Überblick.

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., Hackländerstrasse 33, Stuttgart.

Die Lieferung 27 vom Februar 1959 enthält u.a. die Anpassung der Stichworte „Bausparkassenbeiträge", „Doppelte Haushaltführung", „Entschädigung", „Fahrten zwischen Wohnung und Arbeitsstätte" und „Lohnsteuer-Jahresausgleich" an die neue Rechtslage. Im Anhang sind enthalten die Verordnungen über die Jahreslohnsteuertabelle und den Lohnsteuer-Jahresausgleich. Die Vorteile des ABC-Führer Lohnsteuer sind, dass Ergänzungslieferungen umgehend nach Gesetzesänderungen, neuen Richtlinien oder Durchführungsbestimmungen erscheinen. Bei aller Gründlichkeit sind sie so klar und knapp gehalten, dass der ABC-Führer Lohnsteuer stets das handliche und übersichtliche Nachschlagewerk bleibt.

INDIA

MADHAVA LAL AGRAWAL: *Current Rajasthan Sales-Tax Manual* including the Central Sales Tax Act, 1956. Jagdish & Company, Inside Surajpole, Udaipur, 1957. Loose-leaf.

This book contains the Rajasthan Sales-Tax Act, 1954, the Sales-Tax Amendment Act, Sales-Tax Rules,. 1955, schedules of exemptions & rates, notes and circulars. Further the Central Sales-Tax Act, 1956 with rules and notifications, the Rajasthan Sales of motor spirit taxation Act, 1954 as well as commentaries on these Acts. The commentary is given sectionwise and at the beginning of each section a synopsis has been given. At the end of the book a general subject index has been given which facilitates searching out the topic to be read.

M. L. AGRAWAL: *The Rajasthan Agricultural Income-Tax, 1953*. Messrs. Jagdish & Company, Surajpole, Udaipur, 1954, 352 pp.

The Rajastahan Agricultural Income-Tax Act is closely modelled after the Indian Income-Tax Act, 1922. The author has presented the material in a lucid manner and has combined comprehensiveness with conciseness by making use of case law drawn from the Income-Tax reported cases. He has incorporated the bare Act, as amended up-to-date, the Rules, extracts from the Constitution and the provisions of the Stamp Act and the Court Fees Act besides the commentary given section-wise. A general subject index has been given at the end of the book.

The Rajasthan Sales-Tax Bulletin. A monthly journal dealing with the law of sales-tax in India with special reference to the state of Rajasthan. Publishers: Jagdish & Company, Inside Surajpole, Udaipur.

This Bulletin is a link to the Rajasthan Sales Tax Manual and the Loose leaf service supplement of the same. The Journal contains sections covering Tax News, Articles on Sales tax laws, Case law digest and Reply to queries put by subscribers.

ITALY

VICTOR UCKMAR: *La postestà regolamentare in materia tributaria*. Dott. A. Giuffrè, Editore, Via Solferino 19, Milano, 1958, 62 pp.

In this study Professor Uckmar discusses the various problems concerning regulations in tax legislation. The characteristics and legislative force, the procedure of enactment by state, province and town, the standards for legal validity and the limitations of regulations are treated respectively.

BENEDETTO COCIVERA: *Raccolta delle circolari ed istruzioni ministeriali relative all'imposta di R.M. e complementare progressiva sul reddito.* Dal 1° gennaio 1924 al 31 dicembre 1956. Dott. A. Giuffrè, Editore, Via Solferino 19, Milano, 1957, 1007 pp.
Primo fiscicolo di aggiòrnamento (dal 1° gennaio al 13 dicembre 1957) 1958, 164 pp.

This is a very useful book for the student of Italian taxes. It contains all ministerial circulars and instructions on the schedular income tax and surtax from 1924 until 1956. The first supplement continues this work for the year 1957. In view of the importance of these instructions for the application of the tax Acts it is very convenient to have them all collected in one volume. An alphabetical and a chronological index facilitate the use of the book.

JAPAN

Outline of National Tax in Japan 1958. Tax Bureau, Ministry of Finance, Tokio, 77 pp.

This publication explains briefly the basic features of Japanese national tax (except customs duty) in force as of April 1, 1958. There are chapters on income tax, corporation tax, inheritance tax, registration tax, stamp tax, taxation on aliens and foreign corporations, other indirect taxes and a number of statistics.

MEXICO

Graficas de Organizaciòn Departemental de la Tesoreria del Distrito Federal. Departemento del D.F., Tesoria, Mexico, D.F., 1958, 26 pp.

This book consists of a number of schemes depicting the organization of the Ministry of Finance of Mexico. The Apèndice contains a diagram showing the ways in which tax receipts are expended.

MOROCCO

ANDRE THRIOREAU: *Code Fiscal. Supplément No. 23-24.* FIDUTEC Fiduciaire Marocaine d'Editions Techniques, 81 Rue Colbert, Casablanca.

Un compte rendu de cet oeuvre sur le système fiscal de Maroq a été publié dans le «Bulletin» Tome XI, p. 37. Le *Supplement no, 23-24* contenant des pages nouvelles pour les parts Impots Directs, Parafiscalité familiale, Douanes, Impots indirects et Législation financière a paru. Cette livraison comprend tous les textes parus d'Avril à Septembre 1958 inclusivement.

NETHERLANDS

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 1959, nos. 1-12 to this loose-leaf handbook 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. 140-144 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 35-37 to these loose-leaf volumes have been published.

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

9th Supplement, december 1958.

R. M. SMITS: *Woordenboek van Omzetbelastingtarieven.* N. Samsom N.V. — Publisher — Alphen aan den Rijn, Netherlands. 2nd edition.

Supplement 17, February 17th, 1959, 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. *Supplement 31* hast 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 23* has appeared.

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

Nos. 666-670 of the 18th 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. 7-9 have been received.

"In dubio pro fisco or contra fiscum". AE. E. Kluwer, Polstraat 10, Deventer, 1958, 18 pp.

Prof. van der Poel's final lecture is concerned with a historical survey of the question *"In dubio pro fisco or contra fiscum".* Finally Prof. van der Poel gives a survey of his own career.

Mr. P. H. THEMMEN: *Registratiewet 1917.* (Registration Duty Act, 1917). 2nd edition. Supplement 1, January 24th, 1959. De Belastingwetgeving Serie R. & D. No. 2. J. Noorduijn en Zoon N.V. — Gorinchem — Netherlands.

P. KARMELK: *Belasting op wijn en gegiste vruchtendranken.* 1st edition. Supplement 5, February 10th, 1959. De Belastingwetgeving, Serie I. & A. No. 2. J. Noorduijn en Zoon N.V. — Gorinchem — Netherlands.

C. P. TUK: *Omzetbelasting* (Sales Tax). 6th edition. Supplement 7, February 27th, 1959. De Belastingwetgeving Serie I. & A. No. 11. J. Noorduijn en Zoon N.V. Gorinchem — Netherlands.

Om der Schattinge wille. Bundel opstellen voornamelijk gewijd aan de rechtspraak in belastingzaken en opgedragen aan *Prof. Dr. J. van der Poel* ter gelegenheid van zijn afscheid als hoogleraar-directeur der Rijksbelastingacademie. AE. E. Kluwer, Polstraat 10, Deventer, 1958, 193 pp.

This collection of essays has been dedicated to Prof. Dr. van der Poel by his former students on the occasion of this retiring as professor-director of the Rijksbelastingacademie. One of the essays is concerned with international problems: *J. H. Christiaanse.* On the Problem of international jurisdiction in the field of taxation.

L. J. F. ENGELHARD: *Belastinggids voor de effectenbezitter.* Ned. Uitgeversmij., Breestraat 117, Leiden, 1959, 100 pp. Prijs f 3,25.

In this practical booklet the tax consequences of the ownership of securities has been elucidated in a clear way. The author has collected the material which otherwise can only be found in sources that are not easily accessible to the layman. The book is therefore a useful guide for the security owner to solve the difficulties of drawing up his annual tax return.

Dr. H. L. DROST: *Van eenmanszaak of firma naar N.V.?* Uitgeverij FED, Roemer Visscherstr. 29, Amsterdam-W1, 1959, 114 pp. Prijs f 5,90.

This is a treatise on the question whether the existing juridical form of a firm shall be maintained or that conversion into a limited liability company will be more advantageous. The question is dealt with mainly from the tax point of view although attention is also paid to the legal and economic consequences. The author gives a clear and practical survey with elucidatory examples and references to further literature and case law.

H. N. J. KUIJER: *Belastingaftrek door autokosten.* (Steuerabzug infolge von Autokosten) Nederlandsche Uitgeversmaatschappij N.V., Breestraat 117, Leiden, 1958, 100 pp.

Bei der „Nederlandsche Uitgeversmaatschappij", Leiden, ist ein ausserordentlich handliches kleines Buch erschienen mit dem Titel: Belastingaftrek door autokosten (Steuerabzug infolge von Autokosten). Der Verfasser ist H. N. J. Kuijer, Unter-Steuerinspektor. Die Arbeit richtet sich völlig nach der Praxis und das Buch enthält zudem ein Verzeichnis der Katalogpreise der gangbarsten Kraftwagen, die in den Jahren 1955-1958 hergestellt wurden, ein Verzeichnis das für die Einkommensteuererklärung in den Niederlanden aüsserst wichtig ist. Ausser der Einkommensteuer wird auch die Kraftfahrzeugsteuer behandelt.

C. VAN SOEST and A. MEERING: *Leidraad bij de belastingstudie. I.* (Guide for tax study). *Supplement 3.* S. Gouda Quint — D. Brouwer en Zoon, Uitgevers in het Huis de Crabbe, Arnhem.

A review of this loose-leaf work on Dutch taxation was published in "Bulletin" Vol. XI, p. 229. The *third supplement* contains new pages for the chapters II Income tax; VII Property tax; VIII Corporation profits gax; XIV Miscellaneous.

F. KUIPERS: *Wet op de herkapitalisatie 1957.* Taylor Efficiency-Bureau voor Administratieve Organisatie, Postbus 44, Nijmegen, 1958, 62 pp.

In this booklet the author discusses the Recapitalisation Act 1957 and illustrates its problems with numerous examples.

NEW ZEALAND

Butterworths Taxation Service (New Zealand) *Service no. 6* 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. 6* which has recently been published contains a number of pages to be exchanged. 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. Any amendmends or alterations to a paragraph are shown under the same number in the Service.

CHARLES A. STAPLES: *Taxation Tables 1958*. 14th edition. Financial Publications Ltd., 33 Jessie St., Wellington, 1958, 100 pp.

This edition has been compiled in two parts. Part I consists of a comprehensive review of the Land and Income Tax Amendment Act (No. 2) 1958. The section containing the PAYE weekly tax deduction tables has been expanded by the addition of tables for overtime and secondary employment. A schedule of the new rates of the Social Security Amendment Act, 1958 is given with footnotes relative to accumulated property, allowable income, etc. Part II contains the new scale rates of Estate Duty and Gift Duty, a table showing the tax on dividends in composite incomes, a table showing the statutory allocation of the residual profits of companies, etc.

NORWAY

JACOB JARØY: *Skattelov Samling*. Baugeidsgt. 16, Skien, Norway. *Ajourføring nr. 7-8*.

Reviews of this loose-leaf work on the Norwegian tax system were published in Bull. Vol. XI, p. 152 and Vol. XII, p. 106. Recently *Supplements nos 7 and 8* have been published containing a number of pages for replacement.

SARRE

Dr. R. KLEIN: *Das Recht des Saarlandes*. Blattei für die Praxis der Justiz, Verwaltung und Wirtschaft. *Teil 6: Steuerrecht*. Saarländische Verlagsanstalt und Druckerei, Ursulinenstrasse 1, Saarbrücken.

Ziel und Aufbau dieser Sammlung wurden in der Besprechung in *Bulletin* Bd. XII, S. 29 gewürdigt. Es sind jetzt erschienen die Lieferungen Steuerveranlagung 1957 im Saarland Band I *Einkommensteuer,* Band 2 *Körperschaftsteuer,* Band 3 *Gewerbesteuer*.

SWEDEN

Doing Business with Sweden. U.S. Department of Commerce, Bureau of Foreign Commerce. 1957, 115 pp. Available from the Superintendent of Documents, Government Printing Office, Washington 25, D.C., U.S.A., at 45 cents per copy, plus an additional one-fourth for postage if mailed to a foreign address.

In *Doing Business with Sweden* the Bureau of Foreign Commerce has consolidated in one handbook the material appearing in the 12 separate reports on Sweden currently available in the Bureau's comprehensive subscription series known as the World Trade Information Service. In the process of consolidation the material has been updated insofar as possible. Among the topics covered are: Investing in Sweden; Taxes and Overhead.

SWITZERLAND

Dr. Ch. PERRET und Dr. H. MASSHARDT: *Kommentar zur eidgenössischen Wehrsteuer 1959-1964.*
Textausgabe mit Erläuterungen. Polygraphischer Verlag, Limmatquai, Zürich, 1959, 331 S.

Im Bundesbeschluss vom 31. Januar 1958 über die verfassungsmässige Neuordnung des Finanzhaushaltes des Bundes, der in der Volksabstimmung vom 11. Mai 1958 gutgeheissen wurde, ist für die Wehrsteuer — wie auch für die Warenumsatzsteuer — eine Sonderbehandlung vorgesehen. Die direkte Bundessteuer wird aber vom Gesetzgeber nur ungern geduldet, was durch die Beschränkung ihrer Erhebung auf ein halbes Dutzend Jahre bekundet worden ist. Bis auf weiteres gilt das heutige Wehrsteuerrecht weiter, allerdings vom 1. Januar 1959 an mit tiefgreifenden Änderungen, die sich aus Artikel 8, Absatz 3 der Übergangsbestimmungen der Bundesverfassung ergeben.

Der vorliegende Kommentar nimmt einerseits zu den Änderungen Stellung wie sie im Bundesratsbeschluss vom 1. Juli 1958 über die Anpassung des Wehrsteuerbeschlusses an Artikel 8 der Übergangsbestimmungen der Bundesverfassung formuliert worden sind; anderseits berücksichtigt er die reiche Judikatur der letzten Jahre und die Weiterentwicklung der Praxis seit Erscheinen des Kommentars 1955/58. Der Kommentar vermittelt allen, die sich mit dem Wehrsteuerrecht zu befassen haben, eine rasche Orientierung über die einschlägigen Fragen.

UNITED STATES

Concise explanation of the new 1958 tax law. Prentice-Hall Inc., Englewood Cliffs, New Jersey, 1958, 236 pp.

For the first time since 1954, Congress has made a major revision of the tax law with the Technical Amendments Act of 1958 and the Small Business Tax Revision Act of 1958. The present booklet follows the sections of the Act and by use of the introductory material to the explanation, the table of contents and the separate index, readers will be able to readily ascertain which provisions affect them. Numerous examples are presented to point out the operation of the law changes and it is shown which Code section is affected by each new provision.

Senior tax moves for the man who runs a company. Prentice-Hall Inc., Englewood Cliffs, New Yersey, 1959, 32 pp.

This booklet discusses a group of tax arrangements which are in use for raising the level of company profits and increasing the executive's personal income.

GEORGE B. LOURIE and ARNOLD R. CURTLER: *How to reduce taxes by dividing income among the family.* Prentice-Hall Inc., Englewood Wood Cliffs, New Jersey, 1959, 32 pp.

This analysis considers briefly the general principles and their application to specific methods of accomplishing a tax-saving shifting of income within a family group. The analysis deals primarily with income tax savings, but reference is also made to estate and gift tax consequences.

1958 year-end tax tactics. Prentice-Hall Inc., Englewood Cliffs, New Jersey, 1958, 22 pp.

This special report contains all pertinent new (as well as old) tax laws and regulations which can be used in year-end tax planning.

V

UNITED KINGDOM

Budget 1959

The Council of the Association of Certified and Corporate Accountants has submitted to the Chancellor of the Exchequer its recommendations in connection with the Budget 1959.

Therein the following suggestions in connection with international taxation were given.

Unilateral Double Taxation Relief

Under present law, unilateral relief for overseas taxes is, in two respects, more favourable in relation to income from Commonwealth territories than that from other territories overseas; thus:

(a) tax payable under the law of a 'province, state or other part of a country, which corresponds to United Kingdom income tax or profits tax ranks for relief only where the income is from a Commonwealth source;
(b) where a dividend is received from a non-Commonwealth territory, no relief is given for indirect tax except where the recipient is a company controlling not less than one-half of the voting power in the company paying the dividend.

The Royal Commission on the Taxation of Profits and Income disapproved of the distinction so drawn and, in paragraphs 701 and 708 of its Final Report, recommended that the relief available for non-Commonwealth income be brought into line with that for Commonwealth income.

Recommendation

That legislation should be introduced to give effect to this recommendation.

Overseas Municipal Taxes

No relief is allowed in this country for municipal taxes levied overseas, even though they are in the nature of income tax. Cases arise where a part of overseas income tax on overseas profits is levied by a municipality rather than by the central government.

The Royal Commission on the Taxation of Profits and Income, in paragraph 701 of its Final Report, recommended that the automatic exclusion from relief of municipal taxes should be abolished.

Recommendation

That legislation should be introduced on these lines.

Overseas Tax Incentives, Including Pioneer Relief

Many overseas territories, both inside and outside the Commonwealth, grant tax concessions to encourage the development of industry. These concessions are of widely differing kinds. In some cases they result in complete exemption from overseas tax; in others, in a reduction of overseas tax payable either by way of an allowance or by way of an adjustment of the rate of tax.

The purpose of these concessions is being frustrated by the principle under which relief is only given against United Kingdom taxes in terms of overseas

taxes actually suffered. The Royal Commission recommended that the Government should negotiate bilateral treaties with overseas territories for the purpose of defining the concessions and providing for certification by the overseas taxing authorities of the tax forgone by virtue of the concession. The United Kingdom authorities would then regard the tax as having been paid and would grant a foreign tax credit accordingly.

If any such negotiations have taken place, no results from the British taxpayer's point of view have yet emerged.

Recommendation

That legislation should be introduced under which a credit should be allowed from United Kingdom tax for that amount of overseas tax which would have been paid but for the effect of special foreign reliefs, the general nature of which could be defined.

It is suggested that an obligation should be put upon the taxpayer claiming the relief to provide information in support of his claim which could be regarded as satisfactory by the Board of Inland Revenue.

Overseas Trade Corporations

(a) Status

Where, within an Overseas Trade Corporation group, a subsidiary company ceases to qualify as an Overseas Trade Corporation merely by reason of some misdemeanour, the principal company will itself also lose Overseas Trade Corporation status, with the result that full benefit can no longer be obtained from the Overseas Trade Corporation legislation. It is suggested that, in these circumstances, the principal company should retain its status, any income from the offending subsidiary company being treated as investment income.

Recommendation

That legislation should be introduced on these lines.

(b) *Subsidiary Companies resident outside the United Kingdom*

The present Overseas Trade Corporation legilation applies only to companies resident in the United Kingdom. It is submitted that it should be extended to cover the receipt by a principal company resident in the United Kingdom of dividends, interest and other income from its subsidiary companies resident outside the United Kingdom, and that in this regard the definition of the term 'subsidiary company' should be widened.

The adoption of this proposal would permit the principal company to reinvest abroad the income received from non-resident subsidiary companies without incurring United Kingdom taxation. This would materially assist the further development of United Kingdom investment overseas.

Recommendation

That legislation should be introduced to extend the benefits of Overseas Trade Corporation legislation to income received by a principal company from its subsidiary companies resident outside the United Kingdom, and that for this purpose the definition of the term 'subsidiary company' should be widened.

Source: *The Accountants Journal,* February, 1959

UNITED KINGDOM — BUDGET SPEECH

In his Budget Statement of the 7th April, 1959, Mr. Heathcoat Amory proposed a number of tax concessions. Below, we give an extract from the Chancellor of the Exchequer's Statement, followed by a survey of the tax concessions proposed.

1. Budget Statement

General remarks

"There can be no doubt that the measures which we have taken already, and which I mentioned briefly just now, are taking effect. Moreover, in the coming year I shall continue to see that our monetary policy, and in particular our funding operations keep in step with the development of our economic policy generally.

"Nevertheless the prospect for home production as I have set it out does not represent a full enough use of the capital resources which have been created in recent years. Nor can we be content with the possibility that unemployment might continue at around the present levels allowing for seasonal changes. I have, therefore, felt it right to consider most seriously whether a further stimulus should be given to the economy through the Budget.

"The measures of September, 1957, have led to very satisfactory progress in our external economic affairs. Confidence in sterling has been very strong, and the reserves have been built up to a more adequate level. I conclude that we can now afford a moderate increase in imports, which is the natural accompaniment of recovery in demand and production at home. We must not forget, too, that we in the U.K. have our own contribution to make to the re-expansion of the world economy after the mild recession of the last year.

"My conclusion, then, is that external considerations coincide with domestic ones in making it possible as well as desirable to accelerate somewhat but not excessively, the already slightly rising trend of production.

"As regards stability of prices, the immediate prospects are reasonably encouraging. There may be small seasonal increases in some food prices in the late spring, but if so these should come down again in the summer.,

"If I made no changes in taxation, the prospective surplus above the line would be £397m.," the Chancellor went on. "In present economic circumstances a surplus of this size is no longer needed. I can therefore now contemplate with safety some tax reductions that will lead to a fuller use of our resources without creating dangerous pressure on the economy.

"There is one group of people whom I have felt it my special responsibility to consider. They are the public service pensioners—the retired teacher, civil servant, local government officer. National Health Service officer, policeman, fireman and others, and also the Service pensioners of Her Majesty's forces and their widows.

"Now that there are signs of easement in the economy, I am sure the Committee would feel it right that we should take another look at their position and see what additional help can be given. I am inviting representatives of local authorities to enter into consultation at once and I hope

that it may then be possible to put proposals for legislation before the House within a few weeks.

"The cost of living has been virtually stable for almost a year. I hope all concerned will realise what an exceptional opportunity we now have to keep it so. If we do so, we shall secure two priceless advantages of the utmost importance for our future. First, our export prices will remain competitive in the markets of the world. And, second, the social hardship and injustice inevitably resulting from rising prices, which fall most heavily on those least able to protect themselves, will be avoided for the future."

"The most practical step seems to me to be a reduction in the annual excise duty payable on passenger vehicles with more than eight seats. I propose, therefore, to reduce the excise duty payable on buses and coaches to about one-third of the present rate, subject to the present minimum of £12. I intend to make this reduction effective from immediately, and for that purpose to provide for refunds of duty on licences which have been taken out at the old rate.

"Because of this provision for refund on current licences this concession will cost the Exchequer about £6m. in the present financial year, though the cost will fall to £3½m. in subsequent years.

"Also in the field of vehicle excise duty, I am proposing that vehicles left standing on the highway should have to be licensed.

"I propose also to make certain very minor changes in the scope of the duty on heavy oils used in road vehicles so that in future oil used in a subsidiary engine mounted on a vehicle will not be chargeable with duty, and also that only those vehicles which use the roads to an extent which makes them licensable as road vehicles will have to use dutiable oils. The effect on the revenue will be negligible.

"I come now to four minor measures for relief from Inland Revenue taxes. The first concerns the treatment of life assurance policies for Estate Duty purposes. The Finance Bill will include a clause, the broad effect of which will be, that gifted policies of insurance will be treated just like gifts of other kinds of property for Estate Duty purposes. This will apply both to life assurance policies and to policies providing annuities.

"For my second relaxation I have been stimulated by the example of Mr. Khrushchev. I have read in the Press that he has announced the impending abolition of Income Tax. I felt I must not be outdone. I hasten to prevent inordinate expectations being too quickly raised—it is not Income Tax of which I am proposing the total abolition. It is Corporation Tax. The tax is arbitrary in its incidence and many of the amounts payable do not repay the trouble of collection. I have come to the conclusion that we ought to get rid of it.

Stamp Duty on sea insurance

"I have been impressed with the case made against the present system of stamp duties on sea insurance policies. The duty is, in effect, largely a tax on exports. A large part of the marine insurance business of the British market is overseas business and I do not want to retain a tax which may represent an obstacle to this business. I therefore propose to get rid of the special duty on sea policies and to make them subject only to a fixed duty of 6d like other kinds of accident policies. This change will also bring some benefit to the shipping industry and to shippers. The cost will be about £2m. this year and £3m. in a full year.

"For Profits Tax purposes there has always been a restriction on the amounts that might be deducted for the remuneration of the directors of director-controlled companies. The maximum amounts at present allowable are fixed by a rather complicated scale with alternative limits. The first limits which apply to the larger companies are 15 per cent, of the companies'

profits, subject to a maximum of £15,000. That is the total for all the controlling directors.

"The other scale, which in effect applies to the smaller companies, depends upon the number of full-time working directors and runs from £2,500 for one such director to a maximum of £7,000 for four or more such directors. I have come to the conclusion that there is now a good case for a modest increase in this scale, which I propose to vary so that it becomes £3,000 for one full-time working director, £5,000 for two, £7,000 for three and £9,000 for four or more such directors. The alternative limit of 15 per cent of the profits, subject to a ceiling of £15,000, will remain unchanged.

This relief will cost nothing this year and about £3m. in a full year."

Tax avoidance devices

"Coming now to my proposals on taxation, getting my priorities right, I will deal first with two provisions for the protection of the Revenue.

"I regret to say that cunning people have devised yet another form of dividend stripping at the expense of the Revenue, through companies set up and resident in the Irish Republic which take advantage of a provision in our Double Taxation Agreement with that country.

"This device must be countered, and we have reached an agreement with the Government of the Republic of Ireland for an amendement of our Double Taxation Agreement that will bar such dividend stripping in the future in both countries.

"I propose also to deal with a new form of the device technically known to the initiated as "bond washing". under which certain dealers in securities and exempt institutions are making a quick and illegitimate profit at the expense of the Revenue by purchases of securities cum-dividend and their sale ex-dividend. There will be full safeguards for normal legitimate business. The details will appear in the Finance Bill.

Minor fiscal concessions

"I come now to tax reductions, and shall start with a number of comparatively small proposals which together will be of benefit to quite a lot of people.

"First, road passenger transport. During the last few years, mainly as a result of the increase in the number of private cars and motor-cycles, which in turn is a reflection of our higher standard of living, bus operators have faced increasing difficulty in maintaining their services, particularly in rural areas. With the Minister of Transport and Civil Aviation, I have been considering this difficult problem, and I am satisfied that the bus operators should be given some tax relief to help them to maintain the rural services.

On purchase tax, the Chancellor said that we must continue to look to this tax for an important contribution to the revenue, and he proposed to leave the general structure unchanged this year.

"There are, however, two cases which I regard as special ones," he said. "First, I propose to abolish the purchase tax on commercial vehicle chasis. When the tax was imposed on commercial vehicles in 1950, the intention was to damp down investment in this particular form of capital equipment. Later the need the substantial revenue yielded was an obstacle to its abolition. I now think I can accept this loss and I am glad to be able to remove this tax on commercial vehicles altogether.

"Secondly, I propose to free replacement television tubes from tax. This tax has been represented to me as being unduly burdensome, and technical developments in the reconditioning of tubes have made it difficult to administer the tax with equity. I must, of course, take care that this concession does not give an opportunity for tax avoilance on the sets themselves.

"Apart from these two exceptional cases, I propose to lighten the weight of purchase tax in general by reducing the three higher rates by one-sixth each. The 60 per cent. rate will accordingly be reduced to 50 per cent., the 30 per cent. rate to 25 per cent., and the 15 per cent. rate to 12½ per cent. I do not propose any change in the 5 per cent. rate which is already as low as is consistent with the concept of a tax raised at moderate rates on a wide range of goods in general use.

"The total cost of these purchase tax reliefs, which will operate from to-morrow, is £59m. this year and £81½m. in a full year.

Beer duty cut effect on cost of living

"These changes in purchase tax will make a small contribution towards reducing the cost of living. Few indirect taxes directly affect the cost of living significantly though most may do so in the long run.

"One tax which does have a marked effect is the beer duty. Because a very large number of people drink beer regularly in moderation, changes in its price have a marked exect on the cost of living. For a number of years after the war consumption of beer showed a downward trend and, although for a short time it seemed that a more stable situation had been reached, there was a further and appreciable fall in the year just ended. I depend on this duty for a large contribution towards the revenue and I must do what I can to safeguard the foundations of this contribution for the future.

"The level of the duty is at present a high one. Apart from an adjustment in 1950 to provide for an improvement in the strength of beer it has remained unchanged since the reduction made by Sir Stafford Cripps in his Budget of 1949. A reduction now would therefore be appropriate, not only on its merits, but because it helps to prevent a further decline in the revenue.

"A change in the duty on beer also gives me the opportunity to introduce a reform in the system of liquor licence duties. The present system is complicated and costly to administer and I propose to replace it by a simple system of flat rates of duty which will give a useful administrative saving. The licence duties will in future be treated as registration fees rather than as a source of revenue, and the proposed rates have been fixed at low levels with this in view.

"For example, the rate for the ordinary publican's "full" on-licence, and for the off-licence selling the full range of alcoholic drinks will be £5 a year. There will be a comparable change in the club duty and a consequential change in the basis for assessing compensation levy. I propose also to abolish the provisions requiring monopoly value to be charged when a new on-licence is taken out."

Mr. Amory estimated the cost at £5½m. in a full year, which should be wholly passed on to the consumer.

2d a Pint off the retail price

"On the basis of current consumption of beer the £5½m. of licence duty revenue which I shall be losing in a full year is equivalent to 4s 5d on a barrel of 36 gallons. I propose now to reduce the duty by 43s 7d a barrel which, together with the 4s 5d for the licence duty change, adds up to a total reduction of 48s od a barrel. This means a reduction in the retail price of 2d a pint.

"So, at a cost which I estimate at £36m. this year and £40m in a full year, we shall obtain a reduction in the price of beer to the consumer by 2d a pint and a considerable simplification of the present system and a useful administrative saving.

"The reduction in the beer duty will operate from to-morrow. The changes in licence duties will apply in respect of Excise licences issued or renewed

after to-day. For licences already current the duty position will not be affected The new rates will apply when the licences are renewed later this year. Monopoly value will cease to be chargeable after to-day.

"As a minor adjustment, I also propose to reduce the duty on a rather special product known as 'black beer.' I propose to reduce this duty also by 2d a pint and to modernise its form. The cost of this change, which operates from to-morrow, is trifling and has been taken into account in the estimate I have just given.

Widely spread benefits

"These reductions in the purchase tax and the beer duty will spread widely part of the benefits of the reduction in the burden of taxation which I am able to make in this Budget, and they will make a useful contribution in keeping down the cost of living. The combined effect of the two measures will, in fact, be to reduce the retail price index by about four-fifths of a point. With the usual seasonal reduction in the price of milk from the beginning of May the result will be a reduction of the index by a full point.

Income tax reduced; standard rate down 9d

"Our present rates of income-tax and surtax are high. The standard rate rose from 5s 6d in 1938-39 to a maximum of 10s in the war years and, even after two reductions still stands at 8s 6d. The combined top rate of income-tax and surtax which was 15s in the £ in 1938-39 rose to a maximum of 19s 6d in the £ and even now stands at 18s 6d in the £.

"I have no doubt that these high rates are bad for industry because they cut unduly into profits that can be put to reserve for development and expansion. They also tend to discourage effort and initiative on the part of individuals, and so doubly harm the national interest.

"I have, therefore, decided to propose a reduction of 9d in the standard rate of income-tax and 6d in each of the reduced rates. This change will cost £192m. this year and £229m. in a full year. Of these amounts £57m. this year and £63m. in 1960-61 will be in respect of the profits of companies put to reserve.

"These changes will involve a complete recasting and reprinting of the P.A.Y.E. tables. This will mean that for P.A.Y.E. purposes the tax changes cannot become effective until the first pay day after June 7.

Investment allowances

"The general effect of my other proposals in this Budget will be to stimulate the economy and in the process to stimulate investment. But I think that present circumstances demand that I should do more, and this has led me to consider the question of investment allowances. These are inherently more attractive to the recipients than initial allowances of the same amount because, unlike the initial allowances, they are not deducted from depreciation claims in later years.

"But after careful consideration I think in present circumstances that I must give priority to the need to encourage those who are hesitating about the timing of their investment plans. I have therefore decided upon a general restoration of investment allowances in respect of capital expenditure becoming due and payable after to-day.

"The rates of investment allowance for the main classes of assets will be 20 per cent. for new plant and machinery and 10 per cent. for expenditure on the construction of industrial buildings. These were the rates in force under the 1954 Finance Act.

"In addition, I propose that expenditure on new plant and machinery shall be eligible for a 10 per cent. initial allowance and expenditure on the

construction of industrial buildings for a 5 per cent. initial allowance. These two allowances together will take the place of the present initial allowances of 30 per cent. on plant and machinery and 15 per cent. on industrial building.

"Capital expenditure on new mining works, which at present qualifies for a 40 per cent. initial allowance, will become entitled to a 20 per cent. investment allowance plus a 20 per cent. initial allowance. I propose no change this year in the present special treatment of capital expenditure on ships and on scientific research.

"Capital expenditure on new agricultural and forestry buildings and works will become entitled to an investment allowance of 10 per cent. as it was under the 1954 Finance Act.

"The general provisions that were applicable to investment allowances when they were formerly in operation will again apply.

Aim—To Bring Plans Forward

"I want to emphasis that my main object in taking this step is to encourage firms, who are planning either extension or modernisation schemes, to put them in hand now. The kind of investment expenditure that I want to encourage is that which has as its object higher efficiency even more than expanded capacity. There is a certain amount of spare capacity available now in industries making capital goods which may be no longer available later on when we hope exports will have risen. This step is therefore an incentive to bring forward some expenditure which would otherwise take place later on. It is not therefore a fiscal provision which it would be right to expect to continue regardless of the state of our industrial economy.

"This partial replacement of initial allowances by investment allowances will cost the Exchequer nothing this year and £9 ½m. in 1960-61. The tax proposals I have described will cost altogether £295m. this year, and this is as far as I can go in taxation reliefs.

Post-war credits; qualifying ages lowered

"I think that, this year, I can allow some further stimulus beyond that which will be given by the tax concessions I have described, with safety and indeed with benefit to the economy. This gives me an opportunity, which I very much welcome, to do something for the holders of post-war credits.

"Repayments of these credits are being made currently to men becoming 65 and women becoming 60 and to the beneficiaries of deceased persons who would have reached those ages, at the rate of about £17 ½m. a year. Of the original total of about £765m. of credits, about £25m. has been set off against tax arrears and £310m. has been repaid, leaving some £430m. outstanding.

"First, I propose now to reduce by two years the ages at which owners of credits become entitled to repayment of their credits. The qualifying ages will become 63 for men and 58 for women. This will mean that this year I shall pay off three years instead of one, at an additional cost of £35m. This is as far in this direction as I feel justified in going now. I propose, however, to seek enabling powers to permit the repayment of credits by statutory order. So if, later on in the year, financial and economic circumstances were such as to justify going any further I should be able to make a proposal to this effect.

"Secondly, I propose that all credits now belonging to the beneficiaries of holders who have died shall be paid forthwith, and that, for the future, credits still outstanding shall be repaid on the death of the holder. These repayments will amount to £34m. this year.

Special hardship cases

"Thirdly, I have carefully reviewed the question of payment in cases of hardship. The provision I have already mentioned for payment at death will cover the case of widows who are entitled to credits left by their former husbands. I have, however, decided to go further. I have selected three categories which, on the top of the other administrative work caused by these proposals, are as much as we can deal with this year.

"The classes I have selected are:

(1) Persons who, for a continuous period of 12 weeks ending after to-day, have been receiving national assistance.

(2) Persons who, after to-day, are persons named in a register of blind persons, required under statute to be kept by a local authority. This will not include persons registered as partially sighted.

(3) Persons who, after to-day are receiving Constant Attendance Allowance or Unemployability Supplement under the War Pensions Instruments, the Industrial Injuries Acts (including workmen's compensation cases) or the Industrial Diseases (Benefit) Acts, or who would have been in receipt of unemployability supplement if they had not claimed an alternative benefit, or would have been in receipt of constant attendance allowance but for being a hospital in-patient.

"Though information is scanty, I estimate that repayments in these hardship cases will total about £2m. this year.

2½% Interest to be paid

"Finally, as further evidence of my desire to clear up this long-standing problem, I propose that post-war credits that have not become eligible for payment by October 1, 1959, shall carry interest from that date until the beginning of the month in which repayment is made, or to a date three months after the beginning of the month in which the credit became eligible for repayment, whichever is the earlier. The accrued interest will be paid at the time that the relative credit is itself repaid. The rate will be 2½ per cent. compounded with annual rests.

"As the amount involved for any one person per year will be relatively small, since the maximum post-war credit is £325, I propose that this interest shall not be liable to tax. The cost of interest will be negligible this year and will rise, on the assumption that there is no further acceleration of repayments, and I should hope there would be in fact, to a maximum of £7m. a year in 1980-81, and will reduce slowly thereafter.

£89m. will be repaid out of £430m. outstanding

"I estimate that with these additional repayments we shall pay off this year a total of £89m. out of the £430m. outstanding. I hope that part of this will help to swell the total of National Savings in 1959. I think I was justified in describing this as a comprehensive attack on the problem.

"I should mention one other matter affecting post-war credits. The reduction of tax allowances that gave rise to individual post-war credits had the effect of increasing the compounded rate of tax paid by building societies in respect of interest to their depositors and shareholders above what it would otherwise have been. The total amount outstanding is about £3½m. I do not feel able to repay any of this amount this year but I propose to make statutory the Societies' title and to provide that the amount outstanding may be repaid, partly or wholly, as and when the Treasury by Statutory Order may prescribe.

"I propose that the amounts due to building societies, like other credits shall carry interest from October 1, 1959, at 2½ per cent., free of tax.

Interest will be paid only when the relative amounts of credit are repaid."

Application forms should be available in Post Offices in about a month's time so that the Inland Revenue might begin to make repayments early in June.

"I hope that apart from difficult cases the bulk of the repayments can be made by the end of August.

Large sum to be borrowed

"To sum up, the tax changes I propose will cost £295m. this year, and leave an estimated surplus above the line of £102m. In addition, the proposals for additional repayment of post-war credits will cost £71m. below the line. These changes will leave the sum to be met by borrowing at £721m. This is a large figure. But I am satisfied that, in our present economic circumstances, it represents the right balance between taxation and borrowing and the right figure from the point of view of the balance of the economy too. Behind us is a year of solid achievement; our economy is stronger and more firmly based than at any time since the end of the war. We have the opportunity now to resume a steady rate of advance—not full steam ahead but steady ahead with confidence.

"This is no spending spree Budget. During the last two years we have had the highest level of personal savings in our history. There is now room in our economy for more production. This should give us room for rather more personal spending. But even more, I want to encourage the continuance of a high level of saving because on that the growth of investment and our whole future welfare depends.

"I believe that the measures I have proposed in this Budget." the Chancellor concluded, "will bring benefits directly or indirectly to every section of the community, and will give an invigorating stimulus to the economy that will encourage us as a nation to make the most of the opportunities that lie before us."

2. Proposed changes in taxation

Income Tax

It is proposed to reduce the standard rate of income tax by 9d, from 8s 6d to 7s 9d, and to reduce each of the reduced rates by 6d, that is, from 6s 9d, 4s 9d, and 2s 3d, to 6s 3d, 4s 3d, and 1s 9d, respectively.

These changes will operate for the whole year but effect will not be given to them under P.A.Y.E. before June 8, 1959.

It is proposed to give statutory effect to an agreement entered into between the Government of the United Kingdom and the Government of the Republic of Ireland, with a view to preventing "dividend stripping" by a company resident in one of those countries at the expense of the revenue of the other country.

It is proposed to protect the tax revenue from loss through devices involving the purchase of securities cum dividend and their sale ex dividend within a short period.

Income Tax and Profits Tax

It is proposed that, in the case of capital expenditure on new plant and machinery, the existing initial allowance of 30 per cent. shall be replaced by an investment allowance of 20 per cent., together with an initialallowance of 10 per cent.; and that the existing initial allowance of 15 per cent. for capital expenditure on the construction of industrial buildings shall be replaced by an investment allowance of 10 per cent., together with an initial allowance of 5 per cent. The existing 40 per cent. initial allowance for capital

expenditure on the construction of mining works will be replaced by a 20 per cent. investment allowance, together with a 20 per cent. initial allowance. There will be a 20 per cent. investment allowance for capital expenditure on new plant and machinery dealt with on the "renewals basis" and a 10 per cent. investment allowance for capital expenditure on the construction of agricultural and forestry buildings and works.

The revised allowances will be given for expenditure becoming due and payable after April 7, 1959.

Capital expenditure on ordinary motor-cars and on second-hand plant and machinery will not qualify for the investment allowance and will continue to qualify for the present initial allowance.

Profits Tax

It is proposed to amend the scale of the amount of remuneration of the directors of director-controlled companies that is allowable for profits tax purposes. The new scale will be £3.000; or £5,000 for two full-time working directors, £7,000 for three and £9,000 for four or more such directors. The alternative limit of 15 per cent. of the profits up to a maximum of £15,000 will remain unchanged.

Estate Duty

It is proposed to provide that gifts of life assurance policies shall be treated like gifts of other property for estate duty purposes; this will take effect in respect of deaths occuring after April 7, 1959.

Stamp Duties

It is proposed to replace the present duties on sea insurance policies by a fixed duty of 6d.

Corporation Duty

It is proposed to repeal the corporation duty.

Beer

It is proposed to reduce the *Customs duties* on imported beer including black beer, etc., from April 8, 1959; and in the case of black beer, etc., to simplify the form of the duties. The proposed duties, compared with the existing duties, are as follows:— (*omitted*)

It is proposed to reduce the *Excise duties* on beer including black beer, etc., from April 8, 1959; and in the case of black beer, etc., to simplify the form of the duty. The proposed duties, compared with the existing duties, are as follows:— (*omitted*)

Liquor Licence Duties

It is proposed to replace the present duties, which are mainly based on the annual value of the licensed premises, by a system of fixed rates of duty applicable to licences dated after April 7, 1959, as follows:— (*omitted*)

Purchase Tax

It is proposed that all goods at present chargeable with tax at the rates of 60 per cent., 30 per cent. or 15 per cent, of the wholesale value shall become chargeable respectively at the rates of 50 per cent., 25 per cent. or 12 ½ per cent. of the wholesale value.

It is also proposed to abolish the charge of tax on television picture tubes, at present at the rate of 60 per cent. of the wholesale value, under Group 18 of the tax schedule; and to abolish the charge of tax on road vehicle chassis, at present at the rate of 30 per cent. of the wholesale value, under Group 28 of the tax schedule.

These changes will apply to goods delivered by registered manufacturers and wholesalers or imported by unregistered persons, from April 8, 1959.

Hydrocarbon Oil

It is proposed that from April 8, 1959, rebate of hydrocarbon oil duty in respect of heavy oil not used as fuel in road vehicles.

(i) shall be allowed on heavy oil used as fuel in—(a) engines with which a road vehicle is equipped but which do not propel the vehicle and do not draw their fuel from the same supply as the propelling engine: (b) vehicles which are not used on public roads and are not licensed for such use; (c) vehicles exempt from vehicle licence duty as road construction vehicles; and (d) vehicles exempt from vehicle licence duty because they are used on roads only to a limited extent in passing from one part of a holding to another;

(ii) shall not be allowable on heavy oil used as fuel in a vehicle which is chargeable with vehicle licence duty as a goods vehicle even though it is otherwise of a kind eligible for the use of rebated oil.

Motor Vehicle Duties

It is proposed to reduce the annual licence duties on hackney carriages (other than tram-cars) of over 8 seats. In substitution for the rate of duty chargeable under the Second Schedule to the Vehicles (Excise) Act, 1949, the new scale will consist of an initial charge of £12 plus an additional charge of 10s for each seat in excess of 20. This change will take effect from April 8, 1959. Holders of licences which were taken out before that date will be entitled to a refund of duty in respect of any period after March 31, 1959, during which the licence is or was current, by an amount equal to 1/12th of the reduction in the annual rate for each complete month in that period.

It is proposed that excise duty shall be chargeable in respect of mechanically-propelled vehicles left standing on public roads whether they are being used or not.

Post-War Credits

It is proposed to reduce by two years the qualifying age for payment of credits to 63 for a man and 58 for a woman.

It is proposed to pay credits to the beneficiaries of former holders who have died and, in future, to pay credits on the death of the holder.

It is proposed to pay credits in the following categories of hardship: (a) Persons who, for a continuous period of 12 weeks ending after April 7, 1959, have been receiving national assistance. (b) Persons who, after April 7, 1959, are persons named in a register of blind persons required under statute te be kept by a local authority. This does not include persons registered as partially sighted. (c) Persons who, after April 7, 1959, are receiving constant attendance allowance or unemployability supplement under the War Pensions Instruments, the Industrial Injuries Acts (including Workmen's Compensation cases) or the Industrial Diseases (Benefit) Acts, or who would have been in receipt of unemployability supplement if they had not claimed an alternative benefit, or would have been in receipt of constant attendance allowance but fór being a hospital inpatient.

It is proposed to introduce a system of paying compound interest at 2 ½ per cent. per annum free of tax on credits becoming eligible for payment on or after October 1, 1959. The interest will run from October 1, 1959, and will be paid when the credits are released.

Source: *The Financial Times*, April 8, 1959

II

SURVEYS OF TAX LEGISLATION
APERÇUS DE LEGISLATION FISCALE

AUSTRIA

Period from March 1st until April 30th, 1959

General

55. Verordnung des Bundesministeriums für Finanzen vom 19.2.59 zur Durchführung des Umsatzsteuergesetzes 1959, BGBl. Nr. 300, 1958. BGBl. für Rep. Österr. 11.3.59.

Bundesgesetz vom 4.3.59. zur Durchführung des Abkommens zur Regelung des Walfischfanges. BGBl. für die Rep. Osterr. 18.3.59.

Turnover tax

Bundesgesetz vom 18.3.59 betreffend die Befreiung von Schuldverschreibungen inländischer Kreditunternehmen von der Wertpapiersteuer. BGBl. für die Rep. Österr., 26.3.59, no. 76.

BELGIUM

Period from March 1st until April 30th, 1959

Impôts sur les revenus

Loi du 24.3.59 modifiant les lois coordonnées relatives aux impôts sur les revenus, en matière de réclamations et de restitutions d'office. M. Belge, 6.4.59.

Taxes assimiliées au timbre

Arrêté royal du 4.3.59 modifiant le Règlement général sur les taxes assimilées au timbre. Mon. Belge, 8.3.59.

Arrangement entre la Belgique et la France en vue de régler la situation, au regard des taxes françaises sur le chiffre d'affaires, des inventeurs belges qui ont cédé ou concédé à des entreprises françaises des licences d'exploitation, conclu par échange de lettres, datées à Paris, le 31.5.58, Mon. Belge, 29-31.3.59.

Arrêté royal du 27.3.59, modifiant l'arrêté royal du 14.8.58 établissant un droit spécial l'importation de certains produits agricoles et alimentaires. M. Belge, 3.4.59.

Arrêté royal du 31.3.59 modifiant le règlement général sur les taxes assimilées au timbre. M. Belge, 4.4.59.

Droits d'accise

Arrêté royal du 24.3.59 concernant le régime d'accise des huiles provenant de la distillation des goudrons de houille. M. Belge, 4.4.59.

Arrêté ministériel du 31.3.59 réglementant la perception du droit d'accise sur les huiles provenant de la distillation des goudrons de houille. M. Belge, 4.4.59.

Arrêté ministériel du 31.3.59 réglant l'exécution de l'arrêté royal du 24.3.59 relatif au régime d'accise des huiles minérales. M. Belge, 4.4.59.

Arrêté ministériel du 31.3.59 modifiant l'arrêté ministériel du 1er septembre 1952, accordant des délais pour le paiement des droits d'accise. M. Belge, 4.4.59.

Arrêté ministériel du 15.4.59 modifiant le règlement établi par l'arrêté ministériel du 22 janvier 1948 pour la perception du droit d'accise sur les tabacs fabriqués et modifiant le tableau des bandelettes fiscales pour tabac. Mon. Belge, 17.4.59.

Droits de douane

Arrêté royal du 10.4.59 relatif au Tarif des droits d'entrée. Mon. Belge, 28.4.59.

FRANCE

Period from March 1st until April 30th, 1959

Généralités

Arrêté du 4.3.59 relatif à la liquidation des dossiers de remboursement des charges fiscales et sociales aux entreprises exportatrices. J.O., 7.3.59.

Décret no. 59-448 du 17.3.59 portant modification des limites de compétence pour l'approbation des transactions et remises gracieuses en matière fiscale. J.O., 24.3.59.

Décret no. 59-465 du 21.3.59 ayant pour objet d'étendre aux départements algériens les dispositions de l'art. 272 du décret no. 48-1986 du 9.12.48 modifié relatif à l'unification des poursuites pour le recouvrement des divers impôts et taxes. J.O. 28.3.59.

Impôts sur le revenu

Décret no. 59-355 du 20.2.59 pris pour l'application du § 2 (A,2e alinéa, b) de l'article unique de la loi no. 57-1263 du 13.12.57 et relatif aux modalités de calcul du prélèvement temporaire sur les suppléments de bénéfices dû par les entreprises effectuant des fournitures militaires ou travaillant pour la défense nationale. J.O. 3.3.59.

Arrêté du 18.2.59 modifiant le taux de la taxe fortaitaire applicable aux ventes d'objets mobiliers et de matériels du domaine privé de l'Etat. J.O., 7.3.59.

Décret no. 59-422 du 14.3.59 fixant les indices applicables pour l'évaluation fiscale des stocks. J.O. 15.3.59.

Droits d'accise

Décret no. 59-473 du 27.3.59 relatif au régime fiscal des huiles fluides alimentaires. J.O.28.3.59.

Droits de douane

Décret no. 59-356 du 2.3.59 portant suspension provisoire de la perception des droits de douane d'importation sur certaines huiles essentielles. J.O 3.3.59.

Décret no. 59-357 du 2.3.59 portant suspension provisoire de la perception du droit de douane d'importation sur les graines de ricin et réduction provisoire de la perception du droit de douane d'importation sur les huiles brutes de ricin. J.O. 3.3.59.

Arrêté du 27.2.59 mettant fin au remboursement des droits de douane perçus à l'importation de certains vins de consommation courante affectés à un circuit controlé. J.O. 6.3.59.

Arrêté du 4.3.59 portant fixation du contingent et des conditions d'importation de certains produits sidérurgiques au bénéfice d'un droit de douane réduit. J.O. 6.3.59.

Décret no. 59-374 du 6.3.59 rétablissant partiellement la perception du droit de douane d'importation sur le cacao en fèves et brisures de fèves. J.O. 7.3.59.

Décret no. 59-373 du 6.3.59 portant suspension provisoire de la perception

des droits de douane d'importation applicables à certains légumes secs. J.O. 7.3.59.

Décret no. 59-402 du 11.3.59 portant réduction provisoire du droit de douane d'importation applicable à l'acide alginique, ses sels et ses esters, à l'état sec. J.O. 12.3.59.

Décret no. 59-454 du 21.3.59 portant suspension provisoire de la perceptiou des droits de douane d'importation applicables à certains poissons de mer importés en Algérie. J.O. 25.3.59.

Décret no. 59-417 du 13.3.59 portant rétablissement des droits de douane d'importation applicables aux oranges. J.O. 14.3.59.

Décret no 59-562 du 23.4.1959 portant prorogation des dispositions du décret no 58-585 du 11.7.58 concédant les droits de douane d'importation du tarif minimum en faveur de certaines marchandises originaires du Japon. J. O. 24.4.59.

GERMANY

Period from March 1st until April 30th, 1959

Convention

Gesetz vom 5.3.59 zu dem Zusatzprotokoll vom 9.9.57 zum Abkommen vom 15.7.31 zwischen dem Deutschen Reiche und der Schweizerischen Eidgenossenschaft zur Vermeidung der Doppelbesteuerung auf dem Gebiete der direkten Steuern und der Erbschaften. BGBl.II, 12.3.59.

Income tax

Verordnung vom 12.3.59 zur Aenderung einkommensteuerlicher Durchführungsvorschriften. BGBl.,I, 14.3.59.

Einkommensteuer-Durchfuhrungsverordnung in der Fassung vom 13.3.59. BGBl.I, 14.3.59.

Equalization of burden law

11. Verordnung zur Durchführung des Feststellungsgesetzes zugleich 13. Verordnung über Ausgleichsleistungen nach dem Lastenausgleichsgesetz vom 19.3.59. BGBl.I, 26.3.59.

Customs

2. Verordnung vom 17.3.59 zur Änderung des deutschen Zolltarifs '59 (Zollsenkung für Waren aus Nicht EWG-Ländern). BGBl.II, 20.3.59.

19. Verordnung vom 21.4.49 über Zolltarifänderungen zur Durchführung des Gemeinsamen Marktes der Europäischen Gemeinschaft für Kohle und Stahl. BGBl II, 28.4.59.

Gesetz vom 24.3.59 zur Änderung des Erbschaftsteuergesetzes. BGBl.I, 26. 3.59.

Bekanntmachung vom 4.4.59 der Neufassung des Erbschaftsteuergesetzes 1.4.59. BGBl.I.

LUXEMBOURG

Period from March 1st until April 30th, 1959

Droits de douane

Arrêté grand-ducal du 28.3.59, modifiant l'arrêté grand-ducal du 20.8.58, établissant un droit spécial à l'importation de certains produits agricoles et alimentaires. Mémorial, 4.4.59.

Arrêté grand-ducal du 28.3.59 modifiant le régime de la taxe d'importation et de l'impôt sur le chiffre d'affaires des fueloils. Mémorial, 4.4.59.

Droits d'accise

Arrêté ministériel du 31.3.59, relatif au régime d'accise des huiles minérales. Mémorial, 4.4.59.

Arrêté ministériel du 31.3.59, réglant l'exécution de l'arrêté ministériel du 31.3.59, relatif au régime d'accise des huiles minérales. Mémorial, 4.4.59.

Arrêté ministériel du 31.3.59 modifiant l'arrêté ministériel du 27.10.52 relatif aux délais pour le paiement des droits d'entrée et des droits d'accise dus sur les marchandises importées et pour le paiement des droits d'accise sur les produits indigènes. Mémorial, 4.4.59.

Arrêté ministériel du 31.3.59, concernant le régime d'accise des huiles provenant de la distillation des goudrons de houille. Mémorial, 4.4.59.

Arrêté ministériel du 31.3.59, réglementant la perception du droit d'accise sur les huiles provenant de la distillation des goudrons de houille. Mémorial, 4.4.59.

Arrêté ministériel du 17.4.59 modifiant le règlement établi par l'arrêté ministériel du 25.2.48 pour la perception du droit d'accise sur les tabacs fabriqués et modifiant le tableau des bandelettes fiscales. Mémorial, 28.4.59.

NETHERLANDS *Period from March 1st until April 30th, 1959*

Convention

Decree of the Minister of Finance; Regulation pertaining to the Double taxation Convention between the Netherlands and Switzerland as regards income- and property tax, concluded on Nov. 12,1951. Stcrt, 20.3.59.

Excise duties

Decree of 18.3.59 modifying the Royal Decree of 16.3.22 (Stb. 1939, 442) pertaining to the execution of some provisions of the Tobacco act (Stb. 1921, 712) Stb. 1959, no. 76.

Income tax

Act of 9.4.59 modifying the income tax and wage tax. Stb. 1959, no. 146.

Customs

Decree of 24.4.59 as to provisional taking effect of some changes in import duties. Stb. 1959, no. 141.

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MISCELLANEOUS — FAITS DIVERS

ARGENTINE

Revised Tax Legislation

The Taxation Bill presented to Congress in September last has now been promulgated with certain modifications, as Law No. 14789 and is effective from 16th January, 1959.

The basic rate of tax applicable to earned income and income from individed estates has been raised from 7 to 9 per cent on net taxable incomes up to 10.000 pesos, after which additional surcharges are payable on a sliding scale. The taxe-free allowances, dependent and family allowances have all been increased.

Income from bearer securities, except shares, paid or credited to beneficiaries resident abroad is now subject to a tax of 38 per cent, compared with 35 per cent previously.

Joint-stock companies, limited liability and other partnerships in those cases where the income tax law applies will, if constituted in Argentina, continue to pay a single flat rate of 30 per cent on their profits.

Dividends and shares paid or credited to beneficiaries resident abroad will be subject to an additional tax of 8 per cent, instead of the former 5 per cent. Other changes in the law relate to revaluation of fixed assets, and the capital gains tax.

Source: *Bank of London and South America Ltd. Fortnightly Review*, 28th February, 1959.

BRAZIL

Revaluation

The National Economy Council has issued Resolution no. 1 establishing the co-efficients for the revaluation of company assets referred to in Article 57 in the new income tax law of 28th November 1958.

The maximum coefficients for the revaluation of fixed assets are laid down in two schedules, a) for all components of fixed assets, except real estates, where they range from 13 for 1938 valuations to 1,3 and 1,1 for 1956 and 1957 respectively; b) for real estate, comprising the value of the land and improvements, including buildings, the co-efficients range from 9,9 for 1938 valuation to 1,2 for 1957.

These co-efficients must be applied to the net assets of the firms or companies, on the original value of the assets, as posted to the accounts, less the depreciation made between the date of purchase.

Source: *Bank of London and South American Ltd. Fortnightly Review*, 28th February, 1959.

BUNDESREPUBLIK DEUTSCHLAND

Doppelbesteuerungsabkommen mit Indien.

Am 18. März 1959 wurde in New Delhi ein Abkommen zwischen der Bundesrepublik und der Regierung von Indien zur Vermeidung der Doppelbesteuerung des Einkommens unterzeichnet.

Das Abkommen, über das bereits seit mehreren Jahren verhandelt wurde, trift allerdings erst nach Austausch der Ratifikationsurkunden in Kraft, wirkt sich aber rückwirkend in der Bundesrepublik noch auf die Veranlagungen für das Kalenderjahr 1957 aus.

Source: *Internationale Wirtschafts-Briefe*, 10. April, 1959.

Änderung des Erbschaftsteuergesetzes

Ein Gesetzentwurf zur Änderung des Erbschaftsteuergesetzes ist am 19. Februar 1959 vom Bundestag und am 27. Februar 1959 auch vom Bundesrat verabschiedet worden. Veröffentlichung fand statt im Bundesgesetzblatt 1959, II S.

Die Gesetzesänderungen gelten für Erbfälle für welche die Steuerschuld nach dem 30. Juni 1958 entstanden ist oder entsteht und sie hängen im groszen zusammen mit der Neuregelung des ehelichen Güterrechts (Gleichberechtigungsgesetz vom 18. Juni 1957.)

Auszerdem ist die Änderung bei Anrechnung ausländischer Erbschaftsteuer zu beobachten. Die auf das vererbte Auslandsvermögen gegebennen falls gezahlte Erbschaft — oder Schenkungsteuer konnte bisher nur begrenzt bis zu zwei Dritteln und das auch nur im Billigkeitswege auf die deutsche Erbschaftsteuer angerechnet werden.

In weitgehender Übereinstimmung mit der Regelung des § 34c Einkommensteuergesetz bestimmt jetzt ein neuer § 86 Erbschaftsteuergesetz, dasz bei Auslandvermögen „auf Antrag" die dafür rechtskräftig festgesetzte ausländische Erbschaftsteuer insoweit anzurechnen ist, als das Auslandsvermögen auch der deutschen Erbschaftsteuer unterliegt. Dabei ist es gleichgültig von welchem ausländischen Staat die ausländische Erbschaftsteuer erhoben wird.

Source: *Der Betrieb*, 4. März, 1959.

CUBA

Tax Reform.

During the last months of the revolution the former government was operating at a considerable deficit.

The new government made several decisions to assure itself of funds. It announced that the existing tax structure was to be maintained for the time being, with extensive reform promised for the future.

Taxpayers were urged to pay present and past taxes due. Regulations were adopted extending the tax-paying period and promising discounts on honest payment of back taxes.

Source: *Foreign Commerce Weekly*, March 16th, 1959.

THE DOMINICAN REPUBLIC

Surcharge increased

The temporary surcharge on the Dominican Republic's income, cedular, business license, inheritance and gift taxes, on import and export duties, and on all taxes and fees collected at customs has been extended through 1959 and has been raised to 10 per cent.

As a result of the new increase in the surcharge, the scale of tax rates applicable to income from business activities will now range from 7,7 per cent on the first 3.000 pesos of taxable income up to 33 per cent on all taxable income in excess of 50.000 pesos.

Source: *Foreign Commerce Weekly*, February 9th, 1959.

FRANCE

Réévaluation

Un nouveau Décret No. 59-289 du 14 février 1959 est promulgué par le Ministère des Finances et des Affaires Economiques instituant de nouveaux coefficients de réévaluation pour l'application de la revision des bilans.

Source: *Journal Officiel,* 15 février, 1959.

INDIA

Tonnage Tax

A proposal to increase the Indian tonnage tax, or "light dues" from 4 annas to 8 annas a ton has been approved by the Central Lighthouse Advisory Committee of the Government of India.

The Committee recommended an amendment to the Indian Lighthouse Act of 1927 to provide for the increased rate.

Source: *Foreign Commerce Weekly,* February 9th, 1959.

LEBANON

Tax exemptions for New Companies

By decree-law No. 8 issued on January 13th, 1959, the original 5-year period fixed by the 1954 law during which a corporation must have been established to become eligible for tax exemption is extended an additional 5 years.

Exemption of a corporation from income tax must be approved by the Ministry of National Economy after consultation with the Economic Development Board and approval by the Ministry of Finance. The exemption itself is granted by a Council of Ministers decree.

Source: *Foreign Commerce Weekly,* March 16th, 1959.

MEXICO

Income Tax Changes

Some articles of the Mexican Income Tax Law have been amended or repealed. For the most part the changes may be characterized as technical ones; however a few result in substantial changes.

So, article 6, the article which establishes the international rules for income taxation, has been completely revised. In its new form Article 6 will continue to tax Mexican citizens and resident foreign individuals and companies on their income from both Mexican and foreign sources. Non-resident aliens and companies will continue to be taxed in Mexico only on their income from Mexican sources.

Mexico will also continue to give a credit against the Mexican income tax for income taxes paid abroad.

Source: *Foreign Commerce Weekly,* March 2nd, 1959.

NEW ZEALAND

Taxation of Visitors to New Zealand

A recent statement by the Minister of Finance has altered the position for New Zealand taxation of income derived from New Zealand by visitors in New Zealand in so far as it relates to income derived from personal services performed by visitors in New Zealand.

Remuneration for personal services performed in New Zealand is deemed to have a source in New Zealand and is prima facie liable for New Zealand tax,

irrespective of the country in which the employer resides or of the country in which the remuneration is paid.

The Minister's statement — since amplified — is to the effect that exemption from New Zealand tax will apply in respect of remuneration received for personal services performed by a visitor in New Zealand, where all the following conditions apply:

a) The visitor is employed by an employer or firm which is also not a resident of New Zealand;
b) The visitor is in New Zealand for less than 93 days in any one visit, whether the period of visit is all in one income year or extends into two income years to 31st March;
c) The Commissioner of Inland Revenue is satisfied that the income is taxable in the country in which the visitor normally resides.

The exemption is not extended to visiting public entertainers or to sportsmen from overseas.

The new provision also does not affect in any way the exemption conferred — by double taxation agreements which New Zealand has concluded with the United Kingdom, U.S.A., Canada and Sweden — on income from personal services performed in New Zealand by visitors from one of those countries on behalf of a resident of the same country where the period spent in New Zealand in any income year is 183 days or less.

Source: *The N.Z. Economist and Taxpayer*, February 26th, 1959.

Special exemptions for 1959 Income Tax

The amendments to the Land and Income Tax 1954 contained in the Land and Income Tax Amendment Act (no. 2) 1958 provide for some special exemptions to be allowed in assessments for the year ended 31st March 1959, more particularly the amounts to cover the personal allowance and the wife exemption.

Personal Allowance: Where the taxpayer is over 65 years of age at the commencement of the year (viz. at 1st April 1958) an extra £45 is allowed, making £383 in all.

Wife Exemption: This exemption is reducible by £1 for every £1 by which the wife's income for the year exceeds £113, so as to leave no exemption where the wife's income is £275 or more. Where marriage takes place during the year, the wife exemption is reduced by one-twelfth for every month or part of a month which elapsed before the marriage.

The exemption otherwise allowable is not reduced, however, where the marriage is terminated during the year by death or divorce.

Source: *The N.Z. Economist and Taxpayer*, February 26th, 1959.

RÉPUBLIQUE ARABE UNIE

Traites — Impôts sur les Compagnies d'aviation. Exemptions. R.A.U. — Norvège — Danemark.

Décret no. 1450 du 15 novembre 1948 (J.O.A. 37 du 20 novembre)

Art. 1er.- Est ratifié l'accord d'exemption réciproque de certains impôts appliqués sur les sociétés de transport aérien, conclu entre les gouvernements du Danemark, de la Norvège et la R.A.U., (Province Egyptienne), Mr. l'Ambassadeur, sous-sécretaire d'Etat aux Affaires Etrangères, est mandaté pour la signature de l'accord au nom de la RAU (Province Egyptienne).

Source: *La Gazette Fiscale*, janvier, 1959.

U.S.A.

Base companies

It is suggested by a Representative of the Congress to provide the possibility of organizing base companies in the United States for the conduct of foreign business operations and so to defer tax on foreign income used abroad.

The bill introduced by the Representative contains seven independent sections and it may be that, if the need for compromise develops, one or more sections may be dropped.

Section 1 held the introductory note.

Section 2 would create a new class of Foreign Business Corporations (F. B.C.). These would be domestic corporations which would be permitted to defer U.S. tax so long as the earnings remain invested abroad, to some extent as third-country foreign-base corporations now do.

Section 3 would permit the tax-free transfer by U.S. corporations of foreign business assets to controlled foreign corporations.

Section 4 would extend the 14 percentage-point tax reduction allowed to Western Hemisphere Trade corporations, on all foreign income. Only companies with 90 % of their income from foreign business could qualify as International Trade Corporation (I.T.C.). The W.H.T.C. would be abolished. Section 5 would create an over-all limitation on the foreign tax credit which may be elected in lieu of the per-country limitation.

Section 6 would specifically permit credit for foreign taxes forgiven by the foreign country as part of a tax incentive program.

Section 7 would permit non-recognition of gain on property of foreign subsidiaries involuntarily converted.

Source: *The Journal of Taxation*, March, 1959.

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III

ÉGYPTE — TERRITORIALITÉ DE L'IMPÔT

Impôts sur les revenus. — Bénefices commerciaux et industriels. Achat et vente de coton par une maison étrangère. Intention spéculative. Assujetissement à l'impôt. Du principe de la territorialité de l'impôt.

L'art. 33 de la loi n. 14 de 1939 qui édicte que «l'impôt est dû à raison des bénéfices réalisés dans toute entreprise exploitée en Egypte» retient le principe de la territorialité de l'impôt. Ce principe a été interprété par la Cour de cassation en ce sens qu'une société qui a son siège et qui exerce ses activités à l'étranger, ne peut etre assujettie à l'impôt égyptien sur les bénéfices commerciaux à l'occasion d'une opération isolée effectuée en Egypte.

Ne présente pas ce caractère isolé, mais constitue une véritable activité commerciale (achat en vue de revendre dans le but de réaliser un profit et d'une manière habituelle), le fait par une société étrangère d'acheter au cours d'une saison cotonnière en Egypte, un premier lot de coton, de le revendre, puis d'achêter aussitôt un second lot plus important et de le revendre également en réalisant des bénéfices élevés, sans procéder à aucune exportation du coton pour les besoins de son industrie, les raisons invoquées (élévation du nolis, des frais d'entreposage et d'assurance, difficultés de se procurer des sterling) n'ayant pas été prouvées, alors que toutes les apparences indiquent l'existence d'une véritable opération spéculative, caractérisée par un élément «habitude».

Du 30 janvier 1958. MM. Ali Ali Mansour, Mohamed Osman et Hussein Khalil. Aff. 57/13. *Société El Nil pour l'égrenage c. Administration des Impôts*. Advocats: Dr. Ahmed Zaki El Chiati; Me Kadri Attis.

v. arrêt de la Cour de Cassation en date du 19 février 1953 dans cette Gazette, n. 35-36, p. 12.

v. également Instructions de l'Administration des Impôts en date du 2 décembre 1954, dans cette *Gazette*, n. 53, p: 47:

Note

I. — *Les faits*. — La Société Hilland Rea achète d'une société égyptienne deux lots de coton. Le premier achat se situe en septembre 1949 et porte sur 90 tonnes de coton à exporter vers le Chili dans la première quinzaine du mois de novembre 1949. A la suite de l'élévation du fret et vu l'accumulation des frais de magasinage, d'assurance et les intérêts pour avances, comme aussi vu les difficultés à obtenir les devises en livres sterling. la Société Hilland Rea annula la dite transaction, en vendant le coton. Elle réalise de ce fait un bénéfice de L.E. 10.000 environ.

Au mois de mars 1950, la Société Hilland Rea achète de nouveau 400 tonnes à livrer en quatre lots, en mai, en octobre, en novembre et en décembre 1950. Lors de l'embarquement de la marchandise, il a été difficile d'obtenir les sterling nécessaires, alors que le fret continuait à marquer une hausse constante. C'est pourquoi, la dite Société est amenée à liquider le coton acheté. Elle vend successivement 100 tonnes le 19 mai 1950 et 300 tonnes le 23 septembre 1950. Elle réalise de cette seconde opération un bénéfice d'environ L.E. 26.000, portant ainsi le total des bénéfices dans les deux opérations à L.E. 36.000 environ. L'Administration Fiscale poursuivit alors la Maison égyptienne, intermédiaire dans les transactions sur le coton, en paiement de l'impôt sur les bénéfices

ainsi réalisés. Tant la Commission de recours que le Tribunal de première instance d'Alexandrie firent droit à la réclamation de l'Administration.

II. — *Le jugement de première instance.* — Dans son jugement, le Tribunal de première instance d'Alexandrie relève qu'en faisant application des principes retenus par la Cour de cassation, il n'est pas nécessaire pour assujettir la Société Hilland Rea à l'impôt sur les bénéfices commerciaux et industriels que la dite Société ait un établissement, un bureau, une succursale ou un représentant attitré en Egypte. La réunion des deux conditions suivantes est suffisante:

1° Que les bénéfices aient été réalisés de l'exercice d'une activité continue et habituelle.

2° Que cette activité soit en elle-même assujettie à l'impôt ou que le cycle de cette activité se termine en Egypte.

Or, il résulte d'un certificat émanant des censeurs Hewat Bridson que la Société Hilland Rea n'a point exporté un seul kantar de coton afin de le tisser dans ses usines de Chili. Son activité du 1er janvier 1949 au 13 mars 1950 était limitée à l'achat de deux lots de coton et à leur revente en Egypte. Si l'élévation des prix à la suite du premier achat a pu être la raison qui l'a poussée à vendre, le second achat portant sur une quantité cinq fois supérieure à la première et à des prix plus élevés, achat suivi d'une revente malgré l'absence d'obstacle pour l'exportation indique l'existence d'une activité continue et habituelle en Egypte. Or cette activité, consistant dans l'achat et la vente, et en produisant un bénéfice est assujettie à l'impôt.

III. — *L'appel.* — La Société intermédiaire égyptienne forma appel contre cette décision de première instance, et développa les moyens suivants, tels qu'ils sont résumés par l'arrêt de la Cour d'appel d'Alexandrie.

1. — Afin d'établir que la société appelante a exercé une activité continue et habituelle, le Tribunal de première instance a procédé par déduction en affirmant que la Société avait acheté en vue de revendre et non en vue d'exporter du coton. Cette intention est déduite des prix d'achat et de vente. Or, à supposer même que l'achat avait été fait en vue de la revente, cela ne suffit pas à rendre l'acheteur un commerçant et à assujettir les bénéfices réalisés à l'impôt sur les bénéfices commerciaux et industriels. Il faut en outre, selon le Code de commerce, que le dit acheteur en ait fait sa profession habituelle. Le criterium retenu par le Tribunal fait une confusion entre deux notions complètement indépendantes: l'habitude exige une certaine permanence et une certaine organisation, d'où nécessité d'une répétition de l'acte et de l'habitude à s'y livrer.

2. — Le Tribunal de première instance a affirmé que le prix d'achat de la seconde transaction indique dès le début l'intention de la revente et non l'exportation. Or, la non-exportation des lots de cotons achetés ne prouve pas l'élément «habitude». De même, l'affirmation que l'élévation des prix du coton après le premier achat et qui a mené sa non-exportation, aurait dû constituer un empêchement pour acheter d'autres quantités, pareille affirmation ne tient pas compte des motifs invoqués tels que l'élévation du nolis et de la difficulté de se procurer des devises en sterling.

IV. — *L'arrêt de la Cour d'appel*: — La Cour d'appel d'Alexandrie, développe dans son arrêt l'argumentation suivante:

«Attendu qu'il résulte de l'exposé des faits par l'appelante que l'achat du coton se faisait en vue de son exportation en Chili, où se trouve le siège social de la société appelante, afin qu'il soit filé et tissé, et qu'elle n'a procédé à la revente du dit coton que contrainte et forcée, vu l'élévation du nolis entre l'Egypte et le Chili, ainsi que des frais d'entreposage et d'assurance, comme aussi des intérêts débiteurs sur avances, et enfin vu les difficultés de se procurer des devises en sterling. Toutefois, la société appelante n'a pas prouvé les dits faits. La seule pièce présentée est un certificat de censeurs sur les opérations effectuées par la Société Hilland Rea en base des livres, et le dit

certificat peut servir de preuve quant aux faits sur lesquels se base précisément l'Administration des Impôts.

«Attendu que la Société Hilland Rea en achetant le premier lot de 90 tonnes le 15 septembre 1949, en avait payé le prix. Si l'achat avait été fait en vue de l'exportation, elle aurait pu le faire même en supposant une difficulté dans l'obtention du sterling pour faire face aux frais d'entreposage, d'assurance et de nolis. En effet, il aurait suffit de vendre une partie du dit lot. Bien au contraire, au lieu de procéder à l'exportation de la quantité achetée, vers la mi-novembre 1949 ainsi qu'il était prévu, la Société attendit le 20 janvier 1950 date à laquelle elle vendit le coton en réalisant un bénéfice important. Si les choses s'étaient arrêtées là, on aurait pu dire que l'on se trouvait en présence d'une opération occasionnelle. Mais la Société voulut gagner davantage. Elle acheta le 4 mars 1950 une quantité de 400 tonnes — sans indiquer d'où elle a pu se procurer les sterling nécessaires pour couvrir cette transaction importante, ainsi que les frais d'entreposage et d'assurance et autres exigences invoquées pourtant pour justifier la première revente. Elle affirma avoir acheté cette quantité pour l'exporter en Chili en quatre expéditions: en mai, en octobre, en novembre et en décembre 1950. Toutefois, elle vendit 100 tonnes en mai 1950, et vendit le restant en septembre 1950, ce qui indique la non-exactitude de son affirmation selon laquelle l'achat se faisait en vue de l'exportation, afin d'utiliser le coton dans son industrie. En réalité, l'achat s'était fait dans un but spéculatif et afin de réaliser un bénéfice. Et ce but s'est réalisé, de sorte qu'on ne peut affirmer être en présence d'une opération isolée, mais d'un ensemble d'opérations ayant un but déterminé, soit la réalisation d'un bénéfice, et que ce bénéfice a été effectivement réalisé, grâce au choix judicieux du jour de l'achat et du jour de la vente, lors de l'élévation des prix, de telle sorte que l'ensemble des bénéfices a atteint L.E. 36.000 environ.

«Que l'achat des deux lots a eu lieu au cours d'une même saison cotonnière en Egypte, de sorte que la règle posée par la Cour de cassation dans les décisions citées par le jugement de première instance, a été réalisée dans tous ses éléments. La Société en question a réalisé en Egypte des opérations commerciales caractérisées par l'élément «habitude». . .

«Que les obstacles invoqués comme ayant empêché l'exportation du coton, soit les frais d'entreposage, d'assurance et d'intérêts sur avance bancaires, le nolis et la difficulté d'obtenir du sterling, — n'ont pas été établis par la Société appelante. Qu'au contraire, les dates rapprochées entre l'achat et la revente dans la première transaction, suivis d'achat et de reventes dans la seconde transaction, tout cela prouve en apparence que l'achat se faisait en vue de la revente, et que les deux transactions établissent l'élément «habitude». Que de plus si les obstacles en question pouvaient à la rigueur être invoqués pour la première transaction, que dire de la deuxième transaction, alors que celle-ci dépasse de beaucoup en importance la première. Cela prouve que l'intention ne visait pas, dès l'achat, à exporter du coton, mais à spéculer».

C'est pourquoi, l'arrêt confirme le jugement de première instance.

Source: *La Gazette Fiscale*, Janvier, 1959.

BUNDESREPUBLIK DEUTSCHLAND — ABKOMMEN MIT DEN U.S.A.[1])

1. Einkünfte einer amerikanischen Kapitalgesellschaft aus der Vermietung inländischen Grundbesitzes, die nicht in einem inländischen Gewerbebetrieb anfallen, unterliegen der Besteuerung nach § 49 Ziff. 6 EStG 1953. Der Verlustabzug nach § 10 Abs. 1 Ziff. 4 EStG 1953 (§ 10d EStG 1955) ist nicht zulässig.

2. Zur Auslegung von Art. IX Abs. 2 DA.

EStG 1953 § 49 Ziff. 2 und 6. § 50 Abs. 1; Abkommen zwischen der Bundesrepublik Deutschland und den Vereinigten Staaten von Amerika zur Vermeidung der Doppelbesteuerung auf dem Gebiet der Steuern vom Einkommen (DA) vom 22. Juli 1954 (BGBl 1954 II S. 1118, BStBl 1955 I S. 70) Art. III, IX.

Bundesfinanzhof. Urteil v. 20. Januar 1959 I 112 57 S (BStBl 1959 III S. 133)

Die Beschwerdeführerin (Bfin.), eine Kapitalgesellschaft amerikanischen Rechts mit Sitz in den Vereinigten Staaten, ist Eigentümerin zweier Geschäftsgrundstücke in K. Sie besitzt ausserdem die gesamten Aktien einer inländischen Aktiengesellschaft in Liquidation. Zur Verwaltung ihrer inländischen Vermögensanlagen ist Dr. M. als Vertreter bestellt, der seinen Wohnsitz im Inland hat. Die Tätigkeit der Bfin. im In- und Ausland erschöpft sich in der Verwaltung ihrer deutschen Vermögensanlagen. Das Finanzamt zog für 1954 die Bfin. mit ihren Einkünften aus der Vermietung der Grundstücke als beschränkt steuerpflichtig zur Körperschaftsteuer heran. Aus den beiden Grundstücken hatte die Bfin. erstmalig im Jahre 1954 einen Überschuss der Einnahmen über die Werbungskosten; in den Vorjahren hatten die Ausgaben die Einnahmen überstiegen. Die Bfin. verlangt für das Streitjahr 1954 den Abzug der in den Jahren 1952 und 1953 eingetretenen Verluste nach § 50 Abs. 1 in Verbindung mit § 10 Abs. 1 Ziff. 4 des Einkommensteuergesetzes (EStG) 1953.

Einspruch und Berufung blieben erfolglos. Das Finanzgericht führte aus, es komme bei der beschränkten Steuerpflicht ausschliesslich auf die Art der aus dem Inland bezogenen Einkünfte an; die Eigenschaft der Bfin. als einer ausländischen Kapitalgesellschaft beeinflusse die inländischen Einkünfte nicht. Die Einkünfte der Bfin. aus ihrem inländischen Grundbesitz stünden nicht im Zusammenhang mit einem im Inland unterhaltenen Gewerbebetrieb; die Stellung von Dr. M. sei also ohne Bedeutung. Das Abkommen zwischen der Bundesrepublik Deutschland und den Vereinigten Staaten von Amerika zur Vermeidung der Doppelbesteuerung auf dem Gebiet der Steuern vom Einkommen (hier abgekürzt: DA) vom 22. Juli 1954 (Bundesgesetzblatt — BGBl — 1954 II S. 1118, Bundessteuerblatt — BStBl — 1955 I S. 70) widerspreche der Anwendung dieser Grundsätze nicht.

In der Rechtsbeschwerde (Rb). beruft sich die Bfin. für die Anrechnung des Verlustes auf zwei rechtliche Gesichtspunkte:

1. Sie hält die Einkünfte einer Kapitalgesellschaft stets in vollem Umfang für Einkünfte aus Gewerbebetrieb. Dies gelte nicht nur bei unbeschränkter, sondern auch bei beschränkter Steuerpflicht. Unterschiede zwischen der beschränkten und der unbeschränkten Steuerpflicht bestünden insoweit nicht; die Einkommen-

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[1]) Siehe auch Seite 173

steuer sei in beiden Fällen die gleiche Personensteuer. Die strittigen Einkünfte seien als solche aus Gewerbebetrieb steuerpflichtig, weil ein ständiger Vertreter im Inland zur Verwaltung des inländischen Vermögens bestellt zwei. Dass der ständige Vertreter eine gewerbliche Tätigkeit im Inland für seinen Auftraggeber entfalte, sei für die Begründung der Steuerpflicht nach § 49 Ziff. 2 EStG 1953 nicht Voraussetzung. Verneine man den gewerblichen Charakter der strittigen Einkünfte, so entfiele die Besteuerung überhaupt. Da § 50 Abs. 1 EStG bei gewerb- lichen Einkünften beschränkt Steuerpflichtiger den Verlustabzug zulasse, sei im Streitfall der Verlustabzug zu gewähren.

2. Auch aus dem DA ergebe sich, dass die Bfin. den Verlustabzug in Anspruch nehmen könne. Die Bfin. stüzt sich dabei in erster Linie auf Art. IX Abs. 2b und Art. XVIII Abs. 3 DA und auf Art. XI Abs. 1 des Freundschafts-, Handels- und Schiffahrtsvertrages zwischen der Bundesrepublik Deutschland und den Vereinigten Staaten von Amerika vom 29. Oktober 1954 (BGBl 1956 II S. 488).

Der Bundesminister der Finanzen ist dem Verfahren bei getreten und hat zu den Streitfragen Stellung genommen.

Die Rb. ist nicht begründet.

I.

Zur Auslegung des § 49 EStG 1953

Zu der Frage, ob die streitigen Einkünfte solche aus Gewerbebetrieb oder aus Vermietung und Verpachtung sind, hat der Bundesminister der Finanzen im wesentlichen wie folgt Stellung genommen: „Welchen der in § 49 EStG aufgeführten Einkunftsarten Einkünfte zuzuordnen sind, ist danach zu beurteilen, wie sich diese Einkünfte vom Inland aus gesehen darstellen. Auf die ausserhalb der Bundesrepublik liegende Tätigkeit des ausländischen Beziehers dieser Einkünfte kann es wegen des objektsteuerähnlichen Charakters der beschränkten Steuerpflicht nicht ankommen. Aber auch in den Fällen, in denen eine ausländische Kapitalgesellschaft im Inland eine Betriebstätte unterhält oder einen ständigen Vertreter bestellt hat, kommt neben der beschränkten Steuerpflicht nach § 49 Ziff. 2 EStG die beschränkte Steuerpflicht nach einer der in den übrigen Ziffern des § 49 EStG enthaltenen Vorschriften in Betracht, und zwar dann, wenn neben den nach § 49 Ziff. 2 EStG beschränkt steuerpflichtigen Einkünften noch andere inländische Einkünfte vorliegen, die mit dem inländischen Gewerbebetrieb nicht in einem wirtschaftlichen Zusammenhang stehen. Diese Auffassung hat der Reichsfinanzhof in seinem Urteil 1 A 456/31 vom 28. November 1933 (Reichssteuerblatt — RStBl — 1934 S. 620, Slg. Bd. 34 S. 326) ausgesprochen. Die Aufgabe dieser Rechtsprechung würde bedeuten, dass innerhalb der Gruppe der beschränkt Steuerpflichtigen eine unterschiedliche Behandlung eintreten würde, je nachdem ob bestimmte inländische beschränkt steuerpflichtige Einkünfte im Rahmen eines ausländischen Gewerbebetriebes anfallen oder nicht. Es ist deshalb erforderlich, den objektsteuerähnlichen Charakter der beschränkten Steuerpflicht zu wahren, weil die im Ausland vorliegenden Verhältnisse von den deutschen Finanzbehörden nicht überprüft werden können. Auch in Doppelbesteuerungsabkommen wird stets davon ausgegangen, dass die Besteuerung von Einkünften (z. B. Dividenden, Zinsen, Lizenzgebühren, Einkünfte aus unbeweglichem Vermögen) eines beschränkt Steuerpflichtigen davon unabhängig ist, ob diese Einkünfte im Ausland (Wohnsitzstaat des Steuerpflichtigen) Einkünfte aus Gewerbebetrieb sind oder nicht. So beziehen sich z. B. die im DA enthaltenen Vorschriften über die Besteuerung von Dividenden (Art. VI Abs. 2), Zinsen (Art. VII Buchst. b), Lizenzgebühren (Art. VIII Buchst. b) und Einkünften aus unbeweglichem Vermögen (Art. IX Abs. 1) ausdrücklich auch auf „amerikanische Körperschaften" bzw. „Körperschaften des anderen Staates". Hierzu wäre kein Anlass, wenn, wie die Bfin.

meint, Einkünfte, die amerikanische Körperschaften in der Bundesrepublik erziehlen, hier stets als Einkünfte aus Gewerbebetrieb besteuert werden müssten. Durch Art. VI Abs. 2 des DA wird die Kapitalertragsteuer in der Bundesrepublik ermässigt, wenn die Dividendenempfängerin eine amerikanische Körperschaft ist, die keine Betriebstätte in der Bundesrepublik unterhält und der mindestens 10 v.H. der stimmberechtigten Anteile der dividendenzahlenden deutschen Gesellschaft gehören. Diese Vorschrift wäre unverständlich, wenn die Rechtsauffassung der Bfin. zutreffen würde; denn die Vorschrift setzt gerade voraus, dass die amerikanische Körperschaft keine Betriebstätte in der Bundesrepublik im Sinne des DA unterhält. Dasselbe gilt auch für Art. VII, VIII und IX des Abkommens. Alle diese Vorschriften gehen davon aus, dass amerikanische Körperschaften neben Einkünften aus Gewerbebetrieb noch andere inländische Einkünfte haben können. Die inländischen Einkünfte der Bfin. sind Einkünfte aus Vermietung und Verpachtung (§ 49 Ziff. 6 EStG). Sie fallen nicht unter § 49 Ziff. 2 EStG; denn sie stehen nicht in einem wirtschaftlichen Zusammenhang mit einem im Inland ausgeübten Gewerbebetrieb der Bfin. Zwar mag die in den Vereinigten Staaten von der Bfin. ausgeübte Tätigkeit nach den deutschen Steuergesetzen eine gewerbliche Tätigkeit sein. Dies macht die inländischen Einkünfte der Bfin. aber noch nicht zu gewerblichen Einkünften. Es ist nur zu prüfen, ob die inländischen Einkünfte der Bfin. Einkünfte im Sinne der §§ 15 und 16 EStG sind. Dies ist zu verneinen; denn die inländische Tätigkeit der Bfin. besteht nur in der Verwaltung von Mietgrundstücken. Da es an der in § 49 Ziff. 2 EStG geforderten gewerblichen Tätigkeit fehlt, kommt es für die rechtliche Beurteilung auf den Umfang der dem Zustellungsvertreter der Bfin. erteilten Vollmachten nicht an."

Der Senat tritt der in diesen Ausführungen niedergelegten Auffassung des Bundesministers der Finanzen bei.

Es ist der Bfin. zuzugeben, dass auch die Einkommensteuer der beschränkt Steuerpflichtigen eine Personensteuer ist. Wesentliche Unterschiede ergeben sich aber daraus, dass bei unbeschränkter Steuerpflicht der Steuerpflichtige mit seinem gesamten Einkommen der Besteuerung unterliegt, bei beschränkter Steuerpflicht dagegen nur mit den in § 49 EStG aufgeführten inländischen Einkünften. Die beschränkte Steuerpflicht knüpft an die Quelle an, aus der die inländischen Einkünfte fliessen. Sie lässt die persönlichen Verhältnisse des Steuerpflichtigen, die bei unbeschränkter Steuerpflicht von Bedeutung sind, weitgehend ausser Betracht, wie sich aus § 50 EStG ergibt. Es kommt, wie der Bundesminister der Finanzen mit Recht ausführt, für die Entscheidung, ob die strittigen Einkünfte der Bfin. unter § 49 Ziff. 2 EStG fallen, nicht auf die Eigenschaft der Bfin. als Kapitalgesellschaft an, sondern darauf, ob die Bfin. im Inland einen Gewerbebetrieb ausübt. In diesem Sinne hat der Reichsfinanzhof in dem Urteil I 55/36 vom 12. Mai 1936 (RStBl 1936 S. 968, Slg. Bd. 39 S. 245) die Erträge aus einer durch inländischen Grundbesitz gesicherten Forderung einer ausländischen Körperschaft, die keine inländische Betriebstätte unterhielt und im Inland keinen ständigen Vertreter bestellt hatte, nach § 49 Ziff. 5 EStG (Einkünfte aus Kapitalvermögen) besteuert; er hielt es für unerheblich, ob die gesicherte Forderung bei unbeschränkter Steuerpflicht zum Kapitalvermögen oder zum Betriebsvermögen gehören würde. Auch Mirre-Dreutter heben in Anm. 8a zu § 2 des Körperschaftsteuergesetzes KStG) in diesem Sinne hervor, dass die Vorschrift des jetzigen § 17 der Verordnung zur Durchführung des Körperschaftsteuergesetzes (KStDV), wonach bei Steuerpflichtigen, die nach dem Handelsgesetzbuch zur Führung von Büchern verpflichtet sind, alle Einkünfte als Einkünfte aus Gewerbebetrieb zu behandeln sind, für die beschränkte Steuerpflicht ohne Bedeutung sei; abgesehen davon, dass ausländische Kapitalgesellschaften nur ausnahmsweise bei Bestehen einer inländischen Zweigniederlassung nach deutschem Handelsrecht buchführungspflichtig seien, könnten sie inländische Einkünfte aus Gewerbebetrieb nur unter den Voraussetzungen des § 49 Ziff. 2 EStG be-

ziehen; denn bei der beschränkten Steuerpflicht komme es ausschliesslich auf das Wesen der aus dem Inland bezogenen Einkünfte an; die persönlichen Eigenschaften des Steuerpflichtigen und damit die Eigenschaften einer ausländischen Kapitalgesellschaft und die Art ihres ausländischen Betriebs beeinflussten die beschränkte Steuerpflicht nicht. Vgl. auch Kennerknecht, Anm. 75; Blümich-Klein-Steinbring, Anm. 10, und Herrmann-Heuer, Anm. 26 zu § 2 KStG.

Da die inländischen Einkünfte der Bfin. ihrer Art nach nicht gewerblich sind, entfällt demnach die Anwendbarkeit des § 49 Ziff. 2 EStG. Es bedarf nicht der Prüfung, ob Dr. M,. wenn die Einkünfte der Bfin. gewerblich wären, als bestellter inländischer Vertreter im Sinne des § 49 Ziff. 2 EStG angesehen werden könnte.

Durch die Feststellung, dass die strittigen Einkünfte nicht unter § 49 Ziff. 2 EStG fallen, wird jedoch die Besteuerung nach § 49 Ziff. 6 EStG nicht ausgeschlossen. Ihrer Art nach sind die Einkünfte solche aus Vermietung und Verpachtung. An der in diesem Sinne ergangenen Rechtsprechung des Reichsfinanzhofs, die ausser in der Entscheidung des Reichsfinanzhofs I 55/36 a.a.O. auch in den Entscheidungen I A 377/28 vom 7. Februar 1929 (RStBl 1929 S. 193) und VI A 208/36 vom 5. August 1936 (RStBl 1936 S. 1132, Slg. Bd. 39 S. 326) zum Ausdruck kommt, hält der Senat fest. Mit Recht hat der Bundesminister der Finanzen dargelegt, dass auch die DA auf dieser der Rechtsprechung zugrunde liegenden Rechtsauffassung aufgebaut sind.

II.

Zur Auslegung des DA

Der Bundesminister der Finanzen hat dazu im wesentlichen ausgeführt: „Für die Auslegung der in Doppelbesteuerungsabkommen nicht bestimmten Begriffe kommt es allein auf das nationale Recht des Vertragsstaates an, der die Besteuerung durchführt. Dieser Grundsatz ist in Art. II Abs. 2 des DA ausdrücklich niedergelegt. Da die im DA verwendeten Begriffe „gewerbliche Gewinne" und „Einkünfte aus unbeweglichem Vermögen" nicht bestimmt worden sind, sind sie, soweit die Anwendung des DA in der Bundesrepublik in Betracht kommt, allein nach dem deutschen Steuerrecht auszulegen. Art. II Abs. 1 Buchst. c und Art. III des DA können nicht angewendet werden, weil die inländischen Einkünfte der Bfin. nicht gewerbliche Einkünfte im Sinne des § 49 Ziff. 2 EStG sind. Die Bfin. hat Einkünfte aus Vermietung und Verpachtung, d.h. Einkünfte aus unbeweglichem Vermögen im Sinne des Art. IX des DA. Die Besteuerung dieser Einkünfte wird durch die Vorschrift des Art. IX Abs. 2 Buchst. b nicht eingeschränkt. Diese Bestimmung ist auf Grund der besonderen Rechtslage in den Vereinigten Staaten während der Verhandlungen in den Abkommensentwurf aufgenommen worden. Das amerikanische Steuerrecht sieht unter bestimmten Voraussetzungen für die Besteuerung der Einkünfte beschränkt Steuerpflichtiger aus unbeweglichem Vermögen eine Quellensteuer von 30 v.H. der Bruttoeinnahmen vor (Internal Revenue Code — IRC — Sec. 871 und 881). Auf Antrag der deutschen Delegation hat die amerikanische Delegation entsprechend den Vorschriften in anderen von den Vereinigten Staaten abgeschlossenen Abkommen zugestanden, dass Steuerpflichtige mit Wohnstitz in der Bundesrepublik die Quellensteuer von 30 v.H. der Bruttoeinnahmen dadurch reduzieren können, dass sie verlangen, in den Vereinigten Staaten mit dem „Reineinkommen", d.h. so besteuert zu werden, wie wenn sie dort eine Betriebstätte unterhielten (Art. IX Abs. 2 Buchst. a). Massgebend für das Zugeständnis der amerikanischen Seite war, dass in der Bundesrepublik die Bemessungsgrundlage für die Besteuerung der Einkünfte aus Vermietung und Verpachtung nicht die „Bruttoeinnahmen" sind, sondern die Einkünfte als Überschuss der Einnahmen über die Werbungskosten, also als „Reineinkommen" ermittelt werden. Um

zu verhindern, dass amerikanische Steuerpflichtige benachteiligt werden, wenn später in der Bundesrepublik eine Besteuerung der Einkünfte aus unbeweglichem Vermögen auf Grund der „Bruttoeinnahmen" eingeführt werden sollte, wurde in Art. IXa neben der Vorschrift des Abs. 2 Buchst. a, der die Besteuerung in den Vereinigten Staaten betrifft, die Vorschrift für die Besteuerung in der Bundesrepublik eingefügt (Art. IX Abs. 2 Buchst. b). Durch die Einfügung des Art. IX Abs. 2 Buchst. b — zusätzlich zu Abs. 2 Buchst. a — wird also in der Bundesrepublik die Besteuerung der Einkünfte aus Vermietung und Verpachtung nicht berührt, sondern nur die Anwendung einer „Nettomethode" bei der Ermittlung dieser Einkünfte auch für den Fall einer Änderung der zur Zeit geltenden Vorschriften verbürgt. Die Bfin. kann im Gegensatz zu den Verhältnissen in den Vereinigten Staaten nicht eine Besteuerung auf Grund des „Reineinkommens" verlangen, da sie bereits nach einer „Nettomethode" besteuert wird.

Ob Artikel IX Abs. 2b DA den Verlustabzug auch bei Einkünften aus unbeweglichem Vermögen gestattet, hängt davon ab, ob diese Vorschrift nach ihrem Inhalt nur die Ermittlung und Besteuerung der Einkünfte zum Gegenstand hat oder sich darüber hinaus auch auf die Frage des Verlustabzugs erstreckt. Wenn sich die Vorschrift auf die Regelung der Einkunftsbestimmung beschränkt, kommt der Verlustabzug nicht in Betracht, da hierüber überhaupt keine Bestimmung getroffen ist. Somit ist zu prüfen, wieweit der Anwendungsbereich des Artikels IX Abs. 2b reicht. Artikel IX des Abkommens befasst sich nach seinem Wortlaut nur mit den Einkünften aus unbeweglichem Vermögen. Alle in den verschiedenen Absätzen des Artikels niedergelegten Vorschriften treffen daher nur insoweit eine Regelung, als es sich um die Frage der Besteuerung dieser Einkünfte handelt. Über diesen Bereich hinaus wird nach dem objektiven Gesetzesinhalt des Artikels IX keine Bestimmung getroffen. Gerade auch die Vorschrift des Art. IX Abs. 2b beschränkt sich darauf, für die Einkünfte aus unbeweglichem Vermögen, die von einer Person in den Vereinigten Staaten aus Vermögen in der Bundesrepublik bezogen werden, zu bestimmen, dass der Steuerpflichtige verlangen kann, in der Bundesrepublik „auf Grund des Reineinkommens" besteuert zu werden. Die Vorschrift greift demnach nur insoweit ein, als es sich um die Besteuerungsgrundlage in Bezug auf die Einkünfte aus unbeweglichem Vermögen handelt. Sie bestimmt, dass auf Verlangen die Einkünfte aus unbeweglichem Vermögen auf Grund des „Reineinkommens" zu besteuern sind. Das kann nur so verstanden werden, dass der Steuerpflichtige verlangen kann, mit den Einkünften aus unbeweglichem Vermögen nach dem Nettobetrag und nicht mit einer Quote der Bruttoeinnahmen oder nach einem Durchschnittsatz besteuert zu werden (vergleiche Korn-Dietz, Doppelbesteuerung, USA B, Art. IX, Anm. 3). Als Ergebnis ist somit festzustellen, dass Artikel IX Abs. 2b nicht die Zulässigkeit des Verlustabzuges begründen kann, weil die Bestimmung nach ihrem objektiven Inhalt sich nur mit der Bestimmung der Einkünfte aus unbeweglichem Vermögen befasst und hierfür die Besteuerung nach dem Nettobetrag dieser Einkünfte sicherstellt, der Verlustabzug aber mit der Ermittlung der Einkünfte, gleich um welche Einkunftsart es sich handelt, nichts zu tun hat, sondern einen besonderen Abzugsbetrag darstellt, der ausserhalb des Bereichs der steuerpflichtigen Einkünfte vom Ergebnis der Einkunftsermittlung — dem Gesamtbetrag der Einkünfte — zum Abzug zugelassen ist. — Wenn demgegenüber auf den Schlusssatz des Artikels IX Abs. 2b hingegwiesen wird, wonach auf Verlangen des Steuerpflichtigen die Einkünfte aus unbeweglichem Vermögen so zu besteuern sind, als ob der Steuerpflichtige in der Bundesrepublik durch eine dort belegene Betriebstätte gewerblich tätig gewesen wäre, so ist zu bemerken, dass diese Feststellung lediglich den im vorangehenden Satz festgelegten Grundsatz verdeutlichen will. Dies wird im Wortlaut eindeutig durch die Formel „das heisst" zum Ausdruck gebracht. Wenn man daher der fiktiven Feststellung im Schlusssatz,

„d.h." die Einkünfte sind so zu versteuern, als ob der Steuerpflichtige in der Bundesrepublik durch eine dort belegene Betriebstätte tätig gewesen wäre, auch den weitesten Anwendungsbereich beimessen will, so kann dieser doch niemals über die Grenzen der vorangehenden, erläuterten Feststellung hinausgehen. Diese aber beschränkt sich darauf, für die Einkünfte aus unbeweglichem Vermögen die Besteuerung nach dem Nettoergebnis sicherzustellen. — Selbst wenn man aber dem Argument der Beschwerdeführerin folgt und die Einkünfte aus unbeweglichem Vermögen kraft „der Fiktion" im Schlusssatz des Artikels IX Abs. 2b als gewerbliche Einkünfte angesehen werden, besteht kein Anhalt, diese Fiktion über den Bereich der Einkunftsbestimmung hinaus auch auf den Verlustabzug auszudehnen, da sich der Inhalt des vorangehenden Hauptsatzes, der durch Fiktion erläutert wird, darauf beschränkt, den Nettobetrag der Einkünfte als Besteuerungsgrundlage festzulegen. Die Fiktion besagt nicht mehr, als dass für die Einkünfte aus unbeweglichem Vermögen die bei den Einkünften aus Gewerbebetrieb geltende Besteuerung nach dem Nettoergebnis gewährleistet wird. Der Verlustabzug wird hiervon nicht gedeckt. Dieses Ergebnis wird auch durch die Vorschriften des Abkommens selbst bestätigt. Wenn der Steuerpflichtige verlangen kann, dass die Einkünfte aus unbeweglichem Vermögen so besteuert werden, als ob er in der Bundesrepublik durch eine dort belegene Betriebstätte tätig gewesen wäre, so ist zu fragen, welche Regelung das Abkommen für diesen Fall vorsieht. Artikel III des Abkommens, der die Behandlung der gewerblichen Einkünfte regelt, enthält neben der Zuteilung des Besteuerungsrechts lediglich Vorschriften über die Ermittlung der Gewinne aus gewerblicher Tätigkeit einer Betriebstätte. Der Verlustabzug wird hiervon überhaupt nicht berührt. Die Vertragsbestimmung, die die Ermittlung der gewerblichen Gewinne regelt, besagt nichts über einen Verlustabzug, der überhaupt nicht in den Bereich der Gewinnermittlung fällt. Durch Art. III wird nicht in Abänderung des nationalen Rechts ein Verlustabzug eingeräumt; der Verlustabzug kann nur insoweit beansprucht werden, als er im deutschen Steuerrecht vorgesehen ist."

Der Senat tritt auch in diesem Punkt der Auffassung des Bundesministers der Finanzen bei.

Art. XVIII Abs. 3 DA ist für die Entscheidung der Streitfrage ohne Bedeutung. Nach dieser Bestimmung dürfen Staatsangehörigen des einen Staates, die in dem anderen Staat ihren Wohnsitz haben, dort nicht andere oder höhere Steuern auferlegt werden, als den Staatsangehörigen des Staates, die dort ihren Wohnsitz haben. Unter „Staatsangehörigen" werden auch juristische Personen, Personengesellschaften und Personenvereinigungen verstanden, die nach dem in dem einen oder in dem anderen Vertragsstaat geltenden Recht errichtet oder organisiert sind. Dem Wohnsitz natürlicher Personen entspricht bei den anderen genannten Steuerpflichtigen der Sitz oder die Geschäftsleitung (§ 2 Ziff. 1 KStG). Art. XVIII Abs. 3 bezieht sich mithin nicht auf die beschränkte, sondern auf die unbeschränkte Steuerpflicht.

Art. XI Abs. 1 des Freundschafts-, Handels- und Schiffahrtsvertrages verbietet eine ungleichmässige Behandlung der Staatsangehörigen des anderen Staates gegenüber den eigenen Staatsangehörigen unter „gleichartigen Voraussetzungen". Gleichartigkeit besteht aber bei beschränkter und unbeschränkter Steuerpflicht nicht.

Art. IX DA, der die Besteuerung der Einkünfte aus unbeweglichem Vermögen dem Belegenheitsstaat zuweist, gewährt im Abs. 2 dem Bezieher solcher Einkünfte das Recht, für jedes Steuerjahr zu verlangen, auf Grund des Reineinkommens, d.h. so besteuert zu werden, als ob er in dem Belegenheitsstaat durch eine dort belegene Betriebstätte tätig gewesen wäre. Diese Bestimmung gilt für natürliche Personen und für andere Rechtsträger. Aus dem Wortlaut der Bestimmung leitet die Bfin. her, dass auf ihren Antrag die inländischen Einkünfte nach § 49 Ziff. 2 EStG als gewerbliche Einkünfte be-

handelt werden müssten, so dass ihr in diesem Fall auch der Verlustabzug zustehe.

Der Bfin. ist zuzugeben, dass der Wortlaut des Art. IX Abs. 2 DA zu Zweifeln Anlass gibt. Betrachtet man die Vorschrift für sich allein, so spricht wohl einiges für die Auslegung der Bfin. Eine gesetzliche Vorschrift oder eine Bestimmung eines Doppelbesteuerungsabkommens darf aber nicht für sich allein betrachtet werden, sondern muss, wenn Zweifel bestehen, aus dem Sinnzusammenhang erklärt werden unter angemessener Berücksichtigung dessen, was der Gesetzgeber bzw. die Vertragschliessenden eines Doppelbesteuerungsabkommens offenbar gewollt haben. Wie der Bundesminister der Finanzen dargelegt hat, ist die streitige Bestimmung im Hinblick auf eine Besonderheit des amerikanischen Steuerrechts aufgenommen worden, nämlich die Bruttobesteuerung bei den Einkünften aus Vermietung. Das deutsche Recht kennt bei Vermietung und Verpachtung nur die Nettobesteuerung in Form des Überschusses der Einnahmen über die Werbungkosten. Die Regelung des Art. IX Abs. 2 DA ist demnach zunächst nur für deutschen, in den Vereinigten Staaten belegenen Grundbesitz von Bedeutung. Der völkerrechtliche Grundsatz der Gegenseitigkeit erforderte es aber, dass entsprechendes auch für amerikanischen Grundbesitz in der Bundesrepublik festgelegt wurde, wenn auch nur für den Fall, dass später in der Bundesrepublik eine Bruttobesteuerung eingeführt würde. Es gäbe keinen Sinn, wenn man die streitige Bestimmung mit der Bfin. dahin auslegte, dass auf Antrag Einkünfte aus Vermietung wie gewerbliche Gewinne zu behandeln seien. Eine so wesentliche Bestimmung wäre kaum in dieser Form und an dieser Stelle des Abkommens getroffen worden. Es würde auch angesichts der vielfach verschiedenen steuerlichen Auswirkungen zu unlösbaren Schwierigkeiten führen, dem beschränkt Steuerpflichtigen in jedem Jahr ein Wahlrecht zu geben, ob die Einkünfte aus Grundbesitz als solche aus Gewerbebetrieb oder aus Vermietung zu behandeln sind. Ein solches Wahlrecht würde über die von den Vertragschliessenden gewollte Nettobesteuerung hinaus dem beschränkt Steuerpflichtigen die Möglichkeit geben, jahrweise wechselnd immer nur die Vorteile, nie die Nachteile zu wählen, die mit den verschiedenen Einkunftsarten verknüpft sind. Zutreffend hat auch der Bundesminister der Finanzen auf Art. III Abs. 4 DA hingewiesen. Dort ist es den Vertragsstaaten zur Pflicht gemacht, bei der Festsetzung der Gewinne aus gewerblicher Tätigkeit einer Betriebstätte alle billigerweise der Betriebstäte zuzurechnenden Ausgaben mit Einschluss von Geschäftsführungs- und allgemeinen Verwaltungskosten zum Abzug zuzulassen. Hier wird also das Prinzip der Nettobesteuerung für die gewerblichen Einkünfte festgelegt. Es ist offenbar der Sinn des Art. IX Abs. 2 DA, den beschränkt Steuerpflichtigen zu gewährleisten- dass ebenso wie den Gewerbetreibenden auch ihnen das Recht zusteht, die Nettoeinkünfte aus Vermietung zu versteuern. Welche Ausgaben dabei anzurechnen sind, soll sinngemäss nach den Vorschriften über die gewerbliche Tätigkeit (Art. III Abs. 4 DA) bestimmt werden. Dass darüber hinaus aber auf Antrag des Steuerpflichtigen die Einkünfte ihre Art ändern und aus Einkünften aus Vermietung auf Antrag Einkünfte aus Gewerbebetrieb werden sollten, ergibt der Wortlaut der streitigen Bestimmung nicht. Eine solche Auslegung würde, wenn man den Sinnzusammenhang und die Entstehungsgeschichte angemessen berücksichtigt, offenbar dem Willen der Vertragsparteien nicht gerecht.

Daraus ergibt sich, dass die Einkünfte der Bfin. auch unter Berücksichtigung der Bestimmungen des DA solche aus Vermietung und Verpachtung sind, so dass der verlangte Verlustabzug nicht gewährt werden kann.

Source: *Bundessteuerblatt,* 17. April 1959.

UNITED KINGDOM — NON-RESIDENT COMPANY

Income Tax, Schedule D—Non-resident company—Exercise of trade within United Kingdom-Company in enemy-occupied territory—Agency—„Authorised person"—Ratification—Income Tax Act. 1918 (8 & 9 Geo. V. c. 40), General Rules, Rules 5 and 10.

A trawler belonging to a company registered in France and carrying on business at Boulogne was landing its catch at Fleetwood in 1940 when the German occupation of the French ports was announced. Thereupon P, a director of the French company and managing director of the Appellant Company, arranged, without prior agreement, for the trawler to be taken over by the latter, which owned 49 percent. of the sharers in the French company and carried on business at Fleetwood as trawler owners and managers and agents for British and foreign vessels. The Appellant Company sent the vessel on fishing voyages until 1945, holding itself out for the purpose of applications under wartime controls as manager acting with the owner's authority, and the Free French Naval Forces, which supplied officers and crews as far as possible, did not procure the appointment of a manager by the Minister of War Transport. In 1945 the Appellant Company accounted for the profits of the vessel under its management to the French company, which approved the account (including the commission reserved) and made no objection to any of the Appellant Company's activities.

Assessments to Income Tax for the years 1940-41 to 1944-45 in respect of the aforesaid profits were made upon the Appellant Company as agent of the French company under Rule 5 of the General Rules. On appeal before the Special Commissioners the Company contended that it was not an authorised person carrying on the regular agency of the owner within Rule 10 of the General Rules or, alternatively, that the material transactions were carried out in the ordinary course of its business as a general commission agent within Section 17, Finance Act, 1925. The Commissioners dismissed the appeal.

In the High Court the Company did not pursue its contention under Section 17, but took the new point that the French company was not competent to ratify its acts.

Held, that on the facts the Appellant Company was not an authorised person apart from ratification and the French company could not ratify acts done at a time when, at common law and under the Trading with the Enemy Act, 1939, it was not a competent principal.

Boston Deep Sea Fishing and Ice Co., Ltd.
v.
Farnham (H.M. Inspector of Taxes)

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 13th and 14th October, 1955, Boston Deep Sea Fishing and Ice Co., Ltd. (hereinafter called "Boston"), appealed against

assessments to Income Tax in the sum of £1,000 for each of the years 1940-41 to 1944-45 inclusive made upon it as agent for Pêcheries de la Morinie (hereinafter called "Pêcheries").

2. The assessments under appeal were made under Rule 5 of the General Rules applicable to Schedules A, B, C, D and E of the Income Tax Act, 1918, and the profits intended to be brought into charge were the profits arising from a trade alleged to be carried on within the United Kingdom by Pêcheries through the agency of Boston in connection with the operation of a steam trawler "St. Jean".

3.—(1) The following documents were produced to us and were admitted or proved; they are not annexed hereto but are retained for the use of the High Court should they be required:

(*a*) Ministry of Agriculture and Fisheries report entitled "Fisheries in War Time".
(*b*) Exchange of letters between the Prime Minister and General de Gaulle (Cmd. 6220 of 1940).
(*c*) A copy of a ship warrant application form submitted by Boston in connection with the "St. Jean".
(*d*) A specimen of a ship warrant.
(*e*) Extracts from an account in Boston's books entitled "St. Jean".
(*f*) A bundle of correspondence (marked "A") passing between Boston and H.M. Inspector of Taxes.
(*g*) A bundle of letters (marked "B") between various parties concerning the "St. Jean".
(2) The following persons attended and gave evidence before us:
(*a*) Mr. R. Neve, the managing director of a steam fishing concern.
(*b*) Commander Gonneville, who was at the material time a staff officer at the headquarters of the Free French Naval Forces.
(*c*) Captain Delpierre, who was in 1940 skipper of the "St. Jean".
(*d*) Mr. Basil Parkes, a director of Boston.
(*e*) Mr. Fred Parkes, the managing director of Boston.
(3) From the foregoing material we found the facts set out in paragraphs 4 to 15 below.

4. Pêcheries is and at all material times has been a company incorporated and registered in France and carrying on business as trawler owner at Boulogne.

5.—(1) Boston has at all material times carried on business in the United Kingdom as trawler owner. It also manages trawlers for other British owners, acts as commission agent for British and foreign ships and engages in ship repairing and net making.

(2) At the material times Boston owned 49 per cent. of the shares in Pêcheries. Mr. Fred Parkes, who was managing director of Boston, was also a director of Pêcheries for many years prior to 1941; at some time in 1941 he was removed (without his knowledge) from the board of Pêcheries, and was reinstated after the liberation of France.

6. The steam trawler "St. Jean" is and at all material times was a French fishing vessel of the trawler class owned by Pêcheries, and up to May, 1940, was operating from Boulogne. In May, 1940, Mr. Fred Parkes advised M. Ficheux, the managing director of Pêcheries, that if Germany invaded France Pêcheries should transfer its staff and ships to Fleetwood. This advice was not taken, but immediately before the capture of Boulogne by the Germans the "St. Jean" went to Lorient, where instructions were received from the owners to go fishing on the Great Sole Bank. From there the captain went, on his own initiative and without instructions from the owners, to Fleetwood to sell his catch. At Fleetwood he asked Boston to land his fish,

provision the vessel, carry out certain repairs and get her ready for sea. While he was there news was heard over the wireless that the French ports were occupied by the Germans. Boston, in view of the war situation, disabled the ship to prevent her sailing. Captain Delpierre and two members of the crew went back to France; the remainder of the crew stayed in England. Being unable to get into touch with anyone representing Pêcheries other than Mr. Fred Parkes, Boston after a short interval of time sent the "St. Jean" on a fishing voyage, manned by British officers and a partly French crew, and continued to use her for fishing from Fleetwood in this way from July, 1940, to February or March, 1941.

7. From some date early in 1941 the system described in paragraph 11 below was adopted and the "St. Jean" continued to make fishing voyages from Fleetwood until its last voyage from Fleetwood terminated in November, 1945. In December, 1945, the "St. Jean" sailed for France and Boston had no more to do with her.

8. Boston was unable to communicate with anyone representing Pêcheries (other than Mr. Fred Parkes) from June, 1940, until 1945.

9. During the material period, fishing operations in the United Kingdom were subject to wartime controls. Control of fishing from Fleetwood was exercised through the Port Fishery Officer, Fleetwood, and the Naval Officer in Charge, Fleetwood. A permit to fish was issued, in the case of Allied fishing vessels, to the vessel by the Port Fishing Officer, countersigned by the Naval Officer in Charge, prescribing areas where fishing was prohibited or was permitted only upon certain conditions, and, in the case of Allied fishing vessels, a ship warrant which gave the vessel access to commercial shipping facilities under British control was issued in the name of the vessel by the Minister of War Transport at six-monthly intervals. In general, in the case of French vessels, a British firm of trawler owners was appointed by the Minister of War Transport to act as manager; no manager, however, was so appointed in the case of the "St. Jean".

10. (*a*) The "St. Jean", in common with other French fishing vessels which had not been requisitioned, was a matter of interest to the Fisheries Section of the French Naval Forces, which was part of the French volunteer force set up pursuant to an exchange of letters printed in Cmd. 6220. The principal objects of the Fisheries Section were to ensure that as many as possible of such French fishing vessels in United Kingdom ports could be handed back to their owners in good condition at the end of the war, to ensure that they should be manned so far as was possible by French officers and crews and to watch over the welfare of such officers and crews. They considered themselves to be accountable for the vessels to the French owners. They were not concerned with the amount of fish which was being caught nor with the profits which were being made.

(*b*) A manager was normally appointed for each such vessel by the Ministry of War Transport, and the Fisheries Section could ask the Minister to change the manager if they were dissatisfied with him.

(*c*) The Fisheries Section conducted periodical inspections of the vessels and through the Ministry of War Transport could ensure that any resulting recommendations concerning repairs were complied with by the manager of the vessel concerned.

(*d*) The Fisheries Section, so far as they had men available, made recommendations concerning the manning of the vessels, and the Ministry of War Transport would ensure that the manager of the vessel carried them out.

11. (*a*) Early in 1941, as a result of a recommendation from the Fisheries Section, Boston was instructed by the Ministry of War Transport with the permission of the naval authorities to man the "St. Jean" with French officers and crew; thereafter throughout the material period the "St. Jean"

was kept manned as far as possible with Frenchmen made available by the Fisheries Section. The responsibility for keeping the vessel manned for each voyage rested with Boston, but Boston was obliged, as far as possible, to engage the men made available by the Fisheries Section. It frequently happened, however, that the vessel was found to be short-handed at the time of sailing, owing to some of the proper crew being unable or unwilling to sail. In that case Boston completed the crew with other men of various nationalities who happened to be available.

(*b*) Boston was never formally appointed manager of the "St. Jean"; the Fisheries Section could at any time have asked the Minister of War Transport to appoint Boston or any other competent person manager, but they were satisfied with things as they were. Boston made the applications for ship warrants for the vessel, describing itself on the application form as "Managers acting with the authority of French owners", and was named as manager in the ship warrant. Boston also described itself, and was described by others, as manager of the "St. Jean" in correspondence.

(*c*) Boston took steps to ensure that the "St. Jean" was covered by insurance and was fully supplied with stores, fuel and gear at all times. Boston also made all necessary arrangements for maintenance and repair of the vessel and for the unloading and sale of fish on the completion of each voyage, and attended to the payment of wages to the officers and crew.

(*d*) Boston was obliged to engage as skipper of the "St. Jean" the man made available by the Fisheries Section. When the appointment of a French skipper was first suggested early in 1941 Mr. Basil Parkes objected on the grounds that a French skipper would not know the fishing grounds nor the English gear which was being used and the catch would suffer. He succeeded in putting off the change for a few trips but had to give way in the end. Boston gave the skipper instructions as to what fishing grounds he should visit but had no means of ensuring that such instructions were carried out, and sometimes they were not. The skipper was in direct communication with the Fisheries Section, from whom he received general instructions concerning French personnel and to whom he made reports about the ship and the men under his command.

12. (*a*) Boston kept a separate account in its books in respect of the fishing operations of the "St. Jean", to which the proceeds of sale of all landings of fish were credited and all expenditure relating to the vessel was debited. Boston credited itself with commission at the rate of 2 per cent of the gross sales of fish at the expense of this account. Early in 1945 representatives of Pêcheries came to Fleetwood and agreed that the net profits from the fishing operations of the "St. Jean", as shown in this account, belonged to Pêcheries. Pêcheries made no objection to any of Boston's activities in relation to the vessel, and approved the account and the deduction of commission. The balance in the account was transferred to an account in Boston's books in the name of Pêcheries.

(*b*) French fishing vessels were not allowed to return to France immediately after the cessation of hostilities in Europe and Boston continued to employ the "St. Jean" until November, 1945, in the same manner, no objection being taken by Pêcheries.

13. In 1940 Pêcheries owed a substantial debt to Boston for loans partly secured by mortgages on ships (other than the "St. Jean"), and this indebtedness continued throughout the period material to the appeal. No arrangement was come to in 1945 regarding the possibility of setting off this debt against the balance on the ,,St. Jean" account. The existence of this debt to some extent influenced Boston in obtaining and, so far as it was able, keeping control over the "St. Jean".

14. Mr. Fred Parkes, who was managing director of Boston and was also until May, 1941, a director of Pêcheries, authorised the action taken by

Boston in connection with the "St. Jean" as he considered that in the circumstances he was the proper officer of Pêcheries to say what should be done and that such action was in the best interests of Pêcheries.

15. (1) In the fishing industry there is a well understood distinction between management and agency. Management of a vessel involves full control of the movement of the vessel and the engagement of the skipper and crew. A manager is in the same position as an owner, except as regards his accountability to the owner. An agent is agent for turning round a vessel on a particular occasion when it visits a port other than its usual port; the agent lands the fish, sells it, refuels and re-stores the vessel and sees that it gets to sea again; he uses his discretion regarding running repairs, but does not put major repairs in hand without consulting the owner or manager. He does not tell the skipper where to fish on his next voyage. The agency is for one particular turn-around, though it may be, and often is, repeated regularly by the agent on behalf of the same owner and vessel. For this the agent receives a commission which varies between 2 per cent. and 5 per cent. of the gross sales of fish landed; during the war the usual commission was 3 per cent. Such agency is called turn-around agency.

(2) Boston frequently engaged in turn-around agency for vessels it did not own or manage. In the period material to the appeal it acted as turn-around agent for many foreign and British vessels. It was not disputed that in so doing Boston carried on business as a general commission agent within Section 17 of the Finance Act, 1925.

16. It was contended on behalf of Boston:

(1) that Boston was never constituted agent of Pêcheries in relation to the "St. Jean";

(2) that Boston was not an authorised person carrying on the regular agency of Pêcheries in relation to the "St. Jean" within the meaning of Rule 10 of the General Rules applicable to all Schedules of the Income Tax Act, 1918;

(3) alternatively, that, if and so far as Boston was such an agent and authorised person as aforesaid, Boston's transactions in relation to the "St. Jean" were carried out in the ordinary course of Boston's business as a general commission agent and accordingly Pêcheries was not chargeable in the name of Boston by virtue of Section 17 of the Finance Act, 1925; and

(4) that the assessments under appeal were bad and should be discharged.

17. It was contended on behalf of the Inspector of Taxes:

(1) that Boston was, in relation to the "St. Jean", the agent of Pêcheries within Rules 5 and 6 of the said General Rules;

(2) that Boston was, in relation to the "St. Jean", an authorised person carrying on the regular agency of Pêcheries within Rule 10 of the said General Rules;

(3) that Boston's transactions in relation to the "St. Jean" were not carried out in the ordinary course of Boston's business as general commission agent within Section 17 of the Finance Act, 1925; and

(4) that the assessments under appeal were correctly made and (subject to certain adjustments to the figures) should be confirmed.

18. We, the Commissioners who heard the appeal, found that the trading operations carried on by means of the "St. Jean" from July, 1940, to November, 1945, were not carried on by Pêcheries as principal without the intervention of any agent, nor were they carried on by the Fisheries Section, but were carried on by Boston. On examination of all the facts before us we concluded that they were so carried on by Boston not as principal but as agent for Pêcheries and we found that in so doing Boston was carrying on a regular agency for Pêcheries. We held that Boston was acting as an authorised person carrying on the regular agency of Pêcheries within the meaning of General Rule 10.

We found that Boston's transactions in connection with the "St. Jean" went beyond the scope of Boston's ordinary turn-around agency business and were not carried out in the ordinary course of Boston's business as a general commission agent.

We held that the assessments were correctly made and we left the figures to be agreed.

Agreement of the figures having been subsequently reported to us, we adjusted the assessments accordingly in the following manner:

1940-41 we increased the assessment to £2,587, subject to £1,795 capital allowances;
1941-42 we increased the assessment to £3,268, subject to £2,268 capital allowances;
1942-43 we increased the assessment to £2,982, subject to £1,982 capital allowances;
1943-44 we increased the assessment to £2,982;
1944-45 we increased the assessment to £4,000.

19. Boston immediately after the determination of the appeal declared to us its 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.

20. The question of law for the opinion of the High Court is whether on the facts before us we could properly arrive at the conclusions set out in paragraph 18 of this Case.

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.
12th February, 1957.

Before the hearing in the Chancery Division notice of the following additional contentions on behalf of the Company was given under the Practice Note of July, 1926 ([1926] W.N. 250):

(*a*) That, by virtue of the Trading with the Enemy Act, 1939, and at common law, the Appellant Company could not at any time after Boulogne was occupied by the Germans in 1940 have become the agent of Pêcheries de la Morinie de Boulogne ("Pêcheries") either by express appointment, by implication or by ratification;
(*b*) that, if and so far as Mr. Fred Parkes purported after Boulogne was so occupied to act as a director of Pêcheries, he could not lawfully, either under the Trading with the Enemy Act, 1939, or at common law, have continued so to do;
(*c*) that in these circumstances any purported appointment by Mr. Fred Parkes (if ever made, which is not admitted) of the Appellant Company as agent for Pêcheries after Boulogne was so occupied was ineffective; alternatively,
(*d*) that any agency previously subsisting between the Appellant Company and Pêcheries was revoked and terminated when Boulogne was occupied as aforesaid.

The case came before Harman, J., in the Chancery Division on 3rd, 4th and 5th July, 1957, when judgment was reserved. On 31st July, 1957, judgment was given against the Crown, with costs.

Mr. John Senter, Q.C., and Mr. Desmond Miller (Mr. Peter Rowland with them) appeared as Counsel for the Company, and Sir Frank Soskice, Q.C., Sir Reginald Hills and Mr. Alan Orr for the Crown.

HERMAN, J.—This is a curious aftermath of the fall of France in 1940. When that lamentable event happened the French trawler "St. Jean", with whose earnings we are here concerned, happened to be in the port of Fleetwood, whither she had repaired to land her catch. She was owned by a French limited company known as Pêcheries de la Morinie which had its commercial domicile in France, its head office being at Boulogne; but the "St. Jean" on the capture of that town had fled to Lorient, whence on the orders of her owners she had been fishing on the Great Sole Bank. The Appellant Company carries on at Fleetwood the business of trawler owners, and also that of managers and agents for both British and foreign vessels. It is the proprietor of 49 per cent. of the shares in the French company, and in 1940 its managing director, one Fred Parkes, was a member of the board of the French company. The Appellants in the ordinary course of their business acted as agents, in the sence described in paragraph 15 of the Case, for the vessel when she came into Fleetwood manned by a French skipper and crew. When the news of the French capitulation arrived Mr. Parkes took it upon himself to immobilise the vessel to prevent her falling into German hands. The skipper and two of the crew were repatriated to France but the rest stayed in England. Thereafter Mr. Parkes, without, so far as appears, any authority, but doing the best he could in the circumstances and also regarding the fact that the French company was largely indebted to the Appellants, sent the ship to sea with an English skipper chosen by himself and a crew mainly French. Thereafter a body known as the Fisheries Section of the French Naval Forces took an interest in the vessel and her crew, and eventually, through the good offices of the Minister of War Transport, prevailed upon Mr. Parkes to allow the vessel to be manned as far as possible by French officers and crew. She was thus during the war controlled partly by the Appellants and partly by the French Fisheries Section. The Appellants were never formally appointed by the Minister to be managers because, I suppose, the existing arrangements seemed good enough. The Appellants kept accounts of the ship's takings and expenses, and after deducting a commission for themselves a considerable profit was shown. The arrangement above described went on till the end of 1945, when the ship returned to France under the control of her owners, the French company, representatives of which had at the end of the war visited the Appellants and approved their conduct and accounts and the commission they had reserved for themselves.

In making the various applications required under the controls operating in wartime the Appellants held themselves out as being managers acting with the authority of the French owners, but they never had such authority. Mr. Parkes, it is true, was a director of the French company until the spring of 1941, when he was removed from the board without his knowledge, but whether on or off the board he had no authority from the French company to manage or delegate the management of the vessel. There was no agreement on the subject between the two companies before the fall of France.

Under these circumstances assessments to tax were made on the Appellants for the years 1940-41 to 1944-45 inclusive under Schedule D of the Income Tax Act, 1918, Paragraph 1 (*a*) (iii), and Rule 5 of the General Rules applicable to all Schedules, upon the footing that the trade was carried on by the French company within the United Kingdom through the Appellants as its agent so that the French company could be charged in the agent's name. At the hearing before the Special Commissioners they found that the trade was not carried on by the French company as principal, and no one is concerned to dispute this. The Commissioners further found that the activities were carried on by the Appellants and not by the Fisheries Section of the Free French Movement, and this is not disputed. A controversial point was whether in carrying on the business the Appellants were brokers

or general commission agents within the exception provided by Rule 10 of the General Rules, the material part of which is in these words:

> "Nothing in these rules shall render a non-resident person chargeable in the name of a broker or general commission agent".

This was to some extent modified by section 17 of the Finance Act, 1925. On this the Commissioners found that the Appellants did not come within the exception, and this point has not been contested before me. The dispute before me was whether, as the Commissioners found, the Appellants were in what they did

> "an authorised person carrying on the regular agency".

In considering this question and coming to a finding upon it, it seems to me that the Commissioners were construing Rule 10 and that this, therefore, is a question of law: see *Bell* v. *National Provincial Bank*, (1904) 1 K.B. 149. If this be wrong and the decision was one of fact, or rather an inference from the facts, I have to consider whether there were any facts to justify the Commissioners in reaching this conclusion.

At the outset, on the facts as I have stated them, it seems to me clear that, subject to the question of ratification, the Appellants were not authorised persons at all. It is true that they held themselves out as managers, but no one altered his position over the years on that account, so no question of estoppel arises. If, however, by reason of the doctrine of ratification they must be treated as authorised, the ratification dating back to the year 1940, then I think they would satisfy the words "carrying on the regular agency". This awkward phrase is discussed by Rowlatt. J., in *Gavazzi* v. *Mace,* 10 T.C. 698, at page 744, where, after reading Rule 10, which I have already read, he says this:

> "It is quite clear that it was assumed by those who drew that Rule (Section 31, Sub-section (6), in the Finance (No. 2) Act, 1915, as it was originally), that there would be no attempt to charge any agent otherwise than in respect of profits on sales and transactions carried out by him or through him. Then this provision says that 'a non-resident shall not be chargeable in the name of a broker or general commission agent, or in the name of an agent not being an authorised person,' and so on. I find great difficulty in quite understanding the fabric of this enactment. First of all, I do not quite see why you want the words 'broker or general commission agent' at all, because a broker or general commission agent is an agent who is not an authorised person carrying on a regular agency of the non-resident person, and therefore they would be protected without being mentioned at all. But they are put in, I suppose as a sort of indication of the line on which the draftsman's mind is travelling before he comes to the phrase which supersedes those words, and expresses a larger idea which includes them. Then I am bound to say I find great difficulty in understanding what is exactly meant by 'authorised person.' Anybody who carries on a regular agency must be an authorised person. One view is that an authorised person is meant to indicate that he is to be a person of a somewhat superior scale of importance in the agency, to which I rather incline; another view is that 'authorised person' are merely colourless words for agent, merely serving, for the convenience of grammar, as a noun to which you can apply the words 'carrying on the regular agency of the non-resident person.'" The use of the word 'agent', again, was what was sought to be avoided there by the draftsman, and so he used the non-committal words 'authorised person' before he went on to say that he should not be carrying on a regular agency of a non-resident person."

See further *per* Scrutton, L.J., in *Nielsen, Andersen & Co.* v. *Collins,* 13 T.C. 91, at page 121, where he says this:

> "The next point that is taken is, as I follow it, that it is said that the person you are trying to tax is merely a broker; he is doing just what an ordinary ship broker does—that, of course, puts in 'ship' for the first time; a ship broker is a very different thing from a broker—and consequently, under Sub-section (6) of Section 31 of the Finance (No. 2) Act of 1915, the non-resident person is not chargeable in the name of a broker or general commission agent. Now the language is",

and the Lord Justice repeats it.

> "In my view the words 'not being an authorised person carrying on the non-resident's regular agency' apply to the whole of the preceding descriptions, and the contrast intended to be drawn is between casual employment, temporary employment, for a transaction or few transactions, and regular appointment of a permanent agent who is there as representing the foreigner. Though it was not necessary for Lord Cave to say so, I think what Lord Cave says in the *Maclaine* and *Eccott* case as to the meaning of Sub-section (6) expresses what I mean to express, and is correct: 'A non-resident instructing a broker or other casual agent in this country shall not be chargeable'. I think the distinction is between the casual agent and the authorised person carrying on the non resident's regular agency. It is odd language, of course, because how you can carry on agency if you are not authorised, I do not quite understand, and what was the object of putting in the word 'authorised' I do not follow. The emphasis I lay on the term 'regular'."

Judged by these tests, it seems to me that if the Appellants were authorised persons they were carrying on the regular agency.

The case seems to me to turn, therefore, on the question of ratification. There is no doubt that after the war the French company by its proper representatives approved of what had been done by the Appellants. Ratification, as we all know, has a retroactive effect. It is well stated by Tindal, C.J., in *Wilson* v. *Trumman,* 6 Man. & G. 236, at page 242, in these words:

> "That an act done, *for another,* by a person, not assuming to act for himself, but for such other person, though without any precedent authority whatever, becomes the act of the principal, if subsequently ratified by him, is the known and well established rule of law. In that case the principal is bound by the act, whether it be for his detriment or his advantage, and whether it be founded on a tort or a contract, to the same extent as by, and with all the consequences which follow from, the same act done by his *previous* authority"

Lord Sterndale, M.R., in *Koenigsblatt* v. *Sweet,* (1923) 2 Ch. 314, at page 325, has words to the same effect.

The conditions precedent to a valid ratification are well stated by Wright, J., in *Firth* v. *Staines,* (1897) 2 Q.B. 70, at page 75. The facts of that case I need not rehearse. The passage reads as follows:

> "I think the case must be decided upon the ordinary principles of the doctrine of ratification. To constitute a valid ratification three conditions must be satisfied: first, the agent whose act is sought to be ratified must have purported to act for the principal; secondly, at the time the act was done the agent must have had a competent principal; and, thirdly, at the time of the ratification the principal must be legally capable of doing the act himself."

The first condition is satisfied: the Appellants did hold themselves out as agents for the French company. So is the third: at the time of the ratification the French company was capable of doing the kind of acts which they were

purported to ratify. But I cannot think that the second condition is met. At the time the acts were done the French company was an alien enemy at common law. It was therefore not a competent principal because it could not have done the act itself. Moreover, to have accepted the mandate would have been an offence on the part of the Appellants, constituting trading with the enemy within the mischief of the Trading with the Enemy Act, 1939. Counsel for the Crown suggested that no such offence would have been committed having regard to the proviso to Section 1 of that Act, excepting from the mischief of the Section acts done under the authority of a Secretary of State. I do not accept this. No doubt the Minister of War Transport licensed the ship, but he was not a Secretary of State and for aught I know had no knowledge of the supposed agency. If he or some other authorised person had appointed the Appellants to be managers of the ship, as was apparently the usual course, the matter might have been different, but the Case expressly states that this course was not taken. No doubt the Appellants became accountable after the war to the French company for the profits made—see *Hugh Stevenson & Sons, Ltd. v. Aktiengesellschaft für Cartonnagen-Industrie,* (1918) A.C. 239, and Lord Atkinson's speech at page 256—but that does not seem to me to affect the matter. In *Sovfracht* v. *Van Udens Scheepvaart,* (1943) A.C. 203, it was made clear that the relation of principal and agent is determined by war and such a relationship cannot exist during the currency of hostilities: see Lord Porter's speech at page 254, where his Lordship says this:

> "Ordinarily, when the principal becomes an enemy the authority of the agent ceases on the ground that it is not permissible to have intercourse with an enemy alien, and the existence of the relationship of principal and agent necessitates such intercourse. That the representatives, legal or non-legal, of a litigant may require to have such intercourse with their principal in the litigation is, I imagine, clear and I do not think it is an answer to say that in the event it may not be found necessary for the one to communicate with the other. At any moment the necessity may arise. The very relationship requires it even if it is desired only to terminate the mandate itself. If authority be required for the proposition that the relationship of principal and agent is determined when the parties to the agency agreement become enemies one to the other, it is to be found in"

the *Stevenson* case.

If this be right, it is enough to conclude the case in the taxpayer's favour. I need not therefore, consider Mr. Senter's further point that as Income Tax is a tax assessable year by year it is not legitimate to tax by reason of the events of a subsequent year. The argument was that even though the principal was capable of ratifying in 1945 that did not make the agent taxable in previous years when no such authority could be given. I was referred in this connection to *Dodworth* v. *Dale,* (1936) 2 K B. 503, and *Spencé* v. *Commissioners of Inland Revenue,* 24 T.C. 311.

I should add that the Crown abandoned a suggested alternative that the Appellants could be charged as trustee for the French company. This suggestion was never made to the Commissioners nor were the assessments made on the Appellants in that capacity. Further, I do not think that the French company was an "incapacitated person" within Rule 4 of the General Rules.

The result is that the appeal is allowed and the assessments discharged.

Mr. PETER ROWLAND.—May the appeal be allowed with costs?

HARMAN, J.—Yes.

(Solicitors:—Theodore Goddard & Co., for Andrew M. Jackson & Co., Hull; Solicitor of Inland Revenue.)

Source: *Tax Cases,* Vol. 37, Part 7, 1957.

IV

REVIEWS — COMPTES RENDUS

AUSTRIA

HANS MUSGER und FRIEDRICH SCHULZ: *Das neue Einkommensteuerrecht. IX. Ergänzungslieferung*. Verlag Hermann Schmerzeck & Co., Herzog-Ernst-Gasse 1, Bruck a.d. Mur.

Ziel und Aufbau dieses Loseblattwerkes wurden in der Besprechung im *Bulletin* Vol. XI, S. 122 gewürdigt. Die *IX. Ergänzungslieferung* bringt jetzt das Stammwerk auf den Stand vom 31. Dezember 1958. Angesichts der wiederholten Änderung des EStG 1953 zeigt sich der Vorteil dieser in Lose-Blatt Form angelegte Ausgabe. Die Autoren künden an das die X. Ergänzungslieferung Erweiterungen des Inhaltsverzeichnisses und des Sachregisters bringen wird.

BELGIUM

ALBERT TIBERGHIEN: *Handboek voor Fiscaal Recht.* (Handbook for tax law). Instituut voor Financie- en Belastingwezen, Jozef II straat 153, Brussel, 1955, 479 pp.

The Institute for Finance and Taxation at Brussels has published the Supplement 1958 to its *Handbook for Fiscal Law*, which is an excellent handbook on the Belgian tax system. A review of this book was published in Bulletin Vol. XII, p. 249.

Recueil des Lois Fiscales sous la surveillance de F. AMERIJCKX, Professeur ordinaire à l'Université de Gand. Edité par l'Union belge des Conseillers fiscaux, Documentation juridique et fiscale A. van der Leest, 343, Avenue des Pagodes, Bruxelles II.

Les Compléments 1 et 2, 1959, de ce livre sur le système fiscal belge un compte rendu duquel a été publié dans le "Bulletin" Vol. XII, p. 32 ont paru. Ils contiennent des feuillets à remplacer pour les parties Règlement Général sur les taxes assimilées au timbre et Code des droits d'enregistrement, d'hypothèque et de greffe.

Jurisprudence Fiscale et Sociale. Publié par Documentation juridique et fiscale A. van der Leest, 343, Avenue des Pagodes, Bruxelles II.

Les Suppléments 1959 nos. 1-3 de cette documentation sur la jurisprudence fiscale belge ont paru.

CANADA

Carrying on business in Canada. The Royal Bank of Canada, Head Office, 360 St. James St. West, Montreal, 13 pp.

This publication contains a concise survey of Canadian Income and other business taxes, Personal income taxes and Succession duties.

FRANCE

Feuillets de documentation pratique de l'enregistrement publiés par Francis Lefebvre, 15 rue Viète, Paris. *Supplement no 4*, 31 Décembre 1958.

Un compte rendu de ce recueil pratique sur l'enregistrement était publié

dans le *Bulletin* Vol. XII, p. 355. Le présent *envoi no. 4* en date du 31 Décembre 1958 tient compte des dispositions contenues dans les ordonnances des 29 & 30 décembre 1958.
Il contient des pages nouvelles contenant les nouveaux tarifs des droits sur les ventes d'immeubles, des droits sur les sociétés et des droits de timbre et feuillets supplémentaires pour l'ensemble de la collection.

Service de Documentation Fiscale. Impôts et Sociétés. Code Générale des Impôts Directs. Collection B. *Contribution foncière, Contribution mobilière et Impositions départementales et communales*. Impôts et Sociétés, 14 Rue Clapeyron, Paris 8e.

Reviews of the Collection A of the *Codes Annotés des Impots Directs* were published in *Bulletin* Vol. XI, p. 126 and 332. The present two volumes of Collection B contain the articles 1379 — 1649 of the "Code Général des Impôts" concerning landtax, the tax on movable capital, and the provincial and municipal taxes. There are 9 parts: Centimes additionnels et Principaux fictifs, Contribution foncière des propriétés bâties, Contribution foncière des propriétés non bâties, Contributions foncières — Dispositions communes, Contribution mobilière, Taxes communales, Impositions départementales, Taxes et impositions — Organismes divers, Dispositions communes. The editor "Impôts et Sociétés" has again succeeded in producing two books which offer a clear exposition of the subjects involved.

ALEC MELLOR: *La pratique du procès pénal. Plaintes et constitutions de partie civile*. Collection "ce qu'il vous faut savoir". Editions J. Delmas et Cie, 13 rue de l'Odéon, Paris-VIe, 1959.

Cet ouvrage qui se recommande par la clarté de son ordonnance et la rigueur avec laquelle l'auteur a traité son sujet survient au moment même où l'opinion publique est appelée à faire le point en cette matière si importante, à l'occasion de la promulgation du Code de procedure penale, remplaçant le vieux Code d'Instruction Criminelle abrogé.
Ce guide pratique s'adresse principalement au monde des affaires, dans l'esprit positif et utile de la Collection «Ce qu'il vous faut savoir» dirigée par Francis LEMEUNIER.

Editions Techniques, 128 rue de Rivoli, Paris (1e) a publié les mises au courant suivantes à l'oeuvre *Juris Classeurs, Droit Fiscal*:

Juris-Classeur. Code fiscal. -Impôts directs. 1959, no. 3

Des mesures importantes ont été prises, sous forme d'avantages fiscaux, en vue de favoriser les opérations de recherche scientifique et technique. Elles sont contenues dans l'ordonnance n. 58-882 du 25 septembre 1958. Elles affectent l'impôt sur le revenu des personnes physiques et l'impôt sur les sociétés, d'une part, et les droits d'enregistrement, d'autre part.

Juris-Classeur. Commentaires «Impots directs». 1959, no. 4.

La mise au courant qui fait l'objet de la présente livraison couvre une période de publication du *Journal officiel* s'étendant du 29 juin 1958 au 5 octobre 1958, et une période de parution du bulletin «Droit fiscal» allant du 17 17 juillet 1958 au 17 octobre 1958. Cette période a été surtout marquée par l'ordonnance n. 58-653 du 31 juillet 1958 qui a notamment institué de nouveaux impôts exceptionnels pour 1958: la taxe sur les résidences secondaires, la taxe sur les yachts et bateaux de plaisance, la taxe sur les chevaux de course et la taxe civique. Toutes ces mesures ont fait l'objet des commentaires appropriés. Le fascicule 1294 comprenant le tarif annoté des patentes. complète la série des fascicules consacrés à cette contribution.

Juris-Classsur. Code fiscal «Chiffre d'affaires». 1959, no. 5.
Juris-Classeur. Commentaires «Chiffre d'affaires». 1959, no. 6.

Au nombre des mesures les plus récentes destinées à encourager les exportations, il faut citer celles prises dans le domaine des taux majorés des taxes sur le chiffre d'affaires en faveur des professions qui s'engagent à accroitre le volume de leurs ventes à l'étranger.

Le principe en a été prévu par la loi n. 57-1263 du 13 décembre 1957 tendant au rétablissement de l'équilibre économique et financier. En son article unique, paragraphe 1er, D par lequel les taux limites des taxes sur la valeur ajoutée et sur les prestations de services avaient été portés respectivement à 27,50 % et à 15,50 %, cette loi avait en effet prévu que des allègements de la charge supplémentaire résultant de l'application de ces taux pourront être accordés compte tenu des résultats obtenus en matière d'exportation vers l'étranger. Un décret n. 58-131 est ensuite intervenu le 10 février 1958 pour autoriser le ministre des finances et des affaires économiques et du plan à conclure avec les groupements professionnels des accords relatifs à l'accroissement des exportations.

Juris-Classeur. Droit fiscal d'Outre-Mer. 1959, no. 7.

La mise au courant qui fait l'objet de la présente livraison est particulièrement abondante et importante. Elle fait le point de la législation et de la réglementation fiscale qui étaient appliquées dans les territoires d'outre-mer à la date du 1er septembre 1958.

Les mesures dont il s'agit consistent en effet essentiellement en l'institution de régimes fiscaux de longue durée (Sénégal, Mauritanie, Guinée ,A.-E. F., Gabon, Moyen-Congo, Madagascar, Togo) et en la publication de Codes fiscaux (Code des Impôts directs et indirects en Mauritanie), huit Codes locaux des Impôts en A.-O. F. Citons encore pour l'A.-O. F. de nombreuses modifications au régime des patentes et des licences et la création de deux taxes nouvelles (sur les produits pétroliers, sur les tabaxs).

Le *Juris-Classsur Fiscal* s'enrichit, avec cette livraison, d'un certain nombre de fascicules consacrés à l'étude du «Régime fiscal Algérie-Sahara».

Rappel des dispositions intervenues depuis le 15 Août 1958. (Supplément au Bulletin de Documentation Pratique des Impôts Directs et Droits d'Enregistrement no. 2 de 1959) Publications Francis Lefebvre, 15 rue Viète, Paris-17e.

Le présent supplément, qui donne un rappel des dispositions législatives et réglementaires intervenues entre le 15 Août 1958 et le 15 Février 1959, se rapporte au Bulletin mensuel no. 8 de 1958 (Mode de calcul) un compte rendu duquel a été publié dans le «Bulletin» Tome XIII, p. 43.

Documentation Pratique des Impôts Directs. Publiée par les Publications Francis Lefebvre, 15, rue Viète, Paris (17e). *Supplément au Bullétin no 2, Février 1959.*

Un compte rendu du chef-d'oeuvre a été publié dans le *Bulletin* Vol. XI, 1957, p 127. Ce Supplément au bulletin mensuel no 2 de Février 1959 consiste en 147 feuillets pour les Séries Générale, Taxes diverses, Bénéfices industriels et commerciaux, Revenus fonciers et Conventions internationales.

Algeria

Louis Broët: *Guide pratique des Impôts en Algérie. Mise à jour no. 22,* Octobre 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 22,* October 1958 containing a number of new pages has recently been published.

GERMANY

Steuergesetze. Textsammlung mit Verweisungen und Sachverzeichnis. 4.

Ergänzungslieferung zur 14. Auflage. März 1959. 192 Seiten. In Schlaufe DM 3.60. Gesamtwerk: *Steuergesetze.* 14. Auflage. Stand 15. März 1959. 1732 Seiten. In Leinenordner DM 25.— Verlag C. H. Beck, Wilhelmstrasse 9, (13b)München 23.

Mit der Ergänzungslieferung März wird die soeben verkündete Einkommensteuer-Durchführungsverordnung 1958 geliefert sowie die zugleich bekanntgemachte Einkommensteuertabelle. Bei den Umsatzsteuer-Durchführungsbestimmungen wird die durch Erlass vom 17. Januar 1959 bewirkte neue Fassung der Vergütungsliste zu § 79 eingefügt. Infolge der Änderung eines Paragraphen der Reichsabgabenordnung ist auch die Ersetzung der Lohnpfändungsverordnung durch die entsprechenden Vorschriften der ZPO notwendig geworden. Die nächste Ergänzungslieferung, die gleich nach Verkündung der neuen LStDV erscheinen soll, wird nicht lange auf sich warten lassen.

Das Institut „FINANZEN und STEUERN", Markt 14, Bonn am Rhein hat die folgenden „Grüne Briefe" veröffentlicht:

Nr. 21 *Zur Denkschrift über die Finanzlage der Länder und die Neugestaltung des Finanzausgleichs,* 9 S.

Nr. 22 *Steuerreformgesetze 1958,* 32 S. und 2 Anlagen.

Nr. 23 *Zur Auswirkung der neuen Körperschaftsteuertarife im Gesetz vom 18.7. 1958,* 12 S. und 7 Anlagen.

Am Rande des Defizits. Bund, Länder und Gemeinden. Heft 57, Band 1. Institut „Finanzen und Steuern", Markt 14, Bonn, 1959, 83 S.

Die hier veröffentlichten Untersuchungen erstrecken sich auf die Finanzpolitik und Haushaltswirtschaft des Bundes, der Länder und der Gemeinden. Nach ihnen reichen die gesamten Einnahmen dieser Gebietskörperschaften für die Deckung ihrer Ausgaben aus. Die bei einzelnen Gebietskörperschaften, insbesondere bei den Gemeinden, bestehenden haushaltswirtschaftlichen Schwierigkeiten haben ihren Grund in Mängeln des Finanzausgleichs, für deren Behebung Vorschläge gemacht werden. Ausgehend von diesen Untersuchungen wird das Institut Einzelfragen des öffentlichen Haushalts von beonderer Bedeutung in einem zweiten Band dieses Heftes zur Diskussion stellen.

Der Bundeshaushalt. Heft 15, Band 8. Institut „Finanzen und Steuern", Markt 14, Bonn, 1959, 84 S.

Diese Schrift setzt die alljährliche kritische Würdigung des Bundeshaushalt fort. Nach einem Überblick über die Bemerkungen des Bundesrechnungshofs zu der Bundeshaushaltsrechnung für 1955 wird die kassenmässige Entwicklung des Bundeshaushalts im Rechnungsjahr 1958 behandelt und sodann eine eingehende Analyse des Bundeshaushaltsplans 1959 gegeben. Die Schrift kommt zu dem Ergebnis, dass dieser Haushalt erstmals die volle Verwirklichung des Grundsatzes „am Rande des Defizits" erkennen lässt.

Dr. FRIEDRICH KOTTER: *Die Besteuerung der Rechtsanwälte und Notare.* Fachverlag für Wirtschafts- und Steuerrecht Schäffer & Co., Hackländerstr. 33, Stuttgart-O, 1958, 39 S.

Diese Broschüre ist die erste, bisher veröffentliche Ausgabe, die in so kurzgefasster und verständlicher Form die „Besteuerung der Rechtsanwälte und Notare" darstellt. Herausgestellt werden dabei die Besonderheiten, die sich bei der Besteuerung dieser Berufsgruppen ergeben. Ausserdem werden die Aufzeichnungs- und Auskunftspflichten behandelt.

Neben den Hauptabschnitten wie Umsatzsteuer, Einkommensteuer, Ge-

werbesteuer, Einheitswert und Vermögensteuer sind als wichtige Punkte noch erläutert:

Verkauf einer Praxis - Schadensersatz - Einkünfte aus selbständiger Arbeit - Gewinnermittlung - Durchlaufende Posten - Betriebsausgaben - Personal - Raum- und Reisekosten - Autokosten - Steuern- Repräsentationskosten - Aufzeichnungs- und Buchführungspflicht - Überschussrechnung - Aufbewahrungspflicht - Auskunftspflicht.

Im handlichen Format ist diese Broschüre ein praktischer Ratgeber, den wir jedem Rechtsanwalts- und Notariatsbüro bestens empfehlen können.

Prof. Dr. Ewald Aufermann†: *Einkommensteuerbilanz und Verlust-Kompensation. Verlustanrechnung, Verlustausgleich, Verlustvortrag, Verlustabzug. Unternehmung und Steuer*, Schriftenreihe zur betrieblichen Steuerlehre, Dritte Folge, Heft 2. Carl Heymanns Verlag, Gereonstrasse 18-32, Köln, 1959, 189 S.

Der Verfasser untersucht das Problem des Verlustausgleichs vom Standpunkt der dynamischen Bilanz her; dabei stellt er insbesondere die Schmalenbach'sche Forderung nach Bilanzkongruenz in den Vordergrund. Darüber hinaus wird gleichzeitig damit die Berücksichtigung des Niederstwertprinzips in internationaler Sicht untersucht.

Dr. Konrad Pluckebaum und Dr. Heinz Malitzky: *Umsatzsteuergesetz.* Kommentar. 8. neubearbeitete und erweiterte Auflage. Band I. Carl Heymanns Verlag, Gereonstrasse 18-32, Köln, 1958, 960 S.

Die 8. neubearbeitete und erweiterte Auflage des bekannten Kommentars bringt die Erläuterungen zu dem Umsatzsteuerrecht auf den neuesten Stand. Die letzte neubearbeitete Auflage (6.) war im Juni 1955 erschienen und besprochen im *Bulletin* Bd. XI, S. 31. Ein Teil der seitdem eingetretenen Änderungen ist in einem besonderen Nachtragsband nach dem Stand vom 1. Oktober 1956 dargestellt worden (besprochen im *Bulletin* Bd. XI, S. 335). Von der Neuauflage ist zunächst Band I erschienen, Band II wird in Kürze folgen. Der erste Band umfasst neben dem Textteil die Erläuterungen zu den §§ 1 bis 4 UStG einschliesslich der dazu gehörigen Durchführungsbestimmungen und ergänzenden Vorschriften. Dem zweiten Band verbleiben die Erläuterungen zu den §§ 5 bis 18 UStG, die Kommentierung des Berlinhilfegesetzes, des Truppenvertrags und des Offshore-Steuerabkommens, das Urteilsverzeichnis und das Sachregister. In dieser Neuauflage sind neben den Entscheidungen des BFH die Urteile der Finanzgerichte weitgehend berücksichtigt. Die Gesetzgebung hat zu erweiterten bzw. neuen Erläuterungen Anlass gegeben. Das Buch ist wie bisher ganz auf die Bedürfnisse der Praxis abgestellt. Probleme, die im Wirtschaftsleben häufig vorkommen, und Zweifelsfragen mit denen sich Verwaltung und Rechtsprechung in den letzten Jahren besonders oft und intensiv zu befassen hatten, sind erschöpfend dargestellt in einer klaren, auch den gebildeten Laien verständlichen Sprache. Die Verfasser haben es verstanden, den komplizierten und umfangreichen Stoff im einzelnen zu behandeln aber gleichzeitig auch die grossen Linien des Umsatzsteuerrechts klar aufzuzeigen.

Hubschmann — Hepp — Spitaler: *Kommentar zur Reichsabgabenordnung und den Nebengesetzen.* 1. — 3. Auflage. Verlag Dr. Otto Schmidt, Hohenzollernring 78, Köln.

Die Abgabenordnung ist das Grundgesetz des Steuerrechts. Ihre wichtigen Vorschriften gelten entweder für alle oder doch für einen grösseren oder kleineren Teil von Steuern.

Die *Lieferung 29* enthält eine Überarbeitung der Erläuterungen zu §§ 71 — 87 (Prof. Dr. v. Wallis) und zu §§ 450 - 477 (RGRat i.R. Dr. Hartung). Der

von Hartung bearbeitete steuerstrafrechtliche Teil des Kommentars befindet sich nunmehr ganz auf dem neuesten Stand.

Dr. Otto Model: *Testament und Güterstand des Unternehmers*. 3. erw. und überarb. Auflage des „Unternehmer-Testaments". Verlag Dr. Otto Schmidt, Hohenzollernring 78, Köln, 1959, 444 S.

In dieser dritten Auflage des „Unternehmer-Testaments" ist die Weiterentwicklung der Gesetzgebung, Rechtsprechung und Literatur berücksichtigt. Unter den einschlägigen Gesetzen nimmt das Gleichberechtigungsgesetz vom 18. Juni 1957 eine sehr wichtige Stellung ein, weil es ab 1. Juli 1958 die Zugewinngemeinschaft eingeführt hat und dieser Güterstand auch erbrechtliche Wirkungen hervorruft. Im vergangenen Jahr ist dazu eine umfangreiche Aufsatzliteratur erschienen, die in dieser Neuauflage verarbeitet worden ist. Die Verbesserung des Werkes gegenüber der vorigen Auflage ist beachtlich.

Scholz-Boyens-Well-Herrmann-Steinbring-Stenger-Felix: *Bewertung und Besteuerung des Grundbesitzes. Lieferung 10. Februar 1959.*

Mit der vorliegenden Lieferung werden ua. die Teile Einkommensteuer, Körperschaftsteuer, Gewerbesteuer, Umsatzsteuer und Sonstige Abgaben (Gebühren und Anliegerbeiträge) auf den neuesten Stand gebracht. Es ist in Aussicht genommen, in der nächsten Lieferung eine Überarbeitung des Lastenausgleichsteils vorzulegen.

Steuerrechtsprechung in Karteiform. Höchstgerichtliche Entscheidungen in Steuersachen. Begonnen von Alfons Krozek, fortgeführt von Dr. W. Hubschmann und Paul Kaatz. Verlag Dr. O. Schmidt, Hohenzollernring 78, Köln.

Die Sammlung enthält die Entscheidungen des Bundesfinanzhofes in betont kommentarähnlicher und übersichtlicher Form. Die besondere Stärke der Steurrechtsprechung in Karteiform liegt darin, dass von allen gebrachten Entscheidungen Urteilsgründe und einschlägige Paragraphen mit abgedruckt sind. Durch regelmässige, je nach Umfang und Bedeutung der Rechtsprechung notwendig werdende Nachlieferungen wird das Werk laufend auf dem neuesten Stand gehalten. Erschienen sind die Lieferungen 84-87.

Im Titz-Verlag, Beckerstrasse 3, Berlin-Friedenau sind erschienen in der Reihe *Internationale Steuern* herausgegeben von Dr. Hans Eiche:

8. Lieferung: *Argentiniën.* Bearbeitet von Dr. Gerardo N. Graf, Rechtsanwalt Buenos Aires, unter Mitwirkung von Dr Rodolfo C. Sommer, Wirtschaftsprüfer, Buenos Aires.

9. Lieferung: *Belgien.* Bearbeitet von J. van Hoorn Jr. Direktor des Internationalen Steuerdokumentationsbüros, Amsterdam, unter Mitwirkung von D. A. van Waardenburg, Wissenschaftlicher Assistent des Internationalen Steuerdokumentationsbüros, Amsterdam.

10. Lieferung: *Italien.* Bearbeitet von Prof. Victor Uckmar, Rechtsanwalt Genua und Dr. Silvio Bianchi, Steuerberater Basel.

11. Lieferung: *Luxemburg.* Bearbeitet von J. van Hoorn Jr. Direktor des Internationalen Steuerdokumentationsbüros, Amsterdam, unter Mitwirkung von D. A. van Waardenburg, Wissenschaftlicher Assistent des Internationalen Steuerdokumentationsbüros, Amsterdam.

12. Lieferung: *Australien.* Bearbeitet von Dipl.-Kfm. Gerhard R. Felser, Public Accountant and Auditor, Sydney, N.S.W.

Im *Verlag der Steuertarife* P. Wachsmann, Margarethenstrasse, (22a) M. Gladbach sind erschienen:

Die amtlichen Steuerrichtsätze und Eigenverbrauchsätze 1950-1956 für Süd-, West- und Norddeutschland.

Der Prüfungsschlüssel der Kosten und Richtsätze nach den amtlichen Richtzahlen 1956 für das Bundesgebiet von Bücherrevisor G. Stutz.

Die Steuertarife sämtlicher Steuergesetze. 14. Auflage. 1. und 2. Ergänzungslieferung.

Diese vollständig neu bearbeitete Auflage ist jetzt auf den Stand vom 1. Januar 1959.

Die *Verlagsbuchhandlung des Instituts der Wirtschaftsprüfer*, Cecilienallee 36, Düsseldorf, hat die folgenden Werke herausgegeben:

Dr. HANS GUNTHER HERFORT: *Die Lastenausgleichsabgaben bei Erwerb und Veräusserung, Umwandlung und Verschmelzung von Unternehmungen.* 1959, 268 S.

In dieser Arbeit werden die folgenden Fragen beantwortet in welchen Fällen und wie der Unternehmens-Erwerber für die Abgabeschulden des Rechtsvorgängers haftet, wann diese Abgabeschulden gesetzlich auf ihn übergehen und welche Möglichkeiten einer vertraglichen Übernahme bestehen. Zweitens wie übergehende Abgabeschulden zu bewerten sind, wie sie in der handelsrechtlichen und in der steuerrechtlichen Bilanz des Rechtsvorgängers und des Rechtsnachfolgers zu behandeln sind und welche wirtschaftlichen Auswirkungen der gesetzliche oder vertragliche Übergang oder die haftungsweise Inanspruchnahme des Rechtsnachfolgers für beide Parteien hat.

Rechnungslegung und Prüfung der Versicherungsunternehmen. 1959, 320 S.

Die Herausgabe dieser Aufsatzsammlung erfolgt insbesondere, um die im Zusammenhang mit den ab 1. 1. 1955 in Kraft befindlichen neuen Rechnungslegungsvorschriften des Bundesaufsichtsamts für das Versicherungs- und Bausparwesen aufgetauchten Fragen darzustellen und zu erörtern. Die Aufsätze bringen, im wesentlichen auf der Grundlage der Erörterung im Versicherungsfachausschuss des Instituts der wirtschaftsprüfer, die Ansichten und Erfahrungen der einzelnen Verfasser zum Ausdruck.

Wirtschaftsprüfer-Handbuch 1959, 1706 S.

Der Aufbau des Handbuches blieb im Grundsätzlichen unverändert. Das Werk wurde unter Berücksichtigung der seit Mitte 1954 bis in das 2. Halbjahr 1958 ergangenen Gesetzgebung und Rechtsprechung sowie der in dieser Zeit erschienenen Literatur überarbeitet.

ITALY

CESARE COSCIANI: *Problemi fiscali del Mercato Comune.* Dott. A. Giuffrè, Editore, Milano, 1958, 136 pp.

The author discusses in this book various tax problems of the European Common Market. In the first chapter the attempts to constitute a united Europe are described. Then the author analyses the tax problems and the problem of harmonising the different tax systems. At the end the author gives his conclusions. A bibliography and an index conclude this work with which an interesting analyses is added to the literature on the tax aspects of the Common Market.

Studi in Memoria di Benvenuto Griziotti. A cura dell'Istituto di Finanze, Università di Pavia. Dott. A. Giuffrè, Via Solferino 19, Milano, 1959, 515 pp.

Benvenuto Griziotti (1874-1956) has exercised great influence on the development of fiscal science. After his studies, not only in Rome, but also in

Lausanne, Berlin and Paris he taught the science of finance at Pavia for 30 years. His influence in Italy and other countries has been great. This appears clearly from this volume which is devoted to the taxation of corporations. It contains essays of 28 tax experts from Italy, North America, the Argentine, Uruguay, Africa, Belgium, Germany, Great Britain, France, Greece and the Netherlands. Most of the contributions are in Italian, but some in French. In the first three volumes of our *Bulletin* the name of Griziotti will often be met with.

LEBANON

GEORGES NAGGEAR: *Code de l'impôt sur le revenu*. Imprimerie Angelil, Beyrouth, 1954.

The author of this loose-leaf volume has undertaken the codification of the Lebanese Income Tax Act and added an analytical and alphabetical index. The translations have been made from the official Arab texts. With this work the author has rendered a welcome service to all who have to do with Lebanese tax law. The book is kept up-to-date by supplements, two of which have appeared thus far. *Supplement 1* contains the Act of Febuary 5th, 1954 exempting certain corporations from income tax, case law with commentaries by the author and an article on the double taxation of reserves. *Supplement 2* consists of the Act of September 3rd, 1956 on bank secrecy, the Act of April 8th, 1957 and case law with commentaries.

NETHERLANDS

B. SCHIPPERS and J. L. van HEDEL: *Aftrekposten bij de inkomsten- en vermogensbelasting*. Ned. Uitg. Mij., Leiden 1959, 130 pp. Price f 3,25.

In this booklet a survey of the possibilities of deductions for income tax and property tax is given. It is a handy manual which will be of service to taxpayers, when they fill out their assessment forms.

P. KARMELK: *Besluit op de Vennootschapsbelasting* 1942. (Corporation profits tax 1942). 4th edition. Supplement 6, March 19th, 1959. De Belastingwetgeving Serie D.B. No. 13. J. Noorduijn en Zoon N.V. — Gorinchem — Netherlands.

De Euromarkt in de praktijk. (The European market in practice). Edited by Th. C. HIJZEN a.o. *Supplements* 8-10. N. Samsom N.V. — Alphen aan den Rijn.

A review of this loose-leaf service on the Common market was published in Bulletin vol. XII, p. 168. The *supplements 8-10* contain new pages on the Common market and Euratom treaty and the combined tariff-lists. *Supplement* 11 contains new pages for the chapter on Social Affairs and Combined Tariff-lists. *Supplement 12* brings new tabcards and pages on "Diensten" (Services) and the harmonisation of economic policy.

Dr. M. J. H. SMEETS and J. H. MEIHUIZEN: *Beknopte Belastinggids*. (Concise tax guide) 10th edition. *Supplements 5 and 6*. L. J. Veen's Uitgeversmij., Leidsegracht 78, Amsterdam, Price 6th supplement: f 6.58.

This guide to Dutch taxation contains a concise survey of the most important parts of the various tax Acts. Recently the *Supplements 5 and 6* have appeared containing a number of pages intended for replacement of out-dated sections and tax tables valid as from January 1st, 1959.

J. B. J. PEETERS: *Internationaal Belastingrecht in Nederland* (International Tax Law in the Netherlands). L. J. Veen's Uitgeversmaatschappij, Leidsegracht 78, Amsterdam.

A review of this loose-leaf work on international tax law in the Netherlands was published in *Bulletin* vol. XI, p. 40. It contains the text of the unilateral double taxation relief provisions and the conventions for the prevention of double taxation concluded by the Netherlands with explanations, case law and commentaries. The book is therefore a welcome source of reference for all those who come across double taxation problems in their profession or practice. Recently *Supplement VI* has been published containing the conventions with Sweden of April 25th, 1952 as regards the taxes of the préamble, the text of the convention, the protocol and the ratification Act.

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* 32-33 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* 24 has appeared.

W. E. C. DE GROOT: *Nederlandse Belastingwetten.*
N. Samsom N.V. — Publisher — Alpen 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. 145-146 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 38-41 to these loose-leaf volumes have been published.

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

Supplement 10 has been published.

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

Nos. 671-676 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 issue nr. 10 has been received.

NORWAY

JACOB JAROY: *Skattelovsamling. Supplement Nr. 9.* Baugeidsgt. 16, Skien, Norway.

Supplement Nr. 9 of this loose-leaf work on the Norwegian tax system, a review of which appeared in Bulletin Vol. XI, p. 152. has been published. It consists of 41 pages alphabetical index and 21 pages text.

Bedriftsskatter i Danmark, Norge og Sverige. (Corporate taxes in Denmark, Norway and Sweden. Samfunnsøkonomiske Studier Nr. 6. Statistisk Sentralbyrå, Oslo, 1958, 100 pp.

In this study the direct corporation tax assessment in Denmark, Norway and Sweden are compared. The publication consists of three parts. Part I gives a survey of the tax assessment laws and regulations in each of the countries. Then follows, in part II, a systematic analysis of the main features of the tax assessments. The conclusions are drawn in part III. In appendix I the effects of the tax rules by means of actually collected corporation accounts are compared. Appendix II contains information about new rules concerning depreciation allowances. An English summary has been added to this very useful study.

Det Norske Skattesystemet 1958. (The Norwegian System of Taxation 1958). Samfunnsøkonomiske Studier Nr. 7. Statistisk Sentralbyrå, Oslo, 1958, 158 pp.

This publication describes the present system of taxation in Norway. It is divided into four main sections. Section I deals with definitions, classifications and principles which underlie the Norwegian system. Section II deals with taxes on income and property, section III duties, and section IV social security premiums. In section I the Norwegian tax system is shown as a result of a long historical development. The book is in the Norwegian language, but contains a summary in English.

SWEDEN

Skattebetalarnas Förening, Stockholm 7, the Swedish Taxpayers' Association, has issued the following useful booklets in its series "Meddelanden fran Skattebetalarnas Förening" (Communications from the Taxpayers' Association):

No 158 *Skatterna vid dodsfall*
Contains an exposition about Swedish Succession duties.

No 159 *Hur skatterna beräknas.*
This brochure contains an exposition about the way in which taxes on income and property have to be calculated.

No 160 *Till hederns och samvetets hjälp.*
This is a notebook for income tax returns with a concise survey of incomes liable to tax and immnnities.

SWITZERLAND

Dr. W. R. PFUND: *Das Steuerdelikt. Seine Bedeutung, Erscheinung und Verfolgung.* Schriften zum Schweizerischen Steuerrecht, herausgegeben von der Schweizerischen Vereinigung für Steuerrecht, Heft 4. Verlag für Recht und Gesellschaft, Bundesstrasse 15, Basel, 1959. 47 S.

In dieser Schrift zieht der Verfasser die Schlussfolgerung dass die Steuerhinterziehung eine sehr ernst zu nehmende staatspolitische Frage ist. Er erklärt als seinen Standpunkt das die Steuerhinterziehung eine Gefahr für das Gemeinschaftsleben und für die bürgerlicher Freiheit sei. Er bringt zum Ausdruck dass der Kampf gegen die Steuerhinterziehung weniger eine Frage des Strafprozessrechts, als vielmehr Sache der staatsbürgerlichen Gesinnung und Erziehung sei: „Die Steuerhinterziehung ist ein Zeichen erlahmten Bürgersinnes". Die Schrift ist in fünf Abschnitten eingeteilt. Die ersten drei beziehen sich auf die soziologische Bedeutung, die Erscheinungsformen und Aufdeckung und Abklärung des Fiskaldelikts; der vierte auf die gesetzliche Verfahrensordnung und der fünfte enthält die Schlussbemerkungen.

UNITED KINGDOM

F. NYLAND: *Stamp Duties.* Second edition. *Supplement.* Butterworth & Co. (Publishers) Ltd., 88 Kingsway, London, W.C.2, 1958, 20 pp.

We refer to the review of this very serviceable handbook in *Bulletin* Vol. XI, p. 145 where we pointed out that the author has combined practical information with simple exposition. The primary purpose of this Supplement is to note to the relevant pages of the main volume the changes in the rates of stamp duty made by the Finance Act, 1958. The supplement also contains such new cases as have been reported since the main volume was published in 1957, and the revised statement of the Board of Inland Revenue as to the stamp duty position where separate contracts have been entered into for the conveyance or lease of land.

RONALD W. MOON: *Business mergers and take-over bids*. A study of the post-war pattern of amalgamations and reconstructions of companies. Gee and Company (Publishers) Ltd., 27-28 Basinghall Street, London, EC2, 1959, 210 pp.

Although the subject-matter in this book is dealt with mainly from the accounting and legal viewpoints, due weight has been given to the economic significance of these financial deals. The special circumstances in which stamp duty can be saved and other fiscal reliefs obtained are fully discussed and supported by several examples demonstrating the application of the law on these matters. All in all the book gives a penetrating account of the problems which confront the accountant who may be called to advise upon the merits of a merger or bid for control.

Income Taxes outside the Commonwealth, compiled by the Direction of the Board of Inland Revenue. *Third Supplement*, December 1959. Her Majesty's Stationery Office, London, 1959.

We refer to the review of this excellent handbook published in *Bulletin* Vol. XI, p. 145. The work provides 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 and second supplements added notes on France, Belgium, the Netherlands and the Federal Republic of Germany under Part III (Continental Europe) and revised the information already given. This *third supplement* again revises the information previously given and adds a further two notes (on Norway and Sweden) under Part III.

The British System of Taxation. Second edition. Prepared by Reference Division, Central Office of Information. Her Majesty's Stationery Office, London, 1958, 53 pp.

The aim of this pamphlet is to sketch the purposes and principles of the taxation system of the United Kingdom and Northern Ireland and give some account of the individual taxes, how they work, how they are collected and how much they yield.

The first edition of this booklet was published in January, 1956, and the second edition now available incorporates the principal changes in taxation in the last three years. It gives a comprehensive survey of considerable interest to anyone concerned with British taxation.

R. B. *Gow*: *The taxation treatment of insurance companies*. The Chartered Insurance Institute, The Hall, 20 Aldermanbury, London E.C. 2, 1958, 56 pp.

This paper was awarded the Morgan Owen Medal of the Chartered Insurance Institute. In 1958 it was published in vol. 55 of the Journal of the Institute. In this treatment of taxation of insurance companies interesting subjects such as capital allowances, investment transaction, residence, overseas taxes and double taxation relief are discussed.

Current Law Income Tax Acts Service. Sweet & Maxwell, 3, Chancery Lane, London W.C.2.
Release 50: February 9, 1959.

This Release contains supplementary tables of cases and statutes, additions to the digests of cases, new regulations on employments and a double taxation order. The referencer in volume I has been deleted and the important cases incorporated into the text.

Income Taxes in the Commonwealth. Compiled by Direction of the Board of Inland Revenue. Her Majesty's Stationery Office, London, 1958.

Digests of the taxes on income in the Commonwealth have been prepared and published by the Board of Inland Revenue since 1923. Originally intended for the use of Inspectors of Taxes in administering the laws relating to relief from double taxation, the digests were published in response to many requests for information about Commonwealth taxes. Editions of the digest were published in 1923, 1928 and 1951. The 1951 edition was published in two volumes which are now being continued in the form of a loose-leaf publication, divided geographically into five parts. The first two parts, dealing with Africa and America, are now presented. The remaining three parts, dealing with the Commonwealth countries in Asia; Australia, New Zealand and the Pacific Islands; and Europe, will be published as completed. All parts of the book will cover the taxes in the countries concerned from the calendar year 1956 onwards. Loose-leaf supplements will be available from time to time to keep the information up-to-date.

HENRY E. SMITH and P. H. FLETCHER: *Hanson's Death Duties*. Tenth edition. *Third cumulative supplement* (to January 1, 1959). Sweet & Maxwell, 2 & 3 Chancery Lane, London, 1959, 140 pp.

A review of *Hanson's Death Duties* was published in *Bulletin*, Vol. XI, p. 47/48. Since the issue of the second supplement there have been several interesting judicial decisions on points of estate duty law. Moreover two features of the estate duty provisions of the Finance Act. 1958 are of particular interest. Section 28 is designed to prevent a life tenant avoiding duty under a settlement by purchasing an interest thereunder subsequent to his own. Section 30 will afford relief where, in consequence of successive deaths within a short interval, estates must in effect suffer a cumulative charge for duty. In this, the third cumulative supplement to the tenth edition, the law relating to estate duty is stated as at January 1, 1959.

UNITED STATES

Current problems of credit and fiscal policy. An informal discussion. Twelfth annual meeting of the Board of Governors. International Bank for Recontruction and Development, International Monetary Fund, Washington 25, D.C.

In these pages is reproduced the informal panel discussion on "Current problems of credit and fiscal policy" which was held on September 25, 1957, at the Twelfth Annual Meeting of the Board of Governors of the World Bank and the International Monetary Fund.

PRENTICE-HALL, Inc., Englewood Cliffs, New Jersey has published the following brochures in Sections 2 and 3 of the Federal Tax Report Bulletin:

New advantages of incorporating in the light of the 1958 *tax law.*
How to get maximum travel and entertainment expense deductions under the latest tax rules.
Corporation, partnership and fiduciary Federal Income Tax specimen returns. Completely worked out for filing in 1959.

American Federal Tax Reports. Second Series. Volume 2. Prentice-Hall, Inc., Englewood Cliffs, New Jersey, 1959,

American Federal Tax Reports reports unabridged texts of court decisions from state and federal courts that settle problems arising under the federal tax law. Two volumes will be issued each year; one will cover cases published as AFTR 2d Advance Sheets in P-H Federal Taxes for the first half of a calendar year, and the other will cover cases published in P-H Federal Taxes in the second half of a calendar year.

Federal Tax Treaties. Prentice-Hall, Englewood Cliffs, New Jersey.

A review of this useful book on the tax treaties concluded by the United States of America with other countries was published in *Bulletin* vol. XII, p. 173. *Supplements 12 and 13* contain revisions of the list of tax treaties, the cross reference table and the finding lists as well as a Treasury Department Statement on foreign income taxation.

The PRACTISING LAW INSTITUTE, 20 Vesey Street, New York 7, has recently issued the following monographs:

ALAN J. B. ARONSOHN: *Partnerships*. Revised to October 1958. Series: Fundamentals of Federal Taxation.

Contains chapters on: Taxation of partnerships, Computation of taxable income, Distributions in liquidation of a partner's interest, The successor partner, etc.

Corporate tax election to pass income and loss to shareholders. Subchapter S of the Internal Revenue Code as added by the Technical Amendments Act of 1958. Edited by Robert Anthoine.

This report on a PLI tax forum held on October 10, 1958 is based on the speakers' oral presentations and the supplementary materials they prepared. Except for the outline in Appendix E of the new provision allowing an ordinary deduction for losses on corporate stock, this report is devoted exclusively to subchapter S, which describes the electing corporation.

GEORGE STINSON and ROBERT ANTHOINE: *Tax-free exchanges. Revised to* January 1959: 118 pp.

This monograph discusses the sections of the Internal Revenue Code that provide for the nonrecognition of gain or loss at the time certain kinds of property are exchanged. Before the various types of tax-free exchanges are examined, the general provisions of the Code dealing with the computation of gain or loss are considered. At the end of the monograph, the basis provisions of general application are also discussed.

International Tax Agreements. Volume VII. United Nations, Department of Economic and Social Affairs, New York, 1958, 384 pp.

This volume is the seventh in a series entitled International Tax Agreements. Volumes I, II, IV and VI contain the texts of agreements concluded up to June 1955. Volume VII brings the publication of tax agreements up to date. The texts of agreements are reproduced in official versions transmitted by the contracting governments or in translations prepared by the United Nations. Starting in 1958 the series will be placed on a current basis through the use of two-ring binders. One binder (Volume IX) will contain the texts of new tax agreements and will be supplemented at quarterly intervals; the tabular information on the current status of all tax agreements, at present printed in Volumes III and V, will be contained in the other binder (Volume VIII) and will be supplemented and revised annually.

Land-Value taxation around the world. Robert Schalkenbach Foundation, 50 East 69th Street, New York 21, 1955, 216 pp.

This book contains an interesting survey of the taxing of land values in Australia, New Zealand, The Union of South Africa, Denmark, Canada, The United States of America, Great Britain, Argentina, Hungary, China and Germany. The task of writing and editing this book was performed gratuitously by persons who believe that the merits of the land-value-tax system should be more widely known, as well as its history in those places where its progress has been halted.

World Tax Series, WILLIAM SPRAGUE BARNES, Director. *Taxation in Australia,* by WALTER W. BRUDNO and a research group in the Faculty of Law of the University of Sydney, under the direction of K. O. SHATWELL. The Law School of Harvard University. Little, Brown and Company, 34 Beacon Street, Boston 6, Mass., 1958, 326 pp.

Taxation in Australia has been designed, as have the other volumes in the World Tax Series (reviews in *Bulletin* XI, p. 219, 228, 320 and XII, p. 166), to provide an integrated picture of the entire system as well as a point-by-point analysis of the separate taxes of which it is comprised. The introductory chapters give the reader a comprehensive survey of the Australian tax system. The major portion of the book consists of an analysis of the income tax, with separate chapters on such important aspects as the taxation of business income, the tax treatment of international transactions, and the additional tax on the undistributed income of so-called "private companies". The special rules applicable to these closely held corporations provide an interesting basis of comparison with the tax treatment of such corporations in other countries. Other chapters treat in summary from taxes on gifts and successions, and the various taxes on transactions, such as the sales tax, excise taxes, customs duties, and stamp taxes. The book is fully documented with citations of relevant statutory and case authorities and includes reproductions of the income tax returns forms for individuals and for corporations. Supplements will be issued when new developments make them necessary.

Federal Tax Handbook 1959. Prentice-Hall, Inc., Englewood Cliffs, N.J., 1959, 544 pp.

This *1959 Prentice-Hall Federal Tax Handbook* is a handy guide to an understanding of the 1954 Internal Revenue Code as last amended in 1958, and to the solution of many personal and business income tax problems. Its charts, tables, lists and text are based on the latest law, regulations, rulings and court decisions in effect at the time of publication, including the changes and additions made by the Technical Amendments Act of 1958, the Small Business Tax Revision Act of 1958 and the Social Securities Amendments of 1958. It cites directly the Internal Revenue Code and regulations sections that apply. It gives specific references to the *1959 Prentice-Hall „Federal Taxes"* volumes.

Income Tax Differentials. Symposium conducted by the Tax Institute November 21-22, 1957. Tax Institute, Inc., 457 Nassau Street, Princeton, N.J., 1958, 258 pp.

The complex and equity-involved subject of differentials in federal income tax law and administration as they affect various categories of taxpayers, is the subject of intensive consideration in this Tax Institute symposium volume.

Dan Throop Smith, Deputy to the Secretary of the Treasury, in the opening chapter, reviews the general problems of tax differentials. Harold R. Kent, attorney at law, New York, and formerly one of H. M. Inspectors of Taxes in London, England, compares differential provisions in United States tax law with the treatment accorded in similar situations under

Canadian and British law. Stanley S. Surrey, Law School of Harvard University, examines in detail the way in which the various tax differentials have narrowed the tax base for individuals thereby necessitating higher rates, and have discriminated against nonfavored taxpayers. Specific aspects of differentials are discussed in the next three sections. Part Two is concerned with tax differentials in compensation. The effect of tax differentials on investment is the subject of Part Three. In Part Four, Ralph E. Flanders, United States Senator from Vermont, suggests a method of relieving the double taxation of dividends. The question of how best to reduce taxes is considered in Part Five.

The effect of tax policy on executive and worker compensation. Series on: The impact of taxation on management responsibility. Tax Institute, Inc., 457 Nassau Street, Princeton, N.J., 1958, 80 pp.

This first volume in the Tax Institute series on "The Impact of Taxation on Management Responsibility" considers the question of the relationship between taxes and executive and worker compensation. Among the topics covered are: the types of compensation arrangements—deferred compensation under both qualified and nonqualified plans, stok options, stock bonuses, fringe benefits, and expense accounts; the extent to which these plans insulate management against high taxes; the effect of these plans on executive and worker mobility; the question of whether the tax burden has been shifted to persons other than corporate employees; the desirability of extending the tax advantages of deferred compensation plans to the self-employed; the possibliity of reducing tax rates if relief provisions are eliminated.

URUGUAY

ROBERTO MEXIGOS: *Los subsidios en finanzas publicas.* Cuaderno No. 21. Instituto de la Hacienda Publica, Tristán Narvaja 1546, Montevideo, 1958, 104 pp.

El presente estudio analiza los antecedentes y evolución de la politica de subsidios y su influencia y efectos sobre la economia; pero tiene la virtud de ser comprensivo, observando no solo la actuacion directa, desde el sector de los gastos públicos, sino la indirecta, desde el campo de su financiación.

Memoria Anual del Instituto de la Hacienda Publica II. Tristan Narvaja 1546, Montevideo, Uruguay, 1957, 40 pp.

The first "Anual" of the "Instituto de la Hacienda Publica", Montevideo, was reviewed in Bull., Vol. XI, p. 316. This second volume gives a survey of the Institute's activities during the year 1957. Besides a list of the Institute's publications it gives informations on i.a. courses, related organizations, Uruguyan financial literature, books received, literature on social security, Uruguyan tax legislation during 1957, etc.

V

UNITED STATES - FEDERAL REPUBLIC OF GERMANY INCOME TAX CONVENTION[1]

Legislation and Treaties
Subpart A. — Tax Conventions

(Also income Tax Conventions between the United States and Austria, Belgium, Canada, Denmark, Finland, France, Greece, Honduras, Italy, Japan, Netherlands, Norway, Sweden, Switzerland, the Union of South Africa, and the United Kingdom.)
(See als Part I. Sections 901, 904; 26 CFR 1.901-1, 1.904-1.)

Even though the income tax conventions to which the United States is a party contain a provision that income from real property shall be subjected to tax only in the country in which the property is situated, a citizen of the United States or an alien resident thereof is, by reason of a saving clause in the convention, liable for United States income tax on the income from such property. In order substantially to avoid double taxation in this type of case, a credit against United States income tax is allowable as provided in section 901 of the Internal Revenue Code of 1954, subject to the limitation of section 904.

Advice has been requested with respect to the effect of a "saving clause" as found in most of the tax conventions to which the United States is a party.

For purposes of illustration, the question for consideration is whether income derived from the cutting and sale of timber in Germany by a United States citizen residing in the United States is subject only to German tax by reason of Article IX of the Income Tax Convention between the United States and the Federal Republic of Germany, C.B. 1955-1, 635.

Article IX of the Income Tax Convention between the United States and the Federal Republic of Germany, *supra*, reads, in part, as follows:

(1) Income from real property situated in one of the contracting States including gains derived from the sale or exchange of such property and interest on debts secured by mortgages on farms, timberlands, or real property used wholly or partly for housing purposes * * * derived by a resident or corporation or other entity or company of the other contracting State, shall be taxable only by the former State.

(2) (b) A resident or corporation or other entity of the United States deriving from sources in the Federal Republic any item of income coming within the scope of paragraph (1) of this Article, may, for any taxable year, elect to be subject to tax by the Federal Republic on a net income basis as if such resident or corporation or other entity were engaged in trade or business within the Federal Republic through a permanent establishment therein.

Article XV of the convention reads, in part, as follows:

(1) It is agreed that double taxation shall be avoided in the following manner:
a) The United States, in determining its taxes specified in Article I of this convention in the case of its citizens, residents or corporations, may, regardless of any other provision of this convention, include in the basis upon which such taxes are imposed all items of income taxable under the revenue laws of the United States as if this Convention had not come into effect. * * *

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[1] See also page 141.

(2) The provisions of this Article shall not disturb the exemptions from tax of the United States * * * granted by Article XI 1) of the present convention.

Provisions similar to those in Article XV(1) (a) are contained in the tax conventions between the United States and Austria, C.B. 1957-2, 985; Belgium, T.D. 6160, C.B. 1956-1, 815; Canada, C.B. 1951-1, 624; Denmark, T.D. 5777, C.B. 1950-1, 76; Finland, T.D. 6202, C.B. 1956-2, 1067; France, T.D. 5499, C.B. 1946-1, 134; Greece, effective as of January 1, 1953; Honduras, C.B. 1957-2, 1033; Italy, C.B. 1956-2, 1096; Japan, C.B. 1955-1, 658; Netherlands, T.D. 5778, C.B. 1950-1, 92; Norway, T.D. 6150, C.B. 1955-2, 793; Sweden, T.D. 4975, C.B. 1940-2, 43; Switzerland, T.D. 6149, C.B. 1955-2, 814; and the Union of South Africa, C.B. 1954-2, 651. Although the convention with the United Kingdom of Great Britain and Northern Ireland contains no specific provision such as Article XV (1) (a) of the German convention, other provisions of the United Kingdom convention are interpreted as having the same effect as Article XV (1) (a) of the German convention. T.D. 5569, C.B. 1947-2, 100, regulations section 7.514.

The meaning of Article XV (1) (a) of the German convention and of similar provisions in other income tax conventions is that the United States income tax liability of United States citizens, residents, or corporations is determined "as if this Convention had not come into effect." The purpose of this "saving clause" is to make it plain that the United States reserves the right, in the case of its citizens, residents, or corporations, to include in its tax base all items of income taxable under its revenue laws. However, this right is made subject, in certain of the conventions, to an exception such as is provided in Article XV (2) of the convention with the Federal Republic of Germany.

One of the fundamental principles of interpretation of a statute or treaty is that particular clauses and phrases should not be studied as detached expressions, but that every part of a treaty must be considered in determining the meaning of any of its parts. A treaty must be considered as a whole, its parts making it an integral whole. Accordingly, Article IX of the convention with Germany must be read in the light of Article XV.

It is apparent from the foregoing that the income derived and/or loss sustained from the cutting and sale of timber in Germany by a citizen of the United States, irrespective of his place of residence, or by a resident of the United States, is treated for United States income tax purposes in the same manner as if the convention had not come into effect. The status for United States tax purposes of such income or loss would not be affected by the taxpayer's election under Article IX (2) (b) of the Convention, *supra*, to be subject to tax by the Federal Republic of Germany on a net income basis.

Subject to the provisions of section 901 and the limitation provided in section 904 of the Code, a citizen or an alien resident of the United States is entitled to a credit against his United States income tax for income taxes paid or accrued during the taxable year to any foreign country provided that he does not use the tax table or claim the standard deduction in computing his United States income tax liability.

Source: *Internal Revenue Bulletin*, February 24, 1959.

INDIA - FINANCE MINISTER'S BUDGET SPEECH 1959-60

Sir,

I rise to present the statement of the entimated receipts and expenditure of the Bovernment of India for the year 1959-60.

2. A detailed review of the major developments in the economy during the year now drawing to a close and an assessment of the emerging trends is given in the Economic Survey which is being circulated along with the budget papers. I shall confine muself to a brief review of the economic situation and draw the attention of the House to those important aspects of the situation that merit special attention.

3. The drop in agricultural production last year, which was the lowest in record since 1953-54, affected the availability of foodgrains and other agricultural products during the current year. The rate of growth of industrial production also slowed down while prices showed an upward trend through a major part of the year. There was continuing pressure on the balance of payments in the first half of the year. The situation has eased somewhat in recent months. The kharif crop has been good and the prospects of the rabi appear to be fair. There has been some fall in prices and the decline in foreign exchange reserves has been halted; indeed there have been small accretions to these reserves in recent weeks but the overall shortage still remains. The requirements of foreign exchange for the remaining period of the plan are sizeable and the current account in the balance of payments is likely to show continuing deficits. On the whole the economic situation is somewhat better than it was a few months ago; we are sensing the effect of the various corrective measures we have taken.

Production

4. Agricultural production this year is, as I have just said, expected to be distinctly better both in regard to foodcrops and commercial crops. Industrial production also increased during the year but at a somewhat lower rate than in 1957. In some industries such as cotton textiles, finished steel, automobiles, power transformers and vanaspati, there was, however, a decline in output. The production of mill cloth, in particular, showed a sharp drop, the output declining from 5,317 million yards in 1957 to 4,900 million yards in 1958. Some industries have been handicapped by restrictions arising out of the current shortage of foreign exchange. On the other hand, there have been significant increases in production in a wide range of industries such as coal, pig iron, diesel engines, electricity, machine tools, newsprint and a number of chemical and engineering industries. These increases have been made possible partly by the better utilisation of existing capacity and partly by increases in capacity resulting from the expansion programme undertaken earlier. Among the industries whose capacity increased in 1958 may be mentioned cement, caustic soda, sulphuric acid, super phosphates, oxygen gas and refractories. In the public sector the steel programme is proceeding more or less according to schedule. A significant step was taken during the year in the manufacture of heavy machinery in the country by the formation of the Heavy Engineering Corporation which will set up a

heavy foundry, a forge, a heavy machine building shop and a factory for the manufacture of mining machinery. Construction of the plant at Bhopal for the manufacture of heavy electrical goods is also proceeding apace.

Monetary trends

5. A significant feature in the monetary situation during the year was the decline in the rate of increase in the money supply. The expansionary impact of Government transactions on the economy was mitigated by the contractionist effect of a decline in the foreign exchange reserves and a fall in the indebtedness of the private sector to the banking system. While in 1956 the increase in the money supply was Rs. 131.5 crores and in 1957 Rs. 96.3 crores, it dropped to Rs. 74.9 crores in 1958. Deposits with the banks continued to increase but the expansion of bank credit has been relatively smaller. Banks have, therefore, been able to reduce their credit deposit ratio from 62.7 per cent. at the end of 1957 to 55 per cent, at the end of 1958. Borrowings of scheduled banks from the Reserve Bank have gone down while there has been substantial increase in the holding of Government securities by the banking system. Easy conditions prevailed in the money market until almost the end of 1958 when the onset of the busy season led to a hardening of interest rates.

6. The stock markets have shown a marked improvement as compared with the previous year. The index of variable dividend industrial securities rose from 120 at the end of 1957 to 145 by the end of September, 1958. There has been some decline since then but, over the year as a whole, it has registered an improvement of about 14 per cent. Prices of securities have remained fairly firm despite large borrowings both by the Centre and the States.

Prices

7. The index of wholesale prices has risen from about 106 a year ago to 112 or so, the peak level of 116.5 having been reached last September. This rise in the wholesale index largely reflects the increase in the process of foodgrains consequent on the short-fall in production. The index of prices of cereals rose from 98 in December, 1957 to 105 in December, 1958 and the food articles from 104 to 113 over the same period. The other components of the wholesale price index, such as industrial raw materials and manufactures, have remained practically steady. The working class cost of living index (all India) rose from 113 in December, 1957 to 122 in November, 1958, but declined to 119 in the following month with food items coming down. The price indices in the current year are, to some extent, distorted by the rise in food prices due largely to the poor crop of the previous year.

Balance of payments

8. I shall now give a brief account of the balance of payments position of the country and of the steps taken to ease the difficulties which we have been facing since the beginning of the second plan. It is not necessary for me to give more than a factual account of the recent developments because this problem which has been engaging the continuous attention of Government has been considered by Parliament more than once in some detail. From almost the commencement of the second plan, we have been drawing rather heavily on our reserves and between April, 1956, and February, 1959, they dropped by Rs. 535 crores, from Rs. 746 crores to Rs. 211 crores, despite substantial foreign assistance and drawals from the International Monetary Fund. The reasons for this are well known. The decline was very largely due to larger imports, in the main, of plant, machinery and industrial raw materials for development, though imports of foodgrains and defence equipment and the decline in export earnings also contributed to it. A number of measures were taken to cut down foreign expenditure to the minimum

necessary to maintain the economy and implement the projects in the "core" of the Plan and to promote exports under difficult trading conditions in the world as a whole. As a result of these measures and the arrangements made to obtain credits and loans from friendly foreign countries and the World Bank, the rate of drawals from the reserves declined appreciably from the third quarter of 1957-58. The average monthly drawal was Rs. 23.3 crores in 1956-57 and Rs. 34.7 crores during the first half of 1957-58; in the following six months the rate of drawal dropped to Rs. 14.2 crores a month. There has been a further improvement since then. During the first six months of the current financial year the reserves have fallen at a monthly rate of Rs. 13.9 crores. In the third quarter there has been a slight increase in the balances. Ignoring fluctuations our reserves have more or less maintained their level in the last six months.

9. The year 1957-58 ended with a current account balance of payments deficit of Rs. 451 crores. The payments deficit during each of the 4 quarters of the year was Rs. 150 crores, Rs. 148 crores, 72 crores and Rs. 81 crores, respectively. Imports during the year reached a record level of Rs. 1,175 crores, showing an increase of Rs. 79 crores over the previous year. This increase in imports, despite the efforts to conserve foreign exchange, partly reflects the heavy backlog of past commitments which came in for payment during the year and partly the massive import required for implementing the core of the plan. The year witnessed larger imports on Government account, which rose from Rs. 201.5 crores in 1956-57 to Rs. 492.8 crores in 1957-58. Private imports during the year declined by Rs. 122.3 crores to Rs. 682 crores as a result of the strict import control measures adopted since the beginning of 1957. Total exports during the year amounted to Rs. 594.5 crores, about Rs. 40 crores less than in 1956-57. A general weakening of foreign demand and a fall in the prices of primary commodities in foreign countries account for this decline.

10. The adverse trend in the country's balance of payments has continued in 1958-59. During the first two quarters of the year the payments deficit on current account was of the order of Rs. 120 crores and Rs. 91 crores respectively. As against a total deficit of Rs. 210.8 crores on current account during the first half of 1958-59, the foreign exchange reserves fell by Rs. 86.3 crores; the balance was made up by foreign loans and credits and other capital transactions.

11. In recent months the Sterling Area, of which India is a member, has grown further in strength and its gold and dollar reserves rose to 3,215 million at the end of November, 1958, the highest level attained since September, 1951. During December, 1958—the reserve declined by 146 million to $3,069 million but this was due to the payment of $196 million on account of end year service on the U.S. and Canadian loans, but for which there would have been a small rise in the reserve. As the House is aware, some of the West European countries, including the United Kingdom, announced further relaxations of restrictions on convertibility of their currencies with effect from December 29, 1958. From that date sterling held or acquired by non-residents of the Sterling Area has become freely transferable at the official rate of exchange. Honourable Members will recall that, at the Commonwealth Trade and Economic Conference held at Montreal in September, we, in common with other participating countries, had affirmed that it remained our objective to work for full sterling convertibility as soon as the necessary conditions can be achieved.

Foreign assistance

12. In the statement I made in this House on November 19, 1958, I had referred to the conference convened by the World Bank in August, 1958, to discuss India's foreign exchange situation and the manner in which India

could be helped. Following the conference, the participating countries and the World Bank announced their intention to provide further assistance to India totalling $360 million (Rs. 171.4 crores) during the current financial year. Canada would give a grant equivalent to seventeen million dollars, West Germany a loan equivalent to forty million dollars, Japan a loan equivalent to ten million dollars, the United Kingdom an advance payment under the pension settlement of ten million pounds and a loan of £28.5 millions, the United States a loan of $100 million from the Development Loan Fund and the World Bank a loan of $85 million for the Railways. The procedure for operating the above loans and grant have since been settled and agreements signed with the countries concerned where necessary.

13. During the current financial year, the World Bank sanctioned four loans aggregating $153 million (Rs. 72.9 crores) for the development of the Calcutta Port, the Madras Port, the third D.V.C. Project and the third Railway Development Programme. The World Bank has played a most helpful role both by sanctioning loans for individual development projects and by mobilising a co-operative effort by some of its member-countries to help us meet our essential foreign exchange requirements. The Bank proposes to convene another similar conference next month to explore how India could be helped in meeting her foreign exchange requirements for the next two years of the Plan. It is expected that negotiations with the World Bank for further loans for the Koyna Project and the Railway development programme will take place in the near future.

14. An important outcome of the last annual meeting of the Boards of Governors of the International Monetary Fund and the International Bank for Reconstruction and Development was the decision to increase the resources of these institutions. A general fifty per cent. increase in the quotas of members of the Fund has been made with special *ad hoc* increases in the quotas of some of the members whose currencies it will be advantageous for the Fund to hold in larger amounts. Our quota in the Fund will be raised from $400 million to $600 million. We have to pay a fourth of this increase in the form of gold and the balance in rupee securities and necessary provision is being made in the budget for this purpose. So far as the World Bank is concerned, it is raising its capital stock by $10 million and its authorised capital by $1 billion. Our subscription will be raised from $400 million to $800 million, but this will not involve any payment on our part as the general increase in members' subscription is to remain 'uncalled', the object of the increase in capital stock being only to enhance the borrowing power of the Bank.

15. I referred earlier to the assistance provided by the countries which participated in the conference sponsored by the World Bank last August. In addition to this assistance we have also received in the current year financial and technical assistance from the United States, Colombo Plan countries and the Ford and Rockefeller Foundations. Two agreements were signed this year with the United States Government under the P.L. 480 programme for the import of foodgrains valued at about Rs. 140 crores. This will raise the total amount of supplies under this programme to us to about Rs. 313 crores, of which Rs. 183 crores will be made available to us as loans and Rs. 43 crores as grants, for expenditure on mutually agreed development projects. The United States Government have also agreed to defer the payments due to them on the 1951 wheat loan for the next nine years giving us a relief of $7 million a year and to give a loan of $20 million for the integrated project for export of iron ore to Japan, for which the Japanese Government will provide a yen loan of $8 million for the development of iron ore mines. Assistance has also been provided for the purchase of fertilisers and tube well equipment abroad and for the eradication of malaria, aggregating in all to $14.2 million. Canada has made a special grant of wheat worth

$8 million and sanctioned two loans amounting to $33 million for the purchase of wheat. Autralia and New Zealand have also continued their assistance.

16. Other friendly countries have also continued to help. Negotiations are in progress with U.S.S.R. who are already assisting us for the Bhilai steel plant and for certain other industrial projects, for a credit for establishing a new project for drugs. An agreement has been entered into with the Government of Rumania who will provide machinery and technical skill costing about Rs. 5.2 crores on deferred payment for an oil refinery to be set up in Assam. The Government of Czechoslovakia have also signed an agreement for establishing a forge foundry costing about Rs. 8.5 crores.

17. I should like to express the gratitude of the Government of India to all the countries and institutions which have given us economic assistance so valuable and timely for our development.

18. We on our part have also continued our contribution of technical aid under the Colombo Plan. Up to September, 1958, we had arranged for the training of 1,086 persons from the South and South East Asia Region. We made available seven experts this year to Burma, Ceylon and Viet Nam. We have continued to assist Nepal and the expenditure incurred by us on development schemes to assist Nepal and the provision of technical personnel to that country is expected to be Rs. 1.38 crores this year.

Changes in the budget

19. Before I deal with the estimates of revenue and expenditure, I would like to mention certain changes which have been made in the budget documents presented to the House. For some years it has been the practice to present the Demands of Defence services and the Posts and Telegraphs Department in separate self-contained publications. The question of extending this arrangement to other Ministries has been under consideration for some time and, more recently, the Estimates Committee also suggested that the estimates relating to individual Ministries should be presented in self-contained volumes. This suggestion has been accepted and the Demands for Grants for the budget year are being presented by individual Ministries to Parliament. Along with the Demands for Grants, the notes on the expenditure estimates and on the important schemes under the control of each Ministry will also appear together with the accounts and balance sheets of industrial undertakings. The Explanatory Memorandum on the Budget will now be confined to a general review of the revenue and expenditure estimates and the Capital Budget and will contain various annexures of general and financial interest dealing with the budget as a whole. Opportunity has also been taken to transfer to the Economic Survey, presented along with the Budget, data and statistics of economic interest which used to appear in the Explanatory Memorandum. I am sure the House will welcome the revised arrangement which, for the first time in the history of Government, will bring together for each Ministry the estimates relating to it and will facilitate, the disposal of these estimates by the House. We are also giving, for the first time, the estimates relating to Plan expenditure separately from the estimates on non-Plan items in the Demands for Grants. This segregation of Plan expenditure in the Accounts and Estimates will, I feel, make for a more efficient control of expenditure on the Plan. While making these changes, care has been taken to see that, as far as possible, the material now available to Parliament in the Hindi version of the Budget, is not curtailed in any way.

Financial year 1958-59

20. Against the budgetted revenue of Rs. 767.99 crores the actuals this year are likely to amount to Rs. 728.20 crores while the expenditure met from revenue is placed at Rs. 788.15 crores against the original estimate of Rs.

796.01 crores. In the result, the deficit of Rs. 28.02 crores provided in the Budget is likely to rise to Rs. 39.95 crores.

21. The increase of Rs. 31.93 crores in the revenue deficit for the year is entirely due to a fall in the anticipated revenue, mostly in the revenue from Customs. The total revenue for the year is now expected to fall by Rs. 39.22 crores. Customs duties are expected to show a drop of Rs. 34 crores; the effect of restrictions on imports on revenue appears to have been far more rigorous and the backlog from past licensing not as much as was originally anticipated. Also, during the year adjustments were made in export duties on a scale not visualised when the Budget was framed. The revenue from Union Excises is now placed at Rs. 3.61 crores less while the yield from the Wealth Tax, the Expenditure Tax and Gift Tax will, together, be Rs. 5.3 crores less than anticipated. A drop of Rs. 13 crores is anticipated in the grants from the U.S. Government under the P.L. 480 programme and of Rs. 1.86 crores in the receipts from Currency and Mint, but these will be more than off-set by larger receipts of interest, sale proceeds of evacuee property and an increase of Rs. 3.04 crores in the contribution from the Posts and Telegraphs Department.

22. Civil Expenditure this year is now estimated at Rs. 521.28 crores against the original budget of Rs. 517.87 crores and Defence Expenditure at Rs. 266.87 crores against the original estimate of Rs. 278.14 crores.

23. The increase of Rs. 3.41 crores in Civil Expenditure is the net result of a number of increases and decreases. Debt Services are expected to show an increase of Rs. 2.06 crores, reflecting the growing volume of the public debt, Currency and Mint Rs. 64 lakhs, owing to increased provision for the loss on the destruction of uncurrent coin, States' share of Union Excise duties Rs. 4.02 crores, reflecting the increase in the revenue from the shared duties during the year and a small carry over from last year, and Miscellaneous Expenditure Rs. 11.34 crores due mostly to an increase of Rs. 6 crores in payments to State Governments to assist them to meet the additional expenditure on the raising of the emoluments of the low paid employees and Rs. 4.27 crores in the provision for the transfer of the sale proceeds of evacuee property which is taken in reduction of the capital expenditure on the payment of compensation to displaced persons. A part of the additional expenditure will be counter-balanced by a saving of Rs. 13 crores in the provision for the transfer to the Special Development Fund of the grant received under the P.L. 480 programme for subsequent use on development plans; and a shortfall of Rs. 2.73 crores in expenditure under various heads grouped under Civil Administration.

24. The decrease of Rs. 11.27 crores in Defence Expenditure occurs largely in the Army and Air Force estimates. The expenditure on the purchase of stores is likely to be less than estimated; in the case of the Air Force, the decrease is also due to the fact that payments on account of purchase of aircraft and other equipment from abroad are expected to be less than was anticipated when the budget was framed.

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25. For the coming year, at the existing level of taxation, I am budgeting for a total revenue of Rs. 757.51 crores and an expenditure of Rs. 839.18 crores, leaving a deficit of Rs. 81.67 crores.

26. With the continuing restriction on imports the downward trend in the revenue from customs is likely to continue and for next year I am taking credit for a sum of Rs. 130 crores against the current year's revised estimate of Rs. 136 crores. The revenue from Union Excise Duties next year is likely to show an improvement of Rs. 5.85 crores and the receipts from Corporation Tax and Income-tax an improvement of Rs. 6.50 crores. Under the other principal heads of revenue, the receipts next year will be more or less the

same as in the current year. The principal heads as a whole will thus show an improvement of Rs. 7.2 crores. Receipts under other heads next year will in all be Rs. 25.26 crores more than in the current year. This is the result of three major changes. Firstly, the grants under the P.L. 480 Programme are expected to amount to Rs. 15 crores against Rs. 1 crore this year. Secondly, the profits from the Reserve Bank next year have been placed at Rs. 40 crores against Rs. 30 crores this year. This is a purely temporary arrangement; the stabilised amount that should be paid by the Reserve Bank in subsequent years will be discussed during the course of next year. Thirdly, the profits from the circulation of coin for which credit has been taken next year amount to Rs. 13.15 crores against Rs. 2.75 crores this year. This increase is mainly due to the transfer of Rs. 10 crores from out of the accumulated surpluses in the past on the circulation of rupee and small coins which had been kept under suspense. Till 1956 the practice had been to keep all profits from the circulation of rupee coin, whether silver or nickel, in suspense and also to accumulate under a suspence head the net profits on the circulation of small coin, the transfer to revenue being limited to the net expenditure in a year on the running of the mints plus a fixed sum of Rs. 45 lakhs. This later arrangement was introduced during the last world war so as to even out the impact of the fluctuating profits on circulation on the revenue budget. These accounting arrangements were reviewed in 1956 in consultation with the Comptroller and Auditor General and it was decided that, with effect from 1956-57, the actual profits on coinage and the loss on the destruction of uncurrent coin should be adjusted directly as revenue and expenditure. The accumulated sums held in suspense which amounted to a little over Rs. 50 crores were to be treated as a deficit neutralisation reserve and, although the original intention was to draw upon this reserve in the course of the year, I have decided, in view of the size of the revenue deficit, to take credit for Rs. 10 crores from this source in the budget itself. These increases will be partly balanced by a drop of Rs. 4.41 crores in the receipts from the surplus cement account of the State Trading Corporation and Rs. 3.31 crores in the receipts on account of Steel Equalisation Fund. The contribution from the P & T Department will be Rs. 1.18 crores less. The contribution from the Railways creditable to revenues will also be Rs. 42 lakhs less. As Hon'ble Members are aware, the Railways pay General Revenues dividend at a fixed rate of 4% on the Capital at charge, which is partly adjusted as revenue but mostly taken in reduction of expenditure under interest. Next year's dividend from Railways will amount to Rs. 54.41 crores against Rs. 50.03 crores this year. Of this, Rs. 48.43 crores will be taken in reduction of expenditure under interest and the balance of Rs. 5.98 crores taken as revenue.

27. Payments to State Governments on account of their share of income-tax, estate duty and tax on railway passenger fares next year, on the estimates of revenue taken for these taxes, will amount to Rs. 92.22 crores against Rs. 89.07 crores in the current year. Provision for the States' share of divisible excises is made in the expenditure estimates.

28. Civil expenditure next year will amount to Rs. 596.5 crores and expenditure on Defence Services to Rs. 242.68 crores.

29. The main reasons for the increase of Rs. 75.22 crores in civil expenditure may be briefly mentioned. The grants received under the P.L. 480 programme and initially credited to revenue have to be transferred to the Special Development Fund and used through it for subsequent expenditure. The provision for this transfer next year, following the estimates adopted on the revenue side, is Rs. 15 crores against Rs. 1 crore in the revised estimates this year. Expenditure on debt services which rise with the growing public debt, will absorb Rs. 15.82 crores more than in the current year. Expenditure on administrative services, such as on General Administration, Audit, Administration of Justice, Jails, Police, External Affairs and so on,

is likely to amount to about Rs. 2 ½ crores more in all. Under heads covering Development and Social Services, which include substantial provision on Plan outlay, the total expenditure next year is estimated at Rs. 168 crores roundly against Rs. 145 ¾ crores this year. The provision for Community Development will also be Rs. 6.17 crores more than in this year. Increased provision has also been included in the budget for grants to States for the welfare of Scheduled Tribes and areas and Backward classes amounting in all to about Rs. 5 ½ crores. These increased provisions mainly account for the rise in Civil Expenditure. Detailed explanations for other minor variations are given in the notes on the expenditure estimates circulated with the Demands for Grants.

30. The net expenditure on Defence Services in the coming year will be Rs. 24.19 crores less than in the current year. This improvement is the result of a reduction in the gross expenditure by Rs. 19.55 crores and an increase in receipts and recoveries of Rs. 4.64 crores.

31. The expenditure on the Army will be roughly on the same scale as in the current year, but credit has been taken for a special item of Rs. 5 crores on the receipt side. A sum of Rs. 14.56 crores representing the custodial charges recovered on Defence surplus Stores borne on capital has been lying in suspense. This sum which is actually of the nature of reimbursement of expenditure incurred from revenue is properly creditable to revenue and not to capital. It has been decided to write it back to revenue in three instalments, commencing with the budget for next year and a round sum of Rs. 5 crores has been taken on this account.

32. Navy estimates show a small increase of Rs. 1.84 crores for normal development. The real saving occurs in Air Force estimates which show a drop of Rs. 23.84 crores due to reduced provision for payment on account of the purchase of aircraft spares and other equipment, as a substantial portion of the payments for this purpose would have been made in the current year. Expenditure on service pensions will be Rs. 2 crores higher as it is proposed to sanction to military personnel drawing small pensions an increase on the analogy of that sanctioned to civil pensioners this year.

Capital expenditure

33. I shall now give a brief account of provision included in the budget for capital outlay.

34. Excluding the adjustment for the transfer of capital assistance from the United States to the Special Development Fund which is technically treated as capital expenditure, the current year's budget provided Rs. 412 crores for capital outlay. The corresponding figure is now expected to amount to Rs. 395 crores. The Railways are expected to draw Rs. 18 crores less for their capital requirements which are not met from their Development and Depreciation Reserves. Investment in the three Steel projects will be Rs. 14 crores less as the total equity investment of Rs. 300 crores in Hindustan Steel Limited would have been complete with this reduced investment; the balance of the finance required by the Company will be provided in the form of loans. Food purchases are likely to involve a net additional outlay of Rs. 24.26 crores. The total capital outlay would have been higher than the figure mentioned by me but for the receipt of an additional sum of Rs. 13.33 crores (£ 10 million) from the U.K. Government as advance payments under the Sterling Pensions Arrangement.

35. The corresponding provision for capital outlay next year is Rs. 420 crores. It includes a sum of Rs. 95.24 crores for the payment of the additional subscription to the International Monetary Fund which I explained in some detail earlier in my speech. The Railways will be drawing Rs. 122 crores next year against Rs. 121 crores this year while Defence capital outlay is estimated at Rs. 32.74 crores, an increase of about Rs. 5 crores over the

current year. Capital outlay on Posts and Telegraphs is expected to be Rs. 4 ¼ crores more and the net capital outlay on food purchases may be Rs. 2 crores higher. Increased provision has been made for investment in the various industrial concerns and for Civil Aviation, Civil Works, the Dandakaranya Project and development grants. The total provision which is mostly for development schemes or for inescapable expenditure would have been much higher but for the fact that, as explained earlier, the entire requirements for the steel plants will be met by loans.

36. To complete the picture of the capital requirements of Government, mention should be made of the provision for loans and advances. In the coming year, loans to State Governments, mostly for enabling them to finance their development schemes, will amount to Rs. 313 crores against Rs. 327 crores this year. In addition, loans to Port Trusts, Statutory Corporations, Government companies, etc., will absorb Rs. 123 crores this year and Rs. 212 crores next year. Provisions has been made for the grant of a loan of Rs. 52 crores to Hindustan Steel this year and Rs. 122 crores next year. The Railways will also take a loan of Rs. 10.98 crores this year and Rs. 10.88 crores next year for their Development Fund to be repaid later. Details of the various loans proposed to be given are shown in the Explanatory Memorandum.

37. The House may like to have some idea of the total provision included in the budget for the implementation of the Plan and the magnitude of the total plan outlay next year. The budget includes a total provision of Rs. 843 crores for implementing the plan, Rs. 150 crores in the revenue budget and Rs. 693 crores in the capital budget. Out of this, Rs. 63 crores from the revenue budget and Rs. 195 crores from the capital budget will be given as assistance to the States. In addition, the Railways will be spending Rs. 39 crores from their own resources and the States Rs. 239 crores. Thus, the total plan outlay, including interest on loans on River Valley which are added to capital during the period of construction and short-term loans, will amount to Rs. 1,121 crores.

38. As Hon'ble Members are aware, in view of the strain on resources, internal and external, it has been decided to limit the five year outlay on the Plan to Rs. 4,500 crores. The estimated expenditure in the first three years of the plan is about Rs. 2,540 crores, leaving a balance of Rs. 2,050 crores to be incurred in the next two years. The budget provision at the Centre and in the States, is, as I explained just now, of the order of Rs. 1,120 crores. The resources position for the next two years will continue te remain difficult, and a considerable further effort to augment the resources available for development will be necessary. With all the effort we have made, the proportion of the national income accruing to the public exchequer still remains small. While with the substantial external assistance we have been receiving, the bulk of the Second Plan will go through, we have to remember that we shall have sizeable repayments to make in the period of the Third Plan. This underlines the necessity for a determined effort to increase production and savings.

39. Thinking has already started on the Third Plan. It is obvious that the objective should be to accelerate as much as possible the tempo of development the country would have reached by the end of the Second Plan. It is, in my view, premature to speculate on the size of the plan; questions regarding the overall size, the allocations, methods of raising resources, the quantum of external assistance required and likely to become available are interlinked and are all under study. But it is clear that we should explore every avenue to ensure that the Third Plan does take us decisively forward and not keep the country at the level of development it has reached. We have to aim at creating within the economy conditions which will make the process of growth continuous and self-supporting.

WAYS AND MEANS

40. The overall deficit for the current year is now estimated at Rs. 255 crores against Rs. 200 crores assumed in the budget. The increase of Rs. 55 crores is the result of a number of factors. The revenue deficit is now expected to be Rs. 32 crores more than was estimated at the time of the budget, reasons for which I have given in the earlier part of my speech. Foreign loan assistance for a variety of reasons, is actually likely to be Rs: 46 crores less than the amount for which credit has been taken. We had to give to the States additional loans amounting in all to Rs. 42 crores, mainly arrears of loans promised to them, and Rs. 52 crores to Hindustan Steel. Food debits are also expected to be higher by Rs. 24 crores than the sum provided in the budget. The total increase of Rs. 196 crores on these accounts will, however, be partly counter-balanced by some savings in the loan provision for miscellaneous loans, increased receipts from internal borrowing and by probable shortfalls in expenditure spread over a large number of heads. In the result, the net deficit to be covered by the expansion of Treasury Bills is likely to amount to Rs. 255 crores.

41. Public borrowing in the current year has been far more satisfactory than in the last two or three years. The budget had assumed a market loan of Rs. 145 crores but the actual loan receipts amounted to Rs. 202 crores. During the year three new loans were floated, the 3½% Bonds 1963, the 3¾% National Plan Bonds (Fifth Series) 1968 and the 4% loan 1973, the maturities offered having a sufficient spread for meeting the varying requirements of the market. The total amount offered for all the three loans was Rs. 135 crores but the subscriptions accepted amounted to Rs. 142 crores. The market demand for investment, however, continued and in August 1958, we issued a new 3½% Loan 1968 for Rs. 30 crores and created a further issue of the 3½% National Plan Bonds 1967 for another Rs. 30 crores. These securities were, in accordance with the usual practice, issued to the Reserve Bank to be sold by them to the market. The net receipts from regular loans this year will be Rs. 181 crores against the original estimate of Rs. 125 crores.

42. There was a welcome revival in the market demand for shortterm investment through treasury bills. In July last, the Reserve Bank of India renewed the weekly auctions of treasury bills after a lapse of over two years. They also revived the practice of selling intermediate treasury bills to the market, an operation which had been in abeyance for over fifteen years. It is expected that the total outstanding treasury bills with the public at the end of the current year would amount to Rs. 25 crores.

43. Under Small Savings, the Budget had taken credit for a net receipt of Rs. 100 crores. This has turned out to be over-optimistic and, although there has been an improvement in the collections this year as compared with the previous year the net collections are not likely to be anywhere near the figure taken in the budget. The net collections from Small Savings have been steadily rising from a figure of Rs. 37.57 crores in 1951-52 to a figure of Rs. 69.6 crores in 1957-58. In the first ten months of the current year, the net collections have amounted to Rs. 47 crores against a little under Rs. 38 crores in the corresponding period of the previous year. In the last two months of that year, the collections were somewhat exceptional owing to the special drives undertaken by some of the State Governments. After allowing for this and on the trend of actuals this year, I do not think it wise to take credit for more than Rs. 75 crores for this year. Postal Savings Banks are still not doing as well as in the past, but there has been an improvement in the sales of National Plan Savings Certificates and Treasury Savings Deposit Certificates.

44. While on this subject, I should like briefly to mention the various steps taken during the course of this year for intensification of the savings

movement. To revive the popularity of the postal savings banks, facilities for withdrawal by cheques which were tried out as an experiment in Bombay are being extended to a large number of post offices at a number of big towns, the intention being to provide the facility in all post offices as early as possible. It has been decided to allow sales of Treasury Savings Deposit Certificates through agents on a commission basis. The National Savings Certificates Rules have been rationalised and reissued and a concentrated drive for the recruitment of more authorised agents and the formation of more savings groups undertaken. Publicity has been largely decentralised in consultation with the State Governments who will now be in charge of this work in the States except, to a limited extent, where it has been found desirable to retain the work with the Centre. Publicity will now be largely in the regional languages at the State level and this should assist in the further development of the movement. The question of replacing the multiple agency system which had grown up with by a uniform system is also under consideration. Government have accepted the principle of allowing investors in small savings to nominate the persons to whom the investment should be repaid on the lines of the assignments made of insurance policies and the necessary legislation to permit this will be undertaken shortly. The progressive diversification of investment has been taken a step further by the introduction, with effect from the 2nd January this year, of the Cumulative Time Deposit Scheme under which small monthly payments can be accumulated at post offices for periods of five or ten years at attractive rates of interest.

45. The National Savings Organisation has been keeping in close touch with the State Governments in developing the Savings movement. The State Governments' interest in the movement has been further emphasised by a modification in the arrangement for the sharing of the net receipts with them. When the States' share was raised to two-thirds, a condition was laid down that, in any year in which a State Government floated a market loan, it should surrender to the Centre one-third of the loan proceeds. This condition has now been withdrawn so that the State now receive two-thirds of the net receipts from small savings while retaining the whole of their market borrowing.

46. For next year's Budget, I have taken credit for a market borrowing of Rs. 225 crores, taking into account the fact that the market will receive a repayment of 110 crores from the maturing 3% Second Victory Loan—1959-61. I have also taken credit for a further small expansion of Rs. 15 crores in the treasury bills with the public. For Small Savings I have taken a net credit of Rs. 85 crores, a modest increase of Rs. 10 crores over the likely receipts this year. On the best estimate that can be made at present, I expect that foreign assistance next year would amount to Rs. 337 crores.

47. I may now summarise the overall budgetary position next year. At the existing level of taxation and expenditure, there will be a revenue deficit of Rs. 82 crores. Capital outlay will amount to Rs. 420 crores, loans to State Governments and others to Rs. 525 crores and debt repayments to Rs. 130 crores. This total outgo of Rs. 1,157 crores will be met to the extent of Rs. 111 crores by repayments of loans to Government, Rs. 240 crores from public borrowing in India, Rs. 85 crores from small savings, Rs. 337 crores from foreign assistance, Rs. 95 crores from the issue of special securities to meet the payment of the additional subscription to the International Monetary Fund and Rs. 44 crores from miscellaneous receipts under Debt and Deposit heads, leaving a deficit of Rs. 245 crores which will be met by the issue of treasury bill.

48. I now come to my proposals for dealing with the revenue deficit for the coming year.

49. The deficits in the current and the ensuing years are somewhat exceptional, the significant contraction of revenue coinciding with an increase

in the quantum of development expenditure met from revenue. Although in the past we have been realising surpluses on revenue account every year, I feel that it would be unwise to leave the deficit in the coming year wholly uncovered. In past the comfortable revenue position was partly due to the resilience of revenue and partly to shortfalls in expenditure inevitable while the country is in the process of gearing its administrative machinery to implement an expanding development plan. Both these factors are ceasing to operate. The buoyance of revenue in the past was mainly under Customs but because of the drastic cuts in imports and the progressive freeing of our exports from export duty, Customs revenue has suddenly contracted and is likely to remain static for some years. The administrative machinery is now better equipped for implementing the Plan and budgetary provisions are likely to be spent more fully than in the past. For all these reasons I think that a part of the deficit next year would have to be covered. This would also be consistent with our policy of continuously mobilising additional resources for the Plan.

50. In determining the extent to which the prospective deficit should be covered, I have taken into account the amount by which taxation has been increased in the last two years. Our record in the matter of raising additional resources by way of taxation for the Plan has, I venture to think, been quite impressive since the Second Plan came into operation. In 1956-57, taking the proposals in the original and the supplementary budgets together, the total taxation raised was of the order of Rs. 80 crores. In the following year, we did even better and touched nearly a hundred crores. In the current year, the net additional taxation was not significant but taking the three years of the Plan together, the additional taxation has been quite substantial. Having this in mind, I propose to cover only about a fourth of the anticipated deficit of Rs. 82 crores in the coming year.

51. The next problem is how to distribute this additional taxation between direct and indirect taxes. We have only just achieved an integrated scheme of direct taxation and I think that for the present we should concentrate on improving the administrative machinery, simplifying the existing procedures and plugging loop-holes. By these methods we should be able to improve our revenue from these sources without many major changes. They cannot, however, produce immediate results, and, although my proposals include certain changes in the rates in this field also, the bulk of the additional revenue next year will, I fear, have to come from indirect taxes. I shall first deal with indirect taxation and then proceed to direct taxation.

Indirect taxation

52. In the field of indirect taxation my proposals are mostly by way of re-adjustments of rates and concessions in the existing duties of excise. These are described in some detail in the memorandum circulated with the budget papers and I shall only mention them briefly here.

53. The duty on refined diesel oils and vapourising oil is being raised from 40 naye paise per imperial gallon to 80 naye paise. There is at present a price advantage in favour of diesel oil of which we have to import substantial quantities. Both as a measure of increasing revenue and conserving foreign exchange the proposed increase is justified. As a consequential adjustment, the rate of duty on low-speed diesel oil is also being increased from Rs. 40 per ton to Rs. 50 per ton. The total yield from these two measures will be Rs. 7.85 crores a year.

54. The duty on art silk fabrics is being raised from 6 pies per square yard to 6 naye paise per square yard. Simultaneously the exemption in the present form in respect of products of the first nine looms will be reduced to four looms. The increased levy is amply justified by the large profits which are made by the industry. The estimated yield will be Rs. 1 crore a year. The

lowering of the exemption will also bring in Rs. 20 lakhs by way of additional duties which accrue to the States.

55. The effective of duty on rayon yarn and staple fibre are also being raised by 60 per cent, to yield an additional Rs. 50 lakhs.

56. The duty on motor vehicles tyres is being raised from 30 per cent. *ad valorem* to 40 per cent *ad valorem*. There will be no change in the rate of duty on cycle tyres. The additional revenue is estimated at Rs. 1.75 crores.

57. An increase is also being made in the duty on vegetable product which will increase from Rs. 7 per cwt. to Rs. 8.75 per cwt, with a corresponding adjustment in the exemptions in favour of the small producers. The additional revenue will be Rs. 95 lakhs.

58. Vegetable non-essential oils were first subjected to excise in 1956, but some preference to medium and small scale producers was given by exempting production up to 125 tons per annum on a slab basis. In 1957 the free slab was brought down to 75 tons and a lower rate of duty levied on production, between 75 tons and 125 tons. These concessions have been reviewed and it is now proposed to withdraw the exemption from all power driven units and limit the concessional levy to only the first 75 tons of production. These changes, which will be made by notification and will not affect village *ghanis* in any way, are expected to yield Rs. 4.4 crores.

59. Khandsari sugar is now exempt from excise duty but pays the usual sales taxes. There has always been a fiscal preference in favour of this sugar but, with the recent substantial increases in the duty on crystal sugar, this preference has further widened resulting in the shift of production to this form of sugar. There are cogent reasons for reducing the margin and this is being done by the levy of the basic duty of Rs. 5.60 per cwt., with an additional duty of 70 naye in replacement of the sales taxes. The basic duty will yield Rs. 1.82 crores and the additional duty, which will accrue in its entirety to the States, Rs. 25 lakhs.

60. Certain adjustments are also being made in the duty on various kinds of cigarettes involving an increase of 16 per cent. in the level of duties for cigarettes taken as a whole. These adjustments are expected to yield a revenue of Rs. 1.5 crores.

61. Incidentally, the present tariff on unmanufactured tobacco has led to some diversion to biri-making of tobacco which was previously used for hookah. I am taking powers to assess at the higher rate such varieties of tobacco as may be specially notified and as are actually used for the making of biris.

62. The incidence of excise and export duties on tea has been under continuous review. It has been decided to readjust the rate of excise duties on the teas grown in certain areas of the country and to reduce, at the same time, the effective rate of export duties from 26 naye paise per lb. to 24 naye paise per lb. These changes will result in an additional revenue of Rs. 58 lakhs under Union excise and reduction of Rs. 93 lakhs in the yield from the export duty. In the net, the industry will benefit to the extent of Rs. 35 lakhs.

63. The total additional revenue from the various measures I have just mentioned will amount to Rs. 20.35 crores from the basic duties and Rs. 45 lakhs from the additional duties in replacement of sales taxes which accrue to the States. As Hon'ble Members are aware, the basic duties on tobacco, vegetable product, tea, sugar, and vegetable non-essential oils are shared with the States in accordance with the award of the last Finance Commission. Twenty-five per cent. of the net additional revenue from these commodities will have to be distributed to the States, after deducting the cost of collection. This payment will be of the order of Rs. 2.27 crores. Allowing for this and for the additional duties to be paid to them, I am taking the net additional revenue from changes in Union excise duties at Rs. 18.08 crores.

64. I propose to make no major change in regard to customs duties. But

there will be a countervailing increase in the import duties on the commodities on which excise duties are being increased and this by itself will bring in an additional revenue of Rs. 3.65 crores. The reduction in the export duty on tea will, however, involve a drop of Rs. 93 lakhs in revenue as I have mentioned earlier. I propose to make a small increase in the duty on unexposed cinema films to yield Rs. 5 lakhs a year for the benefit of the Film Finance Corporation which is being set up. With this small addition, the net additional yield from customs duties next year will amount to Rs. 2.77 crores.

Direct taxation

65. I propose to increase, with effect from 1959-60 the wealth-tax payable by individuals and Hindu undivided families by half a per cent. at each slab. The new rates of wealth-tax on individuals will be 1 per cent. on wealth in excess of Rs. 2 lakhs but up to Rs. 12 lakns 1 ½ per cent. on the excess between Rs. 12 lakhs and Rs. 22 lakhs and 2 per cent. on any excess above that. For Hindu undivided families, corresponding changes will be made. The extra revenue on this account will be Rs. 2.5 crores.

66. The revenue from expenditure tax has been quite disappointing this year. It is a new tax, not tried anywhere else in the world, and in the first year of its imposition in our country, it is only right that we should have proceeded cautiously. I think, however, that the time has come to tighten the existing law to some extent. I propose, therefore, to withdraw some of the exemptions now available and, in particular, to provide that the husband, wife and minor children should be regarded as one unit for the exemption limit of Rs. 30,000 in the matter of non-taxable expenditure and not as separate assessees if they have incomes in their individuals rights.

67. Coming to income-tax, I propose to make no change in the present rates and structure of personal income-tax. I have, however, some proposals for changing the present system of taxation of company profits and dividends. At present, an Indian company is generally required to pay income-tax at 30 per cent. plus a surchange of 1.5 per cent. and super-tax at 20 per cent. on its total income. When dividends are declared out of the balance after payment of these taxes, a portion of the income-tax paid by the company is deemed to have been paid by the shareholders themselves. In the assessments of the latter, the dividends received by them are included in their income after being "grossed" and they are credited with the amounts deemed to have been paid by the company on their behalf. This process of grossing is somewhat complicated. For one thing, the rate of grossing depends on the effective rate at which the company's profits are initially subjected to tax. The effective rate in its turn depends upon the composition of the income of the company. The dividends themselves may be paid out of reserves accumulated over some years, which again complicates the determination of the effective rate at which the profits have been taxed. Further, the assessments of shareholders have to await the completion of the assessments of the companies. All these lead to considerable inconvenience to all concerned, and the scheme I propose seeks to avoid this.

68. The main points of this scheme are briefly these. The legal fiction of deeming the income-tax paid by the company as having been paid by the shareholder and the complicated process of grossing the dividends received by the latter will be abolished. The overall tax rate hitherto applicable to Indian companies will be so fixed that the yield will be equal to the present annual gross yield less the annual credit now given to the shareholders. The tax liability of the shareholders will no longer be related to the tax borne by the companies. So far as the shareholders are concerned, companies will deduct tax at a precribed flat rate and credit it to Government. This tax will be re-imbursed to the shareholders at the time of their assessment as is done today in the case of interest on Government securities. I hope to devise a

scheme for issuing exemption certificates for small shareholders so that the question of reimbursement does not arise in their cases.

69. The scheme will be implemented in two stages. In the first stage, that is, during 1959-60, income-tax will be deducted by the companies at the same rate as for Government securities from dividends distributed by them but only from dividends declared for the year the profits of which will be assessed to tax in 1960-61; for example, dividends declared for the year ending 30th June, 1959. Dividends declared for any earlier year, the profits of which are assessable in 1959-60 (for example, dividends for the calendar year 1958) will not be subject to this deduction and will continue to be assessed under the existing provisions. During the second stage, that is during 1960-61, the overall tax rate applicable to the companies under the scheme will come into operation. The present scheme of grossing of dividends will cease to operate from 1st April, 1960, in respect of dividends declared for the accounting year relevant to the assessment year 1960-61 and subsequent years.

70. As part of the scheme of simplification of company taxation, I propose to combine in the income-tax and super-tax rates of companies, the net incidence of the present taxes on income, excess dividends and wealth. For purposes of advance payment of tax by companies under section 18-A of the Income-tax Act, I propose a rate of 20 per cent. for income-tax and 25 per cent. for super-tax, that is to say, a total of 45 per cent. This rate will secure the same revenue as is at present derived from the taxes on the wealth and profits of companies and I propose, therefore, to abolish the wealth tax on companies and the excess dividends tax.

71. The changes in company taxation will not affect the divisible pool of income-tax in the coming year. In 1960-61 a part of the tax now accruing to the pool may not, for technical reasons, be treated as divisible. It is Government's intention to secure that, until the matter has been examined by the next Finance Commission the State Governments continue to receive as their share of income-tax about the same amount which they would have received had this change not been made.

72. Foreign companies which declare dividends outside India will of course, not be subject to the scheme I have described. However some adjustment is necessary in the rates applicable to them on account of the withdrawal of the wealth tax on companies. The present rate applicable to such companies is 61.5 per cent, and I propose to raise it to 63 per cent. with effect from 1960-61.

73. Before leaving the subject of company taxation, I should like to mention one further change. While ordinary issues are subject to tax, bonus issues which are made out of share premium accounts are not now taxed. With effect from 1960-61, I propose to subject these issues also to taxation like other bonus issues.

74. A few more changes in the Income-tax Act will be necessary as a corollary to the new scheme. I will not, however, tire the House with a detailed description of these changes. They are incorporated in the Finance Bill and are explained in the Memorandum on the Bill circulated with the Budget papers.

75. The Finance Bill also contains some other minor changes. These have no significant effect on revenue and I would like to mention to the House only two of them; one of them withdraws the concessions now available to incomes earned abroad but not remitted to India up to a limit of Rs. 4,500 and the other provides for certain allowances to be given in pursuance of the agreement entered into with an oil company for the exploration of oil in the West Bengal area.

Net effect of proposals

76. I would now summarise the net effect of the taxation proposals. The

changes in the Union excise duties, excluding the shares that accrue to the States, will yield Rs. 18.08 crores. The changes in Customs duties will bring in Rs. 2.77 crores and the increase in the wealth tax Rs. 2.5 crores, a total of Rs. 23.35 crores. This will reduce the deficit on revenue account from Rs. 81.67 crores to Rs. 58.32 crores, about the same amount as in the current year which I propose to leave uncovered. The overall budgetary deficit will also be reduced from Rs. 245 crores to Rs. 222 crores.

Conclusion

77. The annual budget is now something more than a simple account of Government's house-keeping. Each budget marks a stage in the country's continuous development and has to be judged by the contribution it makes to this development. In a sense therefore, the stage that has been reached in the implementation of the Plan conditions this budget. So far as the Plan is concerned, I think it is accepted by every one that subject to such minor adjustments as may be necessary and were made at the time of the recent reappraisel by the National Development Council we have to go forward with the Plan. For me, as for my predecessors in this place, this has been the major factor round which the budget has to be built. In doing so, I have kept continuously in mind the main considerations necessary for the successful implementation of the Plan. If I may repeat them, these are the maximum mobilisation of resources by taxation and borrowing, firm control over the growth of non-development expenditure and minimum recourse to borrowing from the central bank for the finance required for development. In regard to the raising of resources, although the quantum of additional taxation next year is moderate compared to what was raised in the first two years of the Plan, it is still substantial. As regards the growth of expenditure, Hon'ble Members will notice that the next year's budget provides for a substantial drop in Defence expenditure and that the bulk of the increase in Civil expenditure is on account of larger provision for development. We are doing our best to see that there is no avoidable increase in non-development expenditure and in the Finance Ministry and in the Planning Commission, we have machinery for securing economies in non-Plan and Plan expenditure. An account of the work of the economy units is given to Parliament from time to time and I need not dilate on it here. I would, however, assure the House that I am fully conscious of the imperative need for tightening control over such expenditure and it is our constant endeavour to achieve the utmost economy without sacrifice of efficiency or output. As regards borrowing from the central bank, although the overall budgetary deficit for the coming year is smaller than in the current year and very much smaller than the deficit in 1957-58, it is still somewhat higher than I myself would have wished and Government had in mind some months ago. The House will appreciate that to a large extent this deficit reflects the outlay on the Plan which cannot be cut down without accentuating unemployment and leading to stagnation. Nevertheless, I may assure the House that Government do not take a complacent view of the situation and it is my intention to see how far the deficit could be reduced by appropriate measures during the course of the year.

78. In recent months, we have been passing through a difficult period and as the Prime Minister summed it up so aptly when he presented the budget last year, our crisis is a crisis of development, a crisis of resources. I feel we have passed through the most difficult phase and that there is no reason for taking a pessimistic view of the situation. Many of the major development schemes will be completed in the course of the remaining period of the Plan and will start yielding results. The country's foreign exchange dificulties are being steadily surmounted and the overall budgetary deficits have started moving down significantly. Although the price situation is still a matter of some concern, there is no reason to doubt the inherent soundness of the

country's economy and its ability to weather the current difficulties. These difficulties are purely transitional and should act as a spur to greater effort on the part of the community. There can, in any case, be no question of looking back or of slowing down the country's economic development. This would require greater production, greater saving and more restraint in consumption—in other words, greater efforts and more sacrifices by the community for ensuring a better future for the country. I am certain that these efforts and sacrifices would be forthcoming and that we could go forward with a stout heart and with confidence in our high destiny.

Source: *The Income Tax Reports*, March 23rd, 1959.

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II

FRANCE - REDEVANCES POUR BREVETS ETRANGERS [1]) - ACCORDS FRANCO-BRITANNIQUE ET FRANCO-NORVEGIEN

La France a passé des accords avec les gouvernements de Norvège et du Royaume-Uni, applicables à compter du, respectivement 24 octobre 1958 et 28 novembre 1958, précisant la situation au regard des taxes sur le chiffre d'affaires des ressortissants norvégiens et britanniques ayant cédé ou concédé des licences pour l'exploitation de brevets en France et fixant les modes de preuves à apporter de la qualité d'inventeur pour bénéficier de l'exonération des taxes. [2])

L'accord franco-britannique stipule, en outre, que la prescription triennale ne sera pas opposée aux demandes de remboursement présentées par les inventeurs anglais, dans le cas où les intéressés auront acquitté l'impôt en formulant des réserves sur le principe même de son exigibilité; cette disposition devient également applicable aux inventeurs des pays avec lesquels des accords de l'espèce ont déjà été conclus (Suisse, Etats-Unis, Suèdes, Pays-Bas, Allemagne fédérale, Belgique, Norvège) (Instr. no. 15 du 2 février 1959).

Source: *Les Cahiers Fiscaux du Patronat Français*, décembre 1958, janvier, 1959.

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[1]) Voir aussi Jean H. Rothstein dans le Bulletin Vol. X, 1956, p. 321.
[2]) Voir Bulletin Vol. XIII, 1959, p. 7.

SURVEYS OF TAX LEGISLATION
APERÇUS DE LEGISLATION FISCALE

AUSTRIA

Period from May 1st until June 30th, 1959.

Convention

Verordnung des Bundesministeriums für Finanzen vom 12. Mai 1959 zur Durchführing des Abkommens vom 20. Juli 1956 zwischen der Republik Österreich und dem Vereinigten Königreich von Grossbritannien und Nordirland zur Vermeidung der Doppelbesteuerung und zur Verhinderung der Steuerumgehung bei den Steuern vom Einkommen. BGBl. 25. 6. 1959.

Turnover Tax

Verordnung des Bundesministeriums für Finanzen vom 18. Juni, 1959 mit der die Zollgesetz-Durchführungsverordnung abgeändert wird. BGBl. 29.6.1959.

BELGIUM

Period from May 1st until June 30th, 1959.

Taxes Assimilées au Timbre

Loi du 24.3.59 concernant le régime applicable aux fournitures faites aux forces des États parties au Traité de l'Atlantique Nord. Mon. Belge 11.5.59.

Arrêté royal du 6.5.59 modifiant le Code et le Règlement général sur les taxes assimilées. Mon. Belge 11.5.59.

Arrêté royal du 8.5.59 modifiant l'arrêté royal du 11.3.53 majorant le taux de la taxe de transmission à l'importation. Mon. Belge 11.5.59.

Arrêté royal du 29.5.59 modifiant le Règlement général sur les taxes assimilées au timbre. Mon. Belge 1.6.59.

Arrêté royal du 27.6.59 modifiant le Code des taxes assimilées au timbre. Mon. Belge 30.6.59.

Droits d'accise

Loi du 9.5.59 modifiant le régime d'accise des huiles minérales. Mon. Belge, 28.5.59.

Généralités

Arrêté royal du 7.5.59 instituant une commission de la réforme de la procédure fiscale. Mon. Belge, 23.5.59.

Loi du 9 mai 1959 modifiant la taxe de circulation sur les véhicules automobiles, la taxe sur les jeux et paris, les droits d'enregistrement, d'hypothèque, de greffe et le code des droits de succession. Mon. Belge 18.5.59.

FRANCE

Period from May 1st until June 30th, 1959.

Droits de Douane

Décret no. 59-636 du 5.5.59 portant réduction provisoire quant à la perception, de certains droits de douane d'importation en régime de droit commun et en tarif minimum. J.O., 20.5.59.

Décret no. 59-625 du 12.5.59 modifiant le code des douanes J.O., 16.5.59.

Arrêté du 12.5.59 portant fixation pour l'année 1959 du contingent et des conditions d'importation au droit réduit de certaines briques et pièces de construction réfractaires. J.O. 13.5.59, p. 4961.

Arrêté du 18.6.59 modifiant l'arrêté du 18.4.57 fixant les modalités d'application de l'article 391 du code des douanes relatif à la repartition du produit des amendes et confiscations. J.O. 24.6.59, p. 6276.

Arrêté du 18.6.59 portant fixation, pour le deuxième semestre 1959, du contingent et des conditions d'importation en exonération du droit de douane du fil machine en acier fin au carbone. J.O. 27.6.59, p. 6415.

Arrêté du 19.6.59 portant fixation du contingent et des conditions d'importation en suspension du droit de douane des linters de coton en feuilles. J.O. 27.6.59, p. 6415.

Arrêté du 20.6.59 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. J.O. 21.6.59, p. 6164.

Droits d'accise

Arrêté du 6.5.59 fixant les cours moyens de certaines eaux-de-vie pendant le premier trimestre 1959 et les taux de la redevance prévue à l'article 384 du code général des impôts. J.O., 15.5.59.

Matières Diverses

Arrêté du 26.5.59 relatif à la liquidation des primes allouées aux producteurs de filasse de chauvre roui sur les ressources du fonds d'encouragement à la production textile. J.O. 19.6.59, p. 6092.

GERMANY

Period from May 1st until June 30th, 1959.

Convention

Gesetz vom 15.5.59 zu dem Siebenten Protokoll vom 19.2.57 über zusätzliche Zugeständnisse zum Allgemeinen Zoll- und Handelsabkommen (Bundesrepublik Deutschland und Österreich). BGBl. II 30.5.59.

Gesetz vom 26.6.59 zu dem Zusatzprotokoll vom 20.3.1959 zum Abkommen vom 15.7.31 zwischen dem Deutschen Reiche und der Schweizerischen Eidgenossenschaft zur Vermeidung der Doppelbesteuerung auf dem Gebiete der direkten Steuern und der Erbschaftsteuern. BGBl. II 30.6.59.

Customs

Erste Verordnung vom 14.5.59 zur Änderung der Erläuterungen zum Deutschen Zolltarif 1959. BGBl. II 30.5.59.

Gesetz vom 19.5.59 über die Ausfuhrzolliste. BGBl. II 30.5.59.

Verordnung vom 3.6.59 zur Änderung der Allgemeinen Zollordnung. BGBl. I 23.6.59.

Zwanzigste Verordnung vom 25.6.59 über Zolltarifänderungen zur Durchführung des Gemeinsamen Marktes der Europäischen Gemeinschaft für Kohle und Stahl. BGBl. II 30.6.59.

Direct Taxes

Verordnung vom 13.5.59 zur Änderung und Ergänzung der Kapitalertragsteuer-Durchführungsverordnung. BGBl. I 16.5.59.

Neufassung der Kapitalertragsteuer-Durchführungsverordnung 20.5.59. BGBl. I 26.5.59.

Turnover Taxes

Zehnte Verordnung vom 18.6.59 über Änderung der Ausgleichsteuerordnung. BGBl. I 24.6.59.

Gesetz vom 25.5.59 zur Änderung verkehrsteurrechtlicher Vorschriften. BGBl. I 26.5.59.

Miscellaneous

Gesetz vom 5.5.59 über die Gewährung von Prämien für Sparleistungen (Spar-Prämiengesetz). BGBl. I 9.5.59.

LUXEMBURG *Period from May 1st until June 30th, 1959.*

Droits de Douane

Arrêté ministériel du 30.4.59 relatif au tarif des droits d'entrée; exécution au Grand Duché de l'arrêté royal belge du 10.4.59. Mém. 15.5.59.

Arrêté ministériel du 30.5.59 relatif au tarif des droits d'entrée; exécution au Grand Duché de l'arrêté royal belge du 29.5.59. Mém. 1.6.59.

Droits d'Accise

Arrêté ministériel du 1er juin 1959 modifiant le régime d'accise des huiles minérales. Mém. 5.6.59.

NETHERLANDS *Period from May 1st until June 30th, 1959.*

Convention

Decree of the Minister of Finance a.i. of 11.5.59. Modification of the decree of 12.2.49, no. 68 (Stcrt. 1949, no. 33) regulating the executing of the double taxation agreement between the Netherlands and the U.S.A. Stcrt. 1959, no. 89.

Income Tax

Law of 9.4.59, modifying the income tax and the tax on wages. Stb. 1959 no. 146.

Turnover Tax

Decree of 27.6.59, modifying the Decree concerning the refund of turnover taxes in case of export (Stcrt. 1958, no. 120). Stcrt. 1959, no. 122.

Customs

Decree of 27.5.59, concerning the suspension of the levying of import duties on specified sorts of methyl alcohol. Stb. 1959 no. 174.

Decree of 18.6.59 extending the suspension of the levying of import duties, in accordance with the execution of the convention, instituting the European Coal and Steel Community. Dtb. 1959 no. 209.

MISCELLANEOUS - FAITS DIVERS

BRAZIL

New Income Tax

A new law (no. 3470) was issued on 28th November 1958. Some of the principal modifications are outlined below.

Companies may revalue their fixed assets every two years at a coefficient to be fixed by the National Economy Council.

A corresponding increase in capital will be subject to a single tax of 10 per cent.

The limits for tax exemptions for the tax-payer, spouse and children are raised.

The income of residents abroad, or of those domiciled in Brazil who have been absent from the country for more than twelve months, will be subject to a deduction at source of 25 per cent, instead of 20 per cent.

Source: *Bank of London and South America Ltd.*, 17th January, 1959.

Tax Data Required on Invoices to Brazil

It has been announced that the Brazilian Merchant Marine tax which is 5 per cent of ocean freight charges, must be shown after the c.i.f. value on commercial invoices covering shipments to Brazil.

Source: *Foreign Commerce Weekly*, January 12th, 1959

CHILE

Tax changes

Salaries of up to one legal minimum wage (now established for 1959 in Santiago at 690.600 pesos a year) are exempt from the 3½ per cent income tax deducted at source by employers.

Private income is taxed on a sliding scale ranging from 5 to 30 per cent. Provisions are made to allow taxpayers under the 3rd and 4th categories to adjust and revalue their capital, within certain limits, in accordance with the increase in the cost of living, without payment of the tax.

During 1959, however, a surcharge of 10 per cent is to be applied to income tax payable under the 3rd and 4th categories and also on "additional" income tax. The law also introduces a new feature in the assessment of income for taxation purposes. Under this system a minimum income is presumed in relation to a progressive percentage of the fiscal valuation of the property occupied by the taxpayer.

Thus, occupants of properties with a fiscal valuation of between 5 and 15 annual legal minimum salaries are presumed to have an income of 25 per cent of the value of the property; this percentage rises by steps to 50 per cent for occupants of property at over 39 legal minimum salaries.

Other tax modifications include the abolition of the 2 per cent tax on sales of foreign currency, the removal of the stamp tax on cheques, the establishment of a 20 per cent surcharge on all urban property taxes in 1959

and the alteration of purchase tax and the tax on alcohol and alcoholic drinks.

Income tax deducted at source from dividends is unchanged at 18 per cent.

Source: *Bank of London and South America Ltd. Fortnightly Review*, 9th May, 1959.

Registration of Taxpayers

Decree no. 1475 published in the Diario Oficial of 24th February provides that all persons liable to taxes (income tax) must enter their names into the general register of taxpayers at their district tax collector's office. After registration a numbered certificate will be issued to the taxpayer. The presentation of these certificates will be necessary, from 1st July, 1959, for all banking operations, when signing notarial documents involving transfers of money or property, for the payment of salaries, for travelling to Customs free zones in the country or to other countries where no passport is required for Chileans and for stock exchange operations.

Source: *Bank of London and South America Ltd. Fortnightly Review*, 28th March 1959.

Revision of tax laws

A committee is being formed to revise, rearrange and simplify the existing tax laws within the limits imposed by Law No. 13305. The committee will use, as a basis for its work, the report, prepared by the United Nations expert, Mr. H. K. Lidstone, during the presidency of General Carlos Ibañez, and by the Taxation Reform Committee which existed at that time.

Source: *Bank of London and South America Ltd. Fortnightly Review*, 6th June 1959.

CUBA

Income tax

Personal income taxes have been increased effective September 1st, 1958. The increases were proportionately heavier for those in the low income groups than those in the higher income groups.

For unmarried taxpayers there is no tax on the first $ 1.200.— of income. The next $ 1.200.— is taxed at 2 per cent, the next $ 1.200.— at 3 per cent. The rates are not steeply graduated and the maximum rate of 31,5 per cent only applies to income in excess of $ 100.000.—.

For married taxpayers who file joint returns the schedule shows a similar moderate progressiveness and income in excess of $ 100.000.— is taxed at the maximum rate of 28.75 per cent.

Source: *Canadian Tax Journal*, November/December 1958.

EGYPT

Tax on motion pictures

Egypt has levied a special tax on motion pictures to be collected by means of stamps, affixed to contracts, written documents, and printed matter related to film production, distribution, import, export and projection.

The tax ranges from 10 to 80 milliems ($ 0.03 to $ 0.23).

Source: *Foreign Commerce Weekly*, April 27th, 1959.

EIRE

The New Budget

The Finance Minister of the Republic of Ireland, announced a reduction in the standard rate of income tax from 7 sh 6 d to 7 sh 0 d in the £. The first £ 100 is now chargeable at 2 sh 9 d in the £ and the next £ 100 at 5 sh 6 d. The exemption level for application of surtax will be raised from £ 1500 to £ 2000, but in arriving at this figure there will be deducted the personal allowances. This will extend to the single personal allowance of £ 150 and the whole of the married allowance of £ 310. In addition to the initial allowances of one-tenth on industrial buildings (including hotels) an annual allowance of 2 per cent will be introduced from April 6th, 1960. As regards plant and machinery, the obsolescence allowance will no longer be dependent on the asset being replaced. Thus a balancing allowance will be available.

Provisions similar to those in force in the United Kindom are to be made in respect of the acquisition of patent rights and it seems that capital sums received as the proceeds of patent rights will likewise become taxable. The repair of foreign ships in Irish shipyards is to be treated as eligible for the special relief on exported goods, granted by the Finance (Miscellaneous Provisions) Act, 1956.

Other income tax reliefs concern the cost of recruiting and training local staff before a new industry commences trading; the extension of the allowance for children of 16 receiving full-time education to those who are undergoing apprenticeship to a trade, profession or vocation; and the exemption of the "capital" element in purchased life annuities. The minister's proposals also cover the implementation of the amended double taxation agreement with the United Kingdom, which aims at countering the device of "dividend stripping" in favour of a resident in one country by a company resident in the other.

Source: *Taxation,* April 25th, 1959.

FRANCE

Revision des bilans

Le Décret No. 59-289 du 14 février 1959 fixe de nouveaux coefficients de réévaluation pour l'application de la revision des bilans prévue à l'article 45 du C.G.I.

Source: *Bulletin officiel des contributions directes et du cadastre,* 25 février, 1959, partie I no. 226, partie II no. 750.

Tax Reform

The Brasart-Committee instituted to study the taxation system of the surrounding countries and to make recommendations about tax reform in France, has published its report. This report deviates widely from the original design of the government. In the next issue fuller reference will be made to this report and the definite Government proposals.

Publication de la surtaxe progressive à la charge de chaque redevable

L'article 243 du Code général des Impôts prévoit le dépôt, en mairie, de la liste des contribuables assujettis respectivement à la taxe proportionnelle, à la surtaxe progressive et à l'impôt sur les sociétés. Mais ces listes ne comportaient jusqu'à présent aucune indication relative au montant des impositions.

L'article 9 de l'ordonnance no. 59-246 du 4 février 1959 modifiant l'article 243 susvisé prévoit qu'en ce qui concerne la surtaxe progressive, la liste sera complétée désormais par le montant de l'impôt mis à la charge de chaque

redevable et par l'indication du nombre de parts retenu pour l'application du quotient familial.

La liste ainsi complétée n'indiquera pas les revenus ou bénéfices imposables de chaque redevable, mais en fait, ce renseignement pourra être reconstitué à partir des éléments donnés.

Rappelons que la liste en cause est déposée dans les mairies des communes où sont établies les impositions et tenue à la disposition des seuls contribuables de la commune.

D'autre part est interdite la publication de toute indication quelconque se rapportant à ces listes et visant des personnes nommément désignées.

Source: *Feuillets de documentation rapide, Francis Lefebvre*, 9 février 1959.

Exonération sous condition de remploi des plus-values sur cession de valeurs mobilières detenues depuis moins de deux ans:

On sait que l'article 34 de l'ordonnance du 29 décembre 1958 a ramené de cinq à deux ans le délai de conservation exigé pour que les valeurs mobilières figurant dans le portefeuille d'une entreprise soient considérées comme faisant partie de l'actif immobilisé et puissent ainsi, en cas de cession en cours d'exploitation, donner lieu à l'exonération de la plus-value sous condition de remploi prévue à l'article 40 du Code général des impôts.

L'article 8 de l'ordonnance du 4 février 1959 relative au marché financier apporte à cette règle, mais cette fois à titre temporaire seulement, un nouvel assouplissement.

Aux termes du nouveau texte, le bénéfice des dispositions de l'article 40 du C.G.I. est étendu aux plus-values qui seront réalisées jusqu'au 31 décembre 1959 lors de la cession en cours d'exploitation de valeurs mobilières même détenues depuis moins de deux ans dans le patrimoine de l'entreprise.

Source: *Feuillets de documentation rapide, Francis Lefebvre*, 9 février 1959.

GERMANY

Review of double taxation negociations

1. **EGYPT**
   The double taxation convention with the United Arabian Republic will be signed in the near future. It will however apply only to the Egyptian Province of the United Arabian Republic.

2. **BELGIUM**
   The negociations in connection with the convention with Belgium will not be continued, before the results of the Belgian tax reform will be known.

3. **CEYLON**
   The signing of the double taxation convention with Ceylon has been delayed to wait for the planned tax reform in Ceylon.

4. **DENMARK**
   The negociations in connection with a new double taxation convention will be concluded in the near future.

5. **FRANCE**
   A draft convention with France will be signed in the near future.

6. **GREECE**
The negociations with Greece are close to an end.

7. **GREAT BRITAIN**
The negociations connected with revision and completion of the double taxation convention with Great Britain of August 18th, 1954, have been continued. Moreover a double taxation agreement in the field of estate-duty is under consideration.

8. **INDIA**
A double taxation agreement with India was signed on March 18th 1959. It will be presented shortly to the legislative assemblies of the two nations.

9. **EIRE**
The negociations connected with a double taxation agreement with Eire will shortly be continued and concluded.

10. **CANADA**
Negociations connected with revision and completion of the double taxation agreement with Canada of June 4th, 1956, have been proposed.

11. **LUXEMBURG**
A double taxation agreement with Luxemburg was signed on August 20th, 1958, and has been presented to the legislative assemblies for ratification.

12. **NETHERLANDS**
The double taxation agreement, signed on August 18th, 1958, was replaced by a new agreement, that gives a different regulation of taxation of capital revenues.
This new agreement was signed June 16th, 1959.

13. **NEW ZEALAND**
Negociations in connection with the conclusion of a double taxation agreement with New Zealand will begin in the near future.

14. **NORWAY**
A double taxation agreement with Norway was signed on November 18th, 1958, and it has been presented to the legislative assemblies for ratification.

15. **PAKISTAN**
The double taxation agreement with Pakistan, signed on August 17th 1958, needed a change, in relation to the exchange of notes, anexed to the agreement. The agreement will shortly be presented to the legislative assemblies.

16. **SWEDEN**
A double taxation agreement with Sweden was signed on April 17th, 1959. It will be presented to the legislative assemblies.

17. **SWITZERLAND**
On the 20th of March 1959 a further supplementary protocol has been signed, actually adjusting the agreement to the Tax Amendment Act 1958. This supplementary protocol has been presented to the legislative assemblies for ratification.

18. **UNION OF SOUTH AFRICA**

Negociations in connection with the conclusion of a double taxation agreement will begin in the near future.

19. **U.S.A.**

Negociations on revision and completion of the German-American double taxation agreement of July 7th, 1954, are going on. Moreover an agreement in the field of estate duty is under consideration.

Source: *Aussenwirtschaftsdienst des Betriebsberaters.* Vol. 5 no. 5, Mai 30 th, 1959.

HAITI

Income tax

The 1951 income tax law has been superseded by a statute enacted in September, 1958. The new measure imposes a gross receipts tax and an income tax on all persons carrying on business in Haiti. The gross receipts tax is particularly interesting, because it is to be based on a regression rate schedule.

The first $ 100.000 of gross receipts will be taxed at 1 per cent, the nest $ 400.000 at 0,5 per cent and gross receipts in excess of $ 500.000 will be taxed at 0,25 per cent.

Income tax rates will range from 5 per cent on the first $ 2000 to a maximum of 40 per cent on taxable income in excess of $ 100.000.

As the gross receipts tax is to be integrated with the income tax, the taxpayer will, if the income tax payable is greater than the gross receipts tax, be liable for the amount of the difference.

If the income tax is less than the gross receipts tax, the income tax liability is waived. Accordingly the total tax liability of persons carrying on business in Haiti is the greater of the income tax or the gross receipts tax.

In computing the income tax liability all "reasonable" expenses are deductible. An interesting sidelight is that where the gross receipts of an enterprise exceed $ 1.000.000 not more than $ 12.000 is deductible in respect of the aggregate of salaries paid to management.

The income tax rules provide further for quite liberal depreciation allowances and also permit a deduction for re-invested profits within prescribed limits.

Source: *Canadian Tax Journal,* November/December 1958.

ISRAEL

Tax relief for foreign investors and double taxation agreement

An amendment to the Law for the Encouragement of Capital Investment is proposed to exempt from income tax also the dividends, received from investments "in approved enterprises", during the first five years. Hitherto only undistributed profits were exempt from income tax, and dividends were taxed at a maximum rate of 25 percent.

Furthermore the tax free period of five years will not be the first five years of operation but the first five years, after the firm first begins showing a profit.

A draft agreement with the U.S. concerning the avoidance of double taxation was signed recently.

Source: *Business Diary,* May 14th, 1959.

JAMAICA

Income tax

A number of income tax amendments which will reduce the personal income tax burden has been adopted.

The basic rate schedule has been revised by reducing the rates which apply to taxable income of less than £ 1.050. At the same time the deduction for each dependent child has been increased to £ 60.

The surtax rates remain unchanged, but the surtax exemption is increased from £ 2000 to £ 2.400.

Source: *Canadian Tax Journal*, November/December 1958.

KENYA

The New Budget

The East African Budget, recently introduced into the Kenya Government indicates a trend towards increased overall taxation, with the emphasis to shifting from direct to indirect methods, standard rates remain unchanged. Both the emergency surcharge of 75 cents per £ on all chargeable incomes over £ 800 a year and death duties on all estates have been abolished.

Source: *The Accountant*, June 6th, 1959. Vol. CXL no. 4407.

NICARAGUA

Import Duties and Income Tax Rates

Nicaragua has enacted a law which increases import duties on many commodities, income tax rates and consular fees on import documents and establishes a new 6 per cent tax on airplane tickets. Income rates now range from 4 per cent on the first C $ 40.000 of taxable income to a maximum of 30 per cent on any part of net taxable income in excess of C $ 2.000.000.

Source: *Diario Official*, March 13th, 1959. *Foreign Commerce Weekly*, April 27th, 1959.

NORTH AFRICA

Morocco salary tax levied in Tangier

The Morocco tax on salaries, remuneration, and allowances (prélèvement sur les traitements publics et privés, les indemnités et émoluments, les salaires, les pensions et les rentes viagères), formerly collected only in the ex-Southern or former French Zone of Morocco and ex-Northern or former Spanish Zone, has been extended to Tangier, beginning October 1st.

This tax is the first income tax to be levied in Tangier. Formerly taxes levied in Tangier were limited to the "patente" tax, a commercial licence fee, an urban real estate tax, and some import, export and consumption taxes.

Source: *Foreign Commerce Weekly*, November 10th, 1958.

PERU

New import surcharge; Internal tax on luxury goods

The government has established an additional surcharge on many imports of up to 25 per cent of their c.i.f.-value and has imposed an internal tax, also up to 25 per cent on certain luxury merchandise not covered by the additional import surtax.

Source: *El Comercio*, April 18th, 1959. *Foreign Commerce Weekly*, April 27th, 1959.

Taxation changes

Important changes in the Peruvian tax system were effected by three laws enacted in December (see *Bull.* vol. XIII nr. 2, page 80).

The most important of these statutes, Law 13051 of December 31st, 1958, repealed the excess profits tax but increased the normal tax on business profits, the complementary tax on bearer shares and bonds, and the annual license tax Law 13047 of December 19th, 1958 provides for increased stamp taxes while the income base for computing the alien tax has been repealed by Law 13053 of December 31st, 1958.

Details are as follows:

The old scale of rates of the normal tax on business profits, which ranged from 7 per cent on the first 10.000 soles up to 20 per cent on that part of net income in excess of 100.000 soles, will continue to apply to the profits of mining companies. All other business enterprises will be subject to the new scale effective January 1st, 1959, which ranges from 5 per cent on the first 10.000 soles up to 35 per cent on that part of the net income in excess of 5.000.000 soles.

The new statute permits all those subject to the normal business profits tax to revalue fixed assets on a one-time basis and under prescribed conditions.

The complementary tax on dividends from bearer shares, earlier fixed at 19 per cent, has been increased to 25 per cent, while the complementary tax on income from bearer bonds has been increased from 9 to 16 per cent.

The surcharge on the stamp taxes are increased to 50 per cent.

The annual patente tax will now range from 2.400 to 10.000 soles (earlier from 1.200 to 5.000 soles).

Source: *Foreign Commerce Weekly*, January 26th, 1959.

SOUTH AFRICA

New Taxes

The National Government in its annual budget proposed company taxes on hitherto exempt building societies and long-term insurance companies. The Finance Minister in his budget speech said the new rate would be six shillings in the pound.

Building Societies will pay company tax in the same way as commercial banks and trust companies. The long-term insurance companies will pay tax at company rate on their income from investments. In addition to the initial allowance for machinery (from July 1st, 1959, 20 percent), an annual allowance of 2 percent will be introduced from the same date.

The Minister announced also tax concessions for children, pensioners and gold mine companies that mine deep in the ground.

Source: *Foreign Tax Weekly Bulletin*, March 25th, 1959.

SWEDEN

Double taxation convention with Sweden

On 29th July 1958 a double taxation convention has been concluded between Egypt and Sweden. For the original thereof see page. 241 of the present issue.

THAILAND

Investment Rules

New regulations on foreign investments issued as a decree of December 5, 1958, has been established in Thailand. The most important features are:

An income tax holiday varying from 2 to 5 years will be approved for new enterprises.

Exemption from or reduction of import duties may be granted some raw materials.

Exemption from or reduction of export duties may be granted certain products.

Source: *Foreign Commerce Weekly*, January 12, 1959

UNITED STATES OF AMERICA

Technical Amendments Act of 1958

In the area of federal taxation, the most important development of the past year was the adoption of the Technical Amendments Act of 1958.

The Congress voted to combine this measure with the Small Business Tax Revision Act, passing both as one Act.

As regard the Technical Amendments Act the provisions of this Act were directed to provisions of the Revenue Code resulting in hardships. Some of the major provisions cover: adjustments required by changes in accounting; improvements on leased property; election permitting the income of closely held corporations to be taxed to their shareholders.

Tax Relief for Small Business

The Act also permits small business to reduce their taxable income by deducting an extra percentage for depreciation of an asset in the year of purchase. This liberalized depreciation allowance only applies to $ 10.000 of investment outlay in any one year, or $ 20.000 in the case of a joint return.

Other provisions are:

Permit estate taxes in certain closely held business to be paid in ten equal installments.

Increase from $ 60.000 to $ 100.000 the amount of earnings, which may be accumulated without penalty.

Allow businesses to get retroactive tax refunds for three previous years, instead of two, as a result of net operating losses.

Provide that more liberal deductions can be taken for losses on investments in small firms.

Source: *The Journal of Accountancy*, January 1959.

A course in Teaching Taxes in Texas

To provide a better understanding of the tax structure and the preparation of tax returns a course is being offered to high schools and colleges in Texas by the Regional Office of the I.R.S.

A 28-minute kinephoto TV.film on income taxes is also being offered to local TV.stations.

Source: *The Journal of Taxation*, February 1959.

VENEZUELA

New income tax law

A new income tax law was enacted by the Venezuelan Junta on December 19th, 1958.

The most important of the changes instituted by the new income tax law is an increased scale of rates for payment of the surtax. The old scale ranged from 1,5 per cent on the first 10.000 bolivares up to 26 per cent on net surtax income in excess of 28 million bolivares. The new scale of rates ranges from 2 per cent on the first 8.000 bolivares up to 45 per cent on net surtax income in excess of 28 million bolivares, as per January 1958.

For most taxpayers other than those engaged in petroleum or other mineral extraction, these increased surtax rates are softened by a new pro-

vision for lower surtaxes on profits which are reinvested in the taxpayer's business.

The new law will lower the amount of the computed surtax in a range of from 10 to 25 per cent depending upon the amount of net income reinvested as follows:

percent of net income reinvested	Percent of surtax reduction
10—20	10
20—30	11
30—40	12
40—50	13
50—60	15
60—70	17
70—80	19
80—90	22
90—100	25

Non-residents receiving income from professional activities (actors, athletes and musicians as well as the liberal professions) will be subject to withholding at a rate of 12 per cent in place of the former rate of 7 per cent.

Wage and salary income received by non-residents will henceforth be subject to withholding at a rate of 6 per cent (was 4 per cent).

After all the gross receipts tax has been repealed, however, it is reported that thought is being given to a substitute levy.

Source: *Foreign Commerce Weekly*, January 19th, 1959.

TAX AGREEMENTS

United Kingdom - Denmark

An exchange of notes extending the convention for the avoidance of double taxation and the prevention of fiscal evasion of March 27, 1950, to certain overseas territories of the United Kingdom has been published as Cmnd. 705.

Source: *British Tax Review*, April 1959.

United Kingdom - United States

The double taxation relief convention between the United Kingdom and the United States appliés to Jamaica as from January 1st, 1959.

Source: *The Accountant*, January 17th, 1959.

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III

UNITED KINGDOM

Residence of Company

The English High Court considered matters affecting the determination of the residence of a company, for the purpose of United Kingdom income tax.

In the ascertainment of profits which are to be subject to United Kingdom income tax, allowance is made for certain payments, known as "subvention payments" which are made by one company to an associated company resident in the United Kingdom.

A wholly owned English subsidiary of an English parent company made "subvention payments" to three other subsidiaries, incorporated in East Africa. For those payments to be allowed as deductions, in determining the English subsidiary's taxable income, it would be necessary for the East African companies to be residents of the United Kingdom. In the case of *Bullock (Inspector of Taxes)* v. *Unit Construction Co. Ltd.* (1958) 3 All E.R. 186, the question for decision was therefore whether these East African companies were, in fact, United Kingdom residents.

The East African companies, incorporated and registered in Kenya, carried on business in that country. The articles of association provided that the management and control of the companies were in the hands of the directors (who were all residents of Kenya) and that director's meetings could be held anywhere outside the United Kingdom. All this was arranged, originally, in order that it might be established clearly that the companies were solely resident in Africa, and thus any profits earned would not be subject to United Kingdom tax. Later, however, the situation changed. The companies suffered losses, and it was decided that the directors of the parent company should take over the management and control of the companies' activities. The directors of the African subsidiaries were elected on the instructions of the parent company, and any decision to remove directors was taken by the London board. The minutes of the local directors' meetings recorded only formal business or the implementation of decisions of the parent company's directors. In fact, the directors of the African companies did not manage and control the business, and if they had attemped to act contrary to the instructions of the London board they would have been removed from office.

It was admitted that the African subsidiaries were resident in East Africa. Now it was contended, having regard to the fact that the subsidiary companies' directors were under the authority of the directors of the parent company, that the central management and control of the African subsidiaries were in the United Kingdom, and therefore that the companies were also resident in the United Kingdom.

The Court sought to discover where the "controlling power and authority" of the company was to be found, and considered that it was necessary to determine where was the authority which could properly be exercised within the framework of the constitution of the companies concerned. It decided that the superior or directing authority did not rest with the parent company's board. According to the constitution of the African companies, the English board had no authority over the subsidiaries' boards.

Thus, although as a matter of fact the African companies' directors accepted the instructions of the directors of the parent company, and it was in their

interests so to do, yet the controlling power and authority were invested according to the Articles of Association of the African companies in the local Boards of directors and it was therefore held that the place of residence of the companies was East Africa. The deduction claimed for the "subvention payments" was accordingly disallowed.

Source: *The Australian Accountant*, February 1959.

Re Emery's Trusts. (Avoiding Foreign Tax.)

No Court Aid for Avoiding Foreign Tax.

When a husband puts investments into his wife's name there is a presumption in English equity that he intends the transaction as a gift, and that accordingly the wife does not hold the investments in trust for him. By the same token a Court of equity will allow him to give evidence to rebut this presumtion of advancement. It seems from the judgment of Wynn-Parry, J., in *Re Emery's Trusts* that such assistance will be refused by the Court where the transaction is part of a scheme to avoid tax, *even if the tax is foreign tax* [1]). In that case a husband who was not a citizen of, nor resident in, the United States, bought some investments there in his wife's name, taking a wide power of attorney from her. His lordship accepted as a fact that the husband's intention throughout was to retain beneficial ownership of half the investments. However, the husband had not disclosed the fact of his interest in the United States, with the result that the witholding tax there directed against non-resident aliens had not been deducted. Accordingly, the husband was in breach of United States law.

The wife having withdrawn the securities without the husband's knowledge or consent (as she was legally entitled to), the husband had brought an action against her to establish his half-share interest. His lordship held that in bringing the action the husband was asking for equity but had failed to do equity himself. Accordingly the action was dismissed.

Source: *The Accountant*, March 7th, 1959.

GERMANY

Presumptive assessment in some cases of foreign trade relations under § 30 E.St.G.

The "Bundes Finanz Hof" has given an important decision about the presumptive assessment of profits under § 30 EStG in cases that particular direct or indirect economic relations of a German firm to a person who is in Germany wholly or partly exempt from taxation, offer the opportunity to reduce the taxable income of the German firm concerned.

It was held incompatible with art. 3 of the Constitution, to use the mere possibility of profit reduction in case of foreign relations for the application of a presumptive assessment.

Source: *Der Betrieb*, June 3rd, 1959.

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[1]) Italics supplied (Editor).

BELGIQUE - REVENUS
REALISES ET IMPOSES A L'ETRANGER

Taxe professionnelle - Réduction au cinquième de la taxe correspondant aux revenues réalisés et imposés à l'étranger - l'article 35, § 11, n'exige à l'étranger aucun établissement ou siège pour application de ce paragraphe - rejet de l'interprètation de l'administration belge.

Une société, ayant son siège en Belgique, reçoit des dividendes, des intérêts etc. d'une source américaine. Selon une circulaire administrative la réduction au cinquième de la taxe correspondant proportionnellement aux revenus réalisés et imposés à l'étranger, ne soit applicable qu'en cas que les revenus résultent d'un établissement ou siège, soumis aux impôts étrangers. A l'avis de la Cour d'Appel le texte de l'article 35, § 11, ne donne pas lieu à une telle limitation. Par l'imposition seulement à la "Withholding Tax", les bénéfices litigieux doivent être considerés comme ayant supporté le régime fiscal des États-Unis.

Attendu que la société requérante fait grief à l'administration d'avoir taxé au taux plein et non au taux réduit prévu par l'article 35, § II, des lois coordonnées relatives aux impôts sur les revenus, des revenus constitués par:

a) des dividendes et intérêts d'obligations de sa filiale;. et des dividendes d'autres sociétés constituées et opérant aux États-Unis;
b) des intérêts sur Fonds déposés à New-York et le profit de l'escompte du papier commercial américain;
c) des bénéfices provenant de la réalisation à New-York de valeurs mobilières américaines en dépôt chez les banquiers de la requérante en cette ville;

Attendu que l'article 35, § II des lois coordonnées énonce que la taxe qui correspond proportionnellement aux revenus réalisés et imposés à l'étranger est réduite au cinquième;

A. - QUANT À LA RÉALISATION DES REVENUS:

Attendu que c'est à tort que l'État belge prétend que pour bénéficier du taux réduit, les revenus doivent avoir été réalisés dans un établissement ou siège quelconque situé à l'étranger;

Attendu, en effet, que cette condition n'est pas prévue par la loi;

Que le texte de celle-ci est clair et qu'il n'y a pas lieu d'avoir égard à l'interprétation qu'en donne une circulaire administrative, ainsi que le voudrait l'État Belge;

Attendu que ce dernier soutient que les revenus litigieux ont été réalisés non à l'étranger, mais en Belgique, où se trouve le siège social de la société requérante;

Attendu qu'à bon droit, celle-ci fait observer que si cette prétention était fondée, elle aboutirait inévitablement, vu son caractère général et exclusif de toute distinction, à éliminer pour tous les établissements belges ayant leur siège social en Belgique la règle exprimée par l'art. 35, § II des lois coordonnées (et en matière de taxe mobilière par l'art, 34, § 1er, 4°) de la réduction du taux des taxes frappant les revenus réalisés à l'étranger;

Attendu que cette prétention de l'État belge repose sur une confusion entre, d'une part, la nationalité d'une société, la concentration des bénéfices au siège social et l'assujettissement de cette société à l'impôt sur les revenus en Belgique et, d'autre part, la localisation des bénéfices imposables au point de vue de la détermination du taux des taxes;

Attendu, certes, que le lieu du siège social d'une société située en Belgique la soumet aux impôts belges quel que soit le lieu où elle a son siège d'exploitation et sans distinguer le pays où sont réalisés les profits imposables;

Que, cependant, ce principe d'imposabilité en Belgique laisse intactes les règles particulières régissant les taux de la taxe professionnelle et spécialement la prescription de l'art. 35, § II des lois coordonnées basée sur l'endroit de la réalisation des bénéfices imposables;

Attendu qu'en l'espèce, les conditions dans lesquelles furent obtenus les revenus litigieux doivent faire décider qu'ils ont été réalisés à l'étranger, bien que les décisions relatives aux opérations qui les ont procurés aient été prises par le conseil d'administration siégeant à Bruxelles;

Qu'une preuve supplémentaire de la réalisation des revenus à l'étranger résulte de ce qu'ils y ont été imposés, ainsi qu'il est dit ci-après;

B. - QUANT À L'IMPOSITION DES REVENUS A L'ÉTRANGER:

Attendu qu'il n'existe de contestation sur l'imposition des revenus à l'étranger qu'à l'égard des bénéfices provenant de la réalisation aux États-Unis de titres étrangers;

Attendu que le taux réduit de taxation a été instauré pour favoriser la réalisation par les sociétés belges d'opérations à l'étranger en considérant que les profits résultant étaient frappés d'imposition à l'étranger;

Que, cependant, la loi ne s'occupe pas de la nature et des modalités d'imposition à l'étranger;

Attendu que, pour que la société requérante puisse bénéficier des dispositions de l'art. 35, § II des lois coordonnées, il suffit que les revenus étrangers aient subi le régime fiscal qui leur est applicable à l'étranger;

Attendu qu'en l'espèce, les revenus des titres américains appartenant à la requérante dont la réalisation a produit une partie des bénéfices litigieux ont été annuellement imposés à la withholding tax;

Que si le bénéfice résultant de la vente de ces titres aux États-Unis est exempt d'impôts, cette situation provient de dispositions de la législation américaine, en vertu desquelles la taxe sur de tels bénéfices (capital gains tax) est remplacée pour les sociétés étrangères *n'y faisant pas d'affaires* par la withholding tax qui frappe leurs gains, bénéfices et revenus annuels et qui est supérieure à celle qui atteint les gains des sociétés américaines;

Attendu que les bénéfices litigieux doivent donc être considérés comme ayant supporté le régime fiscal des États-Unis;

PAR CES MOTIFS LA COUR,

Statuant contradictoirement,

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 fondé;

Annule la cotisation litigieuse.

Condamne l'État belge (Département des Finances) à rembourser à la société requérante toute somme qui aurait été indûment perçue sur base de la cotisation ainsi annulée, et ce avec les intérêts moratoires conformément à l'art. 74 des lois coordonnées. Bruxelles, le 28 juin 1958.

IIe Chambre A - Prés.: M. Bernard - Rapp.: M. Mahaux - Min. Publ.: M. Gevers, Avocat Général.

BELGIQUE - CONVENTION FRANCO-BELGE DU 16 MAI 1931

Taxe professionnelle. - Convention franco-belge. - Sujet français exerçant son activité en Belgique. - Touchant des appointements en France et en Belgique. - Imposable en Belgique sur les rémunérations allouées tant en France qu'en Belgique.

L'article II [1]) de la convention franco-belge du 16 mai 1931, prévoit que les rémunérations quelconques des appointés sont imposables dans celui des deux États où les intéressés exercent leur activité.

La circonstance que les rémunérations recueillies en France auraient été soumises à l'impôt dans ce pays, ne peut être prise en considération, alors qu'il est constant que durant l'exercice en cause le contribuable n'a exercé son activité qu'en Belgique.

C'est à bon droit que l'État belge a soumis à la luxe professionnelle toutes les rémunérations allouées pendant cette periode, sans distinguer si elles ont été payées en France ou en Belgique.

Attendu que le requérant est sujet français et a conservé son domicile en France jusqu'au 24 août 1954; qu'à partir de cette date jusqu'au 29 mars 1955, il fut domicilié à Bruxelles;

Attendu qu'il était ingénieur à la société anonyme «X» à Paris, qui possède en Belgique une société filiale;

Attendu qu'à partir du 1er février 1953, il a été détaché du siège de Paris et a travaillé à Bruxelles, à la société filiale;

Attendu que la société française a continué à lui payer en France des appointements mensuels de 100.000 francs français, tandis que la société belge lui allouait 1.500 francs belges mensuellement et lui remboursait ses frais de séjour et de déplacements;

Attendu que dans sa réclamation, le requérant a précisé que la société française a débité sa filiale belge de la contrevaleur des appointements payes en France;

Attendu que l'administration a compris dans la base imposable des exercices litigieux, les rémunérations obtenues par le requérant tant en France qu'en Belgique;

Attendu que l'article 11 de la convention franco-belge du 16 mai 1931 approuvée par la loi du 28 décembre 1931, prévoit que les rémunérations quelconques des appointés sont imposables dans celui des deux États où les intéressés exercent leur activité;

Attendu qu'il est constant qu'entre le 1er février 1953 et le 31 décembre 1954, le requérant n'a exercé son activité qu'en Belgique; que c'est donc à bon droit que l'État belge (département des finances) a soumis à la taxe professionnelle toutes les rémunérations allouées au requérant pendant cette période, sans distinguer si elles lui ont été payées à Paris ou à Bruxelles;

Attendu que la circonstance que les rémunérations recueillies en France auraient été soumises à l'impôt dans ce pays, ne peut être prise en considération, car elle va à l'encontre des dispositions de l'article 11 de la convention franco-belge précitée;

Attendu d'autre part, que le requérant avait son domicile en Belgique depuis le 24 août 1954 et l'y a conservé jusqu'au 29 mars 1955; qu'il était donc soumis à l'impôt complémentaire personnel pour l'exercice 1955 en

vertu de l'article 37 des lois coordonnées relatives aux impôts sur les revenus;

Attendu qu'il résulte des notes de taxation jointes au dossier qu'il a été tenu compte des impôts versés à la source par la société filiale pour le calcul des impôts restant litigieux;

Par ces motifs, la Cour, statuant contradictoirement; entendu en audience publique le rapport de M. le conseiller Mahaux et l'avis conforme de M. l'avocat général Gevers; reçoit le recours; le déclare non fondé; en déboute le requérant et condamne celui-ci aux dépens.

Du 22 septembre 1958. - Cour d'appel de Bruxelles. - IIe ch. A. - *Prés.:* M. Bernard. - *Min. publ.:* M. Gevers. - *Plaid.:* Me Lebon.

Source: *Journal Pratique de Droit Fiscal et Financier*, 33 - no. 3.

[1]) L'article II est rédigé comme suit: «les rémunérations quelconques des salariés et appointés sont imposables dans celui des deux États où les intéressés exercent leur activité».

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DOCTRINA. — LEGISLACIÓN (nacional y extranjera). — TEXTOS Y DOCUMENTOS LEGISLATIVOS de los distintos países, principalmente de Hispano-América. — REVISTA DE REVISTAS (extractos de artículos aparecidos en revistas jurídicas del país y del extranjero). — INFORMACIÓN (congresos, conferencias y reuniones nacionales e internacionales).

Suscripciones a: Instituto de Derecho Comparado, calle de San Ildefonso, no. 28, MÉXICO, D.F.

Precio de la suscripción anual: 4,00 dólares.

BELGIQUE - SUCCESSION D'UN ÉTRANGER

Succession. Dévolution. Etranger décédé en Belgique. Application de la loi belge en ce qui concerne les immeubles en Belgique. Application de la loi du dernier domicile en ce qui concerne les meubles.

En ce qui concerne le régime successoral auquel est soumise la succession d'un étranger décédé en Belgique, il faut distinguer entre les biens immeubles qu'il délaisse dans ce pays et sa succession mobilière: la dévolution des immeubles en Belgique est réglée par la loi belge; la dévolution des meubles est réglée par la loi du dernier domicile du défunt.

Jugement du tribunal de première instance de Bruxelles du 17 décembre 1958.

I. - *Quant à la recevabilité de l'action:*

Attendu que l'action des demandeurs originaires, aujourd'hui opposants, a pour objet la liquidation et le partage de la succession de feu Wadih Mansour, décédé à Bruxelles, le 22 octobre 1955, et qu'ils prétendent, en leur qualité de collatéraux du défunt et en se fondant sur la loi nationale de celui-ci, avoir droit à une réserve d'un quart dans la dite succession;

Attendu que les défendeurs *sub* nos 4, 5 et 6 prétendent que, de toute façon, l'action doit être déclarée non recevable quant à la succession immobilière délaissée en Belgique par le défunt;

Attendu qu'il est constant que celui-ci était de nationalité ottomane lors de son installation en Belgique en 1912; que depuis lors il a successivement sollicité l'obtention de diverses nationalités étrangères, et à deux reprises a demandé à être naturalisé Belge; qu'il est mort en 1955 pendant que sa demande était à l'examen de l'autorité parlementaire seule compétente en la matière; qu'il résulte à suffisance de droit des documents versés aux débats qu'ayant échoué dans ses diverses tentatives en ce qui concerne les états nés du démembrement de l'Empire ottoman, le défunt doit être considéré comme étant lors de son décés de nationalité turque;

Attendu qu'en ce qui concerne le régime successoral auquel est soumise la succession d'un étranger décédé en Belgique, il faut distinguer entre les biens immeubles qu'il délaisse dans ce pays et sa succession mobilière;

Attendu en ce qui concerne les immeubles que, en vertu des dispositions du Code civil en son article 3, qui sont d'ordre public, les immeubles même possédés par des étrangers sont régis par la loi belge; que la doctrine et la jurisprudence en ont déduit avec raison, que la dévolution successorale des immeubles situés en Belgique est réglée par la loi belge (*Rec. gén. de l'Enreg. el du Not.*, 1956, pp. 19 et suiv.; cf. DONNAY, no. 80 et réf. citées; *Rép. prat. du d. b.*, v° Conflit des lois, n° 43; Civ. Anvers. 16 juin 1950, *Rechts. Weekbl.* 1950, n° 509; Civ. Courtrai, 8 mars 1951, *Tijds. Not.*, 1951, 87; LAURENT. *Dr. civ. intern.*, t. VI, n° 130 et suiv.; DE PAGE, t. IX, n° 26);

Attendu que c'est donc à bon droit que le jugement dont opposition a déclaré non recevable l'action des demandeurs, ceux-ci n'ayant pas la qualité d'héritiers légaux du défunt; qu'en effet, en ce qui concerne les immeubles litigieux, la dévolution successorale est attribuée par la loi belge aux enfants du *de cujus* et dans une certaine mesure, au conjoint survivant (droit d'usu-

fruit successoral); qu'au surplus il convient de ne pas perdre de vue le testament du *de cujus* dont toutes les dispositions conformes au droit belge sont valables et doivent être exécutées par les héritiers; que le défunt n'a fait aucun legs au profit des demandeurs;

II. - *Quant au fond:*

Attendu qu'il faut régler le sort de l'importante fortune mobilière délaissée par le *de cujus;*

Attendu, en ce qui concerne les meubles, que leur dévolution doit être réglée par la loi du dernier domicile du défunt (cf. DONNAY, n° 82 et réf.; NIBOYET, t. II, nos 221 et 601; DE VOS, *Conflit des lois*, t. Ier, nos 317 et 318; *Rec. de l'Enregistr.*, 1956, pp. 19 et suiv.; Civ. Anvers, 12 mai 1944 et Bruxelles, 22 juin 1949 (confirmant le susdit jugement); Civ. Anvers, 16 juin 1950, *Rechts. Weekbl.*, 1950, 509; Civ. Courtrai, 8 mars 1951, *Tijds. Not.*, 1951, 87);

Attendu que la thèse du dernier domicile a enfin été proclamée par la Cour de cassation en son arrêt du 28 mars 1952, sur pourvoi contre l'arrêt précité du 22 juin 1949; qu'il convient donc de décider que c'est la loi belge qui doit en principe régir la succession mobilière du *de cujus*, à la condition que celui-ci fût domicilié en Belgique le jour de son décès;

Attendu qu'il en est bien ainsi en l'espèce; qu'il y a lieu de trancher cette question en prenant comme critères: 1° le fait du domicile, élément matériel; 2° et la volonté de l'intéressé, élément intentionnel;

Attendu qu'en fait il ne peut être contesté que l'intéressé s'est établi en Belgique depuis 1912 et ne l'a jamais quittée depuis cette époque lointaine jusqu'à son décès; qu'il y a installé le siège de ses affaires qui se sont révélées fructueuses, et le centre de ses intérêts;

Attendu qu'il s'est marié deux fois à des femmes belges, et que ses deux filles ont épousé des citoyens belges et sont de nationalité belge; que le *de cujus* avait donc en Belgique aussi le centre de ses affections; que l'élément de fait qui entre dans la conception du domicile légal se trouve donc réalisé en l'espèce;

Attendu qu'il en est de même pour l'élément intentionnel;

Attendu que l'on ferait vainement valoir que le *de cujus* avait d'abord demandé d'être Syrien ou Jordanien, plutôt que d'être Belge; qu'il faut prendre en considération qu'étant né Turc, et ressortissant d'un pays ennemi de la Belgique pendant la guerre 1914-1918, il aurait sans doute été fort difficile à l'intéressé de devenir Belge avant une assez longue période de probation;

Attendu qu'il n'en reste pas moins vrai qu'il a cherché dès la fin de la première guerre à ne plus être sujet turc, c'est-à-dire ressortissant d'un État ancien ennemi de son pays d'adoption;

Attendu qu'à deux reprises, le *de cujus* a demandé la naturalisation belge; qu'après un premier échec dû à des interventions hostiles de sa première épouse, s'il faut en croire les affirmations des conseils des défendeurs, il réitéra sa tentative en 1955; que celle-ci fut appuyée par des déclarations de personnalités belges dont le patriotisme et l'honorabilité sont au-dessus de toute discussion; que ces personnes attestent des sentiments d'attachement du *de cujus* pour la Belgique;

Attendu que l'on peut estimer sans risque d'erreur que la volonté du *de cujus* de rester en Belgique sans esprit de retour dans son pays d'origine est suffisamment établie; que cet élément est décisif si on y ajoute les circonstances de fait rappelées ci-dessus, et sa demande de naturalisation qui n'a manqué son but que par suite de décès de Wadih Chucri Mansour avant qu'elle n'ait pu faire l'objet d'une décision du Parlement; qu'étant donné les témoignages favorables qui accompagnaient sa requête, rien ne permet de dire qu'elle aurait été rejetée;

Attendu en conséquence que le défunt ayant son domicile légal en Belgique

au jour de son décès, sa succession mobilière est régie par la loi belge (cf. POULLET, *Manuel de dr. Int. Privé Belge*, 3e éd., 1947, p. 376 et la jurisprudence citée dans les notes 1 et 2: cf. aussi BATTIFOL, *Traité élémentaire de Droit Intern. Privé*, Paris. 1949, pp. 649-651);

Attendu qu'il en résulte que, ainsi que l'a souligné le premier juge, les demandeurs, aujourd'hui opposants; sont sans qualité pour intervenir dans la succession litigieuse, puisqu'ils ne sont pas, en vertu de la loi belge, héritiers légaux de Wadih Chucri Mansour;

Attendu qu'il devient dès lors superflu d'examiner les autres moyens opposés à la demande par les défendeurs;

Vu les articles 4, 37 et 41 de la loi du 15 juin 1935;

Par ces motifs, le Tribunal, etc.

Source: *Recueil Général*, Juin, 1959.

REVISTA DE LA FACULTAD DE DERECHO DE MÉXICO

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BELGIQUE - ENREGISTREMENT EN CAS D'UN ÉTRANGER

Enregistrement. - Mutation. - Etranger décédé en laissant des immeubles en Belgique. - Intéressés adoptant une dévolution différente de celle prévue par la loi belge. - Exigibilité d'un droit proportionnel.

Si les divers intéressés à la succession d'un étranger délaissant des immeubles en Belgique conviennent de régler la dévolution de ces immeubles autrement que selon la loi belge, par exemple selon la loi nationale du défunt, cet arrangement rend exigible un droit d'enregistrement dans la mesure où la dévolution adoptée s'écarte de celle prévue par la loi belge. Ce droit peut être, selon le cas, le droit prévu pour les transmissions à titre onéreux, le droit de partage ou encore le droit de donation s'il y a eu intention libérale.

Décision du 24 septembre 1958.

Observations. — Lorsqu'une personne vient à décéder en laissant des immeubles situés en Belgique, la dévolution légale de ces immeubles est réglée par la loi belge, quels que soient le domicile et la nationalité du défunt (voy. le numéro qui précède et les références citées).

Cette dévolution est prise en considération pour la liquidation du droit de succession ou du droit de mutation par décès.

L'arrangement par lequel les divers intéressés conviennent de répartir les biens autrement que selon la dévolution prévue par la loi belge est un acte translatif ou déclaratif de la propriété ou de l'usufruit des immeubles successoraux; il justifie, à ce titre, la perception d'un droit proportionnel d'enregistrement.

La décision du 24 septembre 1958 donne, pour l'application de ces notions, l'exemple suivant:

Décès d'un ressortissant néerlandais, domicilié aux Pays-Bas. Il laisse sa veuve, ainsi que cinq frères et soeurs.

La succession comprend notamment la moitié d'un immeuble situé en Belgique (l'autre moitié appartient à la veuve).

Dévolution selon la loi belge: aux frères et soeurs, chacun pour 1/5e, sous réserve de la moitié en usufruit revenant à la veuve. D'après la loi successorale néerlandaise, la succession revient cependant pour la totalité à la veuve.

Par acte notarié passé à l'intervention de tous les intéressés, les frères et soeurs conviennent de régler la dévolution de l'immeuble sis en Belgique d'après la loi néerlandaise et attribuent le dit bien pour la totalité à la veuve.

Cet acte donne lieu à la perception du droit de partage, à moins qu'il ne résulte des circonstances que les collatéraux ont entendu faire une libéralité à la veuve; dans ce cas, le droit de donation serait dû sur les quotités transmises.

Source: *Recueil Général*, Juin, 1959.

IV

REVIEWS - COMPTES RENDUS

AUSTRIA

Dr. EGON SCHEFFER und Dr. FRANZ MONTJOYE: *Die Zollfreizonen in Österreich.* Zollrecht - Steuerrecht. Bedeutung für den internationalen Handel. Wirtschaftsverlag Dr. Anton Orac, Graben 17, Wien I, 1959, 79 pp.

Die vorliegende Schrift, die erste zusammenhängende Darstellung des Problemes der Zollfreizonen in zollrechtlicher, umsatzsteuerlicher und wirtschaftlicher Beziehung, kommt zweifellos einem dringende Bedarf zahlreicher Produzenten und Händler nach, die von dieser Einrichting bisher noch keinen Gebrauch gemacht haben oder die bestimmte Zweifelsfragen bei Inanspruchnahme derselben geklärt wissen wollen. Die umfangreiche Materie ist in möglichst knapper, einfacher und allgemein verständlicher Art behandelt worden. Die Wiedergabe der wichtigsten Gesetzes-, Verordnungs-bzw. Erlassbestimmungen erleichtern den Gebrauch der Schrift durch den wirtschaftlichen Praktiker.

Dr. KURT NEUNER und Dr. OSKAR ZECHMEISTER: *Steuer-Index über Rechtsmittelentscheidungen, Erlässe und Schrifttum des Jahres 1958.* Wirtschaftsverlag Dr. Anton Orac, Graben 17, Wien I, 1959, 269 S.

Das Werk enthält sämtliche finanzrechtliche Entscheidungen, Literaturmeinungen und Erlässe des Jahres 1958 und ist für jeden, der sich mit den österreichischen Steuern befassen muss, ein unentbehrliches Nachschlagewerk. Als verlässlicher Quellennachweis, der zeitraubendes Suchen erspart, ist er für den Praktischer besonders wertvoll. Der Steuer-Index ist nach den Paragraphen der einzelnen Steuergesetze aufgebaut. Die Verfasser beschränken sich aber nicht auf blosse Hinweise. Sie bringen vielmehr den Rechtssatz aus dem Erkenntnis oder den zusammengefassten Inhalt des Erlasses bezw. der Abhandlung. Die Zitate sind so ausführlich gehalten, dass der Benützer schon auf Grund des zitierten Rechtssatzes erkennen kann, ob das Aufsuchen der angeführten Fundstelle für ihn zweckmässig ist oder nicht. Ein reichhaltiges alphabetisches Stichwortverzeichnis ermöglicht das mühelose und rasche Auffinden jeder gewünschten Stelle. Mit dem Jahrgang 1958 wird der 6. Band der Praxis übergeben. Wer also in Hinkunft auf dem Gebiete des Steuerrechts aus der Zeit vom 1.1.1953 bis 31. 12. 1958 ein Erkenntnis, einen Erlass oder eine Zeitschriftenabhandlung sucht, wird den "Steuer-Index" zu Rate ziehen.

Verzeichnis der Rohstoffe, Halberzeugnisse, Fertigware für die Umsatzsteuer-Ausfuhrvergütung mit Freiliste 1 und Ausschluss-Liste nach dem Stande vom 1.5.1959 zusammengestellt von Dr. ERNST STRACK. 3. Auflage. Wirtschaftsverlag Dr. Anton Orac, Graben 17, Wien I, 1959, 152 S.

In der vorliegenden Broschüre hat der als Kommentator des Umsatzsteuerrechts bekannte Autor die wichtigsten Vorschriften und Behelfe zur Berechnung der Umsatzsteuervergütungen zusammengefasst. Kurze Erläuterungen über die Vergütungsgruppen und über den Tarifierungsnachweis, über die Freiliste 1 und über die Ausschlussliste sowie diese beiden Listen selbst in Verbindung mit einer Tabelle der derzeit geltenden Umrechnungskurze und mit dem Verzeichnis der Rohstoffe, Halberzeugnisse und Fertig-

waren ermöglichen es, sich raschest über die wichtigsten einschlägigen Vorschriften und über die Höhe der in Betracht kommenden Umsatzsteuervergütungen zu informieren.

BELGIQUE

Le Guide Fiscal Permanent publié sous la direction de GASTON van den AVYLE. Editions Vioburo, 7, Cantersteen, Bruxelles I.

Il s'agit d'un ouvrage de 3500 pages mobiles, avec mises à jour paraissant mensuellement sur feuilles mobiles interchangeables, contenant tous les impôts: impôts sur les revenus, de guerre, sur le capital; droits d'enregistrement, de succession et de timbre; taxes de transmission, de luxe, etc. Toutes formalités fiscales, réclamations, déclaration, etc. Jurisprudence, commentaires, circulaires administratives, textes légaux, coordonnés. Les mises à jour Janvier-Juin 1959 ont paru.

VICTOR PAUWELS: *Le nouveau Code des Impôts sur les Revenus*. Les Éditions Excelsior, Bvd. de Smet de Naeyerlaan 255, Bruxelles.

Le *supplément* 1959 no. 1a paru contenant des modifications qui mettent à jour ce livre, un compte rendu duquel a été publié dans le Bulletin Tome XII, p. 33.

Jurisprudence Fiscale et Sociale. Documentation juridique et Fiscale A. van der Leest, 343, Avenue des Pagodes, Bruxelles II.
Les *suppléments* 1959 nos. 4-5 consistent de 25 fiches numerotées de 49 à 74.

Recueil des lois fiscales sous la surveillance de F. AMERIJCKX. Union Belge des Conseillers Fiscaux, Secrétariat: A. van der Leest, Avenue des Pagodes 343, Bruxelles.

In "Bulletin" Vol. XII p. 32 we published a review of this loose-leaf work on Belgian taxation and pointed out its merits. The *4th and 5th supplement* of 1959 contain new pages on Income tax, Stamp duties and Succession duties.

BENELUX

Étude comparative des budgets Belges, Néerlandais et Luxembourgois. Secrétariat Général de l'Union Douanière Néerlando-Belgo-Luxembourgeoise, 170 rue de la Loi, Bruxelles, 1958, 109 pp.

La première partie de ce rapport analyse les dépenses et recettes budgétaires de l'État au cours des quatre derniers exercices, classées selon les catégories économiques les plus importantes, telles que les dépenses de consommation, les transferts, les investissements etc. Dans la seconde partie, les dépenses budgétaires des trois derniers exercices sont comparées selon leur destination, c.-à-d. selon les divers objets des interventions de l'État.

CANADA

W. IVAN LINTON: *A review of the Estate Tax Act*. An address delivered at Estate Tax Meetings convened by the Canadian Tax Foundation in February, 1959. Canadian Tax Papers No. 14. Canadian Tax Foundation, 154 University Avenue, Toronto 1, 1959, 29 pp.

During February 1959 the Canadian Tax Foundation held meetings in Toronto and Montreal to acquaint its members and others with the new Estate Tax Act. Mr. W. Ivan Linton, Administrator of Succession Duties and Estate Tax, addressed both meetings at length on the new legislation. A transcript was made of his remarks before the Toronto meeting and, with some editing, forms the text of the present publication.

Report of Proceedings of the Twelfth Annual Tax Conference convened by the Canadian Tax Foundation on November 13-14-15, 1958. Canadian Tax Foundation, 154 University Avenue, Toronto 1, 1959, 470 pp.

This is the fourth complete report of papers and proceedings at an annual conference of the Foundation. It covers in full all meetings and panel discussions at the 12th Annual Conference held in Winnipeg in November, 1958. Among the subjects discussed were: Company amalgamations, Legal and accounting principles governing deductible expenses, The annual process of tax changes, Canada's income tax treaties, Legal vs. accounting principles in the courts, Taxation of the Petroleum industry, Tax treatment of co-operatives, Federal estate tax Act, 1958.

DENMARK

MOGENS EGGERT MØLLER: *Afgraensningen driftsomkostninger privatforbrug.* Handelshojskølen i København, Julius Thomsens Plads 10, København V, 1958, 28 pp.

The author, scientific assistant of the Academy for *Business Administration* in Copenhagen discusses in an expert way the difference between private and business expenses.

FRANCE

J. R. KAUFFMANN, H. EBRARD et J. C. KAUFFMANN: *Les Taxes sur le Chiffre d'Affaires. Mise à jour au 1er Mars 1959.* En vente chez les auteurs 12, rue Margueritte, Paris (17e), et chez les Editions Juridiques Lefebvre, 48, rue Cardinet, Paris (17e). 32 pp.

Depuis le 1er avril 1958, date de parution de cet ouvrage un compte rendu duquel a été publié dans le *Bulletin* Tome XII, p. 252, plusieurs textes législatifs et doctrinaux sont venus modifier sensiblement le régime des taxes sur le chiffre d'affaires. Les auteurs ont fait imprimer les pages de cette mise à jour pour permettre aux acheteurs de cet ouvrage pratique de le mettre eux-mêmes à jour.

A.N.S.A.: *Ordonnance du 4 février 1959 relative au marché financier.* Publication de divers documents sociaux. Cessions directes. Régime fiscal des plus-values de cession. Publication No. 121. Association Nationale des Sociétés par Actions, 15, Place Malesherbes, Paris (XVIIe), 1959, 31 pp.

L'Ordonnance no. 59-247 du 4 février 1959 relative au Marché Financier (J.O. 8 février 1959, p. 1754) contient trois groupes de dispositions qui intéressent les possesseurs et les acquéreurs de valeurs mobilières. A chacune de ces trois catégories de mesures est consacré un chapitre distinct.

Code Annoté des Taxes sur le Chiffre d'Affaires. Taxes par Professions. Service de Documentation Fiscale Impôts et Sociétés. Seteca, 14, Rue Clapeyron, Paris-8e.

Le *mise à jour 1959* constitue la refonte complète de «Taxes par Professions» un compte rendue duquel a été publié dans le Bulletin Vol. XI, p. 129. Ce nouvel ouvrage comprend 135 feuillets à jour au 1er mars 1959. Il remplace simplement la précédente édition à jour au 1er octobre 1958.

GERMANY

Dr. KLAUS TIPKE: *Das Kraftfahrzeug im Steuerrecht.* Erschienen in der Reihe Spezialfragen im Steuerrecht, Herausgeber Bundesrichter Dr. Wilhelm Hartz. Fachverlag für Wirtschafts- und Steuerrecht Schäffer & Co., Hackländerstr. 33, Stuttgart O, 1959, 112 S.

Der Verfasser behandelt das Kraftfahrzeug im Einkommensteuer- Lohnsteuer - Umsatzsteuer- Beförderungsteuer- Vermögensteuer- und Bewertungsrecht einschl. dem Kraftfahrzeugsteuerrecht. Alle mit dem Erwerb, der Haltung und der Veräusserung eines Kraftfahrzeugs zusammenhängenden Fragen sind eingehend behandelt. Die Rechtsprechung des Bundesfinanzhofs und der Finanzgerichte, sowie das massgebliche Schrifttum wurden eingearbeitet. Die unkomplizierte Sprache des Verfassers dürfte es jedem Besitzer eines Kraftfahrzeugs ermöglichen, die steuerlichen Probleme und ihre Lösung herauszufinden und so selbst mit der Schrift zu arbeiten.

CARL HERRMANN, Dr. GERHARD HEUER, Dr. ARNOLD HEINING und OTTO VON SCHILLING: *Kommentar zur Einkommensteuer einschl. Lohnsteuer und Körperschaftsteuer*. 8. Auflage. Verlag Dr. Otto Schmidt, Hohenzollernring 78, Köln.

Lieferung 39, März 1959, 32. Ersatz- und Ergänzungslieferung. Diese Lieferung bringt hauptsächlich eine Überarbeitung der Erläuterungen zu § 6 und zu den Bestimmungen über die Besteuerung bei Auslandsbeziehungen. Die restliche Kommentierung der durch das StÄndG v. 18.7.58 betroffenen Bestimmungen ist wegen der grossen Zahl der Gesetzesänderungen auf diese und die beiden folgenden Lieferungen verteilt worden.

Lieferung 40, April 1959, 33. Ersatz- und Ergänzungslieferung. Diese Lieferung enthält den Text der Einkommensteuer- Durchführungsverordnung 1958 sowie Überarbeitungen verschiedener Erläuterungen aus dem Körperschaftsteuerteil des Kommentars auf Grund der Steuerreform 1958, insbesondere die Erläuterungen zu § 19 Körperschaftsteuergesetz.

Dr. GERHARD HOLTMEIER: *Die Organtheorie im System des Rechts und ihre aktuellen Probleme*. Erschienen als Heft 39 der Schriftenreihe „Der Rechts- und Steuerdienst". Verlag Dr. Otto Schmidt, Hohenzollernring 78, Köln, 1959, 136 S.

Der Verfasser gibt in dieser Schrift eine knappe und übersichtliche Darstellung der Grundlagen und Auswirkungen der Organtheorie. Besonders anzuerkennen ist es, dass die Schrift sich auch eingehend mit der zivilrechtlichen Problematik befasst. Die einzelnen für die Organlehre wichtigen Gebiete der Umsatzsteuer, der Körperschaftsteuer, der Gewerbesteuer uam. werden klar und mit lobenswerter Systematik behandelt. Diese für die Praxis sehr nützliche Zusammenstellung nimmt in der Schriftenreihe des Verlags einen ehrenvollen Platz ein.

Schnellkartei des deutsches Rechts. Reihe III. Verlag Dr. Otto Schmidt, Hohenzollernring 78, Köln.

Diese Sammlung 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.

Lieferung 89. Inhalt: Abkommen zwischen der Bundesrepublik Deutschland und der Südafrikanischen Union zur Vermeidung der Doppelbesteuerung bei den Einkünften aus dem Betrieb der Seeschiffahrt und der Luftfahrt, Änderung der Umsatzsteuerdurchführungsbestimmung und der Ausgleichsteuerordnung, Änderung verschiedener Gesetze.

Lieferung 90. Inhalt: Abkürzung steuerrechtlicher Aufbewahrungsfristen, Einkommensteuer-Durchführungsverordnung 1958, Einkommensteuer-Tabelle zu § 32a Abs. 2 und 3, Anpassung des EStG, KStG und GewStG an Neufassung, Änderung verschiedener Gesetze.

Dr. Dr. EDGAR LENSKI und Dr. WILHELM STEINBERG: *Kommentar zum Gewerbesteuergesetz*. Verlag Dr. Otto Schmidt, Hohenzollernring 78, Köln. Erschienen ist die *Lieferung 6*, Mai 1959.

Der Textteil dieser Lieferung berücksichtigt die Neufassung des Gewerbesteuergesetzes v. 18.11.1958. Im übrigen enthält diese Lieferung die Erläuterungen zu den §§ 23-27 (Lohnsummensteuer) von MinDirig. Dr. Dr. Lenski und die Kommentierung der §§ 33 bis Schluss (Zerlegung; Wandergewerbebetrieb ua.) von MinRat Dr. Steinberg. Mit den nächsten beiden Lieferungen, die vor allem die restlichen Erläuterungen zu § 2 und die zu § 7 enthalten werden, wird das Stammwerk des Kommentars im wesentlichen abgeschlossen sein.

HÜBSCHMANN - GRABOWER - BECK - VON WALLIS - SCHWARZ: *Kommentar zum Umsatzsteuergesetz. Lieferung 12*, Mai 1959. Verlag Dr. Otto Schmidt, Hohenzollernring 78, Köln.

Diese Lieferung enthält eine Überarbeitung der Erläuterungen zu verschiedenen Vorschriften (§§ 1 Ziff. 3, 4 Ziff. 1 a u. b, 11, 15) von ORR Dr. Schwarz. Neu sind die Erläuterungen zu § 4 Ziff. 4 von FinPräs. i. R. Beck, deren zweite Hälfte mit der nächsten Lieferung folgt, und zu §§ 4 Ziff. 22 und 7b von Prof. Dr. v. Wallis. Der Textteil ist wiederum auf den neuesten Stand gebracht worden.

Dr. W. HÜBSCHMANN und PAUL KAATZ: *Steuerrechtsprechung* in *Karteiform*. Begonnen von Alfons Mrozek. Verlag Dr. Otto Schmidt, Köln.

Die *88. Lieferung*, Mai 1959 ist erchienen.

Im Verlag des Instituts der Wirtschaftsprüfer, Cecilienallee 36, Düsseldorf, sind erschienen:

ERNST-GÜNTHER BRENG: *Forschungs- und Entwicklungskosten in Handels- und Steuerbilanz*. 1959, 80 S.

Die "richtige" Behandlung der Forschungs- und Entwicklungskosten nach Handels- und Steuerrecht wird erörtert. Der Schwerpunkt der Untersuchung liegt auf der Behandlung der Aufwendungen für die vom Bilanzierenden betriebene eigene freie Forschung und Entwicklung.

HERMANN GREIFFENHAGEN: *Vom Einfluss der Steuern auf die Unternehmungs-Finanzierung*. Gedanken über das deutsche Steuersystem in Hinsicht auf einen zukünftigen europäischen Wettbewerbsmarkt. 1959, 102 S.

Dass die direkten Steuern zu harmonisieren sind, ohne dass deshalb eine völlige Vereinheitlichung der Steuersysteme stattfinden müsste, ist das Anliegen dieser Schrift. Nach der Auffassung des Verfassers ist eine Annäherung der Grundsätze der Steuersysteme unerlässlich, damit im gemeinsamen Markt infolge des ungleichen Steuerdrucks kostspielige Umschichtungen der Produktionsstätten vermieden werden.

Dr. MARLIES LUDWIG: *Vereinigung aller Anteile einer grundstückbesitzenden Gesellschaft auf dem Gebiet der Grunderwerbsteuer*. Band 4 der Schriftenreihe des Instituts für Steuerrecht der Universität zu Köln. Herausgegeben von Prof. Dr. Armin Spitaler. 1959, 44 S.

Die vorliegende Arbeit beschäftigt sich mit dem für die Praxis sehr bedeutsamen Ersatztatbestand des § 1 Abs. 3 des Gesetzes. In folgerichtigen Darlegungen wird eine erschöpfende Darstellung der Reichweite der Vorschrift gegeben.

Prof. Dr. jur. ARMIN SPITALER: *Die Angemessenheit der Bezüge Geschäftsführender Gesellschafter einer GmbH*. Heft 1 der Schriftenreihe Rechtsfragen der Handelsgesellschaften, herausgegeben in Verbindung mit der Centrale für Gesellschaften mbH Dr. Otto Schmidt. Verlag Dr. Otto Schmidt, Hohenzollernring 78, Köln, 1958, 90 S.

Der Verfasser kommt unter Berücksichtigung der Rechtsprechung und des Schrifttums zu dem bemerkenswerten Ergebnis, dass nur ausser jedem Verhältnis zum Wert der Arbeitsleistung des geschäftsführenden Gesellschafters stehende Bezüge zu beanstanden sind. Die Abhandlung dient dem Zweck, sowohl diese Entwicklung zu fördern, als auch zu zeigen, wie man Meinungsverschiedenheiten ausgleichen kann, die sich auf diesem Gebiet mit der Finanzverwaltung ergeben.

ARNO SCHULZE-BRACHMANN: *Doppelbesteuerung*. Texte der geltenden Doppelbesteuerungsabkommen mit Verweisungen und einer einführenden Darstellung der Massnahmen zur Vermeidung der Doppelbesteuerung. Forkel-Verlag, Jahnstrasse 84, Stuttgart-Degerloch, 1957, 206 S.

Die internationale wirtschaftliche Verflechtung der Bundesrepublik nimmt ständig zu. Jedes ausländische Engagement stellt die Unternehmen und ihre Berater vor die Frage, mit welchen steuerlichen Belastungen zu rechnen ist. In diesem Zusammenhang sund die Doppelbesteuerungsabkommen, die mit vielen fremden Staaten abgeschlossen wurden, von grösster Bedeutung. Der Verfasser hat als Vertreter des Bundeswirtschaftsministeriums an allen Verhandlungen teilgenommen und vermittelt daher aus der Praxis heraus in seinen Ausführungen ein besonders instruktives Bild der allgemeinen Grundsätze und der Besonderheiten der z.Zt. geltenden Abkommen. Seine Darstellung ermöglicht in Verbindung mit den beigefügten Texten der Doppelbesteuerungsabkommen eine zuverlässige Unterrichtung über alle bedeutsamen Fragen. Die Abkommen über Amts- und Rechtshilfe in Steuersachen sowie die Abkommen mit Schweden und der Schweiz zum deutschen Lastenausgleich sind berücksichtigt.

JAKOB THEIS: *Praktischer Führer durch das Steuerrecht*. 7. Auflage. *Lieferung 25. Juni 1959*. Verlag Dr. Otto Schmidt, Hohenzollernring 78, Köln.

Das Buch bringt das Gebiet des gesamten Steuerrechts in einfacher Sprache, veranschaulicht durch Verwendung zahlreicher Beispiele, nahe. Es will vor allem den Anfänger in systematischer Darstellung in das Steuerrecht einführen, gleichzeitig aber auch dem Steuerbeamten, Steuerberater usw. als Nachschlagewerk dienen, wenn er sich schnell über bestimmte Fragengebiete unterrichten will. Mit der *17. Ergänzungslieferung* vom 25.6.1959 werden die Teile Einkommensteuer, Körperschaftsteuer, Vermögenssteuer, AO und Bewertungsgesetz auf den neuesten Stand gebracht.

INTERNATIONAL

INTERNATIONAL MONETARY FUND: *Summary Proceedings of the thirteenth annual meeting of the Board of Governors*. Washington D.C., 1958, 189 pp.

The thirteenth Annual Meeting of the Board of Governors of the International Monetary Fund was held in New Delhi from October 6 through October 10, 1958. These Summary Proceedings of the Fund include the resolutions adopted by the Board of Governors, reports and recommendations of the Joint Procedures Committee, and selected addresses.

Données Statistiques. Statistical data. Population, emploi, agriculture, industrie, commerce, transports, commerce extérieur, finances. Conseil de l'Europe, Section de la Documentation, Strasbourg, 1959, 399 pp.

Le 22 septembre 1952, la commission de la Population 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. En outre il contient un tableau des charges fiscales globales comparées des pays membres du Conseil de l'Europe et du Royaume Uni et des États Unis de l'Amérique.

CESARE COSCIANI: *The effects of differential tax treatment of corporate and non-corporate enterprises.* Published by the European Productivity Agency of the Organisation for European Economic Co-operation, 2, rue André-Pascal, Paris-16e, 1959, 157 pp.

This report first of all analyses financial writings which deal with the economic consequences of a corporation tax. In the second place the author has studied the tax legislation in the countries which have taken part in the E.P.A. project, namely France, Germany, Greece, Italy, and the United Kingdom. Each of these countries has explained the procedure under which corporations are subjected to direct taxation. There are five chapters: Who really pays the corporation tax, Effects of the corporation tax on the incentive to invest. The distorting effects of the tax on companies' capital investment, Economic consequences of the different modes of taxing companies, The corporation tax as an element in a rational system of taxation designed to encourage productivity. The appendix contains the country studies.

ITALY

Commento Testo Unico Imposte Dirette. Edizione Consulente Delle Aziende, Via Mameli 10, Milano, 1959, 574 pp.

The Testo Unico Imposte Dirette (Unified Act of Direct taxes) of January 29th, 1958, consists of 290 sections and comprises and modifies the legislation issued from 1865 to 1956. This commentary is a useful working instrument not only for the taxpayer and the administrator but also for the student. The book offers a complete survey of the Act in clear and understandable language.

Régime des investissements étrangers en Italie. Guide pour l'homme d'affaires. Conféderazione Génerale dell'Industria Italiana, Piazza Venezia 11, Roma, 1957, 70 pp.

La Confédération Générale de l'Industrie Italienne à publié dans cette publication synthétique, aussi clairement que possible pour les hommes d'affaires auxquels elle s'adresse tout particulièrement, les facilités accordées en Italie aux capitaux étrangers qui essaient de trouver de bonnes occasions d'investissements en activités privées de caractère productif. La publication est le résultat d'une expérience acquise par la Confindustria au cours de plusieurs années.

MOROCCO

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

A review of this looseleaf book on the tax system of Morocco was published in Bulletin Vol. XI, p. 37. The *Supplement of March 1959* contains a number of pages to bring subscribers up to date as regards new tax measures. It contains the codification of the texts on "Enregistrement" and "Timbre"

valid in the Southern zone and the extension to and application of these Acts in the Northern zone and Tangier.

NETHERLANDS

Prof. Dr. M. J. H. SMEETS and J. H. MEIHUIZEN a.o.: *Beknopte Belastinggids.* (Concise tax guide). 10th edition. *7th supplement.* L. J. Veen's Uitgeversmaatschappij, Amsterdam, 1959.

This supplement to this looseleaf handbook on the Dutch tax system contains a number of alterations and additions. A review of the main work was published in Bulletin, Vol. XI, p. 39/40.

De nieuwe belastingontwerpen. Verschillen tussen nu en straks. Uitg. Mij. Æ. E. Kluwer, Deventer, 1959, 32 pp.

This brochure contains a survey of the main points of difference between the present Dutch tax legislation and the new income tax, wage tax and property tax Bills.

Dr. A. NOUWENS: *Openbare financiën.* Fiscale Studieserie nr. 11. Uitgeverij FED, Amsterdam, 1959, 124 pp.

In part I of this booklet the expenditure of the state is dealt with while in part II the revenues are treated. Three main problems are discussed in part I: the provisions made for needs of the community, the question of business cycle stabilisation and the re-distribution of income. In part II the repercussions on the economic system of the collection of revenue by the state to finance its expenses are dealt with. In view of the growing government interference in economic life this booklet is an interesting introduction to public finance.

L. LANCEE: *Fiscale winstsplitsing* (Allocation of profits). Æ. E. Kluwer, Deventer, 1959, 174 pp.

In this thesis, propounded at the Amsterdam University, the author aims at a twofold goal. In the first place he gives as clear as possible a description of the problem of the allocation of profit in international tax law. Secondly he investigates the standpoint taken by the Dutch legislation as regards this problem.

The study of Mr. Lancée is a welcome contribution to the establishment of more certainty in tax practice and jurisprudence in this special domain.

A. J. VAN SOEST and J. VAN SOEST: *Belastingen.* Inkomstenbelasting, Vermogensbelasting, Vennootschapsbelasting. (Taxes, Income Tax, Property Tax, Corporation Profits tax) 9th edition. S. Gouda Quint—D. Brouwer & Zoon, Uitgevers in het Huis de Crabbe, Arnhem 1959, 340 pp.

Gute Ware lobt sich selber ist eine bekannte Ausdrucksweise. Dies gilt ohne weiteres für dieses Buch. Der Stil ist klar. Die Verfasser geben ihre eigene massgebende Meinung oder sie weisen auf bestimmte unlogische Schlussfolgerungen hin, wozu der Text des Gesetzes in manchen Fällen führt. Es wird nicht versucht den Gesetzestext mit eigenen Worten zu wiederholen unter Hinweis auf Litteratur und Rechtsprechung. Es wird vorausgesetzt dass die Leser imstande sind den Text lesen zu können. Die bestehende Rechtsprechung ist absichtlich nicht völlig im Buche verarbeitet; die Verfasser beschränkten sich darauf, Entscheidungen aufzunehmen, die das Behandelte erläutern oder die von wesentlicher Bedeutung sind.

Loonbelastingtabellen 1959, Inkomstenbelastingtabel 1956/1959, Belastingtarieven 1959. L. J. Veen's Uitgeversmij., Leidsegracht 78, Amsterdam-C.

These three books contain the tariffs of the Dutch income tax, wage tax, dividend tax, property tax, sales tax and a number of other taxes. The form of the books is handy and the printing is in a clear type. They will be of practical assistance to every one who wants to have these rates ready at hand.

Dr. H. F. A. VÖLLMAR, J. BOXEM and B. J. UDINK: *Vennootschappen, Verenigingen en Stichtingen* (V.V.S.). Band B. AE. E. KLuwer, Deventer.

This is the fourth release to the loose-leaf volume B on companies, societies and foundations in the Netherlands published by AE. E. Kluwer, Deventer. This work is a legal and tax handbook for study and practice. The present release consists of the index to the part on "the Foundation" and further it contains the section on the "Cooperative Society" the parts on law, taxation, the Acts of 1925 and 1876 and Book 2 of the conception of the new Dutch civil code. There is a 35 page elucidation of the tax aspects of the cooperative society. After the introduction and a review of the literature on this subject a historical survey of the taxation of profits of cooperative societies is given. In the following sections the legal basis for this tax and the cooperative society as subject in and object for the corporation profits tax are discussed. Finally the different other tax laws as regards the cooperative societies and the tax position of a member of this legal entity are considered.

Euromarkt-Nieuws. Uitg. Mij. AE. E. Kluwer, Deventer, Netherlands.

This monthly periodical on the Common Market forms part of the loose-leaf service issued by the same publisher and a review of which was published in *Bulletin* Vol. XII p. 269. We mention the following articles which appeared thus far: O.E.E.C. and national taxes, the finances of the O.E.E.C. in 1958, the European Community for Coal and Steel, scheme of development of the European Economic Community, addresses of institutions of the E.E.C. and Euratom, inter-European trade, the state of affairs as regards the association of overseas territories with the E.E.C., customs of a tax nature, answers to questions.

J. SPAANSTRA: *Het ondernemersbegrip in de inkomstenbelasting*. Fiscale Monografieën No. 12. Uitg. Mij. AE. E. Kluwer, Deventer, 1959, 68 pp.

In this monograph the conception of the entrepreneur in the Dutch income tax Act has been analysed. The case law of the Dutch Supreme Court is discussed in this connection and it appears that the conception of the entrepreneur is still in development. The author has included numerous references to literature which opens the possibilities to a further study of the problem.

Belasting van vermogenswinsten. Rapport uitgegeven door de Dr. Wiardi Beckman Stichting, Amsterdam, 1959.

This pamphlet on capital gains taxation consists of two parts. In part one the economic significance of capital gains taxation is elucidated while in part two the technical aspects of the introduction of a tax on capital gains are discussed. In the appendix a survey of the amount of the capital gains and the estimated tax yield is given.

This study has neither practical not theoretical value as far as taxation is concerned. It was meant to serve as a basis for political discussions.

INDIA

M. H. GOPAL: *Towards a realistic tax policy for India*. Being the Presidential address at the forty-first session of the Indian Economic Conference (Lucknow), December 1958, 46 pp.

In this booklet Professor M. H. Gopal of the University of Madras discusses the present tax policy of India and its theoretical framework. He then gives his own recommendations to simplify the tax system and reduce the tax burden on investment. The Appendix contains statistical tables.

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* 34 and 35 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. *Supplements* 24 and 25 have appeared.

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

Nos 677-685 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 issue nr. 16 has been received.

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 147-148 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 41a-45 to these loose-leaf volumes have been published.

De Euromarkt in de praktijk. (The European market in practice). EDITED BY DRS. TH. C. HIJZEN a.o. N. Samsom N.V. Alphen aan den Rijn. *Supplements* 14-16.

A review of the first supplement to this loose-leaf book on the European market was published in Bull. XII p. 271.

The *Supplements 14-16* contain a page on Services, one on Dumping, pages on the right of settlement and a few tabcards.

H. J. HOFSTRA: *Invordering* (Collection). 4th edition. By A. C. den Dulk and W. P. Erasmus. *Supplement 4.* De belastingwetgeving Serie D.B. No. 3. J. Noorduijn en Zoon N.V. - Gorinchem - Netherlands.

P. KARMELK: *Motorrijtuigenbelastingwet* (Motor tax Act). 5th edition. *Supplement 5*, 23rd May, 1959. De Belastingwetgeving Serie D.B. No. 7. J. Noorduijn en Zoon N.V. - Gorinchem - Netherlands.

P. KARMELK: *Loonbelasting* (Wage tax). Edited by P. BOGAARDS. 5th edition. *Supplement* 5. De Belastingwetgeving Serie D.B. No. 11. J. Noorduijn en Zoon N.V. - Gorinchem - Netherlands.

P. KARMELK: *Tabakswet.* (Tobacco Act). 4th edition, Supplement 4. May 16th, 1959. De Belastingwetgeving Serie I. & A. No. 3. J. Noorduijn en Zoon N.V. - Gorinchem - Netherlands.

NEW ZEALAND

CHARLES A. STAPLES: *A Guide to New Zealand Income Tax Practice* (Incorporating PAYE Legislation). Financial Publications Ltd., P.O. Box 6387, Wellington, C2, 1959, 399 pp.

The 1959 edition of this practical Guide incorporates the alterations in the law introduced since the 1958 edition was published, including the Land and Income Tax Amendment Act (No. 2), 1958. This measure brought about radical changes in taxation law in New Zealand by imposing ordinary income tax on dividends derived by individual shareholders, and the complementary excess retention tax on companies. Also incorporated in this edition are numerous departmental decisions given since the 1958 edition was published on the methods of accounting for tax under PAYE on various classes of income.

SWEDEN

LEIF MUTEN: *Inkomst eller Kapitalvinst.* Inkomstskatteproblem vid obligations- och fastighetsaffärer. P. A. Norstedt & Söners Förlag, Stockholm, 1959, 316 pp.

In der vorliegenden Arbeit wird auf drei ausgewählten Gebieten untersucht wie der Kompromisscharakter des steuerlichen Einkommensbegriffes zu Trage tritt, und wie es möglich wäre, die kontroversen Punkte möglichst so zu verlegen dass sie am wenigsten störend wirken. Die drei Gebiete, auf denen das schwedische Steuerrecht untersucht wird, sind Obligationsgeschäfte Parzellierungsgewinne und Grundeigentumsgeschäfte anderer Art. Im Lichte des ausländischen Rechts werden verschiedene Problemlösungen diskutiert.

SWITZERLAND

Le Système Fiscal Suisse. Administration Fédérale des Contributions, Berne, 1959, 30 pp.

La Confédération suisse comprend vingt-cinq cantons et demi-cantons souverains qui ont tous le droit de lever des impôts. Il existe donc en Suisse, à part le système fiscal fédéral, vingt-cinq systèmes fiscaux cantonaux différents. Cet aperçu s'adresse au lecteur étranger désireux de connaître les grandes lignes du système fiscal suisse et de la structure des divers impôts. Il a été rédigé sous la direction de Monsieur C. HIGY, chef de la division des droits de timbre et de l'impôt anticipé de l'Administration fédérale des contributions et professeur de sciences financières et administratives à l'Université de Zürich.

Steuerbelasting in der Schweiz 1958. Bearbeitet von der Eidgenössischen Steuerverwaltung. Statistische Quellenwerke der Schweiz, Heft 305. Herausgegeben vom Eidgenössischen Statistischen Amt, Bern, 1959, 68 S.

Diese in deutscher und französischer Sprache gehaltene Publikation zerfällt in 3 Teile: I. Steuerbelastung der natürlichen Personen; II. Steuerbelastung der Aktiengesellschaften; III. Belastung durch Erbschaftssteuern. Die Steuerbelastung wird nach der typologischen Methode ermittelt. Es sind bestimmte Steuerfälle supponiert und für diese anhand der gesetzlichen Be-

stimmungen die an Bund, Kantone und Gemeinden zu entrichtenden Steuerbeträge berechnet. Ein Anhang Erläuterungen gibt näheren Aufschluss über die Gestaltung der Publikation.

Rechtsbuch der schweizerischen Bundessteuern. Begründet von Dres. J. und E. HENGGELER, fortgeführt von Dr. ANTON PESTALOZZI *30. Ergänzungslieferung*. Verlag für Recht und Gesellschaft, Bundesstrasse 15, Basel.

Ziel und Aufbau dieser Sammlung der eidgenössischen Steuergesetzgebung, die auch die internationale Steuerabkommen enthält, wurden in der Besprechung in Bull. XI, S. 153 gewürdigt.

Die *30. Ergänzungslieferung* enthält eine grosse Zahl von Ausführungserlassen des Eidgenössischen Finanz- und Zolldepartementes und der Eidg. Steuerverwaltung. Es werden ferner der Bundesratbeschluss über die Verrechnungssteuer, das Bundesgesetz über die Stempelabgaben und das Bundesgesetz betr. die Stempelabgabe auf Coupons wiedergegeben. Die Steuerverwaltung hat die Merkblätter für Grossisten 1 bis 32 in einen Erlass zusammengezogen. Der erweiterte Umfang des Werkes machte eine Aufteilung in drei Bände nötig.

Dr. jur. HANS HEROLD: *Praxis des Umsatzsteuerrechts. Lieferung 27.* Stand von Ende Februar 1959. Verlag für Recht und Gesellschaft, Bundesstrasse 15, Basel.

Durch diesen Nachtrag wird diese wertvolle Sammlung wieder auf den neuesten Stand gebracht.

UNION OF SOUTH AFRICA

DAVID SHRAND and E. ZWARENSTEIN: *Income tax and company law in South West Africa.* Legal & Financial Publishing Company, P.O. Box 3461, Cape Town, 1958, 254 pp.

This publication serves a dual purpose, firstly to explain the provisions of the South West African Income Tax Ordinance and Companies Ordinance which are based substantially on South African precedents and secondly, to elucidate the income tax repercussions and company law requirements as they affect South African investors who are shareholders in South West African companies or have acquired other interests in the territory. A very valuable correlation of the sections of the Union and South West African Income Tax is given and a comparison between companies and partnerships from the income tax point of view is dealt with. In the section on company law detailed textual comparisons, section by section, of the South West African and Union enactments are given. The book concludes by giving the complete Licences Ordinance. The authors are to be congratulated in producing this book.

DAVID SHRAND: *What every taxpayer should know about income tax.* Third edition. Legal & Financial Publishing Company, P.O. Box 3461, Cape Town, 1958, 81 pp.

In this publication the mechanics of income tax is explained in non-technical language. It offers useful and practical guidance and advice to the taxpayer in all matters relating to income tax and explains lucidly and concisely the income tax repercussions arising from his various financial transactions. Case references have been cited in support of the text to enable the reader to follow up any point made. The third edition includes all amendments to the Income Tax Act and in addition deals with the 1958 Budget proposals as it affects income tax. The text has been revised throughout in the light of the latest decisions and current departmental practice.

DAVID SHRAND: *What every farmer should know about income tax.* Second edition. Legal & Financial Publishing Company, P.O. Box 3461, Cape Town, 1957, 50 pp.

This publication provides a complete and up-to-date exposition on farming taxation in the Union of South Africa. It consists of four chapters: Introduction to income tax, Income tax as it affects farmers, Hints on how to organise farming operations so as to pay the least amount of tax, How to complete the income tax return.

UNITED KINGDOM

Current Law Income Tax Acts Service. Sweet & Maxwell, 3 Chancery Lane, London S.W. 1

This Service has been devised with the object of providing the practitioner with the utmost assistance in the interpretation of the Income Tax Act. It presents a verbatim reprint of the Act, with each section annotated in detail, showing its source, citing all the cases required for its correct interpretation, and giving full cross-references to other provisions as well as to E. M. Konstam's Law of Income Tax. In addition this Service reproduces and annotates the unrepealed and saved provisions of the earlier Acts, Regulations made, and the Double Taxation Orders made.

Release 52: April 28, 1959. This Release brings the Income Tax, Surtax and Profits Tax provisions of the Finance Bill, annotated with cross-references to the Income Tax Acts and Konstam.

Release 53: May 6, 1959. This Release brings the Income Tax (Repayment of Post-War Credits) Act, also annotated with cross-reference to the Incomes Tax Acts and Konstam.

UNITED NATIONS

Public Finance - Finances Publiques. Extract from United Nations Statistical Yearbook 1958. United Nations, New York, 1958. 50 pp.

In this table the central government expenditure and receipts are classified into economically meaningful categories. Also data are provided on transactions not recorded in the budget accounts proper. Data on local government transactions are presented in summary form for a limited number of countries. The classification scheme employed for central government transactions has been applied. The classification by economic categories is supplemented whenever possible by a classification of total expenditure by purpose, such as education, health, other social services, economic services, etc.

Economic Survey of Europe in 1958 including studies of the relationship between economic expansion and balances of payments in Western European countries and consumption trends and structures in Europe. Prepared by the United Nations, Economic Commission for Europe, Research and Planning Division, Geneva, 1959.

In chapter I of the present Survey recent developments in the economies of eastern Europe are reviewed. Economic developments in western Europe in 1958, and the prospects for a resumed expansion of activity in that region, are discussed in chapter II. Chapter III contains an analysis of the relationship between economic expansion and changes in the balance of payments in western European countries.

Chapter IV reviews structures and trends of personal consumption in the countries of eastern Europe, while Chapter V contains a similar review covering western Europe.

Economic Bulletin for Latin America, Vol. III, No. 2. United Nations, Economic Commission for Latin America, Santiago.

The Economic Bulletin for Latin America appears twice yearly, in February and September. Vol. III, No. 2 contains articles on Latin America's foreign trade in the first half of 1958, the international banana market - its evolution and prospects, and a statistical supplement.

U.S.A.

ROBERT M. MUSSELMAN: *Alexander's Federal Tax Handbook 1959*. The Michie Company, P.O. Box 57, Charlottesville, 1959, 1311 pp.

This handbook is a complete one-volume reference text on all Federal taxes including income, estate, gift, social security, withholding, excise and miscellaneous taxes. 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. Likewise the treatment has been kept timely, by inclusion of all significant amendments and interpretations which have been made since the adoption of this Code. 1958 saw the first drastic revisions of the 1954 Code in the combined Technical Amendments Act of 1958 and the Small Business Tax Revision Act of 1958. Several new sections have been added to this edition where appropriate to cover new concepts brought into the law by the 1958 amendments. The emphasis has been on a clarification and strengthening of individual sections throughout. Footnote citations have been expanded, with particular attention to the latest cases and rulings. Particular attention to those new regulations which have been published and a further increase in the number of examples and illustrations have again expanded the total size of the work, as compared with the 1958 edition, Reviews of the previous editions of this handbook were published in *Bulletin* Vol. XII, p. 276 and Vol. XI, p. 235.

Federal Tax Treaties and Related Matters. Prentice-Hall Inc., Englewood Cliffs, New Jersey.

The *Reports no. 14-17* to this loose-leaf volume on Federal Tax Treaties, a review of which was published in Bulletin Vol. XIII, p. 173, contain the following material: Notes on further extension of United Kingdom treaty, on the proposed Foreign Investment Incentive Act of 1959, and on how to handle the foreign tax credit, supplements to cross reference table, recent decisions and rulings, revision of finding list.

RALPH C. EPSTEIN: *Making money in today's market*. International Sales Division, Doubleday & Company, Inc. 575 Madison Avenue, New York 22, 1959, 215 pp.

This book explains and illustrates the principles for obtaining the highest return or yield from investment capital. It assumes no previous investing experience. A balanced program is set forth which can be followed both in times of boom and in periods of decline. Numerous illustrations, all based on historical fact, are given.

PRENTICE-HALL: *Federal Taxes 1959*. Published by Prentice-Hall, Inc., Englewood Cliffs, New Jersey.

P-H 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.

Volume 4 is the Index Volume. It contains many finding aids that lead the reader to the spot that he wants to read. It also contains Cross Reference Tables and Report Bulletins that keep subscribers abreast of new develop-

ments weekly. *Volume 5* is called the *Supplemental Volume*. Among the supplementary aids are: Tax treaties, Index to tax articles, Supplemental Memo BTA & TC Subject Table, Prior law—Excess profits and Income taxes. The *Current Decisions Volume* contains the texts of all Internal Revenue Bulletin income and excess profits tax rulings, and court proceedings. It is supplemented each week with current income tax and excess profits tax decisions and rulings.

Estate and Gift Tax Volume. The research system in this volume is the same as it is in the income tax volumes. It contains the compilation, current rulings and decisions, index, and finding aids.

Excise Tax volume. For issues relating to this tax one finds the needed information in this volume.

I.R.C. Volume. This volume contains the complete 1954 Code as amended. Proposed regulations are also housed in this volume until they are finalized by the Treasury Department. The "New Legislation" division in the I.R.C. Volume enables subscribers to follow the course of proposed new income and excess profits tax law. A new edition of Federal Taxes is published each year, generally in December. The annual revision involved re-arranging and re-writing the Compilation in the light of the new developments. Between annual revisions Federal Taxes is kept up to date by means of weekly reports. These reports consist of new rulings and decisions which are filed in the appropriate current material divisions.

V

DEUTSCHE BUNDESREPUBLIK — DER TAUSCH VON ANTEILSRECHTEN AN KAPITALGESELLSCHAFTEN

Abkürzungen: EstG = Einkommensteuergesetz
KstG = Körperschaftsteuergesetz

Senat: Gutachten vom 16. Dezember 1958 I D 1/57 S

1. Der Tausch von Anteilsrechten an Kapitalgesellschaften führt grundsätzlich zur Verwirklichung der im Buchwert der hingegebenen Anteile enthaltenen stillen Rücklagen. Eine Ausnahme gilt nur für die Fälle, in denen bei wirtschaftlicher Betrachtung wegen der Wert-, Art- und Funktionsgleichheit der getauschten Anteile die Nämlichkeit der hingegebenen und der erhaltenen Anteile bejaht werden kann. Bei der Beurteilung der Nämlichkeit sind alle Umstände des einzelnen Falls zu berücksichtigen, so dass sich allgemein gültige Abgrenzungsmerkmale nicht bezeichnen lassen; ob die erhaltenen Anteile Gesellschaftsrechte am Tauschpartner darstellen, hat keine Bedeutung. Dass wirtschaftlich zwingende Erwägungen zum Tausch führten, rechtfertigt nicht die Übertragung der stillen Rücklagen auf das erhaltene Wirtschaftsgut.
2. Die Grundsätze des Urteils des Reichsfinanzhofs VI A 434/30 vom 9. Mai 1933, Reichssteuerblatt 1933 S.999, dürfen nicht auf die Einbringung einzelner Wirtschaftsgüter in eine Kapitalgesellschaft im Rahmen einer Kapitalerhöhung gegen Gewährung von Gesellschaftsrechten übertragen werden. Die Einbringung führt in der Regel zur Realisierung der im Buchwert des eingebrachten Wirtschaftsguts steckenden stillen Rücklagen. Dies gilt auch für die Einbringung von Aktien und GmbH-Anteilen.
3. Bei der echten Verschmelzung, die die Voraussetzungen des § 15 Abs. 2 KStG erfüllt, dürfen die Gesellschafter der aufgenommen Kapitalgesellschaft die empfangenen Anteile zum Buchwert der hingegebenen Anteile ansetzen.
4. Die unechte Verschmelzung führt in der Regel bei den die Anteile an der beherrschten Kapitalgesellschaft hingebenden Minderheits- oder Mehrheitsgesellschaftern zur Gewinnverwirklichung.

EStG 1957 § 5, § 6 Abs. 1 Ziff. 1 und 2.

Der Senat gab dem Bundesminister der Finanzen und dem Deutschen Industrie- und Handelstag Gelegenheit, schriftlich und mündlich Stellung zu nehmen. Ihre Auffassungen sind nicht auf genommen worden; denn in der Stellungnahme des Senats werden die wichtigsten Kontroversen sich schon herausstellen.

IV. Stellungnahme des Senats

Anteilsrechte an Kapitalgesellschaften sind unabhängig davon, ob sie zum Anlage- oder zum Umlaufvermögen gehören, mit den Anschaffungs- und Herstellungskosten anzusetzen (§ 6 Abs. 1 Ziff. 2 EStG). Die Anschaffungskosten eines erworbenen Wirtschaftsguts können nur danach bemessen werden, was der Kaufmann aus seinem Betriebsvermögen zum Erwerb aufwendet. Wenn seine Gegenleistung nicht wie beim Kauf in Geld, sondern wie

beim Tausch in anderen Wirtschaftsgütern besteht, so fehlt es an einer Wirtschaftlich vernünftigen Begründung dafür, dass die Gegenleistung und damit der Ansatz der Anschaffungskossen nicht mit dem tatsächlichen Wert, sondern nach dem mehr oder minder zufälligen Buchwert des hingegebenen Wirtschaftsguts bemessen werden soll. Der Reichsfinanzhof und ihm folgend der Bundesfinanzhof haben deshalb in ständiger Rechtsprechung (zum Beispiel Urteil des Reichsfinanzhofs VI A 1361/29 vom 2. April 1930, RStBl 1930 S. 363, und Urteile des Bundesfinanzhofs I 246/54 U vom 13. September 1955, BStBl 1955 III S. 320, Slg: Bd. 61 S. 314, und vom 4. April 1957) die Auffassung vertreten, dass beim Tausch der Anschaffungspreis des eingetauschten Wirtschaftsguts nicht gleich dem Buchwert, sondern gleich dem gemeinen Wert des hingegebenen Wirtschaftsguts ist. Von dieser grundsätzlichen Rechtsprechung zur Auslegung des § 6 Abs. 1 EStG abzugehen, ist nicht möglich.

Es ist zwar richtig, dass handelsrechtlich unter bestimmten Voraussetzungen Bedenken dagegen bestehen können, beim Tausch eine volle Gewinnrealisierung anzunehmen. Dass handelsrechtlich grundsätzlich ein Zwang zur Übertragung der stillen Rücklagen auf das eingetauschte Wirtschaftsgut besteht, will offenbar auch der Deutsche Industrie- und Handelstag nicht behaupten. Nach den Grundsätzen des Handelsrechts kann die stille Reserve mit Rücksicht auf das Niederstwertprinzip übertragen werden, weil es sich in keinem Fall um die Bildung neuer willkürlicher stiller Reserven handelt und weil Ansätze unter dem Teilwert im Handelsrecht in viel grösserem Umfang als im Steuerrecht zulässig sind. Die Bilanzierung in der Steuerbilanz muss sich aber nach den steuerlichen Vorschriften richten.

Lässt man zunächst den Gesichtspunkt des Zwangsverkaufs und des Zwangstausches ausser Betracht, wo der Tausch nicht anders als der Kauf behandelt wird, so folgt aus dem Grundsatz, dass steuerlich eine Veräusserung und ein Erwerb gegen Geld nicht anders als gegen Hingabe von nicht in Geld bestehenden Wirtschaftsgütern behandelt werden kann, dass grundsätzlich der Tauschvertrag zu einer Gewinnrealisierung führt und eine Übertragung der stillen Reserven vom hingegebenen auf das eingetauschte Wirtschaftsgut nicht zulässig ist. Die im Steuerrecht gebotene wirtschaftliche Betrachtung kann aber bei Würdigung aller Umstände des Einzelfalls abweichend von der bürgerlich-rechtlichen Beurteilung ausnahmsweise zu dem Ergebnis führen, dass beim Tausch von Anteilen an Kapitalgesellschaften steuerlich kein Anschaffungsgeschäft und kein Tauschvertrag vorliegt, weil die hingegebenen und eingetauschten Anteile wirtschaftlich identisch sind. Das von dem Senat erbetene Gutachten bezieht sich nur auf den Tausch von Anteilen an Kapitalgesellschaften. Nur mit diesem Tausch befassen sich die folgenden Ausführungen. Sie dürfen, soweit sich aus dem Gutachten nicht etwas anderes ergibt, nicht auf andere Tauschvorgänge übertragen werden.

Die Frage der Identität der hingegebenen und eingetauschten Anteile ist nach wirtschaftlichen Gesichtspunkten zu entscheiden, wobei, wie der Bundesminister der Finanzen mit Recht betont, schon mit Rücksicht auf die Abweichung von dem sonst auch für das Steuerrecht massgebenden bürgerlichen Recht eine enge Auslegung geboten ist. Aus dem Begriff der Identität oder der Nämlichkeit ergibt sich das Erfordernis der Gleichartigkeit, der Funktionsgleichheit und der Gleichwertigkeit der hingegebenen und der eingetauschten Anteile. Insoweit stimmten auch die Stellungnahme des Bundesministers der Finanzen und die ursprüngliche Auffassung des Finanzministers des Landes Nordrhein-Westfalen in seinem Schriftsatz vom 7 Januar 1958 überein.

Dem Deutschen Industrie- und Handelstag und dem Finanzminister des Landes Nordrhein-Westfalen ist darin zuzustimmen, dass mit den bezeichneten Merkmalen keine allgemeine Formel dafür gefunden ist, wann ausnahmsweise beim Tausch von Anteilen steuerlich eine Übertragung der stillen

Reserven zugelassen werden kann. Denn gerade die Betonung der wirtschaftlichen Betrachtung, mit der allein die Nämlichkeit begründet wird, macht eine Berücksichtigung und Würdigung aller Umstände des Einzelfalls erforderlich, so dass die Merkmale der den Begriff der Nämlichkeit ausmachenden Gleichwertigkeit, Gleichartigkeit und Funktionsgleichheit nur als Anhalt in dem Sinn gewürdigt werden können, dass es entscheidend auf alle Umstände des Falls ankommt. Die Rechtsprechung des Reichsfinanzhofs, an der der Senat grundsätzlich in Übereinstimmung mit dem Bundesminister der Finanzen festhält und die auszudehnen der Senat schon mit Rücksicht auf den zwingenden Gesetzesbefehl des § 6 EStG nicht in der Lage ist, stellte je nach den Umständen des Einzelfalls das eine oder andere Merkmal in den Vordergrund und hob auch andere Gesichtspunkte, zum Beispiel den des Zwangs oder der Gefälligkeit, hervor, die für den wirtschaftlich zu fassenden Begriff der Gewinnrealisierung von Fall zu Fall Bedeutung erlangen können.

Der Begriff der Gleichwertigkeit ist in dem Sinn aufzufassen, dass die gemeinen Werte der hingegebenen und eingetauschten Anteile in etwa einander entsprechen müssen. Diese Voraussetzung liegt in der Regel vor, weil sich bei einem gegenseitigen Vertrag Leistung und Gegenleistung auszugleichen pflegen. Da es hier aber nicht auf den Teilwert, sondern auf den gemeinen Wert der Wirtschaftsgüter ankommt, sind durchaus Fälle denkbar, in denen ein Tauschpartner eine Zwangslage des anderen Beteiligten ausnutzt und Anteilsrechte eintauscht, die einen erheblich höheren Wert als die hingegebenen Anteile haben. In diesen Fällen kann die Nämlichkeit schon mit Rücksicht auf den erheblichen Wertunterschied zu verneinen sein. Die Tatsache, dass sich jeder Tauschpartner von dem Tausch in der Regel einen geschäftlichen Vorteil verspricht, führt nicht zur Verneinung der Gleichwertigkeit.

Die Merkmale der Funktionsgleichheit und der Gleichartigkeit entziehen sich einer juristischen Formulierung und gehen auch ineinander über. Die Funktionsgleichheit kann deshalb zu bejahen sein, weil die eingetauschten Anteile bei objektiver Betrachtung die gleiche betriebliche Funktion erfüllen wie die hingegebenen Anteile oder bei wirtschaftlicher Betrachtung die gleichen Wirtschaftsgüter repräsentieren und deshalb nur eine formale Änderung einer Beteiligung am Betriebsvermögen vorliegt. Eine bedeutsame Erhöhung oder der Verlust der Herrschaftsbefugnis über das durch das Anteilsrecht repräsentierte Betriebsvermögen, der Erwerb oder der Verlust des Schachtelprivilegs, eine bedeutende Veränderung der Beteiligungsquote und der Verlust oder Erwerb ins Gewicht fallender, mit der Beteiligung verbundener betrieblicher Vorteile oder Nachteile führen in der Regel zur Verneinung der Funktionsgleichheit. Bei der Prüfung der Gleichartigkeit kann es jedenjalls dann nicht allein auf die Branchengleichheit abgestellt werden, wenn gerade die erstrebte Funktionsgleichheit die Branchenänderung bedingt oder wenn die Branche für den aus Gefälligkeit handelnden Unternehmer unter den Gesichtspunkten seines Betriebs keine Rolle spielt.

Auf den vom Deutschen Industrie- und Handelstag in den Vordergrund gestellten Willen des Kaufmanns, durch den Tausch einen Gewinn zu realisieren, kommt es nicht an, worüber sich auch der Finanzminister des Landes Nordrhein-Westfalen und der Bundesminister der Finanzen einig sind. Dieser Wille ist kaum feststellbar und kann nicht allein aus der Fortführung und Übertragung der stillen Reserven entnommen werden. Man kann von keinem Kaufmann erwarten, dass, wenn von seinem Willen eine steuerliche Belastung abhängt, er einen dahingehenden Willen äussert. Im Ergebnis führt also die Auffassung des Deutschen Industrie- und Handelstags entgegen dem sich aus § 6 Abs. 1 EStG ergebenden Gesetzesbefehl zur Verneinung der Gewinnrealisierung bei Tauschvorgängen. Der Deutsche Industrie- und Handelstag kann seine Auffassung nicht aus einzelnen Satzwendungen des Urteils des Bundesfinanzhofs vom 4. April 1957 herleiten.

Die Ausführungen des Finanzministers des Landes Nordrhein-Westfalen

in seiner Stellungnahme vom 23. Oktober 1958 weichen in wesentlichen Punkten von seiner früheren, mit dem Bundesminister der Finanzen weitgehend übereinstimmenden Auffassung ab, dass es für die Gewinnrealisierung allein auf die wirtschaftliche Nämlichkeit ankomme. Die grundsätzliche unterschiedliche und abweichende Beurteilung solcher Tauschgeschäfte, bei denen der Eintauschende Anteilsrechte des Tauschpartners erhält, und solcher Vorgänge, bei denen er Anteilsrechte an anderen Kapitalgesellschaften als Gegenleistung erwirbt, findet in der wirtschaftlichen Betrachtung und in der bisherigen höchstrichterlichen Rechtsprechung keine Stütze. Die wirtschaftliche Nämlichkeit, auf die es allein bei der Gewinnrealisierung ankommt, darf nicht grundsätzlich danach beurteilt werden, ob die eingetauschten Anteilsrechte solche des Tauschpartners oder solche an einer anderen Kapitalgesellschaft darstellen. Auch wenn der Eintauschende Anteile am Tauschpartner erhält, braucht der Tausch deshalb noch nicht einmal beim Tauschpartner mit einem gesellschaftsrechtlichen Vorgang in Verbindung zu stehen, weil der Tauschpartner die eigenen Anteile auch erworben haben kann.

Der grundsätzliche Rechtsirrtum des Finanzministers des Landes Nordrhein-Westfalen in seiner letzten Stellungnahme liegt bereits im Ausgangspunkt seiner Betrachtung. Auf Sacheinlagen in Verbindung mit Kapitalerhöhungen (gesellschaftliche Vorgänge) sind die Vorschriften des § EStG anzuwenden. Es handelt sich beim Gesellschafter um Geschäftsvorfälle, die zum Erwerb von Wirtschaftsgütern führen, die mit den Anschaffungskosten anzusetzen sind. Rechtlich ist es ohne Bedeutung, ob die Sacheinlage in einem Anteil an einer Kapitalgesellschaft (Aktie, GmbH-Anteil) oder in einem sonstigen Sachwert besteht. Streng genommen liegt hier ein „Tausch" der eingebrachten Aktien gegen neue Aktien, die aus der Kapitalerhöhung stammen, nicht vor. Bei gesellschaftlichen Vorgängen muss hinsichtlich der steuerlichen Auswirkungen stets zwischen den Gesellschaftern und der Gesellschaft unterschieden werden. Gesellschaftliche Vorgänge berühren zwar nicht das steuerliche Ergebnis der Gesellschaft; sie können aber auf den Gewinn des Gesellschafters, der die Einlage aus seinem betrieblichen Vermögen leistet, von Einfluss sein.

Aus der bisherigen Behandlung der Umwandlung einer Kapitalgesellschaft in eine Personengesellschaft durch Übertragung des Betriebsvermögens auf die Gesellschafter als Mitunternehmer oder aus der Einbringung des Betriebsvermögens einer Personengesellschaft in eine von den gleichen Personen gebildete Kapitalgesellschaft dürfen keine entscheidenden Schlüsse für die Gewinnverwirklichung bei der Einbringung einzelner Sachwerte in eine Kapitalgesellschaft gegen Gewährung von Gesellschaftsrechten gezogen werden. Hier dürfen Anteilsrechte nicht anders als sonstige Sachwerte behandelt werden. Der Reichsfinanzhof bejahte in der vom Finanzminister des Landes Nordrhein-Westfalen in den Vordergrund gestellten und auch vom Senat gebilligten Entscheidung vom 9. Mai 1933 bei der Umwandlung eines Einzelunternehmens in eine Kapitalgesellschaft die wirtschaftliche Nämlichkeit des eingebrachten Betriebsvermögens und der erhaltenen Anteilsrechte deshalb, weil er der Umwandlung im wesentlichen formale Bedeutung beimass und das bisherige „Engagement" nur in anderer Form als fortgesetzt ansah. Auf gleichen Erwägungen beruhte das Urteil des Reichsfinanzhofs vom 16. August 1934. Dieser Gedanke der wirtschaftlichen Nämlichkeit des Betriebsvermögens und des dieses Vermögen in vollem Umfang repräsentierenden Anteils bildete die Grundlage dieser Entscheidungen. Die Forderung der Fortführung der im Betriebsvermögen vorhandenen stillen Reserven durch die Kapitalgesellschaft im Urteil vom 9. Mai 1933 diente lediglich der Vermeidung von Steuerumgehungen. Es dürfen deshalb aus dieser Forderung nicht allgemeine Schlussfolgerungen in der Richtung gezogen werden, dass Tauschvorgänge ohne Prüfung der wirtschaftlichen Nämlichkeit der hingegebenen und eingetauschten Anteile oder Wirtschaftsgüter nach allgemeinen Grundsätzen dann

zu keiner Gewinnrealisierung führen, wenn die in den hingegebenen Anteilen steckenden stillen Reserven vom Tauschpartner fortgeführt oder neu begründet werden.

Die Ausführungen des Reichsfinanzhofs im Urteil vom 9. Mai 1933 über den Austausch zweier Geschäftsgrundstücke und die Fortführung der in ihren Buchwerten steckenden stillen Reserven entsprechen nicht der Rechtsprechung des Bundesfinanzhofs, wie sich eindeutig aus dem Urteil vom 4. April 1957 ergibt. Was die Einlage einzelner Sachwerte gegen Gewährung von Gesellschaftsrechten anlangt, so ist zwar richtig, dass der Reichsfinanzhof bei der Begründung der Notwendigkeit, dass die Kapitalgesellschaft die stillen Reserven des eingebrachten Betriebsvermögens in ihren Buchwerten fortführt, von der Einbringung einzelner Wirtschaftsgüter als Sacheinlage ausgeht. Wollte man aus dieser Darstellung allgemein den Schluss ziehen, dass die Einbringung einzelner Wirtschaftsgüter als Sacheinlage gegen Gewährung von Gesellschaftsrechten an der Kapitalgesellschaft zu keiner Gewinnrealisierung der in dem Buchwert der Sacheinlage steckenden stillen Reserven führt, so könnte sich der Senat dieser Auffassung nicht anschliessen. Denn es besteht, wenn man auf den Gesichtspunkt der wirtschaftlichen Nämlichkeit abstellt, ein grundlegender Unterschied zwischen der Umwandlung eines Einzelunternehmens oder einer Personengesellschaft in eine Kapitalgesellschaft und der Einbringung einzelner Wirtschaftsgüter gegen Gewährung von Gesellschaftsrechten. Nur im ersten Fall lässt sich bei wirtschaftlicher Betrachtung die Nämlichkeit der Anteilsrechte und des von ihnen repräsentierten Betriebsvermögens bejahen. Bei der Einbringung einzelner Wirtschaftsgüter ist das in der Regel deshalb nicht möglich, weil der eingetauschte Anteil einen Anteil am gesamten Betriebsvermögen der Kapitalgesellschaft repräsentiert, in dessen Rahmen der eingebrachte Sachwert keine Bedeutung mehr hat. Das Urteil des Reichsfinanzhofs vom 16. August 1934 behandelt einen Sonderfall, dessen Grundsätze nicht verallgemeinert werden dürfen.

Gegen die vom Finanzminister des Landes Nordrhein-Westfalen in seiner letzten Stellungnahme entwickelten Grundsätze bestehen auch aus folgenden Erwägungen Bedenken. Wenn die Einbringung von Anteilen als Sacheinlage gegen Gewährung von Anteilen des Tauschpartners grundsätzlich zu keiner Gewinnrealisierung führen würde, so könnte die Hingabe der Anteile an Erfüllungs Statt im Falle der Bargründung nicht anders behandelt werden. Ausserdem ist die Fortführung des Buchwerts bei der Kapitalgesellschaft praktisch wohl nur dann möglich, wenn der Einbringende die Kapitalgesellschaft beherrscht. Denn andernfalls wird er darauf bestehen, einen dem gemeinen Wert seiner Sacheinlage entsprechenden Anteil an der Kapitalgesellschaft zu erhalten, dessen Nennwert mit dem Buchwert der Sacheinlage in keinem Zusammenhang steht. Schliesslich ist es bedenklich, die Steuerpflicht des Minderheitsgesellschafters von der Verbuchung seiner Kapitaleinlage bei der Kapitalgesellschaft abhängig zu machen, auf die er keinen Einfluss hat und die er nicht zu kennen braucht.

Der Senat kann sich auch den Schlussfolgerungen nicht anschliessen, die der Finanzminister des Landes Nordrhein-Westfalen aus der im § 4 UmwStG geregelten begünstigten Umwandlung einer Kapitalgesellschaft in eine Personengesellschaft und aus dem Urteil des Reichsfinanzhofs VI 353/42 vom 27. Oktober 1943, RStBl 1944 S. 194, zieht. Es kann im Rahmen dieses Gutachtens nicht entschieden werden, ob sich das in § 4 UmwStG geregelte Bewertungswahlrecht der Gesellschafter bereits aus allgemeinen steuerlichen Grundsätzen ergibt. Es ist zwar richtig, dass der Reichsfinanzhof im Urteil vom 27. Oktober 1943 einen Zwang zur Gewinnverwirklichung insoweit ablehnte, als sich der Nennbetrag der erhaltenen Beteiligung an der Personengesellschaft mit dem Buchwert der Anteile der umgewandelten Kapitalgesellschaft deckte. Er verlangte aber anderenfalls grundsätzlich die Gewinnverwirklichung in Höhe des Unterschieds des Teilwerts der erhaltenen Wirt-

schaftsgüter zum Buchwert der erloschenen Beteiligung. Dabei wies er ausdrücklich auf die grundsätzliche Verschiedenheit der Aktienbeteiligung und der Erlangung von Miteigentum an dem durch die Wertpapiere repräsentierten Betriebsvermögen im Rahmen einer Unternehmergemeinschaft hin. Trotz dieser wirtschaftlichen Verschiedenheit hielt es dann der Reichsfinanzhof ohne nähere Begründung unter Hinweis auf die kaufmännischen Gepflogenheiten für angebracht, die stillen Reserven im bisherigen Betriebsvermögen der Kapitalgesellschaft unaufgelöst zu lassen. Bei dieser nicht voll aufeinander abgestimmten Begründung dürfen jedenfalls weder aus einzelnen Teilen der Urteilsgründe noch aus dem Ergebnis weittragende Folgen für die Gewinnrealisierung bei Tausch von Anteilsrechten im allgemeinen gezogen werden.

Source: *Bundessteuerblatt, 21. Januar 1959.*

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SURTAXE PROGRESSIVE. PRINCIPE DE TERRITORIALITÉ

Français ayant plusieurs résidences, en France et dans l'Union Française

Lorsqu'une personne de nationalité française possède deux résidences, l'une en France, l'autre dans un territoire d'outre-mer, la question se pose de savoir où doit être souscrite la déclaration des revenus soumis à un impôt personnel progressif (surtaxe progressive dans la Métropole, impôt général sur le revenu dans les territoires d'outre-mer: Cameroun, Togo, A.E.F., A.O.F., etc.).

L'imprécision des textes et l'absence de toute jurisprudence en la matière permettent des interprétations différentes et, dans certains cas, il peut en résulter des doubles impositions à l'intérieur de l'Union Française.

Le paragraphe 3 de l'article 164 du Code général des Impôts stipule: «Les contribuables *domiciliés* en Algérie ou dans l'un des territoires d'outre-mer où est perçu un impôt sur le revenu global peuvent, *sous condition de réciprocité*, être exonérés de la surtaxe dans la Métropole à raison des résidences secondaires qu'ils y possèdent».

Il est à noter que les conditions de réciprocité sont remplies pour les territoires suivants: A.O.F., A.E.F., Madagascar, Togo, Cameroun, Côte Française des Somalis; d'autre part, bien que les Etats associés du Vietnam, du Cambodge et du Laos ne puissent plus être considérés comme territoires d'outre-mer proprement dits, les dispositions du paragraphe 3 de l'article 164 sont encore applicables pour ces territoires.

Or, si le Code général des Impôts et les Codes locaux des territoires d'outre-mer précisent ce qu'il faut entendre par résidence habituelle (article 4 du Code général des Impôts pour la France), aucune définition n'est donnée du domicile fiscal au sens de l'article 164, § 3, du Code général des Impôts.

En fait, il s'agit de différencier, pour les assujettis ayant plusieurs résidences habituelles à l'intérieur de l'Union Française, celle qui doit être considérée comme résidence principale et celles qui doivent être considérées comme résidences secondaires.

Dans une réponse à une question orale (J.O. *Débats* 20 avril 1956), le Secrétaire d'Etat à la Présidence du Conseil a précisé: «Les dispositions de l'article 164-3 du Code général des Impôts qui prévoit que les contribuables domiciliés dans l'un des territoires français d'outre-mer ont perçu un impôt sur le revenu global peuvent sous condition de réciprocité, être exonérés de la surtaxe progressive dans la métropole à raison des résidences secondaires qu'ils y possèdent, sont applicables aux personnes domiciliées au Cameroun. Mais encore faut-il que les contribuables intéressés soient en situation d'être considérés, eu égard aux *circonstances* de fait, comme étant effectivement domiciliés au Cameroun. En effet ,si les conditions dans lesquelles ils séjournent en France permettent de conclure qu'ils possèdent en réalité leur domicile sur le territoire métropolitain, ces contribuables sont redevables de la surtaxe progressive d'après l'ensemble de leurs revenus.

Corrélativement, ils seraient, dans cette hypothèse, regardés comme ne possédant au Cameroun qu'une simple résidence secondaire à raison de laquelle ils devraient être exonérés dans ce territoire de l'impôt sur le revenu global.

Le point de savoir où est domicilié un contribuable qui possède une résidence en France et une autre au Cameroun constitue une question de fait qu'il

appartient exclusivement au service local des Contributions Directes, de trancher sous le contrôle des tribunaux administratifs. »

Cette réponse ne permet de retenir aucun critère précis et, en fait, l'administration métropolitaine estime devoir retenir, comme lieu d'imposition, le territoire où le contribuable a effectué le plus long séjour au cours de l'année et ceci, même dans le cas où le centre exclusif des intérêts et des affairs de l'assujetti se trouve dans l'autre territoire.

Ce point de vue est contesté, non seulement par certains redevables mais aussi par certains territoires d'outre-mer qui voient de cette manière, une partie de leurs ressources fiscales diminuer au profit de la Métropole; en effet, il est assez fréquent que les Français possèdent dans un territoire de l'Union Française le centre exclusif de leurs intérêts et de leurs affaires mais effectuent de longs séjours dans la Métropole, séjours qui, dans certains cas, excèdent six mois par an. Il est beaucoup moins fréquent de rencontrer le cas de Français ayant le centre exclusif de leurs intérêts et de leurs affaires en Métropole et qui séjournent de longs mois dans un territoire d'outre-mer.

La doctrine administrative semble du reste avoir évolué car, dans des ouvrages émanant de la Direction générale des Impôts et, en particulier, dans une circulaire en date du 31 janvier 1928, § 315, il est précisé: «le domicile réel est le domicile de fait; il faut entendre par domicile de fait, le lieu où le contribuable possède son principal établissement, le centre de ses intérêts et de ses affaires».

Dans un récent arrêté en date du 11 avril 1958, le Tribunal administratif des Alpes-Maritimes a pris nettement position dans ce sens. Cette question étant très importante pour de nombreux ressortissants français d'outre-mer, nous donnons ci-dessous, *in-extenso*, le texte de l'arrêté:

«*Que si l'article 4 du Code général des Impôts prévoit que la surtaxe progressive est due par toutes les personnes physiques ayant en France une résidence habituelle, l'article 164, § 3, du même Code dispose que: les contribuables domiciliés en Algérie ou dans l'un des territoires français d'outre-mer où est perçu l'impôt sur le revenu global, peuvent, sous condition de réciprocité, être exonérés de la surtaxe dans la Métropole à raison des résidences secondaires qu'ils y possèdent:*

«*Considérant qu'il résulte de l'instruction que s'il réside habituellement en France où il dispose de deux habitations, le sieur X... est propriétaire à X... (Cameroun) d'une villa meublée laissée en permanence à sa disposition et d'importantes plantations... qu'il exploite personnellement et desquelles il retire la quasi-totalité de ses revenus;*

«*Qu'il a ainsi dans ce dernier lieu son principal établissement, le siège de ses intérêts et de ses affaires et, par suite, son domicile au sens de l'article* 164, § 3, *ci-dessus rappelé du Code général des Impôts;*

«*Que par voie de conséquence, les résidences que possède en France le requérant à X... et à X... ne sauraient être regardées que comme constituant pour celui-ci des résidences secondaires;*

«*Considérant dans ces conditions que le sieur X... est fondé à se prévaloir des dispositions édictées par l'article* 164 § 3 *du Code général des Impôts pour soutenir que c'est à tort qu'il a été assujetti à la surtaxe progressive dans la Commune de X... (France) pour les années* 1951 *à* 1955 *à raison de l'ensemble de ses revenus de source francaise et étrangère;*

«*Qu'il échet, dès lors, d'accorder au sieur X... la décharge des impositions susvisées ainsi que le remboursement des frais de timbre par lui exposés;*

«*Par ces motifs, vidant son délibéré et statuant contradictoirement décide...*»

La question n'étant pas définitivement tranchée, l'arrêt que sera éventuellement rendu par le Conseil d'Etat sera commenté et analysé dans Impôts et Sociétés dès qu'il sera publié.

B. FRELY.

Source: *Impôts et Sociétés, Sept-Oct.* 1958

UNITED ARAB REPUBLIC - SWEDEN. AVOIDANCE OF DOUBLE TAXATION. PREVENTION OF FISCAL EVASION.

Agreement

The Government of the United Arab Republic and the Royal Government of Sweden,

Desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect of taxes on income and capital,

Have agreed as follows:

Article 1.

1. The taxes which are the subject of the present Convention are:

(a) In Egypt:

(i) Tax on income derived from immovable property (including the land tax, the building tax and the ghaffir tax);
(ii) Tax on income from movable capital;
(iii) Tax on commercial and industrial profits;
(iv) Tax on wages, salaries, indenmities and pensions.
(v) Tax on profits from liberal professions and all other non-commercial professions;
(vi) General income tax;
(vii) Defense tax;
(viii) Supplementary tax on directors' remuneration, and
(xi) Supplementary taxes imposed as a percentage of taxes mentioned above or otherwise,

(hereinafter referred to as "Egyptian Tax").

(b) In Sweden:

(i) State income tax, including coupon tax;
(ii) Sailors tax;
(iii) State capital tax;
(iv) Local income tax, and
(v) Supplementary taxes impose as a percentage of taxes mentioned above or otherwise,

(hereinafter referred to as "Swedish tax").

2. The present Convention shall also apply to any other taxes of a substantially similar character imposed in Egypt or in Sweden subsequently to the date of signature of the present Convention.

Article 2.

1. In the present Convention, unless the context otherwise requires:

(a) The term "*Sweden*" means the Kingdom of Sweden;

(b) The term *"Egypt"* means the Egyptian Province of the United Arab Republic.
(c) The terms *"One of the Territories"* and *"The other Territory"* mean Sweden or Egypt, as the contect requires;
(d) the term *"Tax"* means Swedish tax or Egyptian tax, as the context requires;
(c) The term *"Person"* includes any body of persons, corporate or not corporate;
(f) The term *"Company"* means any body corporate;
(g) The term *"Resident of Sweden"* means: -
(i) Any company which is incorporated under the laws of Sweden and whose business is not managed and controlled in Egypt, or if it is not so incorporated but has its principal seat so incorporated and management in Sweden;
(ii) Any other person who is resident in Sweden (by reason of abode or sojourn) for the purposes of

Swedish tax and not resident in Egypt (by reason of abode or sojourn) for the purposes of Egyptian tax;

(h) The term *"Resident of Egypt"* means:
(i) Any company having its principal seat of control and management in Egypt;
(ii) Any other person who is resident in Egypt (by reason of abode or sojourn) for the purposes of Egyptian tax and not resident in Sweden (by reason of abode or sojourn) for the purposes of Swedish tax;
(i) the terms *"Resident of one of the Territories" and "Resident of the other Territory"* mean a person who is resident of Sweden or a person who is a resident of Egypt, as the context requires;
(j) The terms *"Swedish enterprise"* and *"Egyptian enterprise"* mean respectively an industrial or commercial enterprise or undertaking carried on by a resident of Sweden and an industrial or commercial enterprise or undertaking carried by a resident of Egypt, and the terms *"Enterprise of one of the Territories"* and *"Enterprise of the other Territory"* mean a Swedish enterprise or an Egyptian enterprise, as the context requires;
(k) The term *"Industrial or commercial Profits "*includes rents or royalties in respect of cinematograph films;
(l) The term *"Permanent establishment"* means a branch, management, factory, office, oilfield, mine, quarry, or other place of natural resources subject to exploitation, farm, plantation, workshop, warehouse, installation, or other fixed place of business in which the business of the enterprise is wholly or partly carried on. It also includes a place where building construction is carried on for a period of at least six months. The term shall also include an agent or an employee who has, and habitually exercises, an authoriy to negotiate and conclude contracts on behalf of a enterprise of one of the territories or has a stock of merchandise from which he regularly fills orders on its behalf.

In this connexion: -

(i) An enterprise of one of the territories shall not be deemed to have a permanent establishment in the other territory merely because it carries on business dealings in that other territory through a *bona fide* broker or general commission agent acting in the ordinary course of his business as such;
(ii) The fact that an enterprise of one of the territories maintains in the other territory a fixed place of business exclusively for the purchase of goods or merchandise for that enterprise shall not of itself constitute that fixed place of business a permanent establishment of the enterprise;

(iii) The fact that a company which is a resident of one of the territories has a subsidiary company which is a resident of the other territory or which carries on a trade or business in that other territory (whether through a permanent establishment or otherwise) shall not of itself constitute that subsidiary company a permanent establishment of its parent company;

(m) The term *"Law 14 of 1939"* means the Egyptian law about taxes on income from movable capital, on commercial and industrial profits, on wages, salaries, indemnities and pensions and on profits from liberal professions and all other non-commercial professions.

2. In the application of the provisions of the present Convention by one of the Contracting Parties any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws in force in the territory of that Party relating to the taxes which are the subject of the present Convention.

Article 3.

1. The industrial or commercial profits of a Swedish enterprise shall not be subject to Egyptian tax unless the enterprise carries on a trade or business in Egypt through a permanent establishment situated therein. If it carries on a trade or business as aforesaid, tax may be imposed on those profits by Egypt but only on so much of them as is attributable to that permanent establishment.

2. The industrial or commercial profits of an Egyptian enterprise shall not be subject to Swedish tax unless the enterprise carries on a trade or business in Sweden through a permanent establishment situated therein. If it carries on a trade or business as aforesaid, tax may be imposed on those profits by Sweden but only on so much of them as is attributable to that permanent establishment.

3. Where an enterprise of one of the territories carries on a trade or business in the other territory through a permanent establishment situated therein, there shall be attributted to that permanent establishment the industrial or commercial profits which it might be expected to derive in that other territory if it were an independent enterprise engaged in the same or similar activities under the same or similar condition and dealing at arm's length with the enterprise of which it is a permanent establishment. Such industrial and commercial profits will in principle be determined on the basis of the separate accounts pertaining to such establishment. In the determination of the net industrial and commercial profits of the permanent establishment there shall be allowed as deductions all expenses which are reasonably attributable to the permanent establishment, including executive and general administrative expenses so attributable:

Provided that if the information available to the taxation authority concerned is inadequate to determine the profits to be attributed to the permanent establishment, nothing in this paragraph shall affect the application of the law of either territory in relation to the liability of the permanent establishment to pay tax on an amount determined by the exercise of a discretion or the making of an estimate by the taxation authority of that territory; such discretion shall be exercised or such estimate shall be made, so far as the information available to the taxation authority permits, in accordance with the principle stated in this paragraph.

4. No portion of any profits arising to an enterprise of one of the territories shall be attributed to a permanent establishment situated in their territory by reason of the mere purchase of goods or merchandise within that other territory, provided that no expenses or costs relating directly or indirectly to such purchases shall be allowed as deductions in determining the profits of the permanent establishment.

5. Paragraphs 1. 2 and 3 shall not be construed as preventing one of the Contracting Parties from imposing, pursuant to this Convention, a tax on income (e.g. dividends, interest, royalties) derived from sources within its territory by a resident of the other territory even though such income is not attribuable to a permanent establishment in tne first-mentioned territory.

Such income, if attribuable to a permanent establishment, shall be taxed separately or together with the industrial or commercial profits of the permanent establishment in accordance with the laws of the Contracting Parties.

Article 4.

1. Where

(a) an enterprise of one of the territories participates directly or indirectly in the management, control or capital of an enterprise of the other territory, or

(b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of one of the territories and an enterprise of the other territory.

or in either case, conditions are made or imposed between the two enterprises, in their commercial or financial relations, which differ from those which would be made between independent enterprises, then any profits which would, except for those conditions have accrued to one of the enterprises but by reason of those conditions have not so accrued, may be included in the profits of that enterprise and taxed accordingly. In consequence the necessary rectifications should be made concerning the income of the other enterprise.

2. If the information available to the taxation authority concerned is inadequate to determine, for the purposes of paragraph 1 of this article, the profits which might be expected to accrue to an enterprise, nothing in that paragraph shall affect the application of the law of either territory in relation to the liability of that enterprise to pay tax on an amount determined by the exercise of a discretion or the making of an estimate by the taxation authority of that territory: Provided that such discretion shall be exercised or such estimate shall be made, so far as the information available to the taxation authority permits, in accordance with the principle stated in that paragraph.

Articles 5.

1. Dividends paid by a company resident in Sweden to a resident of Egypt shall be exempt from Swedish tax.

2. Dividends paid by a company resident in Egypt to a resident of Sweden shall in Egypt be subject only to the tax on income derived from movable capital, the supplementary taxes and the defence tax (which taxes shall be deducted at source) provided that such dividends shall be deducted from the amount of the company's taxable income or profits subject to the tax chargeable in respect of its industrial and commercial profits if such dividends are distributed out of the taxable profits of the same taxable year and not distributed out of accumulated reserves or other assets.

3. Dividends paid by a company resident in Sweden whose activities lie solely or mainly in Egypt, shall in Egypt be treated as mentioned in paragraph 2 of this Article; consequently such dividends shall not be subject to the general income tax in Egypt.

4. Dividends, deemed to be paid out of the yearly profits by a permanent establishment maintained in Egypt by a Swedish company whose activities extend to countries other than Egypt, shall in Egypt be treated as mentioned in paragraph 2 of this Article; consequently such dividends shall not be subject to the general income tax in Egypt.

The permanent establishment shall be considered to have distributed in

Egypt within 60 days from the closing of its financial year, a sum equivalent to 90 % of its total net profits liable to the tax on industrial and commercial profits without applying the provisions of Article 36 of Law 14 of 1939, provided that the remaining 10 % of the net profits shall be set aside to form a special reserve which shall be entered in the local balance sheet submitted annually to the Egyptian authorities. Such amount shall only be subject to the tax on commercial and industrial profits.

All sums deducted from the aforesaid 10 % set aside to form the special reserve for purposes other than the redemption of losses incurred in the trade or business carried on by that permanent establishment situated in Egypt shall be deemed to have been distributed in Egypt and shall be taxed accordingly.

5. Where (in other cases than these referred to in paragraphs 3 and 4 of of this Article) a company which is a resident of one of the territories derives profits or income from sources within the other territory, there shall not be imposed in that other territory any form of taxation on dividends paid by the company to persons not resident in that other territory, or any tax in the nature of undistributed profits tax on undistributed profits of the company, whether or not those dividends or undistributed profits represent, in whole or in part, profits or income so derived.

6. In this Article the term "*Dividends*" means in the case of Egypt profits distributed by a company to its shareholders or its founder-shareholders and the profits distributed to sleeping partners in limited partnerships.

7. Paragraphs 1, 2 and 3 shall not apply where a resident of one of the territories has a permanent establishment in the other territory and such dividends are attributable to that permanent estalishment; in such event Article 3 of this Convention is applicable.

Article 6.

1. Notwithstanding the provisions of Articles 3, 4 and 5, profits which a resident of one of the territories derives from operating ships or aircraft shall be exempt from tax in the other territory; and where such profits are derived by a company which is a resident of one of the territories, dividends paid by the company to persons not resident in the other territory shall be exempt from tax in that other territory.

2. Paragraph 1 shall likewise apply in respect of participations in pools of any kind by Egyptian or Swedish enterprises engaged in airtransport or navigation.

Article 7.

1. Interest paid by a resident of Sweden to a resident of Egypt shall be exempt from Swedish tax.

2. Interest paid by a resident of Egypt to a resident of Sweden shall in Egypt be subject only to the tax on income derived from movable capital, the supplementary taxes and the defence tax.

3. In this Article, the term "*Interest*" includes interests on bonds, securities, notes, debentures or any other form of indebtedness.

4. Paragraphs 1 and 2 shall not apply where a resident of one of the territories has a permanent establishment in the other territory and such interest is attributable to that permanent establishment; in such event Article 3 of this Convention is applicable.

Article 8.

1. Any royalty derived from sources within one of the territories by a resident of the other territory shall be exempt from tax in that first-mentioned territory.

2. In this Article the term "*Royalty*" means any royalty or other amount

paid as consideration for the use of, or for the privilege of using, any copyright, patent, design, secret process or formula, trade mark, or other like property, but does not include any royalty or other amount paid in respect of the operation of a mine or quarry or of any other extraction of natural resources or rents or royalties in respect of cinematograph films.

3. Where any royalty exceeds a fair and reasonable consideration in respect of the rights for which it is paid, the exemption provided by this Article shall apply only to so much of the royalty as represents such fair and reasonable consideration.

4. Any capital sum derived from sources within one of the territories from the sale of patent rights by a resident of the other territory shall be exempt from tax in that first-mentioned territory.

5. The provisions of this Article shall not apply where founder share are issued in Egypt as consideration for the rights mentioned in paragraph 2 of this Article and taxed in accordance with the provisions of Article 1 of Law 14 1939.

6. The provisions of this Article shall not apply where a resident of one of the territories has a permanent establishment in the other territory and such royalty is attributable to that permanent establishment; in such event Article 3 of this Convention is applicable.

Article 9.

1. Income of whatever nature derived from real property within one of the territories by a resident of the other territory shall be exempt from tax in the last-mentioned territory.

2. Any royalty or other amount paid in respect of the operation of a mine or quarry or any other extraction of natural resources within one of the territories to a resident of the other territory shall be exempt from tax in the last-mentioned territory.

Article 10.

1. A resident of one of the territories shall be exempt in the other territory from any tax on gains from the sale, transfer, or exchange of capital assets.

2. Paragraph 1 shall not apply where a resident of one of the territories has a permanent establishment in the other territory and such gains are attributable to that permanent establishment; in such event Article 3 of this Convention is applicable.

Article 11.

1. Remuneration, including pensions paid by, or out of funds created by one of the Contracting Parties to any individual in respect of services rendered to that Party in the discharge of governemental functions shall be exempt from tax in the territory of the other Contracting Party, unless the individual is a national of that other Party without being also a national of the first-mentioned Party.

2. The provisions of this Article shall not apply to payments in respect of services rendered in connection with any trade or business carried on by either of the Contracting Parties for purposes of profit.

Article 12.

1. An individual who is a resident of Sweden shall be exempt from Egyptian tax on profits or remuneration in respect of personal (including professional) services performed within Egypt in any calendar year if -

(a) he is present within Egypt for a period or periods not exceeding in the aggregate 183 days during that year, and

(b) (i) in the case of a directorship or employment, the services are performed for or on behalf of a resident of Sweden;
(ii) in other cases, he has no office or other fixed place of business in Egypt, and
(c) the profits or remuneration are not allowable as a deduction in computing any profits taxable in Egypt.

2. An individual who is a resident of Egypt shall be exempt from Swedish tax on profits or remuneration in respect of personal (including professional) services performed within Sweden in any calendar year if -
(a) he is present within Sweden for a period or periods not exceeding in the aggregate 183 days during that year, and
(b) (i) in the case of a directorship or employment, the services are performed for or on behalf of a resident of Egypt;
(ii) in other cases, he has no office or other fixed place of business in Sweden, and
(c) the profits or remuneration are not allowable as a deduction in computing any profits taxable in Sweden.

3. The provisions of this Article shall not apply to the profits or remuneration of public entertainers such as theatre, motion picture, radio or television artists, musicians and athletes.

Article 13.

1. Any pension (other than a pension of the kind referred to in paragraph 1 of Article 11) and any annuity, derived from sources within Egypt by an individual who is a resident of Sweden shall be exempt from Egyptian tax.
2. Any pension (other than a pension of the kind referred to in paragraph 1 of Article 11) and any annuity, derived from sources within Sweden by an individual who is a resident of Egypt shall be exempt from Swedish tax.
3. The term "*Annuity*" means a stated sum payable periodically at stated times, during life or during a specified or ascertainable period of time under an obligation to make the payments in return for adequate and full consideration in money or money's worth.

Article 14.

A professor or teacher from one of the territories, who receives remuneration for teaching, during a period not exceeding two years, at a university or other similar establishment for higher education in the other territory, shall be exempt from tax in that other territory in respect of that remuneration.

Article 15.

A student or business apprentice from one of the territories, who is receiving full-time education or training in the other territory, shall be exempt from tax in that other territory on payments made to him by persons in the first-mentioned territory for the purposes of his maintenance, education or training.

Article 16.

In the case of taxes on capital the following provisions shall be applicable:

1. If the capital consists of

(a) immovable property and accessories appertaining thereto;
(b) commercial or industrial enterprises, including maritime shipping and air transport undertakings;
the tax may be levied only in the territory which is entitled under the preceding Articles to tax the income from such capital.

2. In the case of all other kinds of capital, the tax may be levied only in the territory where the tax-payer is resident.

Article 17.

Where under the provisions of this Convention a resident of Egypt is exempt or entitled to relief from Swedish tax, similar exemption or relief shall be applied to the undivided estates of deceased persons in so far as one or more of the beneficiaries are resident in Egypt.

Article 18.

1. Individuals who are resident in Egypt shall be entitled to the same personal allowances, reliefs and reductions for the purposes of Swedish tax as Swedish subjects not resident in Sweden.

2. Individuals who are resident in Sweden shall be entitled to the same personal allowances, reliefs and reductions for the purposes of Egyptian tax as Egyptian nationals not resident in Egypt.

Article 19.

1. (a) In determining its taxes on income specified in Article 1 of this Convention Sweden shall exclude, in the case of a resident of Sweden, from the basis upon which its taxes are imposed such items of income from sources within Egypt which according to this Convention are not exempt from Egyptian tax. This rule, however, shall not apply to income from dividends and interest within the meaning of Articles 5 and 7; the Egyptian tax collected on this income shall, however, on application, be allowed as a credit against the Swedish tax payable in respect of such dividends or interest computed on the basis of an average rate of tax. Furthermore, Sweden retains the right to take into account in the determination of its rate of tax the items of income excluded in accordance with the provisions of this sub-paragraph.

(b) In determining its tax on capital specified in Article 1 of this Convention Sweden shall exclude, in the case of a resident of Sweden, from the basis upon which its tax is imposed such items of capital which Egypt according to this Convention is entitled to tax. Sweden, however, retains the right to take into account in the determination of its rate of tax the items of capital excluded in accordance with the provisions of this sub-paragraph.

2. (a) In determining its taxes on income specified in Article 1 of this Convention Egypt shall exclude, in the case of a resident of Egypt, from the basis upon which its taxes are imposed such items of income from sources within Sweden which according to this Convention are not exempt from Swedish tax. This rule, however, shall not apply to income from dividends and interest within the meaning of Articles 5 and 7; the Swedish tax collected on this income shall, however, on application, be allowed as a credit against the Egyptian tax payable in respect of such dividends or interest computed on the basis of an average rate of tax. Furthermore, Egypt retains the right to take into account in the determination of its rate of tax the items of income excluded in accordance with the provisions of this sub-paragraph.

(b) In the event that Egypt should impose a tax on capital the provisions of sub-paragraph (b) of paragraph 1 of this Article shall apply, *mutatis mutandis*, at the determination of the capital tax to which a resident of Egypt would be liable.

3. The special tax payable in Sweden by public entertainers such as theatre, television and radio artists, musicians and athletes (bevillningsavgift for vissa offentliga forestallninger) shall be regarded, for the purposes of this Article, as Swedish tax.

4. For the purposes of this Article, profits or remuneration for personal (including professional) services performed in one of the territories shall be deemed to be income from sources within that territory, and the services of

an individual whose service are wholly or mainly performed in ships or aircraft operated by a resident of one of the territories shall be deemed to be performed in that territory.

Article 20.

1. The taxation authorities of the Contracting Parties shall exchange such information (being information which is at their disposal under their respective taxation laws in the normal course of administration) as is necessary for carrying out the provisions of the present Convention or for the prevention of fraud or for the administration of statutory provisions against legal avoidance in relation to the taxes which are the subject of the present Convention. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons other than those concerned with the assessment and collection of the taxes which are the subject of the present Convention. No information as aforesaid shall be exchanged which would disclose any trade, business, industrial or professional secret or trade process.

2. The taxation authorities of the Contracting Parties will consult together, as may be necessary, for the purpose of carrying out the provisions of the present Convention.

3. In the event of substantial changes in the fiscal law of either of the Contracting Parties the taxation authorities of the contracting Parties will consult together in order to determine whether it is necessary for that reason to amend any of the provisions of this Convention.

4. As used in this Article, the term *"Taxation Authorities"* means, in the case of Sweden, the Minister of Finances or his authorized representative; in the case of Egypt, the Minister of Treasury or his authorized representative.

Article 21.

1. The national of one of the Contracting Parties shall not be subjected in the territory of the other Contracting Party to any taxation or any requirement connected therewith which is other higher, or more burdensome than the taxation and connected requirements to which the nationals of the latter Party are or may be subjected.

2. The enterprises of one of the territories shall not be subjected in the other territory, in respect of income, profits or capital attributable to their permanent establishments in that other territory, to any taxation which is other, higher or more burdensome than the taxation to which the enterprises of that other territory similarly carried on are or may be subjected in respect of the like income, profits or capital.

3. An individual or company being a resident of one of the territories, shall not be subject to any tax on capital in the other territory which is other, higher of more burdensome than the tax on capital to which an individual or, as the case may be, a company, being a resident of that other territory is or may be subjected.

4. The income, profits or capital of an enterprise of one of the territories, the capital of which is wholly or partly owned or controlled, directly or indirectly, by a resident or residents of the other territory shall not be subjected in the first-mentioned territory to any taxation which is other, higher or more burdensome than the taxation to which other enterprises of that first-mentioned territory are or may be subjected in respect of the like income, profits or capital.

5. Nothing in this Article shall be construed as -

(a) obliging one of the Contracting Parties to grant to nationals of the other Contracting Party who are not resident in the territory of the former Party the same personal allowances, reliefs and reductions for tax purposes as are granted to its own residents;

(b) obliging Egypt to grant to Swedish companies the exemptions conferred in Egypt by Articles 5 and 6 of Law 14 of 1939; or
(c) affecting the application in Egypt of Article 11 paragraphs 1 and 2 and Article 11 bis of Law 14 of 1939.

6. In this Article, the term "*Nationals*" means:

(a) in relation to Egypt
(i) all Egyptian subjects whether residing in Egypt or not, and
(ii) all legal persons, partnerships, associations and other entities deriving their status as such from the law in force in Egypt;
(b) in relation to Sweden
(i) all Swedish subjects, and
(ii) all legal persons, partnerships and associations deriving their status as such from the law in force in Sweden.

7. In this Article the term "*Taxation*" means taxes of every kind and description levied on behalf or any authority whatsoever.

Article 22.

Any Agreement between the Government of United Arab Republic (Egyptian Region) and Sweden for reciprocal exemption from income tax of profits derived from operating aircraft shall not have effect for any period for which the present Convention has effect.

Article 23.

1. The present Convention shall be ratified by the Contracting Parties. Ratification by His Majesty the King of Sweden shall be subject to the consent of Riksdag.
2. The instruments of ratification shall be exchanged at Stockholm as soon as possible.
3. The present Convention shall enter into force upon the exchange of the instruments of ratification.

Article 24.

Upon the entry into force of the present Convention, the provisions of the Convention shall have effect -

(a) In Sweden:
(i) As respects State and local taxes on income which are assessed in or after the calendar year beginning on 1st January, 1959, being income for which preliminary tax is payable during the period 1st March, 1958, to 28th February, 1959, or any succeeding period;
(ii) as respects coupon tax on dividends payable on or after 1st January, 1958;
(iii) as respects sailors tax income payable on or after 1st January, 1958;
(iv) as respects capital tax which is assessed in or after the calendar year beginning on 1st January 1959.

(b) In Egypt:
(i) As respects tax on income derived from immovable property, tax on income from movable capital, tax on wages, salaries, indemnities and pensions, and supplementary tax on directors' remuneration, which taxes are payable or due on or after 1st July, 1958;
(ii) as respects tax on commercial and industrial profits for any accounting period beginning on or after 1st July, 1958 and for the unexpired portion of any fiscal period current at that date;
(iii) as respects tax on profits from liberal professions and all other non-

commercial professions and the general income tax for the taxation year 1958 or any subsequent taxation years.

The rules in sub-paragraph (b) shall be correspondingly applicable respectively to the defense tax and to the supplementary taxes.

Article 25.

The present Convention shall continue in effect indefinitely but either of the Contracting Parties may, on or before the 30th of June in any calendar year not earlier than the year 1961, give to the other Contracting Party, through diplomatic channels, written notice of termination and, in such event the present Convention shall cease to be effective -

(a) In Sweden:

(i) As respects State and local taxes on income for which preliminary tax is payable after the last day of February in the calendar year next following that in which the notice is given;
(ii) as respects coupon tax on dividends payable on or after 1st January in the calendar year next following that in which the notice is given;
(iii) as respects sailors tax on income payable on or after 1st January in the calendar year next following that in which the notice is given:
(iv) as respects capital tax assessed in or after the second calendar year following that in which the notice is given.

(b) In Egypt:

(i) As respects tax on income derived from immovable property, tax on income from movable capital, tax on wages, salaries, indemnities and pensions, and supplementary tax on directors' remuneration, which taxes are payable or due on or after 1st July in the calendar year next following that in which the notice is given;
(ii) as respects tax on commercial and industrial profits for any accounting period beginning on or after 1st July in the calendar year next following that in which the notice is given for the unexpired portion of any fiscal period current at that date;
(iii) as respects tax on profits from liberal professions and all other non-commercial professions and the general income tax for any taxation year beginning on or after 1st January in the calender year next following that in which the notice is given.

The rules in sub-paragraph (b) shall be correspondingly applicable respectively to the defence tax and to the supplementary taxes.

In Witness Whereof the undersigned, duly authorized thereto, have signed the present Convention.

Done in duplicate at Cairo, in the English language on the twenty-ninth day of July 1958.

Source: *La Gazette Fiscale, janvier* 1959.

UNITED STATES - TAXES OF FOREIGN COUNTRIES AND OF POSSESSIONS OF UNITED STATES

Allowance of credit for taxes

The tax of 25 percent on royalties withheld pursuant to Brazilian Decree No. 36,773 of January 13, 1955, ratifying Regulations for the Collection and Auditing of Income Taxes, is allowable as a credit against United States income tax, under section 901 of the Internal Revenue Code of 1954, subject to the limitation of section 904 of the Code. However, the additional "tax" imposed by Article 3 of Brazilian Law No. 1474, regulated by Article 4, Brazilian Decree No. 30,812 of May 2, 1952, and Article 210 of the Regulations ratified by Decree No. 36,773, does not constitute an income tax and is not allowable as a credit under section 901 of the Code.

Advice has been requested whether the tax on royalties withheld pursuant to Brazilian Decree No. 36,773 of January 13,1955, and the regulations ratified therein, and the additional "tax" imposed by Article 3 of Brazilian law No. 1,474 are allowable as a credit against United States Federal income taxes under section 901 of the Internal Revenue Code of 1954.

The taxpayer, a domestic corporation, has contracts with licensees in Bazil under which royalties are paid to it. In connection with such royalty payments, deductions are made by the licensees for taxes required to be withheld at source under Bazilian income tax law and the regulations thereunder. The corporation is also subject to an income tax which it pays directly and to an additional "tax" or surtax imposed by Article 3 of Law No. 1,474.

Section 901 of the Code, relating to taxes of foreign countries and possessions of the United States, provides, in part, as follows:

* * * If the taxpayer chooses to have the benefits of this subpart [relating to foreign tax credits], the tax imposed by this chapter shall, subject to the limitation of section 904, be credited with the amounts provided in the applicable paragraph of subsection (b) * * *

Section 1.901-1 of the Income Tax Regulations provides, in general, as follows:

* * * Citizens of the United States, domestic corporations, and certain aliens resident in the United States or Puerto Rico may choose to claim a credit, as provided in section 901, against the tax imposed by chapter 1 for taxes paid or accrued to foreign countries and possessions of the United States * * *.

Under Revenue Ruling 54-14, C.B. 1954-1, 129, the taxes imposed on corporations by Article 96 of Brazilian Law No. 4178, as amended by Law No. 1,474 of November 26, 1951, are allowable as a credit against United States income tax to the extent provided by section 131 (a) of the Internal Revenue Code of 1939, which corresponds to section 901 (a) of the Internal Revenue Code of 1954. I.T. 4013, C.B. 1950-1, 65, holds that the taxes imposed under Articles 96 and 97 of Brazilian Income Tax Law No. 4178, dated March 13, 1942, as amended, revised, and consolidated by Decree Law No. 5844 of September 23, 1943, and Law No. 154 of November 25, 1947, are allowable as a credit against the United States income tax under section 131 (a) of the 1939 Code. Article 96 provides that certain types of income are subject to withholding of tax at the source and at the rates specified therein, such rates to be imposed upon the gross earnings. Article 97 provides that

the income received by individuals or corporate bodies, among others, residing or domiciled abroad, is subject to withholding of tax at the rate of 15 percent.

By Decree No. 36,773 of January 13, 1955, which was published in the "Official Bulletin" of January 17, 1955, the President of Brazil ratified new regulations for the collection and auditing of the income tax. The Regulations for the Collection and Auditing of the Income Taxes, ratified by Decree No. 36,773, *supra*, provides as follows:

> From the Income of Parties Residing or Domiciled in Foreign Countries
> Art. 97—There shall be subject to the tax discount (Law No. 2,354):
>
> 2. At the rate of 25% (twenty-five percent)—the income of the persons mentioned in the preceding paragraph, which falls under "royalties," such as payments on the exploitation of trademarks (literally "marks of industry and commerce"), on patents of invention, on manufacturing processes or formulas.

Article 3 of Law No. 1,474, *supra*, provides, in part as follows:

> The tax dealt with in Law No. 154 of November 25, 1947 and governed by decree No. 24,239 of December 22,1947 shall, during the fiscal years of 1952 to 1956, be increased by a surtax which shall be calculated on the amounts due by the taxpayers, * * * as follows:
>
> (a) 15% (fifteen percent) on the tax amount to be paid:
>
> (b) 3% (three percent) on the reserves and profits pending or un-distributed, in possession of legal persons * * *
>
> No.3. The amounts originating from the collection of the surtax dealt with in this Article shall, after the sixty fiscal year be elapsed and after the year of the respective collection, be restituted with a bonus in the form of federal bonds * * *

Regulations for Article 3 of Law No. 1,474 were promulgated by Article 4 of Decree No. 30,812 of May 2, 1952. Chapter IV of the Regulations for the Collection and Auditing of the Income Taxes, ratified by decree No. 36,773, *supra*, provides as follows:

> Art. 210—The collection of the repayable surcharge mentioned in Art. 3 of Law No. 1,474 of November 28, 1951 shall continue in force.

Under Brazilian law, the taxpayer pays the income tax in four installments. The additional "tax" of 15 percent imposed by Article 3 of Law No. 1,474, *supra* is payable as a fifth installment. The latter amount constitutes a special fund and is used for the execution of the program of re-equiping ports and railroads, enhancing warehouse, cold storage and other facilities, increasing the electric power potential and developing basic industries and agriculture. Economic re-equipment bonds, issued by the Brazilian Government in the sixth year to taxpayers who have paid the additional "tax," bear five percent interest and are redeemable by the government in 20 annual installments beginning with the first installment in the year in which the bonds are issued. Taxable entities, but not individuals, may deduct income taxes in determining their taxable income for Brazilian tax purposes. The additional tax of 15 percent is not allowed as a deduction but is carried on the taxpayers' books as an asset.

In view of the above, it is held that the Brazilian tax of 25 percent on royalties withheld pursuant to Brazilian Decree No. 36,773 of January 13, 1955, ratifying Regulations for the Collection and Auditing of the Income Taxes, constitutes an income tax and is allowable as a credit against United States income tax under section 901 of the Code, subject to the limitation contained in section 904 of the Code. However, the additional "tax" imposed by Article 2, Law No. 1,474, regulated by Article 4, Decree No. 30,812 of May 2, 1952, and Article 210 of the Regulations ratified by Decree No. 36,773 of January 15, 1955, is refundable with interest (or, "restituted with a bonus

in the form of federal bonds") and, therefore, is not allowable as a credit against United States income tax within the meaning of section 901 of the Code. See I.T. 3624, C.B. 1943, 438.

CREDIT FOR CORPORATE STOCKHOLDER IN FOREIGN CORPORATION (FOREIGN TAX CREDIT)

26 CFR 1.902-2: Special rules for payments from certain wholly-owned foreign corporations.

Determination of the amount of foreign tax deemed to have been paid by a domestic corporation, under section 902 (d) of the Internal Revenue Code of 1954, where the amounts received by the domestic corporation, from its wholly-owned foreign subsidiary, were allowed as a deduction to the subsidiary in computing its income subject to tax in the foreign country.

Advice has been requested relating to the determination of the foreign tax credit, under the special rules provided in section 902 (d) of the Internal Revenue Code of 1954, with respect to distributions (in lieu of dividends) made by a wholly-owned foreign subsidiary corporation to its domestic parent corporation under the circumstances described below.

A wholly-owned foreign subsidiary corporation has, for a period of years, paid both dividends and certain other service fees in substantial amounts to its domestic parent corporation. In 1954, under section 902 (d) (2) of the Internal Revenue Code of 1954, the domestic parent entered into a "contractual arrangement" with its foreign subsidiary under which the fees were accepted in lieu of dividends, and no dividends, as such, were thereafter paid by the subsidiary. In 1955, the domestic parent corporation received 50*x* dollars in service fees from its wholly-owned foreign subsidiary, the amount of which was allowed as a deduction for income tax purposes by the foreign country in which the subsidiary was located and, thus, no foreign tax was paid on such amount. The total profits of the foreign subsidiary were 500*x* dollars and the foreign taxes paid were 300*x* dollars. Cost of the service fees to the domestic parent was 2*x* dollars.

Section 902 (d) of the Code provides as follows:

SPECIAL RULES FOR CERTAIN WHOLLY-OWNED FOREIGN CORPORATIONS.—For the purposes of this subtitle, if—

(1) a domestic corporation owns, directly or indirectly, 100 percent of all classes of outstanding stock of a foreign corporation engaged in manufacturing, production or mining,

(2) such domestic corporation receives property in the form of a royalty or compensation from such foreign corporation pursuant to any form of contractual arrangement under which the domestic corporation agrees to furnish services or property in consideration for the property so received, and

(3) such contractual arrangement provides that the property so received by such domestic corporation shall be accepted by such domestic corporation in lieu of dividends and that such foreign corporation shall neither declare nor pay any dividends of any kind in any calendar year in which such property is paid to such domestic corporation by such foreign corporation,

then the excess of the fair market value of such property so received by such domestic corporation over the cost to such domestic corporation of the property and services so furnished by such domestic corporation shall be treated as a distribution by such foreign corporation to such domestic corporation, and for the purposes of section 301, the amount of such distribution shall be such excess, in lieu of any amount otherwise determined under section 301 without regard to this subsection; and the basis of such property so received by such domestic corporation shall be the fair market value of such property, in lieu of the basis otherwise determined under section 301 (d) without regard to this subsection.

The essential problem involved in the instant case is the proper determination of the "accumulated profits" of the foreign subsidiary for the

purpose of applying the formula under section 902 (a) of the Code, since, even in a case to which the special rules of section 902 (d) of the Code apply, the computation of the tax deemed paid must be made as provided in section 902 (a) of the Code.

Section 902 (d) of the Code provides a limitation of the amount which will be treated as a dividend and does not make inapplicable the provisions of section 902 (a) of the Code. Thus, in computing the amount of foreign tax deemed to have been paid with respect to a section 902 (d) "dividend", such amount of foreign tax deemed to have been paid shall be the same proportion of taxes paid by the foreign corporation to a foreign country on or with respect to its accumulated profits from which the dividend was paid, which the amount of such dividend bears to the amount of such accumulated profits. Further, section 1.902-2 (b) of the Income Tax Regulations provides that the amount which may be treated as a distribution subject to the special rules under section 902 (d) of the Code cannot exceed the amount which would constitute a dividend for the purposes of subtitle A of the Internal Revenue Code of 1954 relating to income taxes and thus as if, for the purpose of section 902 (a) of the Code, such excess (of the fair market value of the property received in lieu of dividends by the domestic corporation over the cost to it of the property and services furnished) had been declared and paid as a dividend by the foreign corporations.

Regardless of the fact that the service fees, in the instant case, are treated as deductions in computing the income of the foreign subsidiary that is subject to tax in the foreign country, such fees, for Federal income tax purposes (in the instant case, for the purpose of the foreign tax credit), must be treated in the manner precribed in section 902 (a) of the Code.

In *Mary D. Biddle v. Commissioner*, 302 U.S. 573, Ct. D. 1303, C.B. 1938-1,309, the Supreme Court of the United States, in analyzing the credit for taxes under section 131 of the Internal Revenue Code of 1939 (the counterpart of sections 901-905 of the 1954 Code), stated:

> Section 131 does not say that the meaning of its words is to be determined by foreign taxing statutes and decisions, and there is nothing in its language to suggest that in allowing the credit for foreign tax payments, a shifting standard was adopted by reference to foreign characterizations and classifications of tax legislation. * * *

Therefore, in cases where the service fees (like any other item of expense) are allowed as a deduction to the foreign corporation in computing its taxable income for the purposes of the foreign income tax, the amount of such fees cannot, at one and the same time, be a deductible expense and also a distribution from accumulated earnings and profits when applying the provisions of section 902 (d) of the Code. In the instant case, the domestic parent corporation is deemed to have paid, to the extent provided in section 902 (a) of the Code, foreign taxes imposed on its foreign subsidiary on or with respect to the subsidiary's accumulated profits from which the dividend of $48x$ dollars was paid ($50x$ dollars minus $2x$ dollars). Since $48x$ dollars of the service fees is treated as a dividend distribution under section 902 (d) of the Code, such amount must be added back to the amount of $500x$ dollars (profits of the subsidiary before taxes) in order to arrive at the correct amount of accumulated profits under section 902 (a) of the Code. Based upon the facts in the instant case, the computation of the foreign subsidiary's accumulated profits under United States Law, that is, for the application of section 902 of the Code, is as follows:

Total profits of the foreign subsidiary before taxes ($500x$ dollars plus $48x$ dollars)	$548x$ dollars
Foreign income taxes paid	$300x$ dollars
Accumulated profits of the foreign subsidiary for the purpose of applying section 902 of the Code	$248x$ dollars

The formula for computing the foreign tax deemed to have been paid by the domestic parent corporation with respect to the "dividend" of $48x$ dollars would therefore be:

$$\frac{48x \text{ dollars (dividend)}}{248x \text{ dollars (accumulated profits)}} \times \frac{248x \text{ dollars (accumulated profits)}}{548x \text{ dollars (total profits before foreign taxes)}} \times 300x \text{ dollars (foreign income taxes paid)}$$

See section 902 (a) and 902 (c) of the Code. Also, see *American Chicle Co. v. United States*, 316 U.S. 450, Ct. D. 1561, C.B. 1942-1,161. Subject to the limitation of section 904, the amount, thus computed, of foreign tax deemed to have been paid by the domestic parent is allowable as a credit.

One of the conditions for qualifying for the special rule under section 902 (d) of the Code is that, where a domestic parent corporation accepts property in the form of a royalty or compensation from its foreign subsidiary under some form of contractual arrangement, the foreign corporation shall neither declare nor pay any dividend of any kind in any calendar year in which such property is paid to the domestic parent. The lack of this condition would preclude the allowance of a foreign tax credit with respect to a section 902 (d) "dividend" but would not affect the regular dividends pursuant to section 902 (a) of the Code.

Source: *Internal Revenue*, March 9, 1959.

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I

LA NOUVELLE CONVENTION FISCALE FRANCO-ALLEMANDE

par

Jean H. ROTHSTEIN, H.E.C., Paris

Une nouvelle convention entre la France et l'Allemagne Fédérale a été signée le 21 Juillet 1959. Elle s'appliquera rétroactivement aux impôts dûs au titre de l'année 1957 [1]) — sauf en ce qui concerne les impôts retenus à la source sur les revenus des capitaux mobiliers (et assimilés) pour lesquels elle sera appliquée à partir du Ier Janvier 1958.

Le nouveau traité remplacera la convention du 9 Nov. 1934 qui — bien qu'elle ne fût jamais ratifiée — a été pratiquement appliquée (dans sa partie principale) jusqu'au début de la guerre, pendant l'occupation allemande et finalement depuis 1953.

Nous publierons prochainement une analyse détaillée de la nouvelle convention qui ne comprend pas moins de 31 articles (pour la plupart très longs) et un protocole additionnel. Contentons-nous pour le moment de démontrer en quoi elle se distingue, dans les grandes lignes, de la convention de 1934 dont nous n'avons cessé de déplorer les lacunes et les imperfections techniques[2]).

A. ***Dispositions générales***

1) *Champ d'application ratione personae*

Les autorités allemandes — s'appuyant sur un passage du protocole final et des principes généralement appliqués dans leur pays — n'accordaient le bénéfice de la convention de 1934 qu'aux ressortissants de l'un ou de l'autre des deux Etats contractants (du moins en principe).

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[1]) Pour la Sarre, voir infra A.2); pour le «Lastenausgleich» (peréquation des charges) voir infra B.3).

[2]) Voir ROTHSTEIN «*La Convention Fiscale Franco-Allemande*», dans «Echanges Franco-Allemands», 1956, No 8, pages 13 et s.

Cette lacune sera désormais comblée; la nouvelle convention, selon ses propres termes, «. . . a pour but de protégér les résidents de chacun des Etats contractants contre les doubles impositions. . .»

2) *Champ d'application géographique*

La nouvelle convention s'appliquera de plein droit aux *départements* d'outre-mer (Guadeloupe, Guyane, Martinique, La Réunion).

Elle pourra être étendue — par simple échange de notes diplomatiques, mais sous les réserves qu'impose l'autonomie fiscale de ces territoires — à tout territoire dont la France assume les relations internationales (Algérie, *territoires* d'outre-mer, Etats Autonomes Membres de la Communauté).

Du côté allemand, elle s'appliquera à *Berlin-Ouest*, sauf notification contraire (improbable) du gouvernement allemand, dans les 3 mois de la mise en vigueur.

Elle s'appliquera de plein droit au territoire de la *Sarre*, mais à partir seulement de son rattachement économique à l'Allemagne (6 Juillet 1959); jusqu'à cette date, les relations fiscales franco-sarroises étaient régies par une convention franco-allemande spéciale (annexe IV. aux traités dits de Luxembourg, du 27 Oct. 1956) qui constitue d'ailleurs une réplique fidèle du traité franco-sarrois de 1953.

3) *Champ d'application ratione materiae*

La nouvelle convention s'appliquera non seulement aux impôts sur le revenu (au sens le plus large du terme), mais aussi à la Contribution Foncière et à la Contribution des Patentes, ainsi qu'à certains impôts accessoires.

Elle s'appliquera également à l'impôt allemand sur le *capital*, — alors que la disposition correspondante de l'ancienne convention était restée lettre morte (voir infra B. 3).

La vieille querelle du «Lastenausgleich» allemand — une contribution semie-permanente qui correspond à l'Impôt de Solidarité Nationale français — a été réglée par le protocole final, avec — semble-t-il— effet rétroactif *complet*. Les demandes de dégrèvement y relatifs doivent être présentées, sous peine de forclusion, *dans un délai de* 3 *ans* de la mise en vigueur de la convention.

Les clauses d'égalité fiscale (infra C) et d'assistance administrative

et judiciaire (infra D) s'étendent (ou peuvent être étendues)à tous les autres impôts.

B. ***Mesures tendant à éviter la double imposition***

1) *Impôt sur le Revenu des Personnes Physiques, Impôt sur les Sociétés, etc.*

Sauf en ce qui concerne la taxation des revenus des Valeurs Mobilières (v. infra 2), la nouvelle convention ne modifie pas les grands principes qui régissent la répartition de la matière imposable. Les nouvelles règles concernant les appointements et salaires, pensions, redevances, etc. sont plus nuancées que sous le régime de la convention de 1934.

Quant aux bénéfices industriels et commerciaux, la nouvelle définition de l'établissement stable mettra fin à de nombreux litiges qui avaient leur cause dans la rédaction trop sommaire — et très opaque — de l'art. 3 de l'ancien traité. Nous nous demandons toutefois, si la nouvelle technique rédactionnelle — qui a été adoptée dans le cadre de l'O.E.C.E. et où nous retrouvons la méthode casuistique chère aux Britanniques — ne comporte pas aussi certains inconvénients.

2) *Taxation des revenus des Valeurs Mobilières (et assimilés).*

C'est dans ce domaine que la nouvelle convention apportera le progrès le plus net par rapport au traité de 1934. Cela concerne aussi bien la taxation des bénéficiaires de ces revenus (infra a) que celle des sociétés allemandes exerçant une activité en France (infra b).

a) *Taxation des bénéficiaires*

En vertu de l'art. 9 de la convention de 1934, les revenus des capitaux mobiliers n'étaient imposables que dans l'Etat du domicile du bénéficiaire; mais comme le même texte réservait expressément — et sans compensation possible — le droit de chaque Etat de prélever l'impôt à la source, la double imposition continuait de frapper les revenus les plus importants de cette catégorie (notamment les coupons de titres et les distributions des sociétés de capitaux). Seules des exonérations résultant du droit *autonome* allemand étaient susceptibles d'éviter la double imposition dans certains cas déterminés.

La nouvelle convention y apporte un changement radical, par le jeu combiné des deux dispositions suivantes:

1° La retenue à la source ne peut dépasser (en principe) le taux de 15%. Il n'y a exception — motivée par le caractère spécial de la législation interne allemande (taux différentiel de l'Impôt sur les Sociétés) — que dans quelques cas particuliers.

2° L'impôt retenu à la source est déduit de celui que prélève l'Etat du domicile du bénéficiaire.

Des dispositions spéciales tendent à éliminer les difficultés qui pourraient s'élever du fait que les règles destinées à éviter le cumul d'imposition dans les rapports entre sociétés mère et filiale («Schachtelprivileg») sont différentes dans les deux pays.

b) *Sociétés allemandes exerçant une activité en France.*

On sait qu'en vertu de l'art. 109, alinéa 2 du Code Général des Impôts les sociétés de capitaux, etc. étrangères, exerçant une activité en France, sont tenues de payer la Taxe Proprotionnelle sur une «quotité» de leurs distributions, même dans les cas où aucun des associés ou actionnaires n'est domicilié en France.

Nous n'avons pas cessé de nous élever contre cette disposition qui entraîne, dans la plupart des cas, un *traitement discriminatoire* des sociétés étrangères [1]).

L'art. 4 de la convention de 1934 n'y avait apporté que des tempéraments insuffisants en faveur des sociétés allemandes. C'était d'autant plus étonnant que le système allemand — comme la plupart des législations étrangères — ne comportait aucune disposition analogue.

Nous aurions souhaité, pour des raisons de principe, l'abrogation pure et simple — en faveur des sociétés allemandes — de la disposition contenue dans l'art. 109 alinéa 2 C.G.I.; à notre avis, le maintien de tout traitement discriminatoire est incompatible avec l'esprit d'une convention fiscale aussi générale.

Ce voeu n'a pas été exaucé; il convient néanmoins de reconnaître que la nouvelle convention, en accordant aux sociétés allemandes des exonérations importantes, pouvant atteindre la totalité de l'impôt en question, apporte une solution acceptable.

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[1]) Koch-Rothstein *«La Convention Fiscale Franco-Britannique du 14 Décembre 1950»*, (Amsterdam 1954), No 188-193; Rothstein Jean H. *«La Convention Fiscale Franco-Allemande»* dans «Échanges Franco-Allemands» 1956 No 8, pages 13 et s.

3) *Impôt sur le Capital*

On sait que le système allemand comporte un impôt sur le capital permanent frappant et les éléments situés en Allemagne et ceux qui appartiennent à une personne qui y est domiciliée.

Le traité de 1934 comportait bien des principes de répartition de la matière imposable; mais l'application en était subordonnée à l'introduction, en France, d'un impôt similaire (qui n'a jamais eu lieu).

Cette dernière condition sera supprimée; désormais les contribuables frappés par l'impôt allemand, qu'ils soient domiciliés en France ou en Allemagne, seront dégrevés de cet impôt, si les principes de répartition de la masse imposable, tels qu'ils ont été fixés par la convention, le permettent.

La situation est différente pour les *contributions exceptionnelles* sur la fortune; en fait, elles sont exclues du champ d'application de la convention, sous réserve des dispositions spéciales visant le «Lastenausgleich» (voir supra A3) et qui concernent d'ailleurs une catégorie de redevables plus restreinte.

C. ***Clause d'égalité fiscale***

Lorsque la convention de 1934 fut pratiquement remise en vigueur, en 1953, la clause d'égalité fiscale, pour des raisons qui nous échappent, en était exclue.

La nouvelle convention rétablit cette clause, en l'élargissant.

D. ***Assistance Administrative et Judiciaire***

Dans ce domaine, également, les dispositions du traité de 1934 étaient restées lettre morte; à juste titre, car l'application de ces mesures sur la base d'une convention non ratifiée aurait été illégale.

La nouvelle convention comporte des règles détaillées, visant aussi bien l'assiette que le recouvrement des impôts. Ces mesures peuvent être étendues au delà des champs d'application généraux de la convention.

E. ***Procédure de conciliation***

Les redevables qui démontrent que les mesures prises par les autorités fiscales de l'un des Etats contractants entraînent — ou sont susceptibles d'entraîner — une double imposition dans les

domaines appartenant au champ d'application ratione materiae de la convention, peuvent adresser une demande à l'Etat dont ils sont résidents. Si le bien-fondé de cette demande est reconnu, l'autorité saisie se mettra en rapport avec celle de l'Etat partenaire, en vue de régler la difficulté. Au besoin, une *commission mixte* pourra être constituée à cet effet.

Etant donné le fait que les tribunaux français refusent obstinément d'interpréter les conventions fiscales internationales [1]), nous aurions préféré l'octroi de garanties juridiques plus substantielles aux redevables qui risquent toujours, en pareilles circonstances, de faire les frais d'une mésentente entre les autorités des deux pays. Certes, nous ne sousestimons pas les difficultés inhérentes à l'établissement d'une juridiction internationale (même bilatérale) qui se superposerait aux juridictions nationales. Mais dans un pays comme la France — où la juridiction nationale a pratiquement renoncé à ses prérogatives dans ce domaine — des garanties bilatérales s'imposent.

Nous ne cesserons pas de regretter cette lacune, mais nous ne craignons pas qu'elle ne soit très sensible spécialement dans les rapports franco-allemands. En effet, le «climat» des relations fiscales entre ces deux pays est excellent, et les deux administrations ont toujours fait preuve de la plus large compréhension vis-à-vis des intérêts légitimes des redevables. Si cela était vrai sous le règime de la convention très défectueuse de 1934, nous pouvons espérer, à juste titre, qu'il n'en sera pas autrement pour l'application du nouveau traité, beaucoup plus approprié, du 21 Juillet 1959.

Jean H. Rothstein

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[1]) CHRETIEN Maxime «*L'application et l'interprétation des clauses fiscales des traités internationaux par les tribunaux français*», Revue Critique de Droit International Privé 1951, pages 40 et suiv.; ROTHSTEIN Jean H. «*Anwendung und Auslegung internationaler Steuerabkommen durch die französischen Gerichte*» dans «Zehn Beiträge zum Steuerrecht», Sonderbeilage zum Mitteilungsblatt der Steuerberater», 1956 No, 1, pages 21-28 (où l'on trouve les principales références à la jurisprudence et à la doctrine françaises jusqu'en fin 1955).

RECENT DEVELOPMENTS IN DANISH TAXATION

by

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In Denmark the tax provisions have increased considerably during recent years. New tax bills and regulations are still being introduced which makes it difficult to give a summary of present Danish tax law, July 1959.

Danish tax provisions are dissimilar in structure for instance the taxation of persons and of companies is very different, and even with regard to the taxation of persons there is also considerable difference between the taxation of people living in boroughs and larger towns and in other parts of the country.

A progressive system of taxation of the income is aimed at both with regard to the taxation of persons and of companies.

Besides the income tax persons pay tax of property. This tax is not paid by companies.

The most unusual peculiarity in the Danish tax law is no doubt that taxes paid during an individual year are regarded as expenses when calculating the income subject to tax for the same year. This is of immense importance for the understanding of the proportion of the Danish income taxes for instance when shown in a scale or by per cent of the income.

A. *Tax on Property 1959/60*

All persons who are liable to pay tax in Denmark because they are domiciled here are assessed on property. Tax on property is assessed each year on the property owned by the person in question at the time of statement, i.e. generally on the 1st of January.

Property tax as well as income tax paid during an individual year is deducted from the income made during the same year when calculating the income subject to tax. Property below D.kr. 50.000 is not taxable.

All assets which can be realized are taxable with the exception of personal jewellery, personal libraries, art collections and the value of the right to be paid an insurance amount some time in the future for instance a life insurance etc. When calculating the taxable property the taxpayer's debts are deducted.

The tax on property is calculated as per *Appendix* 1.

In the cases of the taxable income being less than 3% of the taxable property, the property tax is reduced between 5 and 75% according to a scale, and if the taxable income is nil or negative, the property tax is reduced by 80%.

B. ***Tax on Income***

Incomes are in Denmark subject to direct taxation to the State and to the local authorities. At present the following taxes are levied:

1. Income tax to the State.
2. Contribution to old age pension fund (Social Security).
3. Income tax to the local authorities.
4. Income tax to the church.

In the following these taxes are combined and the tables show the total amounts to be paid by the taxpayers.

Taxation of income is claimed on the basis of tax returns and subsequent assessment. Certain allowances can be made on the tax return and other allowances are made in connection with the assessment.

The income stated in the tax return after deduction of the allowances included therein is called "taxable income" while the income after deduction of the allowances in connection with the assessment is called "assessment income".

1. For employees the taxable income consists of the wage or salary received including all extras. The value of free board and lodging is estimated, a married man is taxed on his wife's and his children's possible income. Gratuities on the occasion of the employee's jubilee, his retirement due to age or ill-health or on occasion of his employer's 25th Anniversary (50th, 75th or 100th Anniversary) is taxed separately, cfr. VI h.

Deductions

a. With regard to allowances first must be mentioned the fact that

taxes paid during the year of the income can be deducted. This also applies to taxes paid to other countries than Denmark but only if they are similar to the Danish taxes on income and property. Tax paid at the source abroad can also be deducted.

b. Subscriptions to trade organizations.

c. Premiums and contributions to a pension fund when the pension aimed at consists in periodical payments whereas premiums for real life insurances and endowment assurances cannot be deducted except as mentioned in point I d.

d. Premiums for health insurances and life insurances, but only up to D.kr. 600 per annum (for the current calendar year the maximum has been fixed at D.kr. 1.000 for supporters and D.kr. 600 for other taxpayers.)

e. Maintenance to divorced wife or children.

f. Interest on debts may be deducted.

g. Expenses in connection with regularly recurring payments which a person contractually has bound himself to pay apart from certain limited family circumstances. The payments must be for some indefinite time for instance until the death of the recipient or an indefinite amount for instance a share of an uncertain future income.

h. Other expenses which have been necessary in order to acquire, secure and maintain the earned income and which can be satisfactorily proved, including travelling expenses etc.

i. If the employee has no expenses similar to those mentioned in point h, an amount up to D.kr. 400 may be deducted. This allowance is special because D.kr. 400 may be deducted for each member of the family who is an employee, however, only up to 10% of each person's income. If for instance, man, wife and a child are employees, this allowance can be deducted for each of them.

II. For persons other than employees the income is made up in accordance with general principles pertaining to accounts, but there are certain special rules, some of which will be mentioned here briefly.

a. Depreciation on machinery, inventory, cars and other working plant is made according to the "balance method". This is to be understood so that all purchases (from a fiscal point of view) is

debited an account at purchase price and all sales are credited at sales price. On the balance at the end of the year, 30% can be written off (for 1957 only 20% and for 1958 only 25%). If a credit balance results this will be taxable income, it may, however, be postponed a year or eliminated by the purchasing of new machinery etc. In case of a joint realization of all machinery, inventory, cars etc. of a business, the profits are taxed separately. See further VI e.

b. Depreciation on ships is made as mentioned in point a, but depreciation in these groups is made separately.

c. With regard to real estate, depreciation can only be made as far as factory buildings, workshop buildings, warehouses and farm buildings are concerned, but depreciation cannot be made on residential properties or shop or office buildings. The principle of the depreciation is that the life of the buildings from the date of erection is estimated. Each new owner is then allowed each year to depreciate a certain proportion of his purchase price corresponding to the life of the building. Depreciation must, however, never exceed 10% per annum and depreciation cannot be made on the purchase price of the land. In connection with this, very complicated regulations are given for further depreciation. When realizing property, capital gain is generally not subject to tax, but if the regulations for further depreciation have been utilized the share of the capital gain corresponding to the total depreciation is subject to tax, and this share is taxed separately, cfr. VI f.

d. Purchase price of goodwill, patent rights and other invisible assets when these have been obtained on the 1st April, 1958 or later, can be written off at 15% per annum until the date of expiry of validity or, in case such a date cannot be fixed, at 10% annum.

Purchase price of goodwill when obtained before the 1st April, 1958, may be written off according to older rules, which will not be mentioned here. Financial loss on realization of goodwill etc. should be principally deducted from income which is taxed separately, cfr. VIa, and if this is not possible the loss should be deducted from the ordinary income. Profits on sale of goodwill etc. are taxed separately, cfr. VIa.

e. In dealers' statements of gross profits, goods in stock may be entered at current price or cost price and up to 35% can be written off.

f. In dealers' statements of taxable income up to 35% of current price of goods ordered with the suppliers may be deducted as reserve on loss.

g. Paid taxes may be deducted as mentioned in Ia.

h. Subscriptions to trade organizations may be deducted as mentioned in Ib.

i. Contribution to a pension fund for oneself and for employees may be deducted. With regard to own pension, see Ic.

j. The allowances mentioned in points I d, e, f, and g also apply to this group of taxpayers.

III. When the taxable income has been made up, the assessment authorities will grant certain allowances.

a. Allowance for children. The allowance amounts in Copenhagen and in the metropolitan boroughs for the first child, the second child and each subsequent child to D.kr. 600, 700 and 800. In other parts of the country the allowance is smaller, the smallest amount being for the first child, the second child and each subsequent child D.kr. 500, 500 and 600.

b. Allowance for wife's income. Allowance for wife is given in the married couple's total income provided that the wife's income is due to independent activities or work for others than husband. Allowance is not granted when the income is due to the wife's interest on capital etc. (unearned income). The allowance on a husbands's income is made on the wife's income after her allowances as an employee have been deducted from her income. This allowance never exceeds D.kr. 2.000, and when computing tax to the municipal authorities it will in some cases be smaller.

c. Invalids receiving benefits, old age pensioners and some others are entitled to a certain reduction in the tax amount.

d. If the taxable income has increased compared with last year's taxable income, a reduction will be given.

e. There are certain rules for the upper limits of taxation. The main rule is that the total of the income tax and the property tax cannot exceed 80% of the total of the taxable income plus taxes deducted, cfr. Ia. If this is so, a reduction will be given so that the amounts are almost equal, but then the taxpayer's right to deduct taxes will be limited, cfr. 1a, for the next two years.

f. The income tax amount will be computed according to a progressive scale.

IV. Supporters with children whose income does not exceed D.kr. 15.000 will receive a contribution which in most cases will be adjusted in the tax amount. The amount of this contribution is mentioned in details in *Appendix* 6.

Whether this contribution is deducted from the taxes paid or not, it must not be included in the taxable income. If deducted, the contribution will not reduce the allowance mentioned in IIIa.

V. Taxpayers who are not supporters and who have not completed their 25th year must pay an extra tax. The provisions are mentioned in detail in *Appendix 7*, Act No. 168 of 7th June, 1958.

VI. As mentioned earlier certain income amounts will be taxed separately, some sort of *capital gains tax.*

The provisions for this are quite new as they are mentioned in Act No. 148 of May 28th, 1958 (as amended by Act. No. 327 of November 28th, 1958).

The income amounts to be taxed separately are as follows:

a. Profits on realization of goodwill.

b. Profits on realization of patent rights and copyrights.

c. Profits on realization of the right according to a share-of-profit agreement or lease.

d. Compensation on occasion of retirement from a job, relinquishment of an agency and the like.

e. Realization of working plant or ships in connection with realization of the business in question.

f. Profits on realization of property and installations on which extra depreciation has been made (however, not exceeding an amount corresponding to the total depreciation made in the time the property has been in the owner's possession).

g. Amounts falling to the employer at dissolution and discontinuation of a superannuation scheme if the employer has deducted in his taxable income his contribution to the superannuation scheme.

h. Presents, bonuses and the like from the taxpayer's employer if the payment is made once and for all, either on occasion of a special event for the taxpayer such as jubilee or retirement due to age or

ill-health, or on occasion of the business' — in which the taxpayer or his wife is or has been employed — 25th jubilee, or any other amount of years divisible by 25.

From the total amount of the above mentioned income is deducted possible losses suffered in the same period on realization of the assets mentioned under a, b, c, and e.

A fixed allowance of D.kr. 1.000 is granted and *the tax is then* 30% *of the balance.*

This tax cannot be deducted when computing the taxable income, cfr. 1a.

The provisions in this passage are applied in connection with income obtained on the 1st of April, 1958 or later, however, with regard to the above mentioned points e and f in connection with income obtained after the 15th September, 1957.

Instead of paying this special income tax as mentioned above, the taxpayer can claim the total amount before deduction of D.kr. 1.000 to be spread over three years and included in the ordinary taxable income.

C. In the appendixes will be found a table for tax on property, tables for income tax in the part of the Danish Capital called the Copenhagen borough, the part of the Capital called the Frederiksberg borough, a table for income tax in a municipality taxed lightly (Kerteminde), and a table for a municipality taxed relatively heavily (Aakirkeby).

Taxation of limited companies is not mentioned and it is possible that some alterations will take place in the near future.

Appendix 1.

Tax on Property 1959/60.

Table for calculation of tax on property for the fiscal year 1959/60.

Property	Tax Amount D.kr.	Tax Amount as per thousand of capital	Per thousand of balance
50.000	10	0,2	10
60.000	110	1,8	10
70.000	210	3,0	10
80.000	310	3,9	10
90.000	410	4,6	10
100.000	510	5,1	10
150.000	1.010	6,7	10
200.000	1.510	7,6	15
250.000	2.260	9,0	15
300.000	3.010	10,0	15
350.000	3.760	10,7	15
400.000	4.510	11,3	15
450.000	5.260	11,7	15
500.000	6.010	12,0	15
600.000	7.510	12,5	20
700.000	9.510	13,6	20
800.000	11.510	14,4	20
900.000	13.510	15,0	20
1.000.000	15.510	15,5	23
2.000.000	38.510	19,3	23
5.000.000	107.510	21,5	23

Property below D.kr. 50.000 is not taxable.

Example: Taxable property D.kr. 266.986

Rounded off to 266.900

Tax on property amounts to: on 250.000 . . . . D.kr. 2.260,00

on 16.900 15‰ ,, 253,50

total on 266.900 . . . . D.kr. 2.513.50

Appendix 2.

Copenhagen 1959/60.

Table for calculation of total income taxes for the fiscal year 1959/60 including contribution to an old age pension fund.

	Supporters			*Other taxpayers*		
Income	Tax Amount D.kr.	Tax Amount as % of income	% of bal.	Tax Amount D.kr.	Tax Amount as % of income	% of bal.
3.000				219	7,3	24,9
4.000	179	4,5	14,9	468	11,7	24,9
4.500	253	5,6	29,9	592	13,2	24,9
5.000	403	8,1	29,9	717	14,3	24,9
5.500	552	10,0	29,9	841	15,3	34,9
6.000	702	11,7	38,9	1.015	16,9	34,9
7.000	1.090	15,6	38,9	1.364	19,5	34,9
8.000	1.479	18,5	38,9	1.713	21,4	39,9
9.000	1.868	20,8	38,9	2.112	23,5	39,9
10.000	2.257	22,6	38,9	2.511	25,1	49,9
11.000	2.646	24,1	38,9	3.010	27,4	49,9
12.000	3.035	25,3	48,9	3.508	29,2	49,9
13.000	3.523	27,1	48,9	4.007	30,8	49,9
14.000	4.012	28,7	48,9	4.506	32,2	49,9
15.000	4.501	30,0	64,9	5.005	33,4	75,9
16.000	5.150	32,2	64,9	5.764	36,0	75,9
17.000	5.799	34,1	76,9	6.522	38,4	75,9
18.000	6.568	36,5	76,9	7.281	40,5	80,9
19.000	7.336	38,6	76,9	8.090	42,6	80,9
20.000	8.105	40,5	78,0	8.899	44,5	83,0
25.000	12.068	48,3	82,8	13.122	52,5	86,8
30.000	16.210	54,0	82,8	17.463	58,2	86,8
40.000	24.493	61,2	82,8	26.147	65,4	86,8
50.000	32.777	65,6	102,0	34.830	69,7	110,0
60.000	42.999	71,7	102,8	45.872	76,5	110,8
70.000	53.281	76,1	102,8	56.954	81,4	110,8
80.000	63.562	79,5	102,8	68.036	85,0	110,8
90.000	73.844	82,0	102,8	79.117	87,9	110,8
100.000	84.126	84,1	109,7	90.199	90,2	119,7
200.000	193.867	96,9	123,7	209,960	105,0	133,7
400.000	441.282	110,3	136,7	477.414	119,4	141,7
600.000	714.677	119,1	136,7	760.839	126,8	141,7
800.000	988.161	123,5	136,7	1.044.323	130,5	141,7
1.000.000	1.261.645	126,2	139,7	1.327.807	132,8	144,7
2.000.000	2.658.627	132,9	139,7	2.774.919	138,7	144,7

Before using the table the taxable income will have to be reduced by allowance for children and allowance for wife's income provided that the taxpayer is entitled to this.

Appendix 3.

Frederiksberg 1959/60.

Table for calculation of total income taxes for the fiscal year 1959/60 including contribution to an old age pension fund.

	Supporters			*Other taxpayers*		
Income	Tax Amount D.kr.	Tax Amount as % of income	% of bal.	Tax Amount D.kr.	Tax Amount as % of income	% of bal.
3.000				188	6,3	21,8
4.000	148	3,7	11,8	406	10,2	21,8
4.500	207	4,6	26,8	515	11,5	21,8
5.000	341	6,8	26,8	624	12,5	21,8
5.500	475	8,6	26,8	734	13,3	31,8
6.000	609	10,2	35,8	893	14,9	31,8
7.000	968	13,8	35,8	1.211	17,3	31,8
8.000	1.326	16,6	35,8	1.529	19,1	36,8
9.000	1.684	18,7	35,8	1.897	21,1	36,8
10.000	2.042	20,4	35,8	2.265	22,7	46,8
11.000	2.400	21,8	35,8	2.733	24,8	46,8
12.000	2.758	23,0	45,8	3.202	26,7	46,8
13.000	3.217	24,7	45,8	3.670	28,2	46,8
14.000	3.675	26,2	45,8	4.138	29,6	46,8
15.000	4.133	27,6	61,8	4.606	30,7	72,8
16.000	4.751	29,7	61,8	5.334	33,3	72,8
17.000	5.369	31,6	73,8	6.062	35,7	72,8
18.000	6.107	33,9	73,8	6.790	37,7	77,8
19.000	6.845	36,0	73,8	7.569	39,8	77,8
20.000	7.584	37,9	75,0	8.347	41,7	80,0
25.000	11.367	45,5	78,5	12.377	49,5	82,5
30.000	15.290	51,0	78,5	16.499	55,0	82,5
40.000	23.135	57,8	78,5	24.744	61,9	82,5
50.000	30.980	62,0	97,5	32.989	66,0	105,5
60.000	40.733	67,9	98,0	43.558	72,6	106,0
70.000	50.532	72,2	98,0	54.157	77,4	106,0
80.000	60.332	75,4	98,0	64.757	80,9	106,0
90.000	70.131	77,9	98,0	75.356	83,7	106,0
100.000	79.931	79,9	104,5	85.956	86,0	114,5
200.000	184.424	92,2	117,6	200.465	100,2	127,6
400.000	419.592	104,9	129,9	455.663	113,9	134,9
600.000	679.417	113,2	130,0	725.512	120,9	135,0
800.000	939.312	117,4	130,0	995.407	124,4	135,0
1.000.000	1.199.207	119,9	132,3	1.265,302	126,5	137,3
2.000.000	2.521.788	126,1	132,3	2.637.905	131,9	137,3

Before using the table the taxable income will have to be reduced by allowance for children and allowance for wife's income provided that the taxpayer is entitled to this.

Appendix 4.

Kerteminde 1959/60.

Table for calculation of total income taxes for the fiscal year 1959/60 including contribution to an old age pension fund.

Income	*Supporters*			*Other taxpayers*		
	Tax Amount D.kr.	Tax Amount as % of income	% of bal.	Tax Amount D.kr.	Tax Amount as % of income	% of bal.
3.000				221	7,4	25,1
4.000	181	4,5	15,1	472	11,8	25,1
4.500	257	5,7	30,1	598	13,3	25,1
5.000	407	8,1	30,1	723	14,5	25,1
5.500	558	10,1	30,1	849	15,4	35,1
6.000	708	11,8	39,1	1.024	17,1	35,1
7.000	1.099	15,7	39,1	1.375	19,6	35,1
8.000	1.490	18,6	39,1	1.726	21,6	40,1
9.000	1.881	20,9	39,1	2.127	23,6	40,1
10.000	2.272	22,7	39,1	2.528	25,3	50,1
11.000	2.663	24,2	39,1	3.029	27,5	50,1
12.000	3.054	25,5	49,1	3.530	29,4	50,1
13.000	3.545	27,3	49,1	4.031	31,0	50,1
14.000	4.036	28,8	49,1	4.532	32,4	50,1
15.000	4.527	30,2	65,1	5.033	33,6	76,1
16.000	5.178	32,4	65,1	5.794	36,2	76,1
17.000	5.829	34,3	77,1	6.555	38,6	76,1
18.000	6.600	36,7	77,1	7.316	40,6	81,1
19.000	7.371	38,8	77,1	8.127	42,8	81,1
20.000	8.142	40,7	77,1	8.938	44,7	81,1
25.000	11.997	48,0	77,1	12.993	52,0	81,1
30.000	15.852	52,8	77,1	17.048	56,8	81,1
40.000	23.562	59,1	77,1	25.158	62,9	81,1
50.000	31.272	62,5	95,1	33.268	66,5	103.1
60.000	40.782	68,0	95,1	43.578	72,6	103,1
70.000	50.292	71,8	95,1	53.888	77,0	103,1
80.000	59.802	74,8	95,1	64.198	80,2	103,1
90.000	69.312	77,0	95,1	74.508	82,8	103,1
100.000	78.822	78,8	100,1	84.818	84,8	110,1
200.000	178.922	89,5	110,1	194.918	97,5	120,1
400.000	399.122	99,8	120,1	435.118	108,8	125,1
600.000	639.322	106,6	120,1	685.318	114,2	125,1
800.000	879.522	109,9	120,1	935.518	116,9	125,1
1.000.000	1.119.722	111,9	120,1	1.185.718	118,6	125,1
2.000.000	2.320.722	116,0	120,1	2.436.718	121,8	125,1

Before using the table the taxable income will have to be reduced by allowance for children and allowance for wife's income provided that the taxpayer is entitled to this.

Appendix 5.

Aakirkeby 1959/60.

Table for calculation of total income taxes for the fiscal year 1959/60 including contribution to an old age pension fund.

	Supporters			*Other taxpayers*		
Income	Tax Amount D.kr.	Tax Amount as % of income	% of bal.	Tax Amount D.kr.	Tax Amount as % of income	% of bal.
3.000				342	11,4	37,2
4.000	302	7,6	27,2	714	17,9	37,2
4.500	438	9,7	42,2	900	20,0	37,2
5.000	649	13,0	42,2	1.086	21,7	37,2
5.500	860	15,6	42,2	1.272	23,1	47,2
6.000	1.071	17,9	51,2	1.508	25,1	47,2
7.000	1.583	22,6	51,2	1.980	28,3	47,2
8.000	2.095	26,2	51,2	2.452	30,7	52,2
9.000	2.607	29,0	51,2	2.974	33,0	52,2
10.000	3.119	31,2	51,2	3.496	35,0	62,2
11.000	3.631	33,0	51,2	4.118	37,4	62,2
12.000	4.143	34,5	61,2	4.740	39,5	62,2
13.000	4.755	36,6	61,2	5.362	41,2	62,2
14.000	5.367	38,3	61,2	5.984	42,7	62,2
15.000	5.979	39,9	77,2	6.606	44,0	88,
16.000	6.751	42,2	77,2	7.488	46,8	88,2
17.000	7.523	44,3	89,2	8.370	49,2	88,2
18.000	8.415	46,8	89,2	9.252	51,4	93,2
19.000	9.307	49,0	89,2	10.184	53,6	93,2
20.000	10.199	51,0	89,2	11.116	55,6	93,2
25.000	14.659	58,6	89,2	15.776	63,1	93,2
30.000	19.119	63,7	89,2	20.436	68,1	93,2
40.000	28.039	70,1	89,2	29.756	74,4	93,2
50.000	36.959	73,9	107,2	39.076	78,2	115,2
60.000	47.679	79,5	107,2	50.596	84,3	115,2
70.000	58,399	83,4	107,2	62,116	88,7	115,2
80.000	69.119	86,4	107,2	73.636	92,0	115,2
90.000	79.839	88,7	107,2	85.156	94,6	115,2
100.000	90.559	90,6	112,2	96.676	96,7	122,2
200.000	202.759	101,4	122,2	218.876	109,4	132,2
400.000	447.159	111,8	132,2	483.276	120,8	137,2
600.000	711.559	118,6	132,2	757.676	126,3	137,2
800.000	975.959	122,0	132,2	1.032.076	129,0	137,2
1.000.000	1.240.359	124,0	132,2	1.306.476	130,6	137,2
2.000:000	2.562.359	128,1	132,2	2.678.476	133,9	137,2

Before using the table the taxable income will have to be reduced by allowance for children and allowance for wife's income provided that the taxpayer is entitled to this.

Appendix 6.

Contribution for Children 1959/60.

Income according to scale	Metropolitan boroughs	Municipalities	Other places
	D.kr.	D.kr.	D.kr.
Less than 4.000	210	190	170
4.000 but less than 5.000	200	180	160
5.000 ,, ,, ,, 6.000	190	170	150
6.000 ,, ,, ,, 7.000	180	165	145
7.000 but less than 8.000	170	160	140
8.000 ,, ,, ,, 9.000	165	150	130
9.000 ,, ,, ,, 10.000	160	140	120
10.000 but less than 11.000	150	130	110
11.000 ,, ,, ,, 12.000	120	100	80
12.000 ,, ,, ,, 13.000	90	80	60
13.000 but less than 14.000	60	50	40
14.000 ,, ,, ,, 15.000	40	30	20

Appendix 7.

Act No. 168 of the 7th June, 1958.

§ 1. Persons included in the provisions of § 2 may choose either to deposit on special saving accounts or to pay an extra tax to the State.

§ 2. Deposit or extra tax has to be paid by a person who at the beginning of the fiscal year in question:

1. Is fully liable to pay taxes to the State,
2. has not reached his (hers) 25th birthday on the immediately preceding 1st January, and
3. at assessment of taxes is not considered a supporter.

§ 3. The deposit is of the same amount as the income tax to the State which is assessed on the taxpayer. The deposit cannot exceed D. kr. 2.000. The extra tax amounts to 25 % of the amount to be deposited. When the income tax to the State is less than D.kr. 100, the taxpayer does not make a deposit or pay extra tax.

.....

§ 7. Deposit on a saving account for non-supporters must remain standing to the credit of the account until the holder of the account has reached his (hers) 30th year. The amounts deposited will, however, be payable before the said time if the holder of the account by showing a marriage license can prove that he (she) has entered into marriage. If a holder of account proves that he is carrying on independent trade, the Minister of Finance may permit the deposits to be released. Furthermore, the Minister of Finance may permit release of deposits in case the holder of account leaves the country for good.

II

SURVEYS OF TAX LEGISLATION
APERÇUS DE LEGISLATION FISCALE

AUSTRIA *Period from July 1st until August 31st, 1959.*

Convention

Schriftenwechsel zwischen dem Bundesministerium für Finanzen in Wien und dem Eidgenössischen Finanz- und Zolldepartement (Eidgenössische Steuerverwaltung) in Bern, mit dem die Vereinbarung zwischen Österreich und der Schweiz über die Durchführung der Rückerstattung der im Abzugswege an der Quelle erhobenen Steuern von Einkünften aus beweglichem Kapitalvermögen abgeändert wird. BGBl. no. 51, 28.8.59.

BELGIUM *Period from July 1st until August 31st, 1959.*

Convention

Loi du 16 juillet 1959 portant approbation de la convention, signée à Washington, le 22 août 1957, complémentaire à la convention entre la Belgique et les Etats-Unis d'Amérique, pour éviter la double imposition et empêcher l'évasion fiscale en matière d'impôts sur le revenu, signée à Washington, le 28 octobre 1948. Mon. Belge, 5.8.59.

Impôt sur les revenus

Loi du 13 juillet 1959 modifiant l'article 52 des lois coordonnées relatives aux impôts sur les revenus. Mon. Belge, 27.7.59.

Loi du 13 juillet 1959 modifiant les lois relatives aux impôts sur les revenus coordonnées le 15 janvier 1948, en vue de combattre l'évasion fiscale. Mon. Belge, 27.7.59.

Loi du 15 juillet 1959 apportant temporairement des aménagements fiscaux en vue de favoriser des investissements complémentaires. Mon. Belge, 28.7.59.

Loi du 15 juillet 1959 modifiant temporairement le régime de taxation des plus-values en vue de favoriser les investissements. Mon. Belge, 28.7.59.

Loi du 15 juillet 1959 tendant à favoriser l'absorption ou la fusion de sociétés et l'apport de branches d'activité. Mon. Belge, 28.7.59.

Droits d'accise

Arrêté ministeriel du 15 juin 1959 relatif au décompte des droits d'accise entre l'Union économique belgo-luxembourgeoise et les Pays-Bas. Mon. Belge, 7.7.59.

Droits de douane

Loi du 10 juin 1959 concernant le tarif des droits d'entrée. Mon. Belge, 30.7.59.

Loi du 10 juin 1959 portant ratification de l'arrêté royal du 24 décembre 1957 relatif au tarif des droits d'entrée. Mon. Belge, 30.7.59.

Loi du 10 juin 1959 portant approbation des seizième et dix-septième Protocoles à la Convention douanière entre la Belgique, le Luxembourg et les Pays-Bas, et ratification des arrêtés royaux des 21 septembre 1957 et 31 janvier 1958, relatifs au tarif des droits d'entrée. Mon. Belge, 30.7.59.

FRANCE *Period from July 1st until August 31st, 1959.*

Convention

Loi no. 59-855 du 15 juillet 1959 autorisant le Président de la République à ratifier la convention entre la France et la Belgique, signée à Bruxelles le 20 janvier 1959, tendant à éviter les doubles impositions et à régler certaines autres questions en matière d'impôts sur les successions et de droits d'enregistrement. J.O. 15.7.59.

Décret no. 59-894 du 28 juillet 1959 portant approbation et publication d'une convention conclue les 30 avril et 8 juin 1959 entre le Gouvernement français et le Gouvernement malgache tendant à éliminer les doubles impositions et à établir des règles d'assistance mutuelle administrative pour l'imposition des revenus de capitaux mobiliers. J.O. 30.7.59 (rectificatif J.O. 8.8.59).

Décret no. 59-1002 du 22 août 1959 portant publication de la convention entre la France et la Finlande tendant à éviter les doubles impositions et à prévenir les évasions fiscales en matière de droits de mutation par décès et de la convention entre la France et la Finlande 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, signées le 25 août 1958. J.O. 27.8.59.

Taxes sur le chiffre d'affaires

Décret no. 59-817 du 9 juillet 1959 relatif aux taux majorés des taxes sur le chiffre d'affaires. J.O. 10.7.59.

Droits de douane

Décret no. 59-786 du 30 juin 1959 portant concession des droits de douane d'importation du tarif minimum en faveur des produits originaires de l'Afghanistan. J.O. 3.7.59.

Arrêté du 23 juillet 1959 fixant les conditions d'application de l'article 190 du code des douanes. J.O. 2.8.59.

Droits de timbre

Décret no. 59-825 du 4 juillet 1959 relatif au payement du droit de timbre des colis postaux en provenance de l'extérieur. J.O. 11.7.59.

Matières diverses

Décret no. 59-881 du 30 juin 1959 portant simplifications relatives à la taxe de circulation sur les viandes. J.O. 25.7.59.

Arrêté du 3 août 1959 relatif aux modalités de recouvrement des droits et taxes d'enregistrement, d'hypothèques et de publicité foncière afférents aux mutations à titre onéreux de terrains à bâtir et d'immeubles assimilés en cas de caducité du régime fiscal de faveur s'y rapportant. J.O. 11.8.59.

Décret no. 59-989 du 12 août 1959 relatif à la revision des bilans des sociétés d'assurances et de capitalisation. J.O. 20.8.59 (rectificatif 25.8.59).

Décret no. 59-990 du 12 août 1959 portant règlement d'administration publique pour le fonctionnement des entreprises d'assurances et de capitalisation non passibles de l'impôt sur les sociétés. J.O. 20.8.59 (rectificatif 25.8.59).

Décret no. 59-1003 du 17 août 1959 pris pour l'application de l'article 39 octies du code général des impôts tendant à encourager la création d'établissements de vente, de bureaux d'études ou de bureaux du renseignements à l'étranger. J.O. 27.8.59.

GERMANY *Period from July 1st until August 31st, 1959.*

General

Gesetz vom 30.6.59 über die Einführung des deutschen Rechts auf dem Gebiete der Steuern, Zölle und Finanzmonopole im Saarland. BGBl. I, 2.7.59.

Verordnung vom 3.7.59 zur Durchführung des Gesetzes über die Einführung des deutschen Rechts auf dem Gebiete der Steuern, Zölle und Finanzmonopole im Saarland. BGBl. I, 7.7.59.

Verordnung vom 1.7.59 über Vergütung und Nacherhebung von Zöllen, Verbrauchsteuern und Steuern auf Lieferungen und sonstige Leistungen im Saarland. Nachrichtlicher Abdruck BGBl. I, 7.7.59.

Income tax

Verordnung vom 22.7.59 zur Änderung und Ergänzung der Lohnsteuer-Durchführungsverordnung. BGBl. I, 29.7.59.

Verordnung vom 5.8.59 zur Änderung der Körperschaftsteuer-Durchführungsverordnung. BGBl I, 13.8.59.

Equalization of burden law

Vierundzwanzigste Durchführungsverordnung vom 2.7.59 über Ausgleichsabgaben nach dem Lastenausgleichsgesetz. BGBl I, 10.7.59.

Zehntes Gesetz vom 24.7.59 zur Änderung des Lastenausgleichsgesetzes. BGBl 1, 30.7.59.

Elftes Gesetz vom 29.7.59 zur Änderung des Lastenausgleichsgesetzes. BGBl I, 1.8.59.

Customs

Sechste Verordnung vom 2.7.59 zur Änderung des deutschen Zolltarifs 1959 (Kaliumchlorat, Gas-Chromatographen usw.). BGBl. II, 8.7.59.

Zweite Verordnung zur Änderung der Erläuterungen zum Deutschen Zolltarif 1959. BGBl II, 15.8.59.

Dritte Verordnung zur Änderung der Erläuterungen zum Deutschen Zolltarif 1959. BGBl II, 26.8.59.

Miscellaneous

Gesetz vom 30.6.59 zur Änderung des Beförderungsteuergesetzes. BGBl I, 2.7.59.

Durchführungsbestimmungen zum Leuchtmittelsteuergesetz. BGBl I, 12.8.59.

Durchführungsbestimmungen zum Zuckersteuergesetz. BGBl I, 22.8.59.

LUXEMBURG *Period from July 1st until August 31st, 1959*

Impôt sur le revenu

Loi du 7 août 1959 portant réforme de certaines dispositions de l'impôt sur le revenu des personnes physiques et de l'impôt sur le revenu des collectivités. Mém. 11.8.59.

Arrêté ministeriel du 14 août 1959 portant publication des barèmes applicables à partir du Ier janvier 1959 en matière de retenue d'impôt sur les traitements et salaires. Mém. 14.8.59.

Droits d'accise

Arrêté ministeriel du 9 juillet 1959 relatif au décompte des droits d'accise entre l'Union Economique belgo-luxembourgeoise et les Pays-Bas. Mém. 15.7.59.

Arrêté ministeriel du 6 août 1959 relatif à la mise en vigueur de certaines dispositions de la loi belge du 19 mars 1951 concernant les accises. Mém. 18.8.59.

Droits de douane

Arrêté ministériel du 6 août 1959 relatif au tarif des droits d'entrée. 18.8.59.

NETHERLANDS *Period from July 1st until August 31st, 1959*

Convention

Convention between the Kingdom of the Netherlands and the Federal

Republic of Germany for the avoidance of double taxation with respect to taxes on income and property as well as of some other taxes and to regulate other matters in the field of taxes, with protocols and notes. Trb. 1959 no. 85.

General

Law of 2.7.59 containing regulations common to a number of national taxes (General law concerning national taxes).

Law of 22.5.58 abolishing the law of 14.6.30 concerning the avoidance of double taxation. Stb. 1958, no. 700.

Turnover taxes

Decree of 7.7.59 modifying the Decree of 1957 concerning the nomination of tyres in respect of the Turnover tax. Stcrt. 9.7.59.

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MISCELLANEOUS — FAITS DIVERS

BRAZIL

New income tax schedule

A new schedule has been fixed for the Brazilian progressive complimentary tax on individual income. The rate varies from 3 percent of the amount of income between cruz. 90.000 and 120.000 to 50 percent of the amount of income, exceeding cruz. 3.000.000. After January 1, 1960, brackets will be changed, resulting in a mitigation of the tax due.

Source: *Foreign Commerce Weekly*, June 8, 1959.

CHILE

Tax revision

Chile has enacted a statute which makes important changes in the Chilean tax laws and vests extensive economic powers in the President. Within certain limits, he may increase or decrease tax rates and make other substantive changes. Main changes are as follows:

1. The Category II tax rate, applicable to interest and similar income from movables, is raised from 30 tot 33 percent.

2. The Overall Complementary Tax now applies at rates ranging from 5 to 30 percent in place of the former scale of 10 to 62 percent. The brackets are expressed in "living wages", one "living wage" for 1959 being 690.600 pesos.

3. To encourage loans by foreign banks, the new law provides that the interest on such loans, if made at conventional rates, can be deducted by the borrower and no Category II tax will be due on such interest payments.

4. A new provision allows all taxpayers in Categories III and IV, within prescribed limits, to revalue their net assets each year, in conformity with official cost-of-living indexes. The resultant increase will not be subject to tax and it will create a new base for depreciation.

5. The employer payroll tax for support of the Social Insurance Service for workers is raised from 32 to 36 percent of the worker's wage.

Source: *Foreign Commerce Weekly*, June 8, 1959.

CUBA

Tax reform

Tax legislation proposed in Cuba greatly simplifies the tax structure by combining into 22 taxes the more than 150 taxes now in effect. The program also includes new laws on administrative procedures, a fiscal code, a new department to supervise fiscal matters, and authorization to commercial banks to receive tax payments. The program is expected to become effective on July 1, the beginning of the 1959-60 fiscal year.

Source: *International Financial New Survey*, June 26, 1959.

DOMINICAN REPUBLIC

Tax surcharge increased

The temporary 10 percent surcharge imposed on 1959 income taxes, cedular

business licenses, inheritance and gift taxes, import and export duties and all other taxes and fees collected by the customs has been increased to 12 percent. The increase was put into effect by law 5113 of April 22, 1959, published in the Gaceta Official of April 27, 1959, amending law 5054, or the Budget Law of 1958 under which the temporary tax was imposed.

Source: *Foreign Commerce Weekly*, June 29, 1959.

FRANCE

Investment facilities

Under section 39 septies of the "Code général des impôts" a deduction of 10 percent of the cost price is allowed for some machinery etc. acquired for the modernisation of industries, as far as they are listed by Ministerial Decree. By Decree of May, 28, 1959, a new group of machinery etc., to which this section 39 septies applies, are put on the list. Some of them may follow:

1. Transformers and rectifiers;
2. machine tools for stone-cutting, metal- and wood-working;
3. machinery with a normal working life of 5 years or more in: foodstuff industries, rubber and plastics industries, pottery and glass industries, leather and shows industries, textile and paper industries;
4. motor trucks of 5 tons or more;
5. radiologic equipment etc.

There are, however, a few conditions, namely that the machinery etc. involved is made in France, is not used before and, the most important, that the above mentioned goods are ordered between May 29, 1959 and January 1, 1960.

Source: *Bulletin d'informations rapides*, June 20, 1959

Algeria

Various measures

By decision nr. 59-005 many changes have been made in various items of tax legislation. A brief survey may be given:

1. The 10 percent surcharge on both the cedular and the complementary income taxes is again levied in 1959. (section 3 of the decision nr. 59-005).

2. Enterprises which undertake scientific or technical research are allowed to deduct the current costs thereof from their taxable profit. (section 15 of the decision). Investment in immovable goods, materials and machinery used for research purposes can immediately be written off by 50%. (section 16 of the decision). Enterprises, which acquire shares in approved companies or public organizations (established for scientific purposes) are allowed to write off immediately 50% of the purchase price of those shares. (section 17 of the decision).

3. The taxable income of taxpayers, not having their domicile in Algeria, but only one or more residences, will be set at five times the annual rental value of their residences, regardless of the nationality of those taxpayers. (section 50 of the decision).

Source: *Problèmes d'Outre-mer*, July 15, 1959

GHANA

Pioneer industry tax relief

Under the pioneer industry program new companies incorporated and resident in Ghana are eligible for tax exemption on profits for a maximum period of 5 years. Those privileges are generally offered to industries considered to have good prospects and if current production of the product to be manufactured is not adequate for the country's needs. New activities accorded pioneer status are: manufacture of road and advertising signs, glass, milk

products, ice, cosmetics, and pharmaceutical products, and manufacture and printing of textiles.

Source: *Foreign Commerce Weekly*, June 8, 1959

ISRAEL

Encouragement of Investments Bill

According to the new Bill, investment facilities are widened in Israel. Mean changes can be summarized as follows:

1. Hitherto an "approved investment" could be made only in an "approved enterprise". Under the new law, an investment can be approved in any enterprise. (section 2).

.2. Hitherto an "approved enterprise" could only be a new enterprise or the expansion of an existing enterprise. An "approved plan" under the proposed law may also cover capital participation, establishment, expansion or purchase of economic property or part thereof by a foreign resident in foreign currency and loans in foreign currency for redemption during at least 7 years against 10 years under the old law.

3. Hitherto, where a foreign investor liquidated or sold his local holding no re-investment was possible and remittance abroad was subject to special permit by the Controller of Foreign Currency. Under the new law, re-investment will be possible and remittance abroad in seven equal annual instalments.

4. Under the new law, the "plan" will be authorized and not an enterprise, investment or building. The form of approval of the "plan" was chosen in order to force the investors carefully to prepare their plans and thus to enable the Management to examine them more carefully before actual implementation will start. There is, however, a possibility to obtain a preliminary approval pending study of the plan. (section 16-20).

5. According to the proposed law, the approved enterprise should be a limited company or a cooperative society, unless another form is specifically authorised.

6. Under the proposed law also dividends are exempt from income tax for 5 years in the hands of the recipients and profits and interest can be remitted abroad without any restriction. (section 64, 65).

7. In case of the death of a non-resident or an Israeli resident, who was a non resident when he made investments in foreign currency in Israel, the approved investment shall be exempt from estate duty even after the non-resident has become an Israeli resident.

Source: *Business Diary*, June 25, 1959.

Income tax (Additional depreciation for business assets) (Amendment) Bill 1959

The additional depreciation benefit, hitherto only given as to machinery and equipment in industry, transport, agriculture, hotels and cinemas, will be extended to business buildings including buildings for letting.

Source: *Business Diary*, June 25, 1959.

LIBERIA

Corporate income tax increased

Liberian income tax rates on corporate profits have been increased, effective January 1, 1959. Under a new law enacted by the Liberian Legislature, income exceeding $ 50.000 and up to $ 75.000 is to be taxed at 25 %; income over $ 75.000 and up to $ 100.000 at 30 %, and all income over $ 100.000 at 35 %. Formerly all corporate net income over $ 50.000 was taxed at the rate of 25 %.

Source: *Foreign Commerce Weekly*, June 1, 1959

NETHERLANDS

New form required for dividend tax exemption

The Netherlands Government now requires presentation of a new document, a banker's declaration, by U.S. residents and corporations entitled to exemption from the Netherlands withholding tax on dividends paid by Netherlands companies. To receive dividends without withholding of the 15-percent Netherlands dividend tax, U.S. security holders presenting dividend coupons for payment by a Netherlands company or its paying agent must submit therewith one properly completed copy of the new form, 92a V.S., in addition to two copies of Netherlands income tax form 92 V.S. Both imcome tax forms 92a V.S. and 92 V.S. may be obtained free of charge from the Netherlands Ministry of Finance, Afdeling Organisatie van de Belastingdienst, The Hague.

Source: *Foreign Commerce Weekly*, June 29, 1959

SWEDEN

Income tax

Income tax payable by joint-stock companies and economic associations is to be reduced as from January 1, 1960, to the level prevailing prior to the increase introduced in 1955, i.e. from 50 to 40 percent for joint-stock companies and from 40 to 32 percent for economic associations. This reduction is regarded as compensation for the companies' liability to pay their employees' supplementary pension premiums as from 1960.

Source: *Svenska Handelsbanken "Index"*, 1959, no. 5.

U.S.A.

New York State — Tax revision

New York State has completely revised its tax system. Main changes are the following:

1. A pay-as-you-go system is adopted, by withholding the income tax on wages as paid and by payment of an estimated tax in quarterly instalments.
2. In order to avoid payment of two years' taxes in one year, the 1958 taxes are cancelled, with a few exceptions however.
3. Tax rates, applicable to income and capital gains exceeding $ 11.000 are raised from 7 to 10 percent and from 3 ½ to 5 percent respectively.

Source: *The Journal of Taxation*, June 1959.

Allowance of credit for taxes (Rev. Rul. 59-192)

Advice had been requested whether the Cuban taxes imposed under Article 2(b) of Law Decree No. 1005 of July 26, 1953, known as the Rural Housing Tax, may be claimed as a foreign tax credit for Federal income tax purposes by a company incorporated under the laws of the United States. In order for a tax paid to a foreign country to be allowable as a credit against United States income tax under section 901 of the Internal Revenue Code of 1954, it must be shown that the tax imposed by the foreign law is a tax on income within the United States concept thereof, or is a tax paid in lieu of income tax under section 903 of the Code. See Rev. Rul. 56-658, C.B. 1956-2, 501, at 502.

The Cuban tax here involved is based on "net income" computed under the identical formula used for computing the statutory net income for the National Tax (Law of July 15, 1925, increased in rate by Law No. 7 of April 5, 1943). This National Tax was held to be an income tax within the meaning of sections 901 and 902 of the 1954 Code. See Rev. Rul. 56-658, supra. Accordingly, it is held that Cuban taxes imposed under Article 2(b) of Law Decree No. 1005 of July 26, 1953 (Rural Housing Tax) constitute income

taxes for which a credit is allowable under sections 901 and 902 of the Code.

Source: *Internal Revenue Bulletin*, June 1, 1959.

TAX AGREEMENTS

Germany — Spain

In accordance with a Convention between the federal republic of Germany and Spain on certain effects of the Second World War, the exemption from the "Lastenausgleichsabgaben" (Equalization of Burdens Tax) granted to citizens of the United Nations and to corporations owned by citizens of the United Nations is extended to citizens of Spain and Spanish-owned corporations. This exemption was granted for 6 years, from April 1, 1949 until March 31, 1955. The convention becomes effective on July 2, 1959. The exemption will be given on request within a period of 3 years from this data on.

Source: *Bundesgesetzblatt, II*, April 3, 1959.

U.S.A. — Pakistan

Instruments of ratification were exchanged on May 21 in Karachi bringing into force an income-tax convention between Pakistan and the United States. This convention for the avoidance of double taxation and the prevention of fiscal evasion, signed at Washington on July 1, 1957, follows in general the pattern of conventions now in force between the United States and numerous other countries for the avoidance of double taxation with respect to taxes on income. The second sentence of Article XV (1) of the convention as signed contained a provision, commonly referred to as the tax-sparing provision, under which the amount of income tax and super tax by which an American enterprise's Pakistan tax was reduced by Pakistan law, as an incentive for new investment, would be treated, within certain limits and on certain conditions, as though paid for foreign-tax credit purposes. [1]) After the signing of the convention, the relevant Pakistan tax law was repealed.

On July 9, 1958, the U.S. Senate gave advice and consent to ratification of the convention subject to the reservation "that the second sentence of paragraph 1 of Article XV shall not be ratified." The convention was ratified by the President subject to that reservation. The text of the reservation was communicated by the United States Government to the Government of Pakistan, which accepted the reservation. The convention is effective in the United States for taxable years beginning on or after January 1, 1959. It is effective in Pakistan for "previous years" or "chargeable accounting periods", as defined in Pakistan law, beginning on or after January 1, 1959.

1) See our *Bulletin Vol. XI*, 1957, p. 328.

III

BUNDESREPUBLIK DEUTSCHLAND — BÖRSENUMSATZSTEUER

Der Umstand, dass ein im Ausland abgeschlossener entgeltlicher Vertrag, der den Erwerb von Anteilen an einer inländischen GmbH zum Gegenstand hat, formlos abgeschlossen und erst gemäss § 15 Abs. 4 Satz 2 GmbHG durch die später im Inland gemäss § 15 Abs. 3 GmbHG vorgenommene Abtretung gültig geworden ist, macht den Vertrag nicht zu einem im Inland abgeschlossenen Anschaffungsgeschäft.

KVStG §§ 17, 34 Abs. 1; EGBGB Art. 11 Abs. 1; GmbHG § 15.

Bundesfinanzhof. Urteil v. 25. Februar 1959 II 155/58 U (BStBl 1959 III S. 215)

Streitig ist, ob ein Anschaffungsgeschäft über Geschäftsanteile an einer GmbH, die ihren Sitz im Bundesgebiet hat, im Inland oder im Ausland abgeschlossen worden ist.

Das Finanzgericht hat folgenden Sachverhalt festgestellt:

Die Beschwerdegegnerin (Bgin.), die Firma Z., beabsichtigte, zwei Anteile an der deutschen GmbH X. zu erwerben, und zwar als Treuhänderin einer inländischen Firma. Die Anteile befanden sich im Besitz der englischen Firma Y. in London.

Im Auftrag der Bgin. verhandelte mit der englischen Firma teils mündlich, teils schriftlich der im Inland wohnhafte Kaufmann A., der von vornherein erklärte, er beabsichtige, die Anteile nicht für sich selbst, sondern für eine ihm nahestehende Firma zu erwerben, deren Namen er zunächst nicht nennen wolle. Am 4. Juli 1955 traf A. mit den Vertretern der englischen Firma in Rotterdam zusammen. Es bestand hier zunächst noch keine Einigkeit über den Kaufpreis. Der Kaufmann A. hat dann jedoch das Angebot der englischen Firma angenommen, als deren Vertreter ihm mitteilen, sie würden unter den von ihnen genannten Preis nicht heruntergehen und die Verhandlungen als gescheitert betrachten, wenn ihr Angebot nicht noch an demselben Tage angenommen würde. Der Abschluss wurde durch Handschlag bekräftigt; eine notarielle oder auch nur schriftliche Verlautbarung des Vertrages unterblieb. Klarheit bestand bei allen Beteiligten darüber, dass die — dingliche — Übertragung der Anteile der Beurkundung durch einen deutschen Notar bedurfte. Am 16. Juli 1955 unterzeichneten die Beteiligten in M. (Inland) eine Erklärung des Inhalts, dass sie sich am 4. Juli 1955 in Rotterdam über die Abtretung der X.-Geschäftsanteile von 100 000 DM und 200 000 DM, welche die englische Firma Y. an der deutschen X.-GmbH besitze, und über die Bedingungen der Abtretung geeinigt hätten und dass die dingliche Übertragung der Anteile entsprechend den deutschen Gesetzen durch einen deutschen Notar beurkundet werden müsse. Demgemäss lasse man den anliegenden Vertragsentwurf dem Notar zur Begutachtung zugehen. Der im Entwurf enthaltene Wortlaut stelle den Willen der Parteien gemäss den Abmachungen in Rotterdam dar. Es sei vorgesehen, dass redaktionelle Änderungen — soweit erforderlich — durchgeführt werden könnten. Nach dem dieser Erklärung beigefügten „Vertrag" verkauft die Firma Y. an die Bgin. zwei näher bezeichnete Anteile an der X.-GmbH für 1 500 000 DM. Die Wirksamkeit des Vertrages sei von der Genehmigung der zuständigen Behörden abhängig. Der „Vertrag" enthält ausserdem ausführliche Bestimmungen über die Zahlung und Verzinsung des Kaufpreises. Nach Erteilung der Genehmigung der britischen

Stellen schlossen die Beteiligten am 11. Oktober 1955 in M. (Inland) einen notariellen Vertrag, in dem folgendes bestimmt wurde:

„I. Die Firma Y. hat verkauft und überträgt hiermit an die Firma Z. zu M. ihre beiden vorbezeichneten Geschäftsanteile ..... Die Kaufbedingungen waren und sind die folgenden ....."

Es folgen in dem notariellen Vertrag die Kaufbedingungen entsprechend dem Wortlaut des oben erwähnten Vertragsentwurfs mit der Abweichung, dass der Zinssatz für das Restkaufgeld 4,5 v. H. (statt 5,5 v. H.) betragen sollte.

Am 15. Oktober 1955 genehmigte die zuständige Landeszentralbank (Devisenstelle) die Abtretung gegen Zahlung von 1 500 000 DM gemäss den Bedingungen des Vertrages vom 11. Oktober 1955.

Das Finanzamt unterwarf den Vertrag vom 11. Oktober 1955 der vollen Börsenumsatzsteuer und setzte diese nach einer Gegenleistung von 1 500 000 DM fest. Den Einspruch wies das Finanzamt als unbegründet zurück.

Auf die Berufung der Bgin. hob das Finanzgericht die angefochtene Entscheidung auf und ermässigte unter Bejahung der Voraussetzungen des § 34 Abs. 1 des Kapitalverkehrsteuergesetzes (KVStG) die Steuer auf die Hälfte.

Die hiergegen eingelegte Rechtsbeschwerde (Rb.) des Vorstehers des Finanzamts ist nicht begründet.

Nach § 17 KVStG unterliegt der Börsenumsatzsteuer der Abschluss von Anschaffungsgeschäften über Wertpapiere, zu denen auch GmbH-Anteile gehören, wenn die Geschäfte im Inland oder unter Beteiligung wenigstens eines Inländers im Ausland abgeschlossen werden. Die Steuer ermässigt sich nach § 34 Abs. 1 KVStG bei Anschaffungsgeschäften, die im Ausland abgeschlossen werden, auf die Hälfte, wenn nur ein Vertragsteil Inländer ist. Anschaffungsgeschäfte sind gemäss § 18 KVStG entgeltliche Verträge, die auf den Erwerb des Eigentums an Wertpapieren gerichtet sind.

Im Streitfall ist zunächst zu prüfen, ob die Beteiligten ein, wenn auch nur formloses, Anschaffungsgeschäft bereits in Rotterdam abgeschlossen haben. Diese Frage liegt auf tatsächlichem Gebiet. Das Finanzgericht hat festgestellt, dass die in Rotterdam getroffene schuldrechtliche Regelung von den Beteiligten als endgültige gewollt war und als solche auch angesehen wurde. Diese Feststellung ist nicht zu beanstanden. Das Finanzgericht hat diese Feststellung hergeleitet aus der schriftlichen Äusserung des amerikanischen Rechtsanwalts B., deren Richtigkeit zu bezweifeln es keinen Anlass sah. Nach der Angabe dieses Rechtsanwalts wären die Verhandlungen in Rotterdam abgebrochen worden, wenn der Beauftragte der Bgin. eine bindende Erklärung über die Annahme des Angebots der britischen Firma nicht abgegeben hätte. Das Finanzgericht stützt seine Feststellung ausserdem auf den Wortlaut des notariellen Vertrages vom 11. Oktober 1955, der davon ausgeht, dass der Verkauf der Anteile bereits in einem früheren Zeitpunkt abgeschlossen worden ist, und der damit nur die Beurkundung des dinglichen Erfüllungsgeschäfts zum Gegenstand haben konnte. Das Finanzgericht hat weiterhin darauf hingewiesen, dass die Bgin. mit der Abgabe und Entgegennahme der erforderlichen Erklärungen in der notariellen Verhandlung einen Bürovorsteher beauftragt hat, eine Tatsache, die ebenfalls darauf schliessen lässt, dass es sich bei der notariellen Verhandlung vom 11. Oktober 1955 nur noch um den Vollzug bereits bestehender Vereinbarungen gehandelt hat, eine verantwortliche Entscheidung also nicht mehr zu treffen war. Diesem Ergebnis steht nicht die Tatsache entgegen, dass in Rotterdam lediglich der Kaufmann A. aufgetreten und die Bgin. erstmalig am 11. Oktober 1955 in Erscheinung getreten ist. Nach der Feststellung des Finanzgerichts hat der Kaufmann A. niemals einen Zweifel daran gelassen, dass er nicht selbst kaufen wollte, sondern nur im Auftrage und für Rechnung einer ihm nahestehenden Firma handelte. Zu der gegenteiligen Auffassung zwingt auch nicht der Wortlaut der Vollmacht, die die Bgin. dem Bürovorsteher C. für die notarielle Ver-

handlung vom 11. Oktober 1955 erteilt hat. Die tatsächlichen Feststellungen des Finanzgerichts sind nach der an das Urteil des Reichsfinanzhofs VI v A 27/24 vom 29. Oktober 1924 (Slg. Bd. 14 S. 350) anknüpfenden ständigen Rechtsprechung der höchsten Steuergerichte gemäss § 288 Ziff. 1, § 296 Abs. 1 der Reichsabgabenordnung für den Senat bindend, wenn das Finanzgericht auf Grund der ihm zustehenden freien Beweiswürdigung ohne Rechtsirrtum und ohne Verstoss gegen den klaren Inhalt der Akten und gegen Verfahrensvorschriften zu dem gewonnenen Ergebnis kommen konnte. Dies gilt auch dann, wenn es sich um die Auslegung von Verträgen handelt (vgl. Urteil des Reichsfinanzhofs VI A 504/26 vom 16. Februar 1927, Slg. Bd. 20 S. 317).

Allerdings ist die Abmachung in Rotterdam nur mündlich getroffen worden. Sie entsprach also nicht der im § 15 Abs. 4 Satz 1 des Gesetzes betreffend die Gesellschaften mit beschränkter Haftung (GmbHG) vorgeschriebenen Form. Diese Beurteilung steht auch im Einklang mit Art. 11 Abs. 1 des Einführungsgesetzes zum Bürgerlichen Gesetzbuch (zu vgl. Entscheidungen des Reichsgerichts in Zivilsachen Bd. 160 S. 225, insbesondere S. 229). Jedoch ist nach § 15 Abs. 4 Satz 2 GmbHG die in Rotterdam getroffene Vereinbarung durch den nach Massgabe des § 15 Abs. 3 GmbHG geschlossenen dinglichen Vertrag gültig geworden (vgl. Hachenburg, Gesetz betreffend die Gesellschaften mit beschränkter Haftung, 6. Aufl., § 15 Anm. 46; Baumbach-Hueck, Gesetz betreffend die Gesellschaften mit beschränkter Haftung, 8. Aufl., § 15 Anm. 3E; Entscheidungen des Reichsgerichts in Zivilsachen Bd. 65 S. 39). Es ist also nicht so, dass das Anschaffungsgeschäft erst in M. (Inland) abgeschlossen wurde, vielmehr wurde das formlos in Rotterdam abgeschlossene Anschaffungsgeschäft durch einen Rechtsvorgang im Inland rechtsgültig. Die nachträgliche Heilung, die das in Rotterdam abgeschlossene Anschaffungsgeschäft seinem ganzen Inhalt nach gültig werden liess, kann aber nicht dazu führen, dass das formlos im Ausland abgeschlossene Anschaffungsgeschäft steuerlich als im Inland abgeschlossen anzusehen ist. Der Umstand, dass die in Rotterdam getroffene Abmachung erst durch den Vertrag in M. (Inland) rechtsgültig wurde, ändert nichts daran, dass die Abmachung in Rotterdam getroffen wurde.

Der Hinweis des Finanzamts auf das Urteil des Bundesfinanzhofs I 73/54 U vom 8. März 1955 (BStBl 1955 III S. 187, Slg. Bd 60 S. 489) kann nicht zu einem anderen Ergebnis führen. Nach diesem Urteil entspricht es der feststehenden höchstrichterlichen Rechtsprechung, dass Verträge, die in zivilrechtlich gültiger Form mit rückwirkender Kraft geschlossen werden, erst vom Zeitpunkt ihres Abschlusses steuerliche Auswirkungen haben können. Im Streitfalle ist zwar der schuldrechtliche Vertrag erst durch den Rechtsvorgang in M. (Inland) wirksam geworden. Aber dadurch ändert sich nichts an der Tatsache des Abschlusses des schuldrechtlichen Vertrages in Rotterdam.

Auch der Hinweis auf die Urteile des Reichsfinanzhofs II A 353/28 vom 25. September 1928 (Mrozek-Kartei, Kapitalverkehrsteuergesetz 1922, § 35 Rechtssprüche 36, 37) sowie II A 126/31 vom 26. Januar 1932 (Mrozek-Kartei, Kapitalverkehrsteuergesetz 1922, § 27 Rechtsspruch 9) vermag die Rb.. nicht zu begründen. Das letztgenannte Urteil II A 126/31 vom 26. Januar 1932, das die Wertpapiersteuer betrifft, nimmt auf die Entscheidung des Reichsgerichts in Zivilsachen Bd. 59 S. 335 Bezug. Das Reichsgericht hatte dort über die einen anderen Sachverhalt betreffende Frage zu entscheiden, ob ein Rechtsgeschäft, das durch briefliche Korrespondenz (vgl. § 6 Abs. 3 des Reichsstempelgesetzes vom 14. Juni 1900, Reichsgesetzblatt 1900 S. 275) mit einer ausländischen Firma unter Vermittlung einer dritten Firma mit Sitz im Inland zustandegekommen war, im Inland oder Ausland abgeschlossen wurde. Der Sachverhalt des Urteils des Reichsfinanzhofs II A 126/31 vom 26. Januar 1932 war im wesentlichen gleichgelagert dem der Entscheidung des Reichsgerichts. Schon aus diesem Grunde können weder das Urteil des Reichsgerichts noch die Entscheidung des Reichsfinanzhofs als Stütze für die

Ansicht des Finanzamts in dem andersgelagerten Streitfall herangezogen werden. Das gleiche gilt für das erstgenannte Urteil II A 335/28 vom 25. September 1928. In diesem war die mündliche und deshalb unwirksame Abrede über die Abtretung des Geschäftsanteils im Gegensatz zum Streitfall nicht als endgültige Regelung gedacht. Das Finanzgericht hatte in diesem Falle lediglich als erwiesen erachtet, dass für Geschäftsanteile ein bestimmter Betrag bezahlt worden sei, und daraus geschlossen, dass die Person, die das Finanzamt als Erwerber der Geschäftsanteile ansah, habe „in die Lage versetzt worden sein müssen, über die Anteile zu verfügen".

Bei dieser Sachlage kann dahingestellt bleiben, ob die Rb. im Streitfall nicht schon auf Grund des § 5 Abs. 3 des Steueranpassungsgesetzes zurückzuweisen war.

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BUNDESREPUBLIK DEUTSCHLAND - AUSGLEICHSTEUER

1. Der Senat hält an dem Urteil V z 11/56 U vom 23. November 1956 nicht mehr fest.
2. Der Begriff des Zollwerts kann als ein international gebundener Begriff des Wertzollrechtes nur nach zollrechtlichen Gesichtspunkten ausgelegt werden. Dies gilt auch für die Fälle, in denen der Zollwert nur die Besteuerungsgrundlage für die Erhebung der Ausgleichsteuer bildet.
UStG 1951 §§ 6 Abs. 1, 15 Abs. 2; Ausgleichsteuerordnung 1952 § 4 Abs. 1 Sätze 1 und 2.

Bundesfinanzhof. Urteil v. 25. Februar 1959 VII 174/57 S
(BStBl 1959 III S. 166)

Streitig ist die Frage, welcher Zollwert als Steuerwert der Berechnung der Ausgleichsteuer zugrunde zu legen ist für urheberrechtlich geschützte Bücher, die eine inländische Verlagsfirma (Beschwerdegegnerin — Bgin. —) auf Grund von ihr erworbener Verlagsrechte bei einer ausländischen Druckerei, die selbst das Material stellte, hat drucken und binden lassen. Die Bgin. und auch das Finanzgericht stehen unter Berufung auf das Urteil des Bundesfinanzhofs V z 11/56 U vom 23. November 1956 (BStBl 1957 III S. 62, Slg. Bd. 64 S. 164) auf dem Standpunkt, dass als Zollwert für die Berechnung der Ausgleichsteuer der Rechnungspreis der ausländischen Druckerei zu gelten habe, der neben den Material-, Druck- und Bindekosten nur den Unternehmergewinn des ausländischen Druckers einbezieht. Demgegenüber vertritt die Verwaltung (Hauptzollamt und der dem Verfahren beigetretene Bundesminister der Finanzen) die Auffassung, dass der Rechnungspreis nicht als Zollwert für die von der Bgin. eingeführten Bücher anerkannt werden könne, da er nicht den Voraussetzungen des § 53 des Zollgesetzes (ZG) in der Fassung des Gesetzes zur Änderung des Zollgesetzes, des Zolltarifgesetzes und des Mineralölsteuergesetzes (Drittes Zolländerungsgesetz) vom 9. August 1956 (Bundesgesetzblatt — BGBl — 1956 I S. 735, Bundeszollblatt — BZBl — 1956 S. 594) entspreche und wesentliche Wertanteile, die dem Zollwert zuzurechnen seien, nicht enthalte.

Die gleiche Frage hat der damals für Zölle und Verbrauchsteuersachen zuständige V. Senat des Bundesfinanzhofs in seinem bereits erwähnten Urteil im Sinne der Bgin. entschieden. Wegen der grundsätzlichen Bedeutung der Frage für das Wertzollrecht hat die Verwaltung das Problem im vorliegenden Rechtsstreit sowie in einer Reihe weiterer ähnlich gelagerter Fälle erneut zur Entscheidung gestellt. Der nunmehr für Zölle und Verbrauchsteuern zuständige erkennende Senat hat daher die strittige Rechtsfrage unter Berücksichtigung aller von seiten der Parteien vorgebrachten Gründe und der dem früheren Urteil des Bundesfinanzhofs und der Vorentscheidung zugrunde liegenden Erwägungen nochmals an Hand der ihm gleichzeitig zur Entscheidung vorliegenden Fälle im Zusammenhang eingehend geprüft.

I.

Die von der Bgin. am 18. Februar 1957 eingeführten gedruckten und gebundenen Bücher sind nach der Tarifnr. 4901—B—2 der damals geltenden Fassung des Zolltarifs 1951 zollfrei, unterliegen aber der Ausgleichsteuer mit 4 v. H. ihres Wertes. Dieser Wert ist nach den Vorschriften über die Wertverzollung zu ermitteln (§ 6 Abs. 1 Sätze 1 und 2 und § 7 Abs. 4 Satz 1 des Um-

satzsteuergesetzes — UStG — 1951 in der Fassung des Gesetzes zur Änderung des Umsatzsteuergesetzes vom 14. November 1951 — BGBl 1951 I S. 885, BZBl 1951 S. 565 — in Verbindung mit § 4 Abs. 1 Sätze 1 und 2 sowie § 5 Abs. 1 der Ausgleichsteuerordnung — AStO — 1952). Damit gilt kraft Gesetzes als Bemessungsgrundlage für die Erhebung der Ausgleichsteuer der Zollwert. Dieser richtet sich im Streitfall nach den §§ 53 und 53a ZG in der oben genannten Fassung.

Der erkennende Senat hat zu der Grundsatzfrage des Wertzollrechts, ob nämlich die Rechnungspreise aus Werklieferungsverträgen über urheberrechtlich geschützte Waren als Zollwert anerkannt werden und daher als Bemessungsgrundlage gelten können (§ 53b ZG), in dem zur Veröffentlichung bestimmten Grundsatzurteil VII 102, 114, 115/58 S vom heutigen Tage (BStBl 1959 III S. 183) ausführlich Stellung genommen.

Der Senat hat dort entschieden, dass in den Fällen, in denen dem Lieferer nicht auch das Vertriebsrecht an den geschützten Waren zusteht, die Rechnungspreise aus den Werklieferungsverträgen nicht als Zollwert anerkannt werden können, weil sie im Sinne des Wertzollrechts nicht als Verkaufspreise unter den Bedingungen des freien Wettbewerbs angesehen werden können; denn die jeweils eingeführten Waren, um deren Bewertung es im Einzelfalle geht, könnten infolge der auf ihnen ruhenden Urheberrechte vom Lieferer-Verkäufer nicht an jeden beliebigen Käufer im Wege eines Verkaufs auf dem freien Markt vertrieben werden. Es handelt sich dabei nicht um die auf dem Werklieferungsvertrag selbst beruhenden Bindungen obligatorischer Art zur Übereignung der hergestellten Waren an den Auftraggeber, sondern um die Auswirkungen der auf den jeweiligen konkreten Waren ruhenden absoluten Schutzrechte, die den Verkäufer rechtlich hindern, die geschützten Waren als solche an einen anderen als den Inhaber der Vertriebsrechte zu veräussern.

Die nach Ansicht des erkennenden Senats zum Wesen des Zollwertbegriffs gehörende Voraussetzung, dass die den Gegenstand des Kaufgeschäfts bildende, zu bewertende Ware an jeden beliebigen Käufer absetzbar sein muss, ohne dass bei diesem irgendwelche besonderen Voraussetzungen erfüllt sein müssen damit ein Verkauf an ihn rechtlich zulässig ist, kann auch nicht im Wege der Anerkennung der besonderen Handelsumstände ausgeschaltet werden. Denn nur insoweit, als das der Einfuhr zugrunde liegende Geschäft die Voraussetzungen erfüllt, die das Gesetz für den den Normalpreis bestimmenden Verkaufsbegriff festgelegt hat, können bei der Anerkennung eines Rechnungspreises als Normalpreis handelsmässige Umstände eines solchen „Verkaufs unter den Bedingungen des freien Wettbewerbs" berücksichtigt werden. Der erkennende Senat hat daher in seinem oben angeführten Grundsatzurteil vom heutigen Tage der Auslegung des § 1 Abs. 2 der Wertzollordnung (WertZO) 1951, wie sie dem Urteil vom 23. November 1956 zugrunde liegt, nicht folgen können.

Es kommt im vorliegenden Rechtsstreit also nicht darauf an — worüber die Parteien sich zunächst eingehend auseinandergesetzt haben —, ob ein Werklieferungsvertrag auch wertzollrechtlich als Kaufvertrag angesprochen werden kann, sondern es ist ausschliesslich von Bedeutung, ob die auf Grund eines solchen Vertrages hergestellte Ware vom Lieferer-Verkäufer an jeden beliebigen Käufer frei verkauft werden könnte oder nicht. Da dies bei urheberrechtlich geschützten Waren dann nicht der Fall ist, wenn dem Verkäufer nicht auch das Vertriebsrecht an den Waren zusteht, kann in Fällen wie dem vorliegenden, in dem dies nicht gegeben ist, der Rechnungspreis nicht als Zollwert anerkannt werden.

Auf die Einzelheiten der ausführlichen Begründung des oben erwähnten Grundsatzurteils zu der wertzollrechtlichen Frage wird Bezug genommen.

Es bleibt daher hier noch zu prüfen, ob diese wertzollrechtliche Entscheidung auch dann zu gelten hat, wenn — wie im vorliegenden Falle — der Zollwert ausschliesslich als Bemessungsgrundlage der Ausgleichsteuer dient.

II.

Im Gegensatz zu sonstigen zollrechtlichen Vorschriften, die gemäss § 15 Abs. 2 UStG sinngemäss auf die Erhebung der Ausgleichsteuer Anwendung finden, gelten die zollrechtlichen Vorschriften über den Zollwert unmittelbar. Sie haben daher auch dann Anwendung zu finden, wenn dies im Einzelfall zu Ergebnissen führt, die unter Umständen dem Sinn und Zweck der Ausgleichsteuer nicht voll entsprechen. Der durch den Gesetzgeber infolge der unmittelbaren Verkoppelung des Bemessungsmassstabes für die Ausgleichsteuer mit dem Zollwert geschaffenen Rechtslage muss Rechnung getragen werden. Jedenfalls kann nicht durch Erwägungen, die ihren Ursprung in vermeintlichen Ungereimtheiten bei der Anwendung des Wertzollrechts auf die Erhebung der Ausgleichsteuer haben, der Begriff des Zollwerts umgedeutet werden.

Der Zollwert, der als international verbindlicher Begriff für die Signatarstaaten des Brüsseler Abkommens über den Zollwert vom 15. Dezember 1950 (vgl. Gesetz über internationale Vereinbarungen auf dem Gebiet des Zollwesens vom 17. Dezember 1951, BGBl 1952 II S. 1 ff., und Bekanntmachung über das Inkrafttreten von internationalen Vereinbarungen auf dem Gebiete des Zollwesens vom 7. Juli 1953, BGBl 1953 II S. 256) die Grundlage des Wertzollrechts bildet, kann nur nach zollrechtlichen Gesichtspunkten ausgelegt werden. Die im UStG getroffene Regelung, wonach vom 16. November 1951 an die Ausgleichsteuer nach dem Zollwert zu berechnen ist, verfolgte den Zweck einer sinnvollen Vereinfachung des Abfertigungsverfahrens. Die Zollstellen sollten im Interesse einer reibungslosen Abwicklung der Zollabfertigung nicht gehalten sein, neben der Ermittlung des Zollwerts noch weitere Ermittlungen über einen etwa von der Höhe des Zollwerts abweichenden Bemessungsmassstab für die Ausgleichsteuer durchzuführen. Aus diesem Grunde wurde bestimmt, dass nicht mehr der früher in erster Linie massgebende Erwerbspreis, sondern der von den Zollstellen für wertzollbare Waren sowieso festzustellende Zollwert auch die Grundlage für die Bemessung der Ausgleichsteuer bilden solle. Es kann daraus aber nicht gefolgert werden, dass deshalb dem Begriff des Zollwerts, also einem zollrechtlichen Begriff, aus Erwägungen umsatzsteuerlicher Art ein anderer Inhalt gegeben werden könnte. Das hat auch dann zu gelten, wenn, wie im Streitfall, eine Ware, weil nicht wertzollbar, nur der Ausgleichsteuer unterworfen ist (vgl. § 6 Abs. 1 Satz 3 UStG 1951). Es muss daher de lege lata davon ausgegangen werden, dass der Zollwertbegriff eine für alle an dem Brüsseler Abkommen beteiligten Staaten einheitlich festgelegte, in das nationale Recht der Vertragsstaaten übernommene Norm darstellt, die nicht durch Erwägungen rechtlicher Art beeinflusst werden kann, die aus dem Bereich etwa neben dem Zoll noch bestehender innerer nationaler Abgaben hergeleitet werden könnten. Denn jede Umdeutung des Zollwertbegriffs aus nicht auf dem Wertzollrecht beruhenden Gründen würde eine einseitige Verschiebung der Vergleichsmöglichkeiten der Zollbelastungen in den einzelnen Vertragsstaaten nach sich ziehen und damit den Hauptvorteil des Wertzollsystems sowie die gleichmässige Handhabung der Wertnorm, zu der sich alle Vertragsstaaten verpflichtet haben, in Frage stellen.

Auch die Grundsätze des Genfer Allgemeinen Zoll und Handelsabkommens vom 30. Oktober 1947 (GATT), dem die Bundesrepublik beigetreten ist (vgl. Gesetz über das Protokoll von Torquay vom 21. April 1951 und den Beitritt der Bundesrepublik Deutschland zum Allgemeinen Zoll- und Handelsabkommen vom 10. August 1951, BGBl 1951 II S. 173, Bekanntmachung über den Zeitpunkt des Inkrafttretens des Allgemeinen Zoll- und Handelsabkommens — GATT — vom 5. Oktober 1951, BGBl 1951 II S. 200), und die Havanna-Charta der Vereinten Nationen vom 24. März 1948, deren allgemeine Grundsätze von den GATT-Vertragsstaaten zu berücksichtigen sind,

können auf die Entscheidung im vorliegenden Rechtsstreit keine unmittelbare Anwendung finden, weil diese internationalen Abkommen nach der herrschenden Meinung zwar die Vertragsstaaten binden, nicht aber Recht schaffen, aus dem der einzelne Staatsburger unmittelbare Anspruche herleiten kann.

Wie sich aus dem Vorstehenden ergibt, kann auch der Umstand, dass im vorliegenden Fall der Zollwert ausschliesslich als Bemessungsgrundlage für die Ausgleichsteuer dient, nicht zu einer veranderten Betrachtungsweise hinsichtlich des Zollwertbegriffs und seiner rechtlichen Folgen führen.

Source: *Bundessteuerblatt*, Teil III, 12. Mai, 1959.

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FRANCE - PRET SANS INTERET CONSENTI PAR UNE SOCIETE FRANÇAISE A UNE FILIALE ETRANGERE

Impôt sur les sociétés. - Détermination du bénéfice imposable. Prêt sans intérêt consenti par une société française à une filiale étrangère. Transfert de bénéfice imposable. Prêt sans intérêt consenti par une société française à une autre société française filiale ou non filiale. Absence de transfert de bénéfice sauf preuve contraire à apporter par l'Administration. Conseil d'Etat, 7e sous-section, 7 juillet 1958, no. 35.977.

LE CONSEIL D'ETAT; — *En ce qui concerne le prêt consenti à la Société X...;* — Considérant qu'aux termes de l'article 57 du Code général des Impôts «pour l'établissement de la taxe proportionnelle due par les entreprises qui sont sous la dépendance ou qui possèdent le contrôle d'entreprises situées hors de France, les bénéfices indirectement transférés à ces dernières soit par voie de majoration ou de diminution des prix d'achat, ou de vente, soit par tout autre moyen, sont incorporés aux résultats accusés par la comptabilité»; — Qu'il résulte de cette disposition que les avantages consentis au profit d'une entreprise située hors de France par une société sise en France et qui possède le contrôle de la société bénéficiaire, sont présumés constituer un transfert de bénéfices; — Considérant que la S.A.R.L. Y... conteste la réintégration dans le bénéfice imposable de l'exercice 1951 d'une somme de 453.000 francs représentant des intérêts que, d'après l'estimation de l'Administration, la société aurait dû percevoir au titre d'un prêt consenti par elle à sa filiale, la Société X...; — Considérant que la société requérante n'établit pas que, en consentant à sa filiale un prêt sans intérêts, elle n'ait pas cherché à effectuer un transfert de bénéfices; que, dès lors, c'est à bon droit que l'Administration a réintégré dans le bénéfice imposable de la société requérante l'intérêt que le prêt dont s'agit aurait normalement produit au profit de ladite société; — *En ce qui concerne les prêts consentis à d'autres sociétés:* — Considérant que, en l'absence de toutes dispositions du Code général des Impôts analogues à celle de l'article 57 précité, une entreprise ne saurait quand elle consent à une société sise en France une diminution du prix de vente, être présumée avoir entendu procéder à un transfert dissimulé de bénéfices; qu'il appartient dans chaque cas à l'Administration de rapporter la preuve que le contribuable, qui n'est jamais tenu de tirer des affaires qu'il traite, le maximum de profit que les circonstances lui auraient permis de réaliser a délibérément poursuivi un intérêt commercial étranger à son entreprise; — Considérant qu'il résulte de l'instruction que la société requérante a consenti des prêts sans intérêts à diverses sociétés filiales, à la Société Z... et au sieur N...; — Considérant que le Ministre du Budget n'établit pas que en renonçant à exiger de ses filiales un intérêt pour les avances dont s'agit, prélevées sur des capitaux dont la société avait la disposition, et que ne grevait par conséquent aucune charge d'emprunt, la société requérante n'ait pas eu pour but de consolider la situation ou d'aider au développement des dites filiales; — Considérant en revanche, que la Société Z... n'a pas de caractère de filiale de la société requérante, et que le président de celle-ci en détient personnellement la presque totalité des actions: que le Ministre, qui a établi l'inexactitude des allégations de la société requérante, quant aux avantages qu'elle prétendait avoir retirés du prêt considéré, doit être regardé comme ayant sur ce point rapporté la preuve

qui lui incombait; que, de même, doit être regardée comme apportée, la preuve qu'en consentant au sieur N..., son président directeur général, un prêt sans intérêt, la société requérante a délibérément poursuivi un intérêt commercial étranger à l'entreprise;

Décide: — *Art. 1er.* — Il est accordé à la Société Y... une réduction de l'impôt sur les sociétés auquel elle a été assujettie pour l'année 1951 sur les rôles de la ville de ..., correspondant à la déduction, du montant des bénéfices imposables, d'une somme de 1.882.000 francs réintégrée à tort par l'Administration comme correspondant aux intérêts de prêts consentis par la société à des filiales françaises; — *Art. 2.* — Le jugement du Tribunal de ... en date du 1er avril 1955 est réformé en ce qu'il a de contraire à la présente décision; — *Art. 3.* — Le surplus des conclusions de la requête de la Société est rejeté.

MM. Heilbronner, *prés.;* Schmeltz, *rapp.;* Méric, *com. gouv.;* Me Gauthier, *av.*

Source: *Juris Classeur Périodique*, 4 Juin 1959, No. 23.

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IV

REVIEWS - COMPTES RENDUS

AUSTRIA

HANS MUSGER und FRIEDRICH SCHULZ: *Das neue Einkommensteuerrecht. X. Ergänzungslieferung*. Verlag Hermann Schmerzeck & Co. Herzog-Ernst-Gasse 1; Bruck a.d. Mur.

Eine Besprechung dieser nützliche Sammlung wurde in *Bulletin XII*, S. 97 veröffentlicht. Die jetzt vorliegende X. Ergänzungslieferung bringt das Werk durch Berücksichtigung der zwischenzeitig zum Gegenstand herausgekommenen gesetzlichen Bestimmungen, BMfF.-Erlässe sowie VwGH.-Erkenntnisse auf den Stand vom Mai 1959. Ausserdem enthält die Lieferung das Sachregister für die neunte und zehnte Ergänzung und die Verzeichnisse der Gesetze, Erlässe und Verwaltungsgerichtshoferkenntnisse.

Dr. ERNST STRACK: *Das Umsatzsteuerrecht in Theorie und Praxis*. 3. Auflage. Wirtschaftsverlag Dr. Anton Orac, Graben 17, Wien I. Loseblatt-Ausgabe, 544 Seiten, Preis S 264.-, Sammelmappe S 25.-

Mit dem Erscheinen der 3. Auflage des nunmehr seit fast 10 Jahren bestehenden Werkes „Das Umsatzsteuerrecht in Theorie und Praxis" von wirkl. Hofrat Dr. Ernst Strack wird den zahlreichen Änderungen, die das Umsatzsteuergesetz 1959 mit sich brachte, vollauf Rechnung getragen. Die Neuauflage wird daher von allen jenen Interessenten begrüsst werden, deren Tätigkeit eine genaue Kenntnis des Umsatzsteuerrechtes erfordert. Über die Bezieher der bisherigen Auflage hinaus wird nun auch der „Strack" für alle jene zugänglich, die sich um eine Erwerbung des längst vergriffen gewesenen Werkes vergeblich bemüht haben. Der Autor, dessen Ansicht vom Verwaltungsgerichtshof schon wiederholt übernommen wurde, hat auch die dritte Auflage in der bekannten und bewährten Weise gestaltet. Er weist an den entsprechenden Stellen auf die Unterschiede zwischen dem früheren und dem derzeit geltenden Umsatzsteuerrecht hin und berücksichtigt auch die jüngste Rechtsprechung des VwGH. Das Loseblatt-System wurde beibehalten und schafft so die Möglichkeit, das Werk stets auf dem neuesten Stand der Gesetzgebung zu halten.

Infolge seines Umfanges wird der Umsatzsteuer-Kommentar in zwei Teilen herausgebracht. Der zweite Teil wird in September 1959 ausgeliefert werden.

Die bisherige 2. Auflage von Strack „Das Umsatzsteuerrecht in Theorie und Praxis" behält für die Zeit bis 31. 12. 1958 ihre Gültigkeit.

BELGIUM

L. BRISMEE et G. WILMOTTE: *Les Taxes sur les transmissions commerciales*. 281, Avenue de Roodebeek, Schaerbeek. *6me mise à jour, 1959*.

Le présent ouvrage est principalement un «dictionnaire» combiné avec un exposé, sous forme de tableaux synoptiques, des divers régimes fiscaux auxquels sont soumises les marchandises à l'occasion de leurs transmissions à titre onéreux: transactions sur marchandises étrangères, importations, transactions intérieures, exportations. Il débute par un commentaire succinct des principes élémentaires, mettant l'accent sur ce qui est de nature à rendre

la consultation des «tableaux-régimes» aussi fructueuse que possible. Partout le classement alphabétique a été adopté pour faciliter les recherches.
La *6me mise à jour* a été publiée. Elle consiste de 162 feuilles.

Recueil des Lois Fiscales sous la surveillance de F. AMERIJCKX, Professeur ordinaire à l'Université de Gand. Edité par l'Union belge des Conseillers fiscaux, Documentation juridique et fiscale A. van der Leest, 343, Avenue des Pagodes, Bruxelles II.

Le Complément 7, 1959, de ce livre sur le système fiscal belge un compte rendu duquel a été publié dans le *"Bulletin" Vol. XII*, p. 32 a paru. Il contient des feuillets à remplacer pour les parties Code des et Règlement Général sur les taxes assimilées au timbre, Code des droits d'enregistrement, d'hypothèque et de greffe, Code des Droits de Timbre, Code des Droits de Succession.

Jurisprudence Fiscale et Sociale. Publié par Documentation juridique et fiscale A. van der Leest, 343, Avenue des Pagodes, Bruxelles II.

Les *Suppléments 1959 nos. 7-8* de cette documentation sur la jurisprudence fiscale belge ont paru.

CANADA

JOHN G. MCDONALD: *Canadian Income Tax. Twelfth (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 May 1, 1959. 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. Further supplements will be cumulative and will replace those which preceded them. As an addition to this supplement subscribers receive a revision of Chapter II of *Canadian Income Tax*. The enclosed pages 113-326 AR should be inserted into the binder in place of the existing pages 113-326, which should now be destroyed. The new Chapter II states the law as on June 1st, 1959, and will be kept up to date in the usual way in the supplements. The preliminary pages of the volume, including the List of Cases and the List of Sections, has also been revised. The next chapter to be revised and rewritten will be Chapter IV.

Corporate Management Conferences. Eight papers on business tax problems. Canadian Tax Papers No. 15. Canadian Tax Foundation, 154 University Avenue, Toronto 1, 1959, 117 pp.

In May, 1959, the Canadian Tax Foundation held one-day conferences in Toronto and Montreal for representatives of its corporate members. Topics were selected for their appeal to tax management, and in the papers an effort was made to set forth broad principles that govern in some of the more complex fields of corporate taxation. The resulting papers, eight in all, are reproduced in this report.
Subjects were: Expenses — deductible or non-deductible; Tax implications of corporate mergers and amalgamations; Tax position of fringe benefits; Sale and lease-back arrangements; Provincial profits taxation.

ENGLAND

A. G. B. BURNEY: *Illustrations of management accounts in practice.* Gee and Company (Publishers) Ltd., 27-28 Basinghall Street, London, EC2, 1959, 126 pp.

Part A of this book explains a number of management accounting statements designed to assist various levels of management in controlling their costs. Part B describes the detailed costing and accounting procedures which enable the statements for a medium-size manufacturing concern to be prepared. The emphasis is on practical management accounts.

Current Law Income Tax Acts Service. Sweet & Maxwell, London.

Release 54: August 17, 1959. The Finance Act, 1959. This Release brings to subscribers the text of the Finance Act, fully annotated.

FRANCE

PUBLICATIONS FRANCIS LEFEBVRE — 15 Rue Viète, Paris 17ème.

1°) *Memento pratique du contribuable* — (Mode de calcul annuel des Impôts). Entièrement à jour au 15 Mai 1959; 520 pages — prix 1.600 Frs — 1.750 Frs. franco —. En vente aux Publications Francis Lefebvre, 15 Rue Viète, Paris (17ème), C.C.P. Paris 1117-51.

Cet ouvrage constitue un «condensé» de l'ensemble de la réglementation fiscale française (impôts directs, taxes sur le chiffre d'affaires, taxes uniques, droits d'enregistrement, impôts indirects). Comme son nom l'indique, le Mémento est conçu dans un esprit essentiellement pratique. Sous un volume réduit, le nouvel ouvrage des Publications Francis Lefebvre constitue à la fois un Mémento et un instrument de contrôle indispensable aux chefs d'entreprise, aux praticiens et, d'une manière plus générale, à tous les contribuables.

2°) *Documentation pratique des impôts directs:* L'envoi de feuillets no 2 de Juin 1959 contient notamment: la refonte de la Table alphabétique générale de l'ouvrage, qui permet ainsi des recherches plus faciles, la mise à jour de nombreuses séries et la refonte complète de la série consacrée à l'étude détaillée de la Revision des Bilans.

3°) *Documentation pratique des taxes sur le chiffre d'affaires:* L'envoi de feuillets no 2 de Juin 1959 comprend, outre la mise à jour de nombreuses séries, la refonte de la Série concernant les Exonérations et la création d'une série nouvelle consacrée aux Taxes sur le chiffre d'affaires en Algérie.

4°) *Documentation pratique des contributions indirectes:* L'envoi no 2 de juin 1959 contient notamment la refonte de la Série qui étudie la Taxe sur les Transports routiers et fluviaux.

5°) *Documentation pratique de l'enregistrement et du timbre:* L'envoi no 2 de Juin 1959 met à jour la totalité de l'ouvrage.

6°) *Documentation pratique de sécurité sociale et de législation du travail:* L'envoi no 2 de Juin 1959 comprend la mise à jour de nombreuses séries et la refonte des séries qui étudient les allocations vieillesse des Professions industrielles et commerciales et les allocations aux vieux travailleurs salariés.

Documentation pratique des taxes sur le chiffre d'affaires. Envoi no. 4 de 1958. Les Editions Francis Lefebvre, 15, Rue Viète, Paris-17e.

This is the 4th quarterly supplement of 1958 to the loose-leaf volume on French sales taxes published by les Editions Francis Lefebvre. It contains 79 pages to be exchanged.

Editions Techniques, 128 rue de Rivoli, Paris (1e) a publié les mises au courant suivantes à l'oeuvre *Juris Classeurs, Droit Fiscal:*

Juris-Classeur. Code fiscal.-Impôts directs. 1959, no. 5.
Juris-Classeur. Commentaires «Impôts directs». 1959, no. 5.

La présente mise au courant porte sur une période de publication du *Journal officiel* s'étendant du 12 octobre 1958 au 18 janvier 1959 et de parution de la revue *Droit fiscal* comprenant les numéros 44 de 1958 à 4 de 1959. Rendant compte des nombreux textes et des non moins nombreuses instructions, notes ou circulaires administratives, publiées durant cette période, elle constitue un ensemble très abondant.

Fascicules refondus. — La liste des fascicules refondus s'établit ainsi qu'il suit:

Fascicules 221 et 222 relatifs au régime forfaitaire d'imposition des bénéfices industriels et commerciaux; Fascicules 1241, 1242 et 1243 relatifs aux taxes somptuaires (taxes sui les résidences secondaires, taxes sur les yachts ou bateaux de plaisance, taxe sur les chevaux de course) fondus en un fascicule unique, le fascicule 1241; Fascicule 1271 relatif à la taxe civique remplacé par le fascicule 1245; Fascicule 1609 concernant les remises gracieuses d'impôts. *Fiches.* — Les fiches sont multiples. Elles tiennent compte de toutes les modifications intervenues à la fin de l'année 1958 et au début de l'année 1959.

Juris-Classeur. Code fiscal «Chiffre d'affaires». 1959, no. 5.
Juris-Classeur. Commentaires «Chiffre d'affaires». 1959, no. 5.

La présente mise au courant porte sur une période de publication du *Journal officiel* s'étendant du 12 octobre 1958 au 18 janvier 1959 et de parution de la revue *Droit fiscal* comprenant les numéros 44 de 1958 à 4 de 1959. Au cours de cette période des textes nouveaux sont intervenus qui ont notamment modifié les taux des taxes sur le chiffre d'affaires et apporté des changements au régime existant. Pour en tenir compte, certains fascicules ont été refondus et de nombreuses fiches de mise à jour ont été établies.

Code de l'Enregistrement. Envoi no. 2, Décembre 1958. Seteca, 14, Rue Clapeyron, Paris-8e.

A review of the *Code de l'Enregistrement,* a volume of the «Service de documentation fiscale Impôts et Sociétés» was published in *Bulletin Vol. XII,* p. 355. The present supplement consists of 18 pages dated December 1958.

L'Association Nationale des Sociétés par Actions, 15, Place Malesherbes, Paris (XVIIe) a publié la brochure suivante:

No. 123. *Les taxes sur le chiffre d'affaires,* Juin 1959, 228 pp.

Algeria

Louis Broët: *Guide pratique des Impôts en Algérie. Mise à jour no. 23,* Février 1959. 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 23,* Février 1959 containing a number of new pages has recently been published.

GERMANY

Die *Verlagsbuchhandlung des Instituts der Wirtschaftsprüfer,* Cecilienallee 36, Düsseldorf, hat die folgenden Werke veröffentlicht:

1) Dr. Helmut Neubert: *Internal control.* 1959.

Die Arbeit versucht aus praktischer Tätigkeit und Berührung mit amerikanischen Prüfungsmethoden und Organisationsgrundsätzen gewonnene Erkenntnisse deutschen Verhältnissen anzupassen.

2) KURT KOLBE: *Ermittlung von Gesamtwert und Geschäftswert der Unternehmung*, 1959.

Diese Arbeit ist eine zweite unter völlig neuen Erkenntnissen bearbeitete Auflage der in 1954 erschienenen Schrift «Gesamtwert und Geschäftswert der Unternehmung».

3) Dr. GÜNTER JAENKE: *Verwaltungsvorschriften im Steuerrecht.* Die Bedeutung der Richtlinien. Schriftenreihe des Instituts für Steuerrecht der Universität zu Köln, herausgegeben von Prof. Dr. ARMIN SPITALER, Band 5, 1959.

Der Autor unterscheidet folgerichtig zwischen rechtssatzmässigen und verwaltungsmässigen Verwaltungsvorschriften. Als rechtssatzmässig behandelt er die Vorschriften, die die Ermessensausübung betreffen, ferner solche, die zur Durchführung des Gesetzes ergehen, soweit es sich um ausfüllende und mildernde Bestimmungen handelt.

Dr. WILHELM HARTZ und Regierungsrat JOSEF OVER: *ABC-Führer Lohnsteuer.* 3. Auflage. Loseblattausgabe zum gesamten Lohnsteuerrecht mit amtlichem Wortlaut und ausführlichen Erläuterungen. Fachverlag für Wirtschafts- und Steuerrecht Schäffer & Co., Hackländerstrasse 33, Stuttgart. Grundwerk jeweils auf neuesten Stand DM 15.50, Leinenordner DM 3,50.

Erschienen ist die *Lieferung 28/29*: Juli/August 1959 mit der Lohnsteuer-Durchführungsverordnung vom 22.7.1959, einem Auszug aus der Einkommensteuer-DVO und einer Neufassung der Stichworte Reisekosten, Renten, Repräsentationskosten, Rückzahlung von Arbeitslohn, Rundfunk, Sachbezüge, Sonderausgabe, Spenden, Splitting, Sportler, Steuerfreier Betrag, Steuerkarte, Vorauszahlung von Arbeitslohn, Wohnungsbau-Prämiensparen u.a.m. Der ABC-Führer ist das umfassende Nachschlagewerk in Lohnsteuerfragen. Die Erläuterungen sind klar und knapp gehalten und für jeden verständlich.

Schnellkartei des deutschen Rechts. Verlag Dr. Otto Schmidt, Ulmenallee 96-98, Köln-Marienburg.

Lieferung 91 Inhalt: Neufassung der 12. AbgabenDV-LA, des ASpG, der KapStDV und des ErbStG; 22. und 23. AbgabenDV-LA, die 7. WAG-DV und das SparPrG; Änderung des DoppBestAbk. Schweiz, des KVStG, WechsStG; VersStG, u.a.m.

Lieferung 92, Inhalt: 24. Abgaben DV-LA — II.HGA — W AufbDV. Änderungen versch. Gesetze und Verordnungen.

Steuerrechtsprechung in Karteiform. Höchstgerichtliche Entscheidungen in Steuersachen. Begonnen von ALFONS KROZEK, fortgeführt von Dr. W. HUBSCHMANN und PAUL KAATZ. Verlag Dr. O. Schmidt, Ulmenallee 96-98, Köln-Marienburg.

Die Sammlung enthält die Entscheidungen des Bundesfinanzhofes in betont kommentarähnlicher und übersichtlicher Form. Die besondere Stärke der Steurrechtsprechung in Karteiform liegt darin, dass von allen gebrachten Entscheidungen Urteilsgründe und einschlägige Paragraphen mit abgedruckt sind. Durch regelmässige, je nach Umfang und Bedeutung der Rechtsprechung notwendig werdende Nachlieferungen wird das Werk laufend auf dem neuesten Stand gehalten. Erschienen ist die Lieferung 91.

WALTER KLEMPT und HEINZ MEYER: *Rechtsmittelverfahren und Rechtsmittelkosten in Steuerstreitsachen.* 2. neubearbeitete Auflage. Fachverlag für Wirtschafts- und Steuerrecht Schäffer & Co., Hackländerstrasse 33, Stuttgart O, 1959, 256 S.

Die nunmehr vorliegende 2. Auflage des Erläuterungsbuches gibt über alle wichtigen, im Rechtsmittelverfahren auftretenden Verfahrensfragen nach dem neuesten Stand der Gesetzgebung und Rechtsprechung schnell und zuverlässig Auskunft. Hervorzuheben ist die eingehende Darstellung des neuen Gebührenrechts, das für alle Beteiligten (Finanzämter, steuerberatende Berufe, Rechtsanwälte und andere Bevollmächtigte) erhebliche finanzielle Bedeutung hat. Die 2. Auflage ist gegenüber der 1. Auflage wesentlich vertieft und hinsichtlich ihrer Gliederung und ihres Inhalts in noch weiterem Umfange auf die Bedürfnisse der Praxis ausgerichtet. Der erste Teil (Rechtsmittelverfahren) beschränkt sich nicht auf die eigentlichen Rechtsmittel, sondern behandelt darüberhinaus auch alle Anfechtungs- und Berichtigungsmöglichkeiten der Bescheide und sonstigen Verfügungen der Finanzverwaltungsbehörden und Finanzgerichte. Die systematisch vorgenommene Gliederung und ein ausführliches Stichwortverzeichnis ersparen dem Benutzer Zeit und langes Suchen und gewährleisten eine schnelle Unterrichtung über die in Betracht kommenden Fragen.

Prof. Dr. jur. FRIEDRICH KLEIN: *Die bisherige Rechtsprechung des Bundesverfassungsgerichts in Finanz- und Steuerfragen.* Heft 58. Institut „Finanzen und Steuern", Markt 14, Bonn am Rhein, 1959, 47 S.

Dieser Vortrag wurde auf der Mitgliederversammlung des Instituts am 10. Juni 1958 gehalten und liegt nunmehr — ergänzt durch mehrere steuerliche Entscheidungen aus neuester Zeit — in ausgearbeiteter Form vor. Die Untersuchung kommt zu dem Ergebnis, dass zur Vermeidung von Zweifeln an der Sachkunde und der Autorität des Bundesverfassungsgerichts angesichts der Vielschichtigkeit und ungewöhnlichen Schwierigkeit der Materie ein besonders behutsames Vorgehen bei der Rechtsfindung in diesem Bereich angezeigt ist.

Steuergesetze. Textsammlung mit Verweisungen und Sachverzeichnis. 14. *Auflage 5. Ergänzungslieferung* zur Neuausgabe, Juni 1959. Verlag C. H. Beck, Wilhelmstrasse 9, München.

Die Neuausgabe der Steuergesetze in grösserem Format wurde in *Bulletin XII*, S. 358 und XIII, S. 44 besprochen.

Mit der *Ergänzungslieferung Juni 1959* werden die Blätter des Einkommensteuergesetzes ausgewechselt; es hat sich zwar nichts am Gesetz selbst geändert, doch waren die den einzelnen Paragraphen beigegebenen Verweisungen auf die neugefasste EStDV und auf die LStDV, deren Änderung und Neubekanntmachung unmittelbar bevorsteht, überholt und deshalb verbesserungsbedürftig.

Neu aufgenommen ist das Spar-Prämiengesetz und der — wenn auch nur für die Umsatzsteuer noch geltende — Teil des Ausfuhrförderungsgesetzes. Das Erbschaftsteuergesetz, das durch Gesetz vom 24. März 1959 weitgehend geändert und am 1. April neu bekanntgemacht worden ist, wird ganz ausgewechselt. Schliesslich berücksichtigt die Ergänzungslieferung die durch das Gesetz zur Änderung verkehrsteuerrechtlicher Vorschriften bewirkten Änderungen des Kapitalverkehrsteuergesetzes, des Versicherungsteuergesetzes und des Wechselsteuergesetzes sowie die Neubekanntmachung der Kapitalertragsteuerdurchführungsverordnung, die Änderung des Kapitalanlagegesellschaftengesetzes und die Änderung der Ausgleichssteuerordnung.

ZIEMER-KALBHENN-FELIX; *Steuer-Fundhefte.* Leitsätze der Entscheidungen — Literaturübersicht — Nachweis der Gesetze und Verwaltungsvorschriften. Bearbeitet von HERBERT ZIEMER, Regierungsdirektor im Bundesfinanzministerium; HEINZ KALBHENN, Amtsrat im Bundesfinanzministerium; Dr. GÜNTHER FELIX, Wissenschaftlicher Assistent des Instituts

für Steuerrecht an der Universität Köln. *Band VI: 1958*. Mit Gesamtregister für alle sechs Bände. 404 Seiten, DM 37.50, Vorzugspreis DM 32,— (gilt für Bezieher der „Neuen Juristischen Wochenschrift" oder der Loseblattsammlung „Deutsche Steuergesetze" oder der „Deutschen Steuer-Zeitung"), Gesamtpreis für Band I-VI DM 148.—, Vorzugspreis DM 128.—. Verlag C.H. Beck, München.

Die *Fundhefte* enthalten die Leitsätze von sämtlichen in über 130 Fachzeitschriften veröffentlichten steuerrechtlichen Entscheidungen, Nachweise der gesamten in der Fachpresse veröffentlichten Aufsätze und der besprochenen Bücher und Nachweise der Fundstellen aller Gesetze, Verordnungen, Erlasse, Verfügungen, Verwaltungsanordnungen, Richtlinien und Gesetzesentwurfen. Das in den Fundheften gebotene Material ist systematisch geordnet, d.h. Entscheidungen, Literatur, Erlasse, Verfügungen usw. sind unter dem Gesetz und Paragraphen zu finden, zu dem sie gehören. Ausserdem ermöglicht ein ausführliches Sachverzeichnis das Auffinden des gesuchten Materials nach Stichworten. Das Sachverzeichnis in Band VI erschliesst alle sechs Bände. Man braucht deshalb nur in diesem Generalregister nachzuschlagen, um alle auf das betreffende Stichwort bezüglichen Stellen in sämtlichen sechs Bänden nachgewiesen zu finden. Das zwischenstaatliche Steuerrecht hat eine besonders eingehende Darstellung gefunden. Der grosse Wert dieses einzigartigen Nachschlagewerkes für Wissenschaft und Steuerpraxis liegt sowohl in der umfassenden Art der Registrierung als auch in der zeitnahen Erscheinungsweise der Registerbände.

GÜNTER HEDTKAMP: *Instrumente und Probleme westlicher und sowjetischer Wirtschaftslenkung*. Osteuropastudien der Hochschulen des Landes Hessen, Reihe I, Band 6, Wilhelm Schmitz Verlag, Eichgärtenweg 1-3, Giessen, 1958, 187S.

In dieser Untersuchung werden Instrumentarium (Teil I) und Problematik (Teil II) westlicher und sowjetischer Wirtschaftslenkung dargestellt. Die Untersuchung in bezug auf die sowjetische Problematik bracht den Verfasser dazu, sowjetische Theorie (Ideologie) und Planungspraxis zu trennen, da die Planungssysteme oft der Ideologie widersprechen.

Einige Seiten dieser eingehenden Arbeit sind den sowjetischen Steuern gewidmet, die eine ganz andere Funktion haben als die im Westen.

MOROCCO

ANDRE THRIOREAU: *Code Fiscal. Supplément No 26*. FIDUTEC Fiduciaire Marocaine d'Editions Techniques, 81 Rue Colbert, Casablanca.

Un compte rendu de cet ouvrage sur le système fiscal de Maroc a été publié dans le «*Bulletin*» *Tome XI*, p. 37. Le *Supplement no* 26 contenant des pages nouvelles pour les parts Prélèvement sur traitements, Taxe sur les automobiles, Droits de douane, Importation-Exportation, Impôt sur les spectacles, Impôt sur produits miniers, Enregistrement a paru. La présente expédition est arrêtée aux textes parus au Bulletin Officiel no. 2422 du 27 mars 1959.

NEW ZEALAND

Butterworths Taxation Service (New Zealand) *Service no. 7* 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. 7*, which has recently been published contains a number of pages to be exchanged. 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. Any amendmends or alterations to a paragraph are shown under the same number in the Service.

SWITZERLAND

EIDGENÖSSISCHE STEUERVERWALTUNG: *Die Steuern der Schweiz.* I. Teil: Einkommens- und Vermögenssteuern natürlicher Personen, *Nachtrag 23* von 1959. II. Teil: Ertrags- und Kapitalsteuern juristischer Personen. *Nachtrag 21* von 1959. III. Teil: Erbschafts- und Schenkungssteuern, Vermögensverkehrssteuern, Verbrauchs- und Aufwandsteuern, *Nachtrag* 20 von 1959. Verlag für Recht und Gesellschaft, Bundesstrasse 15, Basel.

Über Ziel und Aufbau dieses Standardwerkes, das in licht fasslicher, eingehender und präziser Form die Steuergesetzgebung in der Schweiz behandelt, orientiert die Besprechung im *Bulletin XI*, S. 154. Die Bundes-, Kantons- und Gemeindesteuern werden systematisch aufgezeigt und erläutert. *Nachtrag 23* des ersten Teils bringt in den allgemeinen Übersichten, die jährlichen Steuersätze 1959 der Kantone und Gemeinden und Übersichten über die Änderungen in der kantonalen Gesetgebung von Zürich, Luzern, Uri, Glarus, Fribourg, Basel-Stadt, Appenzell I.-Rh., Tessin, Vaud, Neuchâtel und Genève. *Nachtrag 21* des zweiten Teils gibt ebenfalls eine Übersicht über die Steuersätze 1959 der Kantone und Gemeinden; ferner orientiert er über die Neuerungen in Glarus, Fribourg, Basel-Land, Graubünden, Vaud und Genève. *Nachtrag 20* des dritten Teils enthält die in Glarus und Vaud getroffenen Änderungen.

Dr. WERNER ALTORFER: *Geschäftsvermögen und Privatvermögen im Einkommensteuerrecht.* Veröffentlichungen der Handels-Hochschule St. Gallen, Reihe A, Heft 53. Polygraphischer Verlag, Zürich, 1959, 199 S.

Im 1.—3. Teil dieser Dissertation werden die sich aus der ungleichen Behandlung von Geschäfts- und Privatvermögen ergebenden Fragen im Zusammenhang dargestellt und beantwortet. Im 4. Teil wird die geltende Ordnung als solche einer Kritik unterzogen. Der Verfasser kommt zum Ergebnis das die ungleiche Behandlung der beiden Vermögensteile nicht gerechtfertigt ist. Auf Grund dieser Erkenntnisse werden die Grundzüge einer neuen Ordnung herausgearbeitet. Der Autor schlagt vor die beide Vermögenskomplexe hinsichtlich Kapitalgewinnen, Kapitalverlusten und Abschreibungen gleich zu behandeln.

UNITED NATIONS

Economic Bulletin for Europe, Vol. 11, No. 1, 1959. United Nations, New York.

The Economic Bulletin for Europe, a quarterly publication of the Economic Commission for Europe, gives in its last issue two important articles, viz., Current Economic Developments in Europe and Foreign Trade and Economic Development in Eastern Europe and the Soviet Union. It gives in its first article a survey of trends in economic development in all countries of Europe, while in the second article, Eastern Europe trade and industry are described extensively. Statistics of production and foreign trade of industrial products have been added.

U.S.A.

DONALD L. KEMMERER and C. CLYDE JONES: *American Economic History.* McGraw-Hill Publishing Company, 95 Farringdon Street, London EC4, 1959, 680 pp.

The authors have divided American economic history into four standard periods, the first ending about 1815, the second in 1860, the third in 1914 and the fourth at the present time. Eight general topics are treated in each of the four periods: population and physical expansion, transportation, manufacturing, capital formation, money and banking, commerce, labor and

agriculture. *Taxation* is likewise stressed, since governments of today spend nearly a third of what their citizens earn. Review sections, introductions and conclusions are included in the book, as well as an annotated bibliography and excellent illustrations.

The Federation of Tax Administrators, 1313 East 60th Street, Chicago 37, has issued the following publications:

North American Gasoline Tax Conference. Thirty-first annual report.

National Tobacco Tax Association 1957. Proceedings of the Thirty-first annual meeting.

Revenue Administration 1957 and 1958. Proceedings of the twenty-fifth and twenty-sixth annual conference of the National Association of Tax Administrators.

Federal Tax Treaties. Prentice-Hall, Englewood Cliffs, New Jersey.

A review of this useful book on the tax treaties concluded by the United States of America with other countries was published in *Bulletin Vol. XII*, p. 173. *Supplement 19* contains a.o. supplements to the cross reference table and the finding lists and a recent ruling.

Prentice-Hall: Federal Taxes. Published by Prentice-Hall, Inc., Englewood Cliffs, New Jersey.

A review of the 1959 edition of this standard work on Federal Taxes was published in *Bulletin XIII*, p. 231. *Report Bulletins Vol. XL*, No. 1-32 which keep these volumes up to date have been published.

V

ORGANISATION FOR EUROPEAN ECONOMIC CO-OPERATION (O.E.E.C.)

EXTRACTS FROM THE SECOND REPORT OF THE FISCAL COMMITTEE [1])

A. Preliminary Remarks

Implementation of previous report

In its Recommendation of 11th July 1958, the Council recommended that the Governments of the Member countries, when revising existing bilateral Conventions between them for the avoidance of double taxation or when concluding new Conventions between them, should adopt four Articles concerning respectively:

a) the list and definition of taxes covered by the Convention (Article I);
b) the definition of permanent establishment (Article II);
c) the definition of fiscal domicile (Article III);
d) tax discrimination on grounds of nationality or other similar grounds (Article IV).

A. Bilateral Conventions concluded since 11th July 1958

Between 11th July 1958 and 21st July 1959, eight new general double taxation Conventions and one Additional Protocol have been signed between Member countries. The Fiscal Committee is informed that the first, second and fourth of the Articles mentioned above have been adopted for all practical purposes in seven of these nine agreements, and the third in six of them.

The Fiscal Committee considers that these results are satisfactory especially as the Council only made its Recommendation a little more than a year ago. Another point which should be remembered is that, in several cases, the agreements signed after 11th July 1958, had already been initialled for some time and that in any case it would have been very difficult to recommence the negotiations on the new bases proposed, as some of them had been proceeding for some time already.

B. Bilateral negociations in progress

Seventeen bilateral negotiations are now proceeding between the Member countries; seven of these are to revise or complete general Conventions already in force, and the other ten to conclude new general Conventions between Member countries which have not up to now signed any agreement with one another. Information reaching the Fiscal Committee shows that in a number of cases the negociators have already adopted the Articles proposed by the Committee. Thus in these seventeen negotiations, the Article on permanent establishment has already been adopted in eleven cases, the

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[1]) For the first Report see *Bulletin Vol. XII*, pages 193 and 291.

Article on the taxes to be covered by the Convention in ten cases, the Article on fiscal domicile in nine cases, and the Article on tax discrimination on grounds of nationality in eight cases.

As in this case also certain agreements were already initialled before the Recommendation of the Council of July 1958 and cannot, therefore, be easily modified, and, as in a number of cases the discussions are still in their initial stages, these first results can be regarded as encouraging.

C. General remarks

These indirect results of the work of the Fiscal Committee, as well as the direct results which are dealt with in the following chapter, are largely due to the fact that the Committee is composed of civil servants responsible in each Member country for the negotiation and the day-to-day administration of double taxation Conventions. The Committee is in a way a forum where problems which arise can be discussed thoroughly and constantly on a multilateral basis. The Articles for a Convention proposed by the Committee will simplify and thereby shorten bilateral negotiations. The fact that they have been unanimously agreed also constitutes a guarantee for those Member countries which have not yet entered into any Conventions, and this should facilitate the starting of negotiations with their European partners.

These Articles were favourably received by various international non-governmental organisations which have for long been concerned with the problems of double taxation. Thus, in a Statement adopted at its 17th Congress at Washington in April 1959, the International Chamber of Commerce considered that these Articles "constitute a valuable step forward in the technique of double taxation previously proposed by the League of Nations in its Model Conventions. The I.C.C. strongly supports the recommendation of the O.E.E.C. Council in favour of the early introduction of these Articles into bilateral Conventions for the avoidance of double taxation, whether in the case of new Conventions or of the revision of existing Conventions. The I.C.C. believes that countries outside the O.E.E.C. might well also profit by the valuable work of the O.E.E.C. Committee and adopt the same provisions in their bilateral treaties".

It should be noted that the network of general double taxation Conventions between Member countries was substantially widened in recent years. The number of such Conventions, after being forty on 1st June 1953 and forty-eight on 11th July 1958, is now fifty-one. For various practical reasons more rapid progress cannot be expected. It should also be observed that the existing Conventions already bind Member countries which have the highest national income and cover a very large part, if not the larger part, of incomes of all descriptions which might be taxed in two Member countries.

It remains nevertheless necessary to revise those Conventions which are no longer in keeping with the present circumstances and to complete the network of existing Conventions in order to eliminate double taxation between all Member countries. Such was the aim of the Recommendation adopted by the Council of O.E.E.C. on 25th February 1955. The Fiscal Committee considers that Member countries should pursue their efforts in this direction. Indeed the Articles which it proposes can only be applied so far as existing Conventions are revised or new Conventions concluded. Moreover, the common rules established by the Fiscal Committee for the avoidance of double taxation will become increasingly effective as they are extended to an increasing number of Conventions.

As stated by the Fiscal Committee in its First Report, the Articles for a Convention which it then proposed, like those contained in the present Report and those now in course of preparation, have a dual aim. First, in the

short term, their inclusion in existing bilateral Conventions between the Member countries as they come to be revised, or in future Conventions to be concluded between them, should lead to the progressive harmonization of these Conventions and to a more effectual avoidance of double taxation. Secondly, in the long term, all the Articles adopted by the Committee taken together will in the end constitute a general Convention, the adoption of which would finally establish uniformity of principle and method with a view to the abolition of double taxation on income and capital between Member countries. It is clear that the harmonization which will by then have been progressively established between the bilateral Conventions will largely facilitate the adoption of a multilateral Convention between Member countries.

Further results of the Committee's work

A. Results since May 1958, and work in hand

Since its last Report to the Council, the Fiscal Committee has agreed upon four new groups of subjects, namely:

a) taxation of income from shipping, inland waterways transport and air transport;

b) taxation of income in respect of independent and dependent personal services;

c) taxation of income from immovable property;

d) taxation of capital.

The Fiscal Committee has unanimously adopted a uniform text for those Articles in double taxation Conventions which relate to these subjects, together with a Commentary to illustrate and interpret the Articles. These texts are annexed to the present Report. [1]) The present chapter, therefore, will merely state the objects of each of the ten Articles and explain why the proposed wording was chosen. As these Articles follow on the four Articles in the Committee's First Report, they are numbered V to XIV.

The Fiscal Committee is pursuing the drafting of Articles on the six last groups of subjects which remain, in order to complete the Convention for the avoidance of double taxation with respect to taxes on income and capital, which the Council instructed it to establish, namely:

i) taxation of royalties;
ii) taxation of dividends;
iii) taxation of interest;
iv) technical methods of avoiding double taxation (exemption method and tax credit method);
v) the definition and allocation of profits between the head office of an an enterprise, its permanent establishments and its subsidiaries;
vi) structure and general provisions of the Convention (definition of the personal and territorial scope of the Convention, provisions concerning mutual consultation procedure; clauses relating to the entry into force and denunciation of the Convention, etc.).

The first three questions often constitute the hard core of the negotiations for the conclusion of a double taxation Convention. The adoption of common solutions therefore presents rather delicate problems, as ways have to be found of reconciling the sometimes conflicting interests of certain countries. On these questions, and on the fourth also, the establishment of uniform rules is made more complicated by the great disparity between national laws

[1]) See part B of this Extract, pages 310 *et seq.*

and regulations which has led Member countries to adopt very different solutions in the bilateral Conventions hitherto concluded between them. However, work is sufficiently advanced on all six questions mentioned above for the Fiscal Committee to hope that a solution on most of them will be reached during 1960.

B. Objects and scope of the proposed new Articles

The ten new Articles proposed are designed to settle conflicts as regards taxing powers which may arise between the Member States in relation to the four groups of subjects mentioned before. The Fiscal Committee has sought to settle and co-ordinate the principles, definitions and methods in order to establish, in a liberal spirit, uniform solutions which are acceptable to all the Member countries and correspond to the existing conditions of the problems in question. The Committee is unanimous in considering that the insertion of these Articles in the double taxation Conventions between the Member countries would make an effective contribution to the elimination of some of the outstanding difficulties. It would, in no small measure, clarify and safegueard the position of the taxpayers concerned, thereby providing a valuable stimulus to intra-European economic activities. Furthermore, it would appreciably simplify the application of the Conventions by the national authorities concerned. In the Committee's view, the implementation of these Articles would only entail limited readjustments of taxation revenue, one way or another, and whatever reductions of revenue might occur would be largely justified by the various advantages just described.

As stated before, the Committee is still studying the question of the technical methods of avoiding double taxation, i.e. the exemption method and the tax credit method, and has therefore not taken any final view on this matter. It wishes to stress that this question is in no way prejudged by the wording of the ten Articles proposed for inclusion in bilateral Conventions. The Committee will make proposals in due time for inclusion in the draft Convention to be submitted to the Council by July 1961. In the meantime, for the sake of clarity and in order to facilitate the implementation of the Articles in existing Conventions, the Fiscal Committee has used the expression "shall be taxable only" wherever the State of residence is given the exclusive right to tax and the expression "may be taxed" wherever the State of source is given a right to tax. This means that when the State of residence is not given the exclusive right to tax under the Articles, it must take account, in accordance with such provisions as may be contained in its bilateral Conventions of the right to tax of the State of source. Until the Fiscal Committee is in a position, as a result of its present studies, to make concrete proposals as regards these technical methods, the ten Articles proposed by the Committee must be applied according to the methods currently in force.

a) *Article on the taxation of income from shipping, inland waterways transport and air transport*

By the nature of their business, shipping, inland waterways transport and air transport enterprises are more exposed than most other industrial and commercial enterprises to the danger of multiple taxation on their income, as they are liable to be taxed simultaneously in their own countries and in the other countries where they receive payment for the carriage of passengers or goods or where their activities are exercised. To avoid double taxation, many special Conventions concerning the taxation of these enterprises have been signed or special clauses inserted into general double taxation Conventions. As it would be very difficult to determine what proportion of the profits of a shipping or air transport enterprise is attributable to each of the

countries concerned, most Conventions provide that income from the international business of shipping or air transport is to be taxed only in the State in which the enterprise concerned is established.

However, the almost universal acceptance of this principle does not necessarily mean that there is uniformity in the texts. A great many Conventions give the right to tax the income to the State in which the "place of effective management" of the enterprise is situated. Others give it to the State in which the enterprise has its "fiscal domicile". In certain cases the ships or aircraft must also be registered in the State concerned. Although these differences do not give rise to any great difficulties in practice, it is desirable for the Member countries to adopt a common rule. This would greatly facilitate the application of the Conventions between Member countries in the field of shipping and air transport, which is much to be desired in view of the present expansion of these activities.

Article V reserves the right to tax the income from the operation of ships and aircraft in international traffic and of boats engaged in inland waterways transport to the Contracting State in which the enterprise's place of effective management is situated. This rule is in conformity with the taxing rule proposed in relation to the operation of ships and aircraft by the League of Nations (Article V of the London Model Convention and Article II, paragraph 4, of the Protocol) and by the International Chamber of Commerce in a Resolution of its Council of 28th October 1954.

After considering the special position of Greece in relation to shipping, the Fiscal Committee unanimously proposes that those provisions of the Article which deal with income from the operation of ships in international traffic shall not apply to Greece. The provisions as to the income from the operation of aircraft in international traffic or of boats engaged in inland waterways transport would, however, be applicable to Greece.

b) *Articles on the taxation of income in respect of independent and dependent personal services*

The purpose of Articles VI to XII is to settle cases of double taxation of income from personal services, for a salary or wages or for remuneration not in the nature of a salary or wages, when, for example, the recipient of the income resides in one State and performs the services in another. Generally speaking, the existing Conventions have abandoned the principle that the right to tax is that of the State in which the recipient of the income is resident, and have given the right to the State in which the personal services are performed. The latter rule, moreover, was adopted in the Model Conventions established by the League of Nations (Article VII of the Mexico Model Convention and Article VI of the London Model Convention).

Despite the almost universal adoption of the above principle, however, there are in some cases appreciable dissimilarities in regard to its application, particularly in regard to professional services. Consequently, the Fiscal Committee found it necessary to standardize the rules applying respectively to income from professional services and to remuneration from employment in the form of salaries, wages or the like (including pensions), and to make special provisions for certain particular cases such as remuneration and pensions paid by a State, remuneration of members of company boards, or income of public entertainers.

Under Article VI, income from professional services is subjected to a similar taxing rule to that for income from industrial and commercial enterprises, the concept of a "fixed base" for the performance of the services being adopted in place of the concept of the "permanent establishment" used in the case of an enterprise. Article VII establishes, in paragraph 1, the general rule

applicable to remuneration in respect of employment for a salary or wages, namely, taxation in the State where the services are performed. To this rule there are only two exceptions: one in the particular case of employments of short duration abroad - this exception is designed in particular to facilitate the international movement of qualified personnel (Article VII, second paragraph) - the other in the case of certain governmental functions (Article VIII). Paragraph 3 of Article VII aims at defining the application of the rule to the remuneration of crews of ships and aircraft in international traffic and of boats engaged in inland waterways transport. It provides that such remuneration may be taxed in the Contracting State in which the place of effective management of the enterprise is situated. In countries where wages and salaries are taxed at the source this procedure enables tax to be levied easily and speedily and permits of proper tax inspection. A special exception having been made for Greece in connection with the taxation of income from the operation of ships in international traffic (see paragraph 23), a similar exception is made in regard to the taxation of remuneration of crews of such ships.

The object of Article IX is to define the application of the above rules in the case of members of company boards. As regards pensions, Article X gives the right to tax to the State of the recipient's residence, except in the case of pensions paid in respect of certain governmental functions, in which case the pensions, like the remuneration, are taxable in the State paying the pension or remuneration. Article XI covers the particular case of public entertainers - whether performing for a salary or wages or on their own account - who are taxable in the State in which their activities as such are exercised. Article XII settles the special cases of payments received by students and business apprentices for their maintenance, education or training, and exempts such payments from taxation in the State visited.

c) *Article on the taxation of income from immovable property*

The purpose of the Article XIII is to settle the double taxation which arises, for example, when a taxpayer resides in one State and draws an income from immovable property situated in another State, and as a result is taxed both by the first State on his total income and by the second State on the income from the property in its territory. All the existing double taxation Conventions provide that in such case the right to tax belongs to the State in which the immovable property is situated, as do the Mexico and London Model Conventions (Article II).

Starting from this commonly accepted principle, the Fiscal Committee has proceeded to specify its field of application and to standardize its operation, which in some cases gives rise to certain difficulties. Thus, the Article stipulates that the definition of immovable property is to be the definition laid down in the laws of the State in which the property is situated, which helps to remove difficulties of interpretation. However, the Article specifically mentions those properties and rights which must in every case be regarded as immovable property and states that ships, boats and aircraft are not regarded as such. The Article goes on to state that the rule applies both to income from immovable property - irrespective of the form of exploitation - and to profits accruing from the alienation of immovable property.

d) *Article on the taxation of capital*

As taxes on capital generally supplement the taxation of income, it would seem natural to reserve the right to levy taxes on capital to the State which is entitled to tax the income from the capital. Thus the London Model Convention provides that its rules as to the taxation of income are to apply, mutatis

mutandis, to taxes on capital (Article XV). However, it is not possible to refer in the double taxation Conventions purely and simply to the rules relating to the taxation of the income, for not all classes of income are subject to taxation exclusively in one State.

Article XIV is designed to remove this difficulty. It first states the rule that immovable property may be taxed in the State in which it is situated. It also provides that, subject to the above rule, assets forming part of the business property employed in a permanent establishment and assets pertaining to a fixed base used for the performance of professional services may be taxed in the State in which the permanent establishment or fixed base is situated. It then provides that ships and aircraft in international traffic, boats engaged in inland waterways transport and assets other than immovable property pertaining to the operation of such ships, aircraft and boats, shall be taxable only in the State in which the place of effective management of the enterprise is situated, by analogy with the rule adopted in Article V for the income from the operation of such ships, aircraft and boats. Lastly, the Article provides that all other elements of capital of a resident of a Contracting State are taxable only in that State.

A special exception having been made for Greece in connection with the taxation of income from the operation of ships in international traffic to take into account Greece's special situation in relation to shipping, a similar exception has been made in regard to the taxation of the capital of the enterprises in question.

Conclusions

The Fiscal Committee proposes, as it did for the Articles contained in its first Report, that the ten Articles annexed to the present Report should be the subject of a Recommendation of the Council in which Member countries would be invited to adopt these Articles when they revised existing Conventions or concluded new Conventions between themselves.

It also proposes that the Member countries should notify to the Organisation all new or revised bilateral Conventions in which these Articles have been adopted or, where these Articles have not been so adopted, the reasons for the omission. The Fiscal Committee, on the basis of such notifications, would report to the Council on the measures taken by Member countries to implement the Recommendation and on any measures which ought to be taken in order to facilitate its implementation.

The Fiscal Committee considers that the adoption of the ten new Articles in the bilateral double taxation Conventions between Member countries, in conjunction with the adoption of the four Articles recommended in 1958, would ensure substantial progress towards the desired harmonization of these Conventions.

B. Draft articles with the Fiscal Committee's Commentaries

V. DRAFT ARTICLE ON THE TAXATION OF INCOME FROM SHIPPING, INLAND WATERWAYS TRANSPORT AND AIR TRANSPORT

Article V

1. Income from the operation of ships or aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

2. Income from the operation of boats engaged in inland waterways transport shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

3. If the place of effective management of a shipping enterprise or of an inland waterways transport enterprise is aboard a ship or boat, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship or boat is situated, or, if there is no such home harbour, in the Contracting State of which the operator of the ship or boat is a resident.

COMMENTARY

Paragraph 1

1. The object of paragraph 1 concerning income from the operation of ships or aircraft in international traffic is to secure that such income will be taxed in one State alone. Operation in international traffic means any operation of ships or aircraft which extends over more than one country whatever the number of places of call in a particular country. The provision is based on the principle that the taxing power shall be left to the Contracting State in which the place of effective management of the enterprise is situated. This makes it unnecessary to devise detailed rules e.g. for defining the income covered, this being rather a question of application for which general principles of interpretation must be taken into account. It seems useful, however, to give a few examples and comments to clarify the question.

2. The income covered consists in the first place of the profits obtained by the enterprise from the carriage of passengers or cargo. With this definition, however, the provision would be unduly restrictive, in view of the development of shipping and air transport, and for practical considerations also. The provision therefore covers other classes of income as well i.e. those which by reason of their nature or their close relationship with the income directly obtained from transport may all be placed in a single category. Some of these classes of income are mentioned in the following paragraphs.

3. Income obtained by leasing a ship or an aircraft on charter fully equipped, manned and supplied must be treated like the profits from the carriage of passengers or cargo. Otherwise, a great deal of business of shipping or air transport would not come within the scope of the provision. The Article does not, however, apply to income from a bare boat charter, in respect of which the ordinary rules for taxing commercial and industrial business shall continue to apply.

4. Shipping and air transport enterprises—particularly the latter—often engage in additional activities more or less closely connected with the direct operation of ships and aircraft. Although it would be out of the question to list here all the auxiliary activities which could properly be brought under the provision, nevertheless a few examples may usefully be given.

5. The provision covers, inter alia, the following activities:
   a) the sale of passage tickets on behalf of other enterprises;
   b) the operation of a bus service connecting a town with its airport;
   c) advertising and commercial propaganda.

6. On the other hand, the provision does not cover a clearly separate activity, such as the keeping of a hotel as a separate business. The income from such an establishment is in any case easily determinable. In certain cases however, circumstances are such that the provision must apply even to a hotel business, e.g. the keeping of a hotel for no other purpose than to provide transit passengers with night accommodation, the cost of such a service being included in the price of the passage ticket. In such a case, the hotel is simply a kind of waiting room.

7. There is another activity which is excluded from the field of application of the provision, namely a shipbuilding yard operated in one country by a shipping enterprise having its place of effective management in another country.

8. Investment income of shipping, inland waterways or air transport enterprises (income from stocks, bonds and shares; interest) is to be subjected to the treatment ordinarily applied to this class of income in general.

9. Since the Second World War, various forms of international co-operation have come into existence, particularly in air transport. In this field international co-operation is secured through pooling agreements or other Conventions of a similar kind which lay down certain rules for apportioning the receipts (or profits) from the joint business.

10. Generally speaking, participation in a pool, in a joint business or in an international operating agency does not appear to offer any special difficulties. If the provision recommended is applicable to any enterprise engaged in shipping, inland waterways transport or air transport, it follows that it must also extend to profits obtained through the type of co-operation described above; indeed, such an interpretation results directly from the text of the provision.

Paragraph 2

11. The object of this paragraph is to apply the same treatment to transport on rivers, canals and lakes as to shipping and air transport in international traffic. The provision applies not only to inland waterways transport between two or more countries, but also to inland waterways transport carried on by an enterprise of one country between two points in another country.

12. The provision does not prevent specific taxation problems which may arise in connection with inland waterways transport, in particular between adjacent countries, from being settled specially by bilateral agreement.

Case of enterprises not exclusively engaged in shipping, inland waterways transport or air transport

13. If follows from the wording of paragraphs 1 and 2 of the Article that enterprises not exclusively engaged in shipping, inland waterways transport or air transport nevertheless come within the provisions of these paragraphs as regards income arising to them from the operation of ships, boats or aircraft belonging to them.

14. If such an enterprise possesses in a foreign country permanent establishments exclusively concerned with the operation of its ships or aircraft, there is no reason to treat such establishments differently from the permanent establishments of enterprises engaged exclusively in shipping, inland waterways or air transport.

15. Nor does any difficulty arise in applying the provisions of paragraphs 1 and 2 if the enterprise possesses in another State a permanent establishment which is not exclusively engaged in shipping, inland waterways transport or air transport. For if its goods are carried in its own ships to a permanent establishment belonging to it in a foreign country, it is right to say that none of the profit obtained by the enterprise through acting as its own carrier can properly be attributed to the permanent establishment. The same must be true even if the permanent establishment maintains installations for operating the ships or aircraft (e.g. consignment wharves) or incurs other costs in connection with the carriage of the enterprise's goods (e.g. staff costs). In this case, the permanent establishment's expenditure in respect of the operation of the ships, boats or aircraft should be attributed not to the permanent establishment but to the enterprise itself, since none of the profit obtained through the carrying benefits the permanent establishment.

16. In cases—which are probably purely theoretical— where the enterprise's ships or aircraft are operated by a permanent establishment which is not the place of effective management of the whole enterprise (e.g. ships or aircraft put into service by the permanent establishment and figuring on its balance sheet), then the effective management for the purposes of paragraphs 1 and 2 must be considered, as regards the operation of the ships or aircraft, as being in the Contracting State in which the permanent establishment is situated.

Paragraph 3

17. This paragraph deals with the particular case where the place of effective management of the enterprise is aboard a ship or a boat. In this case tax will only be charged by the State where the home harbour of the ship or boat is situated, It is provided that if the home harbour cannot be determined, tax will only be charged by the Contracting State of which the operator of the ship or boat is a resident.

VI-XII. DRAFT ARTICLES ON THE TAXATION OF INCOME IN RESPECT OF INDEPENDENT AND DEPENDENT PERSONAL SERVICES

Article VI

Income derived by a resident of a Contracting State in respect of professional services or other independent activities of a similar character shall be taxable only in that State unless he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities. If he has such a fixed base, such part of that income as is attributable to that base may be taxed in that other State.

Article VII

1. Subject to the provisions of Articles VIII, IX and X, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1 above, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first mentioned State if:

a) The recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the fiscal year concerned, and

b) the remuneration is paid by, or on behalf of an employer who is not a resident of the other State, and

c) the remuneration is not deducted from the profits of a permanent establishment or a fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration for personal services performed aboard a ship or aircraft in international traffic, or aboard a boat engaged in inland waterways transport, may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

Article VIII

1. Remuneration, including pensions, paid by or out of funds created by, a Contracting State or a political subdivision or a local authority thereof to any individual in respect of services rendered to that State or subdivision or local authority thereof in the discharge of functions of a governmental nature may be taxed in that State.

2. The provisions of Articles VII, IX and X shall apply to remuneration and pensions in respect of services rendered in connection with any trade or business carried on by one of the Contracting States or a political subdivision or a local authority thereof.

Article IX

Directors' fees and similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors of a company which is a resident of the other Contracting State may be taxed in that other State.

Article X

Subject to the provisions of paragraph 1 of Article VIII, pensions and other similar remuneration paid in consideration of past employment shall be taxable only in the Contracting State of which the recipient is a resident.

Article XI

Notwithstanding anything contained in this Convention, income derived by public entertainers, such as theatre, motion picture, radio or television artistes, and musicians, and by athletes, from their personal activities as such may be taxed in the Contracting State in which these activities are exercised.

Article XII

Payments which a student or business apprentice from one of the Contracting States who is present in the other Contracting State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training, shall not be taxed in that other State, provided that such payments are made to him from sources outside that other State.

COMMENTARY

Article VI

1. Article VI is concerned with what are commonly known as professional services and with other independent activities of a similar character. This excludes industrial and commercial activities and also professional services performed in employment, e.g. a physician serving as a medical officer in a factory. It should, however, be observed that the Article does not concern performances by public entertainers and athletes working on their own account, all public entertainers coming under a special Article covering their activities whether independent or not (Article XI).

2. The provisions of Article VI are similar to those customarily adopted for income from industrial or commercial activities. Nevertheless it was thought that the concept of permanent establishment should be reserved for commercial and industrial activities. The term "fixed base", which is to be found in various Conventions, has therefore been used. It has not been thought appropriate to try to define it, but it would cover, for instance, a physician's consulting room or the office of an architect or a lawyer. A person performing professional services would probably not as a rule have premises of this kind in any other State than that of his residence. But if there is in another State a centre of activity of a fixed or permanent character, then that State should be entitled to tax the person's activities.

Article VII

3. The first paragraph of Article VII establishes the general rule as to the taxation of income from employment (other than pensions), namely, that such income is taxable in the State where the employment is actually exercised. One consequence of this would be that a resident of a Contracting State who derived remuneration, in respect of an employment, from sources in the other State could not be taxed in that other State in respect of that remuneration merely because the results of his work were exploited in that other State.

4. The general rule is subject to exception only in the case of pensions (Article X) and of remuneration and pensions in respect of certain governmental functions (Article VIII). Remuneration of members of boards of directors of companies is the object of a special provision (Article IX).

5. The second paragraph of Article VII contains, however, a general exception to the rule in paragraph 1. This exception, which concerns employment of short duration abroad, is mainly intended to facilitate the international movement of qualified personnel, as in the case of firms which sell capital goods and are responsible for installing and assembling them abroad. The three conditions prescribed in this paragraph must be satisfied concurrently for the remuneration to qualify for the exemption. The exemption is limited to the 183-day period which is stipulated in the Mexico and London Model Conventions of the League of Nations. The employer paying the remuneration must not be a resident of the State in which the employment is exercised. Furthermore, should the employer have in that State a permanent establishment (or a fixed base if he performs professional services or independent activities of a similar character), the exemption is given only on condition that the remuneration is not deducted in calculating the profits which are taxable in that State. It should be noted that, under the provisions of Article XI, the exemption does not apply to remuneration of public entertainers and athletes.

6. The object of the third paragraph of Article VII is to apply to the remuneration of crews of ships or aircraft in international traffic, or of boats engaged in inland waterways transport, a rule which follows up to a certain extent the rule applied to the income from shipping, inland waterways transport and air transport—that is, to tax them in the Contracting State in which the place of effective management of the enterprise concerned is situated. This provision assumes that the internal law of that State allows it to tax the remuneration of a person in the service of the enterprise concerned, irrespective of his fiscal domicile.

Article VIII

7. Article VIII applies to remuneration in respect of governmental functions. The similar provisions which are frequently found in bilateral Tax Agreements were originally framed in order to conform with the rules of international courtesy and mutual respect between sovereign States (Cf. Mexico Model Convention, Commentary ad Article VIII). They were therefore rather limited in scope. The first paragraph of Article VIII lays down a general principle, the scope of which may be determined by the Contracting States by means of special provisions. It should be observed that the Article is not intended to restrict the

operation of any rules originating from international law in the case of diplomatic and consular missions, but deals with cases not covered by such rules.

8. It should be noted that the term "remuneration" used in Article VIII covers wages and salaries and pensions, to the exclusion of any other payments. The provisions of the Article apply to remuneration paid not only by a State but also by its political subdivisions and local authorities (member States, cantons, municipalities, etc. . .). Paragraph 1 of the Article does not apply if the services are performed in connection with trade or business carried on by the State, or one of its political subdivisions or local authorities, paying the remuneration. In such cases, the ordinary rule applies (Article VII for wages and salaries, Article IX for directors' fees and similar payments and Article X for pensions).

Article IX

9. Article IX relates to remuneration received by a resident of a Contracting State, whether an individual or a legal person, in the capacity of a member of a board of directors of a company which is a resident of the other Contracting State. Since it might sometimes be difficult to ascertain where the services are performed, the provision treats the services as performed in the country of residence of the company.

Article X

10. According to the rule stipulated in Article X, pensions in respect of private employment are taxable only in the country of residence of the recipient. The provision also covers widows' and orphans' pensions and other similar payments such as annuities paid in respect of past employment. It also applies to pensions in respect of services rendered to a State or a political subdivision or local authority thereof which are not covered by the provision of paragraph 1 of Article VIII.

Article XI

11. The provisions of Article XI relate to public entertainers and athletes and stipulate that they may be taxed in the State in which the activities are performed, whether these are of an independent or of a dependent nature. This provision is an exception, in the first case, to the rule laid down in Article VI, in the second case, to the rule laid down in paragraph 2 of Article VII.

12. By this provision the practical difficulties are avoided which often arise in taxing public entertainers and athletes performing abroad. Certain Conventions, however, provide for certain exceptions such as those contained in paragraph 2 of Article VII. Moreover, too strict provisions might in certain cases impede cultural exchanges. In order to overcome this disadvantage, the States concerned may, by common agreement, limit the application of Article XI to independent activities by adding its provisions to those of Article VI relating to professional services and other independent activities of a similar character. In such case, public entertainers and athletes performing for a salary or wages would automatically come within Article VII and thus be entitled to the exemptions provided for in paragraph 2 of that Article.

Article XII

13. The rule established in Article XII concerns certain payments received by students or business apprentices for the purpose of their maintenance, education or training. The exemption provided for is already fairly well established in existing bilateral Conventions. All such payments received from sources outside the State in which the student or business apprentice concerned is staying shall be exempted from tax in that State.

General Remarks

14. No special provision has been made regarding remuneration derived by visiting professors or students employed with a view to their acquiring practical experience. Most current Conventions contain rules of some kind or other concerning such cases, the main purpose of which is to facilitate cultural relations by providing for a limited tax exemption. Sometimes, tax exemption is already provided under national taxation laws. The absence of specific rules should not be interpreted as constituting an obstacle to the inclusion of such rules in bilateral agreements whenever this is felt desirable.

15. It should be noted that no special rule regarding the taxation of income of frontier workers is included as it would be more suitable for the problems created by local conditions to be solved directly between the countries concerned.

XIII. DRAFT ARTICLE ON THE TAXATION OF INCOME FROM IMMOVABLE PROPERTY

Article XIII

1. Income from immovable property may be taxed in the Contracting State in which such property is situated.

2. The term "immovable property" shall be defined in accordance with the laws of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment of agricultural and forestry enterprises, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of mineral deposits, sources and other natural resources; ships, boats and aircraft shall not be regarded as immovable property.

3. The provisions of paragraphs 1 and 2 above shall apply to income derived from the direct use, or from the letting of immovable property or the use in any other form of such property, including income from agricultural or forestry enterprises. They shall likewise apply to profits from the alienation of immovable property.

4. The provisions of paragraphs 1 to 3 above shall also apply to the income from immovable property of any enterprises other than agricultural or forestry enterprises and to income from immovable property used for the performance of professional services.

COMMENTARY

1. All Double Taxation Conventions in force give the right to tax income from immovable property to the State of source, that is, the State in which the property producing such income is situated. This uniform practice in the Conventions is due to the fact that there is always a very close economic connection between the source of the income and the State of source. The rule laid down in paragraph 1 of the Article is in conformity with this practice.

2. Defining the concept of immovable property by reference to the laws of the State of situs, as is provided in paragraph 2, will help to avoid difficulties of interpretation over the question whether an asset or a right is to be regarded as immovable property or not. The Article, however, specifically mentions the assets and rights which must always be regarded as immovable property. In fact such assets and rights are already treated as immovable property according to the laws or the taxation rules of most Member countries of the O.E.E.C. Conversely, the Article stipulates that ships, boats and aircraft shall never be considered as immovable property. No special provision has been made as regards income from indebtedness secured by immovable property, as the question is to be settled under the Article on the taxation of interest.

3. As indicated in paragraph 3 of the Article, the general rule applies irrespective of the form of exploitation of the immovable property and also operates in the cases of the alienation of immovable property.

4. Paragraphs 3 and 4 also make it clear that the provisions of the Article apply not only to income from agricultural and forestry enterprises but also to income from immovable property of industrial, commercial and other enterprises as well as to income from immovable property used for the performance of professional services.

5. It should be noted in this connection that the right to tax of the State of source has priority over other rights to tax and applies also where, in the case of a business undertaking or of non-industrial and non-commercial activities, income is only indirectly derived from immovable property. This does not prevent income from immovable property, when derived through a permanent establishment, from being treated as income of a business enterprise, but secures that income from immovable property will be taxed in the State in which the property is situated also in the case where such property is not part of a permanent establishment situated in that State. It should further be noted that the provisions of the Article do not prejudge the application of national laws as regards the manner in which income from immovable property is to be taxed.

XIV. DRAFT ARTICLE ON THE TAXATION OF CAPITAL

Article XIV

1. Capital represented by immovable property, as defined in paragraph 2 of Article XIII, may be taxed in the Contracting State in which such property is situated.

2. Subject to the provisions of paragraph 1 above, capital represented by assets forming part of the business property employed in a permanent establishment of an enterprise, or by assets pertaining to a fixed base used for the performance of professional services, may be taxed in the Contracting State in which the permanent establishment or fixed base is situated.

3. Ships and aircraft operated in international traffic and boats engaged in inland waterways transport and assets other than immovable property pertaining to the operation of such ships, aircraft and boats, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated

4. All other elements of capital of a resident of a Contracting State shall be taxable only in that State.

COMMENTARY

1. The Article deals only with taxes on capital, to the exclusion of taxes on estates and inheritances and on donations and of transfer duties. Taxes on capital to which the Article applies will be indicated in the Article concerning taxes which are covered by the Convention.

2. Taxes on capital generally constitute supplementary taxation of income from real property. Consequently, taxes on capital can be levied, in principle, only by the State which is entitled to tax the income from the capital. However, it is not possible to refer purely and simply to the rules relating to the taxation of the income, for not all income is subject to taxation exclusively in one State.

3. The Article, therefore, enumerates first property and assets which may be taxed in the State in which they are situated. To this category belong immovable property, as defined in the Article on the taxation of income from immovable property, and assets, other than immovable property, forming part of the business property employed in a permanent establishment of an enterprise, or pertaining to a fixed base used for the performance of professional services (paragraphs 1 and 2.)

4. Ships and aircraft operated in international traffic and boats engaged in inland waterways transport and assets, other than immovable property, pertaining to the operation of such ships, aircraft and boats are taxable only in the State in which the effective place of management of the enterprise is situated (paragraph 3). This rule is based on the provisions of the Article on taxation of income from shipping, inland waterways transport and air transport. Immovable property pertaining to the operation of ships, aircraft and boats, may be taxed in the State in which they are situated, in accordance with the rule laid down in paragraph 1.

5. As regards other elements of capital than those listed in paragraphs 1 to 3, the Article provides that they are taxable only in the State of which the person to whom they belong is a resident (paragraph 4).

6. If, following the application of paragraph 4 to elements of movable property under usufruct, double taxation subsists because of the disparity between national laws, the States concerned may resort to the mutual agreement procedure or settle the question by means of bilateral negotiations.

Source: *The Elimination of Double Taxation,* 2nd rapport, July 1959.

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I

DEVELOPPEMENTS RECENTS EN MATIERE DE DROIT FISCAL INTERNATIONAL [1])

par
J. VAN HOORN JR., Amsterdam

Dans le rapport annuel sur 1958 du Bureau International de Documentation Fiscale j'ai fait passer en revue, d'une façon très sommaire, le développement du Droit Fiscal International pendant les vingt dernières années. La conclusion que l'on peut en tirer est qu'il s'agit d'une discipline qui est loin d'avoir atteint une stabilité. Cela n'est pas étonnant. Le climat politique, économique et social a largement changé dans la plupart des pays pendant cette période, qui a vu éclater et se terminer une des plus grandes catastrophes que notre belle terre ait jamais subies.

Les changements dans la vie sociale se reflètent clairement dans les mesures fiscales introduites dans chaque pays. Non seulement la fiscalité est devenue très lourde, partout je crois, mais aussi est-elle devenue un instrument important pour les gouvernements de poursuivre une politique économico-sociale. J'ose même soutenir la thèse que ce phénomène s'est produit en dehors de toute considération politique proprement dite, bien qu'il y ait évidemment des différences d'opinion quant aux limites au rôle que pourrait et devrait jouer la fiscalité.

Etant donné le rôle important de la fiscalité, il n'est pas difficile à voir que l'on a trop facilement perdu de vue ce que devrait être un bon et équitable système fiscal. Il y en a eu trop qui n'ont vu dans la fiscalité qu'une branche de l'économie. Ils ont eu tort à mon avis, et je ne dis pas cela parce que je suis juriste d'origine : un bon fiscaliste —ce que je m'efforce d'être— doit être juriste et économiste en même temps pour pouvoir voir les choses en de grandes lignes. Une de ces lignes est l'aspect juridique de chaque mesure émanant du pouvoir

[1]) Conférence faite à l'occasion de l'ouverture du Congrès de l'Association Fiscale Internationale à Madrid, le 28 septembre 1959.

public. Si je parle du Droit, je pense à un Droit universel qui dépasse largement le cadre national des pays individuels.

Heureusement beaucoup d'entre nous approuveront ce que je viens de dire. Il n'en a pas été ainsi toujours, et l'évolution des idées ne s'est mise en marche que très récemment, sans que je puisse vous dire exactement à partir de quelle date.

Je vous parlerai donc des développements du Droit Fiscal International. Je voudrais faire cela en partant de quelques principes qui ont dominé la fiscalité dans différentes périodes récentes.

Les voici:

1. La prédominance des pays créditeurs, c.à.d. exportateurs de capitaux.
2. La reconnaissance des intérêts des pays importateurs de capitaux, première phase.
3. La concurrence fiscale dans le domaine international.
4. La reconnaissance des intérêts des pays importateurs de capitaux, deuxième phase.
5. Les mesures unilatérales, bilatérales et multilatérales.
6. Les différentes méthodes pour éviter la double imposition internationale.
7. Opportunisme et conceptions de Droit dans l'évolution du Droit Fiscal International.

Au cours de l'exposé de ces sujets j'espère vous signaler trois tendances intéressantes qui caractérisent les problèmes devant lesquels nous nous trouvons.

Première tendance: Pour autant qu'elles touchent au domaine international, les mesures fiscales sont inspirées par un esprit de politique nationaliste. Les différents pays ne tiennent compte que de leurs propres intérêts, et la fiscalité est largement basée sur ce principe.

Deuxième tendance: Au caractère politique de la fiscalité se joint l'idée que dans le domaine international le Droit doit occuper une place plus importante, non seulement pour les propres citoyens du pays impositeur mais aussi vis-à-vis les autres pays. Ceux-ci ne sont plus considérés exclusivement comme des concurrents; de plus en plus l'idée vient que les pays font partie d'un cadre plus étendu et le

principe de la solidarité internationale commence à avoir son influence sur la fiscalité aussi.

Troisième tendance: En combinaison pour ainsi dire avec le développement de la pensée juridique en matière fiscale internationale, les experts sont à la recherche de nouvelles conceptions économiques, conceptions qui pourraient avoir une influence sur les systèmes fiscaux mêmes. Depuis longtemps on a cherché à trouver une distinction claire entre les différentes *sources* de revenus, afin de pouvoir les faire imposer par les pays où se trouvent ces sources. Si je ne me trompe pas, les idées vont maintenant dans une autre direction:

Maintenant ce sont plutôt les différences entre production et consommation qui sont à la base des considérations. Dans cette conception, le pays où un revenu se produit, ou, en d'autres termes, où la production donne lieu à la naissance d'un revenu, est considéré comme ayant le droit exclusif d'imposition. Du moment où ce même revenu est destiné à la consommation privée le pays où cette consommation s'effectue serait également intitulé à imposer ce revenu.

Voilà une évolution qui me semble être bien fondée du point de vue économique et qui est de nature à pouvoir donner lieu à des conceptions scientifiques conformes aux principes du Droit.

Permettez-moi maintenant, je vous le prie, de développer les différents points dont je vous ai parlé tout à l'heure.

1) *La prédominance des pays créditeurs-exportateurs de capitaux.*

Aujourd'hui on ne trouve presque plus, en droit fiscal international, les termes «pays créditeurs» et «pays débiteurs». La raison peut en être qu'à l'heure actuelle les deux qualités se sont entremêlées et que la plupart des pays économiquement développés en même temps exportent et importent des capitaux. Il y a quelques dizaines d'années il en était autrement et on trouve les différences quant aux situations économiques dans les systèmes fiscaux nationaux qui, dans leurs formes actuelles, ont eu leur origine dans le période de la première guerre mondiale ou peu après.

Je ne vais pas vous donner un long exposé historique et me bornerai à constater qu'il y avait deux systèmes principaux dont l'un était basé sur le principe du domicile du contribuable et l'autre sur celui de la territorialité du revenu imposable. Dans les pays créditeurs le premier système prévalait, ce qui était nécessaire pour

pouvoir imposer une personne domiciliée dans le pays en raison de ses revenus de provenance étrangère. Par contre, les pays débiteurs qui voyaient des étrangers tirer leurs revenus de sources y situées, s'attribuaient le droit d'imposer ces revenus pour pouvoir profiter des richesses provenant de leur propre territoire.

Ainsi, les systèmes fiscaux reflétaient bien la situation économique des pays en question.

Je sais bien que les systèmes n'étaient pas purs: la plupart des pays du premier groupe imposait également les revenus réalisés par des personnes résidentes à l'étranger, et inversement les pays du principe de territorialité avaient introduit, à côté des impôts cédulaires, un impôt progressif sur le revenu global d'un contribuable y domicilié. Ces divergences de système n'avaient, au début, qu'une importance secondaire. Il est clair que la double imposition internationale ne pouvait pas tarder à se manifester comme conséquence de ces différences de système. Il est frappant que ce sont les pays créditeurs qui, à cet époque-là, trouvaient normal leur imposition illimitée. Sans prendre en considération la nature et la destination des revenus, ils imposaient la personne du contribuable pour l'ensemble des montants qui lui revenaient.

En effet, on trouve très peu de pays qui à cet époque-là avaient déjà pris des mesures unilatérales pour éviter la double imposition. Au soin de la Société des Nations cette prédominance de ce groupe de pays fut plus ou moins reconnue, comme on peut le constater dans les divers rapports, (excellents d'ailleurs), des experts qui se sont occupés de la matière.

2) *La reconnaissance des intérêts des pays importateurs de capitaux; première phase.*

Peu à peu l'attitude change, et la période après la deuxième guerre nous laisse voir un accroissement de mesures, tant unilatérales que bilatérales, tendant à éviter les doubles impositions d'une façon qui laisse aux pays débiteurs assez largement le droit d'imposition.

Il est assez difficile de trouver des considérations officielles qui ont servi de base pour ce changement d'attitude. Mais on n'a pas besoin d'une imagination abondante pour comprendre que les considérations politiques et économiques ont joué un rôle important. Du point de vue politique il était souhaitable d'établir des contacts avantageux

avec les pays débiteurs, pays qui maintenant sont appelés pays en développement. Beaucoup d'entre eux ont fait tout pour élargir leurs bases économiques — j'en parlerai encore — en attirant des capitaux étrangers. Les raisons économiques sont assez claires: d'une part on pourrait trouver des marchés nouveaux pour y exporter les produits nationaux, d'autre part les propres entreprises subiraient des difficultés de concurrence s'il y avait une double imposition.

Abstraction faite d'autres considérations plutôt d'ordre juridique ou éthique, les mesures en matière fiscale — comme dans d'autres domaines d'ailleurs — démontrent clairement l'influence des considérations politico-économiques dans le domaine du droit fiscal international. Inutile de dire que les gouvernements ont ainsi largement contribué au développement (et à l'importance) de cette discipline, toutefois sans avoir résolu le problème de savoir quelle doit être la clef pour une juste et bonne attribution du droit d'imposition. Les solutions adoptées avaient plutôt un caractère arbitraire.

3) *La concurrence fiscale dans le domaine international.*

De temps en temps on entend soutenir la thèse qu'il soit intolérable dans le cadre des tendances vers une intégration économique internationale, d'introduire des mesures — y comprises des mesures fiscales — qui résulteraient dans une situation de concurrence plus favorable qu'avant. Je dois vous avouer que je ne partage pas cette opinion. Tout le monde devrait être libre, sous certaines limites bien entendu, de poursuivre ses buts d'une façon aussi profitable que possible. Il en est de même pour les pays. Il faut tout de même poser fermement une condition importante à cette liberté, à savoir qu'elle ne se serve pas des moyens de nature à aboutir à une concurrence déloyale.

Nous avons pu voir, dans le passé, de telles mesures déloyales, ayant pour résultat une sorte de «dumping». Je vous rappelle les dispositions d'après lesquelles les exportateurs pouvaient bénéficier, dans certains pays, d'exemptions fiscales pour la seule raison de favoriser les exportations. Le Traité instituant la Communauté Economique Européene dite Marché Commun interdit de telles mesures discriminatoires et par conséquent nous impose une attitude qui est plus conforme à des principes de justice et à des conceptions morales.

D'un caractère tout à fait différent sont les mesures qu'on trouve dans la plupart des pays en développement. Ces pays ont souvent des difficultés énormes d'ordre économique et social. Leur économie nationale a des bases trés étroites et dépend souvent du prix, sur le marché mondial, des matières premières qu'ils produisent. En même temps les populations augmentent d'une façon inconnue, grâce aux améliorations dans le domaine de la santé publique. Ces pays sont obligés de se transformer beaucoup plus vite que les pays industrialisés. Pour cela ils ont besoin de capitaux, d'assistance technique. Ils font tout pour les attirer. Une des mesures les plus pratiquées est celle de l'immunisation fiscale.

On peut se demander si, à la longue, une telle politique fiscale est bonne. La réponse à cette question dépend de nombreux facteurs que je ne discuterai pas maintenant. Pour mon sujet il suffit de constater qu'encore une fois la fiscalité sert d'instrument pour poursuivre une politique sociale et économique générale qui est basée surtout sur des considérations macro-économiques. Car je constate que très souvent on n'a pas assez pris en considération le fait qu'une imposition juste devrait tenir compte, non seulement de la capacité contributive du contribuable mais aussi du rôle économique différent que peuvent jouer les revenus qu'on veut taxer, ou de la source dont ils proviennent. On trouve cette manque de distinction — si je peux l'appeler ainsi — dans les pays en développement et dans les pays qui procurent les capitaux. Il est très satisfaisant qu'on reconnaisse plus davantage les intérêts des pays en développement, mais il est indispensable, pour arriver à de bonnes solutions, qu'on se base sur des conceptions réalistes.

Avant de développer cette idée, je vous dirai quelques mots sur

4) *La reconnaissance des intérêts des pays importateurs de capitaux: deuxième phase.*

Dans presque tous les pays développés il existe des mesures pour éviter les doubles impositions. Trés souvent ces mesures s'appliquent à toutes catégories de revenus et il en résulte une imposition secondaire aux pays où les bénéficiaires de ces revenus sont domiciliés. En d'autres termes: sans distinguer quant au caractère des revenus étrangers, les pays en question laissent aux pays dont les revenus proviennent le droit primaire d'imposition.

Sans doute cette méthode est la conséquence de considérations de politique économico-fiscale, dans ce sens que les pays qui ont introduit les mesures contre la double imposition veulent favoriser les investissements à l'étranger et donner de cette façon un aide à leurs entreprises.

Dans cet ordre d'idées il faut ranger les dispositions concernant les entreprises établies dans un pays déterminé et exerçant ses activités exclusivement à l'étranger. Je pense aux Overseas Trade Corporations anglaises, aux Foreign Business Corporations canadiennes et au projet de loi américaine tendant à introduire des dispositions similaires, projet déposé par le senateur Boggs. L'idée en est, en quelques mots, d'exempter de la fiscalité nationale les bénéfices étrangers sans tenir compte du fait si ces bénéfices ont subi un impôt étranger ou non. Voilà aussi des mesures qui entrent dans le cadre d'une politique fiscale. Il existe toutefois une différence par rapport aux mesures dont je parlais tout à l'heure: l'exemption des bénéfices n'est accordée que pour autant qu'ils ne sont pas distribués aux actionnaires. On fait ici donc une distinction entre bénéfices destinés à la production, par réinvestissement, et bénéfices destinés à la consommation. Il s'agit d'un véritable progrès vers une fiscalité qui tient compte des différents faits générateurs d'une imposition réaliste et équitable. De cette façon on permet aux pays en développement de se procurer les capitaux dont ils ont besoin sans les obliger pratiquement de percevoir des impôts. C'est à eux-même que revient alors la décision d'imposer les bénéfices provenant des investissements ou non. Je répète que je ne veux pas traiter la question de savoir si ces pays font bien de ne pas imposer ces bénéfices. En tout cas est-il nécessaire que l'imposition, si elle a lieu, soit égale pour tous les contribuables. Sous ce rapport je vous signale une mesure proposée en Nouvelle Zélande, dont je ne suis pas enthousiaste, et d'après laquelle le taux de l'impôt ne pourra jamais être plus élevé, pour une entreprise étrangère, que le taux que celle-ci aurait à payer dans son propre pays. Il en résulterait une discrimination en faveur des étrangers qui à la longue ne serait pas conforme aux intérêts du pays, à mon avis.

Il existe d'autres tendances vers une reconnaissance plus grande des intérêts des pays en développement. Depuis des années, la Chambre de Commerce Internationale a adopté des résolutions en

faveur d'une exemption totale de bénéfices et revenus provenant de l'étranger. A l'occasion de son congrès de cette année à Washington on a précisé qu'une telle exemption n'aura les meilleurs résultats que si les pays en développement imposent ces bénéfices et revenus à des taux très modérés qui restent stables pendant une longue période. On trouve les considérations de la Chambre dans sa brochure No. 197. On pourrait dire que cette suggestion donne une combinaison des différentes considérations dont je vous parle.

Je tiens à vous signaler une autre évolution qui me semble avoir une importance primordiale. C'est l'extension d'un nombre plus en plus croissant de conventions fiscales à des territoires en développement et qui ont des relations étroites avec les pays développés qui avaient conclu déjà entre eux des conventions. Je vous mentionne, entre autres, les conventions conclues par les Etats-Unis, la France, la Suède avec la Belgique, la Grande Bretagne et les Pays-Bas. Quant aux pays qui hésitent encore à approuver une telle extension de leurs conventions, et cela à cause des régimes fiscaux de faveur dans plusieurs territoires en développement, je voudrais faire l'observation, que l'encadrement des territoires en question dans le réseau de conventions pourra avoir pour résultat une atténuation de la concurrence fiscale entre ces territoires et par conséquent une situation plus équilibrée dans les relations fiscales dans le monde.

Les résolutions de la Chambre de Commerce Internationale et l'extension de conventions fiscales à des territoires en développement pourra signifier qu'on tienne mieux compte de la distinction qu'il faudrait faire d'après le caractère des revenus, sujet dont j'ai parlé déjà. Mieux que dans les mesures unilatérales. Pour vous expliquer ce que je veux dire, voici maintenant quelques observations sur

5) *Les mesures unilatérales, bilatérales et multilatérales.*

Souvent les mesures unilatérales ont un caractère plus libéral que les conventions bilatérales pour éviter les doubles impositions, dans ce sens qu'elles donnent lieu à une réduction d'impôt dans le pays du bénéficiaire des revenus dans des cas plus nombreux que les conventions. Je vous donne un exemple: une entreprise dans un pays A vend régulièrement ses produits dans un pays B. Ce dernier pays impose les bénéfices ainsi réalisés, même si l'entreprise en question n'y maintient pas un établissement stable. Si le pays A, dont je suppose

qu'il impose également les dits bénéfices, accorde une réduction de son impôt, disons par voie de «crédit», égale au montant de l'impôt perçu en B, il est plus libéral qu'en cas d'une convention où le droit d'imposition ne serait réservé à B que si l'entreprise y avait un établissement stable. Il peut en être de même en cas de dividendes. Dans certains cas les pays du domicile du bénéficiaire accordent une réduction d'impôt parce que les dividendes ont été imposés dans le pays du siège de la société distributrice. Dans une convention il peut être stipulé que seul le pays du domicile impose les dividendes.

Dans ces deux hypothèses, ce sont les conventions qui contiennent des règles plus conformes à l'idée que l'imposition, dans un pays ou dans l'autre, doit tenir compte du caractère des revenus et que les revenus destinés à la consommation devraient en premier lieu être imposés dans le pays ou le bénéficiaire en est domicilié et où donc aura lieu la consommation. Le pays d'où proviennent ces revenus pourrait toutefois, d'après cette idée, assujettir ces revenus à un impôt perçu à la source et à un taux assez bas. Cette méthode serait indiquée pour mettre en lumière que ces revenus sont le résultat d'une activité productive et que le pays où la production a lieu devrait donc avoir le droit d'en profiter en imposant les revenus en question.

Nous sommes encore loin d'une solution parfaite, et les tentatives dans cette direction ne sont certainement pas analogues. Le nombre de conventions augmente le nombre de solutions, et le résultat en est une situation qui devient de plus en plus chaotique.

Sous ce rapport je signale avec un grand plaisir les travaux du Comité Fiscal de l'O.E.C.E., travaux qui aboutiront sans doute à la première convention multilatérale contre les doubles impositions internationales. Certes, il reste encore quelques problèmes extrêmement difficiles à résoudre, et le Comité a commencé par les questions les moins délicates. Vous trouverez ici le deuxième rapport du Comité avec des projets de clauses fiscales sur quatre sujets. Je vous rappelle que l'année dernière on a proposé quatre articles, dont le texte fut adopté à l'unanimité par les délégations qui font partie du Comité Fiscal. Il s'agissait des sujets suivants: énumération des impôts sur lesquels une convention porte; la notion du domicile fiscal; la notion d'établissement stable; enfin le problème de la non-discrimination d'après la nationalité des contribuables. Le deuxième rapport contient dix articles, portant également sur quatre sujets, à

savoir: l'imposition des revenus provenant de la navigation maritime, intérieure et aérienne; des revenus de professions indépendantes et dépendantes; des revenus provenant de biens immobiliers; l'imposition de la fortune.

Le Comité se propose de traiter encore quelques autres sujets dont je mentionne: l'imposition des redevances, dividendes et intérêts; les méthodes techniques pour éviter les doubles impositions; la ventilation de bénéfices entre une entreprise principale et ses succursales ou filiales; la procédure amiable, etc.

Il va sans dire qu'une convention multilatérale comportera une uniformité plus grande de solutions dans le domaine du droit fiscal international. C'est un premier avantage.

Le deuxième, c'est que les principes qui sont à la base de nombreuses conventions et que je viens de mentionner — attribution du droit d'imposition d'après le caractère des revenus — auront une meilleure chance à étre réalisés. Il est vrai que les solutions définitives ne sont pas encore trouvées, et surtout dans le domaine des dividendes, intérêts et redevances elles seront très difficiles. Etant donné la haute qualité des membres du Comité Fiscal et leur volonté de terminer leur travail délicat, je suis sûr qu'on arrivera à un résultat très satisfaisant.

Comme je viens de dire, un des problèmes encore à régler est celui concernant

6) *Les méthodes pour éviter les doubles impositions.*

Je voudrais en dire quelques mots seulement.

A présent, il existe trois méthodes principales, à savoir:

—La méthode du crédit, d'après laquelle le montant de l'impôt dans le pays du domicile du contribuable est diminué de l'impôt effectivement payé à l'étranger sur les mêmes revenus, avec certaines limites. On trouve cette méthode dans les pays anglo-saxons et en Allemagne.

— Une autre méthode est celle qui prescrit une diminution de l'impôt sans rapport avec le montant de l'impôt payé à l'étranger. La réduction se calcule en relation avec l'impôt national du pays qui accorde la réduction. Il en est ainsi aux Pays-Bas où l'impôt est calculé sur le revenu global du contribuable. Ensuite on en déduit le montant de l'impôt néerlandais qui se rapporte au revenu étranger. Il en est de même pour la taxe professionnelle belge, mais dans ce cas la réduc-

tion est limitée à 80% de l'impôt belge qui frappe le revenu étranger. En Suisse il existe une méthode qui ressemble beaucoup au systéme néerlandais.

—Enfin il y a la méthode dite d'exemption, préférée entre autres par la Chambre de Commerce Internationale.

Je dois vous avouer que, à plusieurs reprises dans le passé, je me suis déclaré en faveur de la troisième méthode et cela pour différentes raisons dont voici quelques-unes:

Tout d'abord les deux autres méthodes subordonnent la réduction à la condition que le revenu en question ait subi un impôt similaire à l'étranger. Or, abstraction faite de la difficulté de savoir si un impôt étranger est similaire à l'impôt national, il me frappe toujours qu'on semble oublier que les différences d'impôts sont telles qu'il n'existe guère une similarité.

Ensuite: le fait même que le pays étranger n'impose pas directement un revenu ne veut pas dire qu'il n'existe pas une charge fiscale. Les contrats de redevances conclus par les grandes compagnies de pétrole avec les pays où elles exercent leurs activités en sont un exemple clair: au lieu de payer des impôts, ces compagnies payent des redevances, ce qui ne constitue pas une grande différence à mon avis.

En troisième lieu il y a la difficulté que les pays en développement qui veulent accorder à des entreprises étrangères un régime fiscal de faveur, voient se réduire à néant leurs efforts à cause des mesures fiscales des pays créditeurs. Pendant mes études dans la matière, je suis arrivé à la conclusion que l'exemption totale d'impôt pour des revenus de provenance étrangère n'est pas souhaitable parce qu'on perdrait alors de vue la différence de caractère des revenus en question. Il faut distinguer, je le répète, entre revenus provenant de production — qui devraient être imposés dans le pays de leur source — et revenus destinés à la consommation, qui pourraient certainement être taxés dans le pays du domicile. Je dois avouer que ce résultat de mes recherches m'ont causé des difficultés, parce que je ne sais pas bien comment faire une telle distinction dans la pratique, au moins pour autant qu'il concerne des revenus commes dividendes, intérêts, etc. Une solution pratique serait peut-être de laisser au pays de provenance le droit d'imposer une partie de ces revenus, en permettant au pays de domicile le droit exclusif d'imposer l'autre partie. Une telle procédure aura l'avantage que chacun des deux pays en

question sera tout-à-fait libre d'user de son droit d'imposition ou non, sans que cela puisse avoir une influence sur l'impostition dans l'autre pays. Reste évidemment la difficulté de fixer la partie imposable dans chaque pays. Etant donné qu'il y a déjà une tendance vers un pourcentage général maximum de 15%, dans les conventions bilatérales, pour un prélèvement à la source, je suis d'avis qu'il est possible de trouver pour un partage comme je viens de suggérer, également un critère commun.

Monsieur le Président, j'ai été invité à parler sur l'évolution du droit fiscal international. Je vous ai parlé d'autre chose aussi: un peu d'historique, un peu d'évolution, avec critique et approbation. Maintenant je pose la question: où en sommes nous? Permettez-moi de terminer par quelques conclusions en disant un mot sur

7) Opportunisme et conceptions de Droit dans l'évolution du droit fiscal international.

J'ai essayé de vous dépeindre une évolution qui va d'une fiscalité à la base de laquelle les considérations politiques prévalent, en faveur de chaque pays individuel, vers une fiscalité moins autarchique et par conséquent plus internationale. Nous ne sommes toujours pas arrivés à une situation idéale, c'est vrai, mais je crois pouvoir constater que l'esprit des gouvernements et des contribuables s'inspire plus qu'auparavant d'un sentiment de solidarité et de coopération. Un tel sentiment exige, comme dans toute société humaine, des règles de Droit. A son tour, le Droit ne peut atteindre son but que s'il est basé, *et* sur des principes de justice et d'équité, *et* sur des fondements réalistes économiques et sociaux.

Je suis d'avis, que les conceptions économiques ne se bornent pas à la macro-économie, mais aussi sinon surtout sur des petits faits. En matière fiscale de tels petits faits ont une grande importance. Si l'on pouvait donc trouver des distinctions claires entre les différents facteurs qui donnent lieu à une imposition correcte, il n'y aura personne qui pourrait avoir des objections contre un partage du droit d'imposition entre les divers Etats. Je vois, je vous l'ai dit, une tendance vers une telle distinction claire et correcte. C'est la distinction d'après le caractère des revenus imposables. Pour autant que, dans la pratique, il est difficile de trouver un critère exact, il faut trancher cette difficulté en prenant des mesures qui, conformé-

ment aux principes de base du Droit, attribuent à chaque pays intéressé sa part, une part qui lui permet de se ranger parmi les membres d'une communauté internationale.

Je vois une telle évolution dans le nombre croissant de conventions fiscales, dans l'extension de ces conventions à des territoires en développement et, surtout, dans les travaux du Comité Fiscal de l'O.E.C.E. qui tendent vers une convention multilatérale. Il faut espérer que l'esprit qui inspire ces tendances continuera à régner. Personnellement je suis optimiste à cet égard!

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II

SURVEYS OF TAX LEGISLATION
APERÇUS DE LEGISLATION FISCALE

BELGIUM *Period from September 1st until October 31st, 1959.*

Impôts sur les revenus.

Arrêté royal du 14 octobre 1959 modifiant l'arrêté royal du 22 septembre 1937 d'exécution des lois coordonnées relatives aux impôts sur les revenus. Mon. Belge 24.10.59.

Taxes assimilées au timbre.

Arrêté royal du 14 octobre 1959 modifiant le Code et le Règlement général sur les taxes assimilées au timbre. Mon. Belge 24.10.59.

Arrêté royal du 16 octobre 1959 modifiant le Code des taxes assimilées au timbre. Mon. Belge 21.10.59.

FRANCE *Period from September 1st until October 31st, 1959.*

Droits de douane.

Arrête du 1er septembre 1959 portant fixation du contingent et des conditions d'importation en suspension du droit de douane de certains produits azotés. J.O. 9.9.1959.

Décret no. 59-1085 du 19 septembre 1959 portant réduction provisoire, quant à la perception, de certains droits de douane d'importation en régime de droit commun et en tarif minimum. J.O. 22.9.1959 et rectificatif J.O. 25.9.1959.

Décret no. 59-1128 du 28 septembre 1959 portant modification partielle du tarif des droits de douane d'importation. J.O. 30.9.1959.

Décret no. 59-1166 du 29 septembre 1959 portant concession des droits de douane d'importation du tarif minimum en faveur de certaines marchandises originaires du Japon. J.O. 10.10.1959.

Arrêté du 30 septembre 1959 portant modification de l'arrêté du 13 septembre 1948 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. J.O. 9.10.1959.

Arrêté du 1er octobre 1959, fixant, pour l'année 1959, le contingent et les conditions d'importation en suspension du droit de douane d'importation du benzène. J.O. 7.10.1959 et rectificatif J.O. 9.10.1959.

Décret no. 59-1151 du 1er octobre 1959 portant suspension, dans la limite d'un contingent, de la perception des droits de douane d'importation sur le benzène. J.O. 4.10.1959.

Décret no. 59-1181 du 19 octobre 1959 portant inclusion dans le Marché commun de la Communauté européenne du charbon et de l'acier et spécialisant sous la rubrique tarifaire no. 26-02 A du tarif des droits de douane d'importation les poussiers de hauts fourneaux. J.O. 20.10.1959.

Décret no. 59-1185 du 20 octobre 1959 portant suspension provisoire de la perception des droits de douane applicables au lait complet ou écrémé. J.O. 21.10.1959.

Décret no. 59-1250 du 31.10.59 portant suspension provisoire des droits de

douane d'importation applicables aux travertins et autres pierres calcaires d'une densité apparente supérieure ou égale à 2,5 en blocs bruts ou équarris (no. 25-15 B b du tarif des douanes d'importation). J.O. 1.11.59.

GERMANY *Period from September 1st until October 31st, 1959.*

Convention

Bekanntmachung vom 17.9.59 über das Inkrafttreten des Zusatzprotokolls zum Abkommen zwischen dem Deutschen Reiche und der Schweizerischen Eidgenossenschaft zur Vermeidung der Doppelbesteuerung auf dem Gebiete der direkten Steuern und der Erbschaftsteuern. BGBl II 14.10.1959.

Customs

Verordnung vom 29.9.59 zur Änderung der Allgemeinen Zollordnung-BGBl I 24.10.1959.

Zweite Verordnung vom 29.8.59 zur Änderung der Beförderungsteuer-Durchführungsverordnung 1955. BGBl I 16.9.1959.

LUXEMBURG *Period from September 1st until October 31st, 1959.*

Conventions

Loi du 17 août 1959 portant approbation de la Convention entre la France et le Grand-Duché de Luxembourg tendant à éviter les doubles impositions et à établir des règles d'assistance administrative réciproque en matière d'impôts sur le revenu et sur la fortune, signée à Paris, le 1er avril 1958 (et texte de la Convention.) Mém. no. 43 du 24.9.1959.

Loi du 17 août 1959 portant approbation de la Convention entre le Grand-Duché de Luxembourg et la République Fédérale d'Allemagne tendant à éviter les doubles impositions et à établir des règles d'assistance administrative réciproque en matière d'impôt sur le revenu et sur la fortune et en matière d'impôt commercial et d'impôt foncier, ainsi que du Protocole final et l'échange de notes relatifs à cette Convention, signés à Luxembourg, le 23 août 1598. (et texte de la Convention, le Protocole final et l'échange de notes). Mém. no. 43 du 24.9.1959.

Arrêté grand-ducal du 14 septembre 1959 portant approbation de la Convention entre le Grand-Duché de Luxembourg et la France tendant à éviter les doubles impositions et à établir des règles d'assistance administrative réciproque en matière d'impôts extraordinaires sur le capital (et texte de la Convention). Mém. no. 43 du 24.9.1959.

Impôt sur le revenu

Arrêté grand-ducal du 25 août 1959 déterminant les modalités d'application de l'article 12 de la loi du 7 août 1959 portant réforme de l'impôt sur le revenu des personnes physiques et de l'impôt sur le revenu des collectivités. Mém. no. 40 du 10.9.1959.

Arrêté grand-ducal du 25 août 1959 concernant l'organisation du service régional de contrôle de la retenue d'impôt sur les traitements et salaires. Mém. no. 40 du 10.9.1959.

Arrêté ministériel du 25 août 1959, complétant l'arrêté ministériel du 14 août 1959 portant publication des barèmes applicables à partir du 1er janvier 1959 en matière de retenue d'impôt sur les traitements et salaires. Mém. no. 42 du 21.9.1959.

Droits d'accise

Arrêté grand-ducal du 14 octobre 1959 portant modification de l'article 1er de l'arrêté grand-ducal du 18 août 1959 réglant la perception des droits d'accise établie par la loi du 27 juillet 1925 sur le régime fiscal des eaux-de-vie. Mém. no. 47 du 24. 10.1959.

MISCELLANEOUS — FAITS DIVERS

AUSTRALIA

Budget Proposals

The Treasurer has announced in his Budget Speech some alterations in the field of the Income Tax. The main changes will be as follows:
Personal Income Tax rates will be reduced bij about 5 percent.
A 30 percent withholding tax on dividends paid to non-residents will be introduced. The rate will be 15 percent if under the taxation agrreements between Australia and the United Kingdom, the United States of America and Canada income tax is payable on Australian dividends remitted to those countries.
The retention allowance for private companies will be increased. Private companies will now be allowed to retain about 35 percent of their distributable profit, without being liable to "undistributed profits tax".

Source: *The Taxpayers' Bulletin,* August 15, 1959.

BELGIUM

Furthering economic activity

In Belgium a number of acts has been introduced to further economic activity.

1. Act of July 15th, 1959, to introduce a temporary tax exemption in connection with investments. An allowance of 30 % of the capital expenditure incurred for investment in real estate, plant and machinery belonging to a business during the years 1959 and 1960 (or accounting years closed in 1960 and 1961), is granted. The amount to be deducted shall be spread over 3 years. The minimum investment which will be taken into consideration amounts to B. frs. 50.000 ($ 10.000).

2. Act of July 15th, 1959, to bring into effect a temporary change in the tax treatment of capital gains. Capital gains made with the sale or real estate, plant and machinery, belonging to a business, which sale is effected in the years 1959 up to 1963 (or during the accounting years 1959/1960 up to 1963/1964) will be partially oi wholly exempt form tax if a number of conditions are met, e.g. reinvestment of the capital gain within a specified period.

3. Act of July 15th, 1959, to further amalgamation of companies and business. No tax will be levied on capital gains realised with the amalgamation of companies and business effected between March 1st, 1959, and December 31st, 1961, if a number of conditions are met, e.g. furthering of productivity and employment.

4. Act of July 17th, 1959, to introduce and coordinate measures to further economic expansion and the establishment of new industries. The act grants a number of facilities — e.g. loans at a decreased interest percentage — for activities which contribute to establishing, expansion, modernization etc. of industrial enterprises. As a tax facility freedom of Land tax is granted for a period of 5 years for buildings constructed within the scope of this act.

5. Act of July 18th, 1959, to combat economic and social difficulties in a number of districts. The purpose is to further investment in districts where for instance unemployment exists by granting loans at a decreased interest

percentage and subventions. Those subventions are not to be treated as income for the Belgian taxes on profits (Taxe Professionnelle and Impôt Complémentaire Personnel). For the fiscal writing off on assets those subventions are to be deducted from the costs incurred. For buildings constructed under this act a taxfreedom of Landtax is granted for 5 years.

Source: *Moniteur Belge,* July 28th, 1959, and August 29th, 1959.

LUXEMBURG

Tax reform

A "small tax reform" has come into operation, containing some interesting provisions in the field of Corporation Income Tax.

The main features are as follows:

1. *Revaluation of capital assets in view of depreciation in the future.* For the purpose of calculating future depreciation of capital assets the original purchase price and the depreciation allowances in previous years will be revaluated by means of coefficients given in the law, in order to arrive at a revaluated bookvalue. This is a one-time revaluation.

2. *Revaluation of capital assets in case of sale of the asset or transfer or liquidation of the enterprise.* Instead of including total bookprofit in assessable income, a part thereof now remains taxfree, in order to give compensation for currency depreciation. Therefore the difference between:
a. the original purchase price, as revaluated by means of given coefficients, and
b. the sum of bookvalue and depreciation allowances in previous years, as revaluated remains untaxed.

3. As regards profits made in alienating an "important participation" the same rules as given under 2 are applicable.

4. *Investment allowance.* In case of acquisition of new capital assets during financial years, ending in 1959 and 1960 that can be considered as productive plant and machinery, used within Luxembourg, an amount equal to 20 percent of the purchase price can be deducted from profits, extended over 4 years, i.e. 5 percent a year. The investment allowance is limited, however, to L frs. 5.000,000 (=$100.000) in total.

Source: *L'Echo de l'Industrie,* July 18 and 25, 1959.

NEW ZEALAND

Budget Proposals

The New Zealand Finance Minister, in the course of introducing his Budget, announced the following changes in taxation:

1. Personal exemptions will be increased from £ 300 to £·468 a year for single persons and from £ 500 to £ 624 for married taxpayers with dependant wives. Moreover the exemption for each dependant child will be raised form £ 75 to £ 78.

2. The first £ 500 of taxable income will be taxed at the flat rate of 3/- in the £ (15 percent). Thereafter the rate will rise by 6 d in the £ for each £ 100 of income until at £ 900 of taxable income the existing rate will apply.
The figure at which the aggregation of husband and wife's incomes will apply will be raised from £ 520 to £ 650 annually.

3. To encourage overseas investments, companies not carrying on business in New Zealand may be taxed at the rate applying in the country of residence if that rate is lower than the rate applying in New Zealand.

4. Companies desiring to capitalise by means of bonus issues, profits which had accumulated prior to the 1957/58 income year (i.e. before the introduction of dividend tax) are to be given authority to do so "within a reasonable period" without shareholders becoming liable to dividend tax thereon.

The value of the bonus issue will, however, be treated as non-assessable income to the shareholder as in the past, which means that it is included in taxable income for the purpose of fixing the rates of tax.

5. Taxpayers are to be given the option of having depreciation recovered on the sale of an asset set off against the purchase price of any replacement instead of having to pay tax on the amount recovered.

Source: *The Taxpayers' Bulletin,* July 25, 1959.

TAX AGREEMENTS

India — United States

[22.1] The Treasury Department announced that it has recommended the adoption by the United States of an income tax treaty between India and the United States designed to eliminate double taxation and otherwise to promote the flow of private investment and trade between the two countries. [TD Press Memo, 10-6-59].

Although similar to the 21 other income tax treaties of the United States, the proposed treaty with India is unique in containing a U. S. credit for tax exemption granted by India.

Under existing U. S. law a credit is allowed against income tax only for taxes actually paid abroad to the country where the income is earned [100,901]. If a foreign country gives tax exemption to encourage new investment, no credit is allowed against U. S. tax liability. This would be changed in the treaty with India. A credit for Indian tax would be allowed against U. S. tax even though India has granted exemption from tax.

Observation

A tax-sparing provision first appeared in the Pakistan treaty [Article XV (1), [70,115]. That paragraph provided, in effect, that the U. S. would allow as a foreign tax credit Pakistani taxes which are waived. However, while the treaty was pending, the Pakistan law providing for a waiver of taxes expired. Therefore, the Senate withheld approval of the provision and it is treated as if it was deleted from the treaty. However, the Senate said that it would reconsider the matter in the event the Pakistani tax-waiver law is reenacted [1029].

It is anticipated that the credit provision of the treaty will be an important stimulus in arousing interest in private investment opportunities in India.

The Treasury has transmitted the treaty to the State Department with the recommendation that it be signed. The proposed treaty will not become effective until signed by both governments and the Senate gives its advice and consent to ratification.

The Treasury said that agreements containing similar provisions are under discussion with several other countries seeking to develop their economies through private capital investment.

Source: *Federal Tax Treaties Report,* October 23, 1959.

III

AUSTRALIA — ROYALTY PAID TO NON-RESIDENT

The existence of a trademark registered in Australia was held by the Board of Review to be sufficient to establish that the source of royalties was in Australia.

The taxpayer company was a resident of Ausstralia. It entered into an agreement with an American company, under which it was granted a licence to manufacture in Australia certain equipment covered by an Australian trademark which was owned by the American company. The Australian company paid royalties to the American company, based on the number of units manufactured. The royalties paid to the American company were assessed to Australian income tax, being regarded by the Commissioner as arising from a source in Australia.

The taxpayer contended, before the Board of Review in 7 C.T.B.R. (N.S.) Case 125, that it could not be said that the American company had any property in Australia which could be regarded as the source of the royalties, and therefore, as the royalties were received by an ex-Australian company, they should not be subject to tax in Australia. In support of this claim, it was stated that the agreement was executed in part in America, that payment of the royalties was made in dollars in America, and, in any event, that the registration of the trademark in Australia was virtually invalid because the American company had done nothing to protect it, and the Australian company was not a registered user.

At the hearing, however, the taxpayer's representative admitted that the use of the trademark was of fundamental value to the Australian company's business.

The Board agreed with the Commissioner that the trademark, registered in Australia, represented the asset in respect of which the royalty payments were made; the possibility that its registration was of doubtful validity was discounted. It was held, therefore, that the American company owned property in Australia from which arose income having its source in Australia, and so Australian income tax was correctly charged to the non-resident on the royalties received.

Source: *The Australian Accountant,* April 1959.

COVERS

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BELGIQUE — REDEVANCES PAYEES A UNE SOCIETE ETRANGERE PAR SA FILIALE ETABLIE EN BELGIQUE

Soc. an. X..., c. Administration des finances

I. Taxe professionnelle. - Article 27, § 2.7°, des lois coordonnées. - Redevances payées à une société étrangère par sa filiale établie en Belgique. - Non taxables en tant qu'elles représentent la contrepartie réelle et adéquate du droit d'utiliser des marques et de l'aide technique accordés par la société étrangère. - Taxables pour le surplus.
II. ...

I. Constituent des avantages et des profits taxables en vertu de l'article 27, § 2, 7°, des lois coordonnées, les redevances payées à une société étrangère par sa filiale belge que dans la mesure où l'administration prouve qu'elles ne sont pas la contrepartie réelle du droit accordé par la société étrangère d'utiliser ses marques et ses brevets et de l'aide technique fournie par elle.
II. .....

Attendu que la requérante soutient en premier lieu qu'à tort l'Etat a considéré comme avantages au sens de l'article 27, §2, 7°, des lois coordonnées: A. les redevances versées par elle à la société X... suisse dans la mesure: où a) ces redevances ont excédé 5 p.c. du montant des ventes des produits pharmaceutiques X... fabriqués en Belgique durant les années 1945 et 1946; où b) ont été calculées sur le montant des ventes de produits pharmaceutiques X... conditionnés en Belgique ou importés de Suisse durant les années 1946 à 1951; B. les rémunérations versées par elle à la société X... suisse sur la vente des produits colorants;

Attendu qu'aux termes de l'article 27, § 2, 7°, des lois coordonnées, «les avantages et profits qu'une entreprise établie à l'étranger retire, directement ou indirectement, sous quelque forme que ce soit ou par quelque moyen que ce soit, d'exploitations établies en Belgique qui sont sous sa dépendance ou sous son controle, sont ajoutés aux bénéfices des exploitations ou entreprises établies en Belgique";

Attendu qu'il résulte des éléments du dossier (pièce 64) que la requérante est sous le contrôle et la dépendance de la société X... suisse; que ce fait n'est au surplus pas contesté;

Attendu que la disposition légale ci-dessus, conçue en termes généraux, tend à réduire les moyens et combinaisons dont usent couramment, en vue de dissimuler les bénéfices réalisés dans le pays, les entreprises étrangères exerçant en Belgique, par l'intermédiaire soit de succursales, soit de filiales belges (coordination administrative no 1255); qu'elles ne présupposent pas la preuve de l'existence d'une fraude (Bruxelles, 12e ch. B, 12 novembre 1954, confirmé par cass., 16 mars 1956, *Pas.*, 1956, I, 758);

Attendu que la contestation se ramène ainsi au point de savoir si les redevances et rémunérations litigieuses correspondent ou non à une contrepartie effective et adéquate (Liège, 22 mai 1950, *Journ. prat. dr. fisc.*, 1950, p. 150, et *C. A.*, no 1265), la preuve de l'existence d'avantages ou profits imposables incombant à l'administration;

Attendu que, suivant contrat des 21-24 décembre 1945 (pièce 86), X... Bâle concède à la requérante une licence pour l'utilisation de ses procédés de préparation de spécialités pharmaceutiques, brevetés et non brevetés, ainsi que pour l'exploitation des spécialités fabriquées d'après ces brevets et/ou ces procédés (X.1); le droit d'utiliser les marques internationales indiquées à l'annexe du contrat (X.3), la mise à la disposition de X... Bruxelles de toutes ses connaissances et expériences techniques, cliniques, commerciales et publicitaires (X.4), moyennant une redevance de 10 p.c., calculée sur le total des prix de vente auxquels X... Bruxelles facture les produits du contrat et l'obligation de poursuivre à frais communs sur instructions de X... Bâle les contrefacteurs de la marque en Belgique; que ladite redevance a en fait été réduite à 5 p.c. à partir de l'année 1947;

Attendu que, suivant contrat des 20-24 décembre de la même année (pièce 85), X... Bâle concède à la requérante le droit d'utiliser les marques internationales X... nos 100.520 et 100.521 dans la mesure où elles se rapportent à des matières colorantes, couleurs, vernis, laques et produits auxiliaires pour l'industrie textile (X.l), moyennant une redevance de 3 p.c. sur le chiffre d'affaires réalisé quant aux produits ci-dessus et l'obligation de poursuivre en Belgique, à ses frais et suivant les instructions de X... Bâle les contrefacteurs de ces marques;

Attendu que l'Etat admet que, dans la mesure où elles s'appliquent à des produits pharmaceutiques fabriqués en Belgique et où, pour les exercices 1946 et 1947, elles ne dépassent pas 5 p. c. ces redevances ont une contrepartie réelle et adéquate dans les services prestés par X... Bâle;

Attendu qu'il résulte des pièces déposées en annexe de la lettre du 7 juin 1955 du conseil de la requérante (piéce 37) qu'en ce qui concerne les produits pharmaceutiques conditionnés en Belgique, les redevances trouvent une contrepartie réelle également dans l'aide technique importante et nécessaire apportée par la société X... suisse dans le conditionnement et la vente de ces produits sous la marque X...; qu'en effet pour conditionner ces produits la requérante reçoit toutes les directives provenant des laboratoires et des services commerciaux de X... Bâle, directives dont elle ne pourrait se passer sans procéder elle-même à des recherches de laboratoire et création de modèles d'emballages, prospectus, etc.; que pour les vendre elle profite de la réputation de la marque X...;

Attendu que la réalité de cette contrepartie pour les produits conditionnés en Belgique trouve également une confirmation dans la loi du 2 janvier 1953 portant approbation de la convention sur la valeur en douane des marchandises et l'application qui en a été faite à la requérante (pièce 4 déposée à l'audience du 3 mars 1958 sous lettre *C*) l'administration des douanes étant amenée à considérer le prix normal des marchandises en y comprenant la valeur que ces marchandises empruntent aux droits de brevets, ainsi qu'au droit d'utilisation des marques de fabrique, etc.;

Attendu toutefois, en ce qui concerne la hauteur de la redevance, que le fait que celle-ci a été ramenée de 10 à 5 p. c. sans qu'aucune circonstance n'explique cette réduction permet à l'administration de présumer qu'au delà de 5 p. c. la redevance ne correspondait pas au service rendu; que l'explication donnée à cet égard par la requérante soit l'état du marché, n'est appuyée d'aucun élément; qu'il apparaît au contraire, que le marché n'a pas été moins prospère durant les années qui ont suivi les deux exercices 1946 et 1947 pour lesquels elle avait appliqué les 10 p. c.;

Attendu que l'administration n'apporte pas la preuve que la redevance contractuelle ramenée ainsi à 5 p. c. calculée ensemble sur produits pharmaceutiques fabriqués et sur produits conditionnés en Belgique contiendrait encore un avantage ou profit au sens de l'article 27, § 2. 7°, des lois coordonnées;

Attendu en ce qui concerne les produits pharmaceutiques vendus conditi-

onnés par X. . . Bâle, qu'il résulte des indications du rapport de la Société fiduciaire suisse à Bâle (pièce 26), dressé à la requête de la requérante elle-même suivant ses indications, que ces produits sont vendus aux clients étrangers, dans les pays où elle ne possède pas de société sous son contrôle, à des prix sensiblement égaux à ceux pratiqués vis-à-vis de la requérante, soit un peu plus élevés en 1945-1946 et un peu moins élevés en 1947-1948 (pièce 26, p. 6);

Attendu en ce qui concerne les matières colorantes qu'il résulte de l'enquête à laquelle il a été procédé qu'elles sont vendues telles qu'elles arrivent de Suisse, sauf exceptionnellement lorsque la requérante procède à une vente divisée (pièce 13/5);

Attendu qu'il n'apparaît pas que, pour ces produits, matières colorantes et produits pharmaceutiques conditionnés, l'aide technique ou commerciale prêtée par X. . . suisse par renseignements, modes d'emploi, publications scientifiques etc., dépasse celle que fournit habituellement un commerçant pour la diffusion de ses produits;

Attendu que la requérante reconnaît elle-même dans ses réclamations, sous la rubrique «Bénéfice de la maison-mère» que cette dernière ne lui livre pas ses produits à un prix inférieur à celui du marché ou de la production, prix dans lequel doivent intervenir tous les frais qui grèvent la marchandise c'est-à-dire les frais de recherches et les frais d'invention;

Attendu qu'à bon droit le directeur a retenu que, suivant les usages commerciaux et le droit commun, en achetant de la société suisse dont elle dépend des produits fabriqués portant les marques X. . ., la requérante acquérait incontestablement le droit de les revendre sous les mêmes marques; que c'est d'ailleurs la société suisse qui est la principale intéressée à ce que ses produits soient revendus sous la marque X. . . et qu'elle n'aurait jamais toléré qu'ils le soient sous une autre marque;

Attendu que, contractant l'obligation de payer, outre le prix d'achat normal de ces produits, une redevance pour l'utilisation des marques en ce qui concerne les matières colorantes et les produits pharmaceutiques conditionnés, ainsi que pour ces derniers les connaissances et expériences techniques cliniques, commerciales et publicitaires etc., la requérante a incontestablement accordé à X. . . suisse, société étrangère contractante, un avantage ou profit sans contrepartie effective;

Attendu qu'il importe de relever, spécialement en ce qui concerne les matières colorantes, que la redevance n'a été maintenue qu'un seul exercice seulement;

Attendu que les certificats délivrés par le président de la Chambre syndicale corporative des fabricants et concessionnaires de spécialités pharmaceutiques (pièce 37 et pièce 4 déposés à l'audience du 3 mai) concerne le taux de 5 à 15 p. c. des royalties prévues pour l'exploitation des marques par les laboratoires de fabrication et de conditionnement en Belgique; qu'on ne peut donc en déduire qu'il serait normal de calculer également la redevance sur les produits livrés conditionnés ni que la redevance de 5 p. c. serait inférieure à la valeur du service rendu;

Attendu qu'en l'absence de pièces sur lesquelles ils s'appuient, les rapports de la Société anonyme fiduciaire suisse (pièces 26-37) ne permettent pas d'admettre l'usage prétendûment mondial de calculer la redevance tant sur produits fabriqués et conditionnés que sur produits reçus conditionnés ni que le taux de 5 p. c. est inférieur au montant de la redevance normalement admise par les autres pays;

Attendu qu'il échet de relever que X. . . suisse dont dépend la requérante s'est abstenue de fournir les renseignements permettant de déterminer le coût exact de ses fabrications (pieces 15-17);

Par ces motifs, la Cour, ... ;

reçoit le recours, le déclare fondé: annule les cotisations litigieuses dans la

mesure ou pour les établir l'administration a: 1° incorporé dans la base imposable le montant de la redevance, calculée à concurrence de 5 p. c. des prix de vente, payée par la requérante à X. . . Bâle sur produits pharmaceutiques conditionnés en Belgique; 2° . . . . . ; condamne l'Etat belge etc. . .

Du 21 Juin 1958. - Cour d'appel de Bruxelles .- 11e ch. B. - *Prés.*: M. Saliez. *Min. publ.*: M. Convent. - *Plaid.*: MMes de Mey et de Longueville, c.Me Lévy-Morrell.

Source: *Journal Pratique de Droit Fiscal et Financier,* Avril/Mai, 1959.

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INDIA — RECOGNITION OF FOREIGN TAX LAWS

The case of *Government of India v. Taylor* (34 A.T.C. 10, 1 All E.R. 292; 1955) has established beyond doubt that it is not part of the functions of the Courts of the United Kingdom to enforce the revenue laws of other countries or to collect or assist in collecting foreign taxes. Nevertheless, the Courts of the United Kingdom will have regard to the revenue laws of other countries to the extent that they will refuse to enforce an agreement which involves a breach of them. This principle has been demonstrated forcibly in the recent case of *re Emery's Will Trusts* (1 All E.R. 577; 1959) where a husband advanced certain foreign property to his wife primarily with a view to the avoidance of foreign withholding tax. In such a case as this where property is transferred by a husband to his wife in the absence of any consideration, there is an equitable presumption of advancement. This presumption can be rebutted by evidence of the circumstances surrounding the transfer, and by evidence of statements made by the transferor or transferee subsequent to the transfer, which are against the interests of the respective parties. Any other statements are not admissible for the purpose of rebutting the presumption.

The husband maintained before Mr Justice Wynn-Party in the Chancery Division that no presumption of advancement existed in his case because the only purpose of tne transaction was the avoidance of foreign withholding tax. However, as the husband had failed to declare his beneficial interest in the property which formed the basis of the advance, the learned judge felt that the Court was precluded from assisting him in recovering the property which had been transferred into his wife's name and stated at page 582:

'In mij view, there was a clear breach of the Federal Law in the way these transactions were carried out by the non-disclosure of the husband of his beneficial interest in the securities and in the dividend paid thereon. He comes to this Court seeking the aid of equity and in the state of the authorities and on that evidence it appears to me that it is impossible for this Court to help him'.

The effect of this decision is to focus attention once again on the words of Lord Macnaghten in the case of *Stamp Duties Commissioner v. Byrnes* (1911 A.C. 386) at page 392:

'No one may act in contravention of the law. But no one is bound to leave his property at the mercy of the revenue authorities if he can legally escape their grasp'.

It becomes apparent that the Courts of the United Kingdom will have due regard where necessary to any contravention of the revenue laws of a foreign country notwithstanding that no assistance in the enforcement and collection of taxes arising from these laws will be forthcoming from these Courts.

Source: *Taxation,* July 25 th,1959.

SCHWEIZ — GESETZESKRAFT VON VERWALTUNGSAKTEN. AUSLEGUNG VON STEUERGESETZEN. GEWOHNHEITSRECHT.

Referentin: Prof. Dr. Irene Blumenstein.

Willkürbeschwerde. - I. Gesetzmässige Verwaltung. Der Erlass eines den Bürger belastenden Verwaltungsaktes ohne gesetzliche Grundlage bedeutet einen Verstoss gegen Art. 4 BV. II. Gesetzesauslegung. Ausdehnende Auslegung ist auch im Steuerrecht zulässig und eine Vollzugsverordnung darf das Gesetz sinngemäss ergänzen, wo dieses stillschweigt oder eine Lücke enthält. Indessen liegt darin, dass ein Steuergesetz gewisse Tatbestände, die Anlass zur Besteuerung geben könnten, nicht erwähnt, keine Lücke, die durch Verordnung ausgefüllt werden könnte. III. Gewohnheitsrecht als Rechtsquelle. Gewohnheitsrecht ist grundsätzlich auch im öffentlichen Recht als Rechtsquelle anzuerkennen. Dabei ist jedoch grosse Züruckhaltung geboten; insbesondere sind an die Voraussetzungen für die Entstehung strenge Anforderungen zu stellen. Für die Bildung von Gewohnheitsrecht, das eine Abgabepflicht begründen soll, muss verlangt werden, dass die ganze Rechtsgemeinschaft die Rechtsüberzeugung hat, dass der angewandte Grundsatz wirklich Recht sei.

Aus dem Tatbestand:

A. Nach Art. 26 des st. gallischen Gesetzes über den Marktverkehr und das Hausieren vom 28 Juni 1887 erlässt der Regierungsrat die zum Vollzug dieses Gesetzes notwendige Verordnung. Die am 8.Mai 1942 erlassene Vollzugsverordnung (VV) bestimmt in Art. 16:

„Der Betrieg von automatischen Apparaten, durch welche Waren an öffentlichen Orten, Wirtschaften, Bahnhöfen usw. verkauft werden, ist ebenfalls patentpflichtig.

Die Gebühr beträgt Fr. 10,— bis Fr. 120.— pro Jahr und Apparat.

Über die Zulassung anderer Apparate entscheidet das Polizei-departement.

Entsprechende Bestimmungen, jedoch mit anderen Gebührenansätzen, waren schon in den Vollzugsverordnungen vom 3 Juli 1903 (Art. 9) und vom 31. Dezember 1920 (Art. 15) enthalten.

B. Der Beschwerdeführer X. ist Inhaber einer Kolonialwarenhandlung in St. Margrethen. Im Jahre 1957 stellte er in dieser Gemeinde auf privatem Grund einen Warenverkaufsautomaten auf. Die Gemeindeverwaltung teilte ihm am 23. August 1957 mit, dass dieser Automat patentpflichtig sei, und verlangte auf Grund des zitierten Art. 16 VV eine Gebühr, deren Höhe den Akten nicht zu entnehmen ist, für den Staat sowie eine gleich hohe Gebühr für die Gemeinde X. erhob hiergegen beim Regierungsrat des Kantons St. Gallen Beschwerde mit dem Antrag auf Aufhebung der Gebührenauflage und auf Feststellung, das für Warenautomaten auf Privatgrund keine Patentgebühren geschuldet seien. Zur Begründung machte er vor allem geltend, dass Art. 16 VV keine gesetzliche Grundlage habe und im vorliegenden Falle übrigens auch deshalb nicht anwendbar sei, weil sich der Automat nicht an einem öffentlichen Ort, sondern auf Privatgrund befinde. . .

Erwägungen:

1. Art. 16 VV erklärt den Betrieb von Warenverkaufsautomaten für patentpflichtig (Abs. 1) und setzt die dafür zu entrichtende Gebühr auf Fr. 10 bis Fr. 120 pro Jahr und Apparat fest (Abs. 2). Die Frage der Patentpflicht, d. h. ob Art. 16, Abs. 1 VV verfassungsmässig sei, ist nicht Gegenstand der vorliegenden staatsrechtlichen Beschwerde. Diese richtet sich ausschliesslich gegen die Gebühr, die gestützt auf Art. 16, Abs. 2 VV vom Beschwerdeführer verlangt wird für den Betrieb des Automaten, den er in St. Margrethen aufgestellt hat.

2. Die Höhe dieser Gebühr ist den Akten nicht zu entnehmen. Indessen behauptet der Beschwerdeführer nicht, sie halte sich nicht im Rahmen von Art. 16, Abs. 2 VV. Es ist daher davon auszugehen, dass sie zwischen je Fr. 10 bis Fr. 120 für den Staat und für die Gemeinde beträgt. Ob es sich dabei um eine Gebühr im Rechtssinne, d. h. um ein Entgelt für eine Tätigkeit der Verwaltung, oder um eine (Gewerbe-) Steuer handle, braucht nicht geprüft zu werden. Sie stellt jedenfalls keine blosse Kanzleitaxe dar und darf daher nur erhoben werden, wenn eine gesetzliche Grundlage dafür besteht. Das wird vom Regierungsrat mit Recht nicht bestritten. Der Grundsatz, dass ein den Bürger belastender Verwaltungsakt nicht ohne gesetzliche Grundlage erlassen werden darf (BGE 65 I 300), gilt im Rechtsstaat allgemein und wird namentlich mit Bezug auf Steuern und andere öffentliche Abgaben vom Bundesgericht in ständiger Praxis gehandhabt (BGE 33 I 390, 56 I 514, 67 I 26/27, 80 I 327), und zwar nicht nur da, wo er ausdrücklich in kantonalen Verfassungen aufgestellt wird (BGE 52 I 213/4, 82 I 27/28). Es handelt sich somit um einen feststehenden allgemeinen Rechtsgrundsatz, dessen Missachtung einen Verstoss gegen Art. 4 BV bildet.

Der Regierungsrat behauptet nicht, dass ihm eine selbständige Rechtsverordnungskompetenz zustehe, die ihn zum Erlass von Art. 16, Abs. 2 VV berechtigt habe. Er leitet die Befugnis dazu aus der in § 26 des Gesetzes von 1887 über den Marktverkehr und das Hausieren enthaltenen Ermächtigung zum Erlass der zum Vollzug notwendigen Verordnung ab und beruft sich für den Fall, dass dieses Gesetz als Grundlage nicht genügen sollte, auf Gewohnheitsrecht.

3. Das Gesetz von 1887 regelt den Marktverkehr und das Hausieren und umschreibt in Art. 4 (ergänzt durch Art. 7 des Nachtragsgesetzes von 1894) im einzelnen diejenigen Formen der Gewerbeausübung, die als Hausieren zu gelten haben und für welche daher die in Art. 16 des Gesetzes festgesetzten Patenttaxen zu entrichten sind. Da der Warenverkauf durch Automaten dabei nicht erwähnt wird, kann sich Art. 16, Abs. 2 VV jedenfalls nicht auf den Wortlaut des Gesetzes stützen. Der Regierungsrat bestreitet das nicht, glaubt aber, sich auf den Sinn des Gesetzes berufen zu können, der — wie er behauptet — über den Wortlaut hinaus dahin gehe, die ausserordentlichen, vom gewöhnlichen Ladenverkauf abweichenden Verkaufsarten einer besondern Aufsicht und Besteuerung zu unterwerfen. Dieser Standpunkt erweist sich indessen als unhaltbar. Nach der Rechtsprechnung des Bundesgerichts ist zwar die ausdehnende Auslegung auch im Steuerrecht anwendbar (BGE 72 I 310, 76 I 210) und darf eine Vollzugsverordnung das Gesetz sinngemäss ergänzen, wo dieses stillschweigt oder eine Lücke enthält (BGE 64 I 315 und dort zitierte Urteile). Indessen liegt darin, dass ein Steuergesetz gewisse Tatbestände, die Anlass zur Besteuerung geben können, nicht erwähnt, keine Lücke, die durch eine Vollzugsverordnung ausgefüllt werden könnte. Die in Art. 4 des Gesetzes von 1887 enthaltene Aufzählung der als Hausieren zu betrachtenden Arten der Gewerbeausübung muss, jedenfalls was die Besteuerung betrifft, als abschliessend gelten und kann nur den Sinn haben, dass sich die Abgabepflicht auf diese Tatbestände beschränkt. Auch bei weitester Auslegung gestattet das Gesetz nicht, den Warenverkauf durch Automaten, der mit den in Art. 4 genannten Tätigkeiten keinerlei Aehnlich-

keit aufweist, zu besteuern. Die Berufung des Regierungsrates auf das einen Spielapparat betreffende Urteil des Bundesgerichts vom 22. Dezember 1954 i. S. Willimann (BGE 80 I 350 ff.) ist unbehelflich. Es ging dort nicht um die Besteuerung eines solchen Apparates, sondern um das Verbot, damit um Geld zu spielen, und die Befugnis des Regierungsrates zum Erlass dieses Verbotes konnte, wie das Bundesgericht in der (nicht veröffentlichten) Erwägung 3 a ausgeführt hat, aus verschiedenen, weit gefassten Gesetzesbestimmungen abgeleitet werden. Art. 16, Abs. 2 VV wäre nur rechtsbeständig, wenn der darin wie schon in den entsprechenden Bestimmungen der Vollzugsverordnungen von 1903 und 1920 enthaltene Grundsatz der Gebührenpflicht für Warenverkaufsautomaten als Gewohnheitsrecht gelten könnte.

4. Wie das Bundesgericht in BGE 83 I 247 unter Hinweis auf frühere Urteile ausgeführt hat, ist das Gewohnheitsrecht grundsätzlich auch auf dem Gebiete des öffentlichen Rechts als Rechtsquelle anzuerkennen. Dabei ist jedoch, wie dort und schon früher (BGE 73 I 345/6) hervorgehoben wurde, grosse Zurückhaltung geboten, was unter anderm bedeutet, dass and die Voraussetzungen für die Entstehung von Gewohnheitsrecht, d. h. an die Regelmässigkeit und lange Dauer der Uebung und an die ihr zugrunde liegende Rechtsüberzeugung, strenge Anforderungen zu stellen sind. Die Urteile, in denen das Bundesgericht das Bestehen eines Gewohnheitsrechts im öffentlichen Recht bejaht oder doch in Erwägung gezogen hat, betreffen indessen vorwiegend andere Tiele dieses Rechtsgebietes. Im Steuerrecht wurden gewohnheitsrechtliche Normen, soweit ersichtlich, nur in zwei Fällen anerkannt. Einmal hat die staatsrechtliche Kammer im (amtlich nicht publizierten, aber in MBVR 1 S. 470 ff. abgedruckten) Urteil vom 6. Februar 1901 i. S. AG. Hotel Thunerhof und Bellevue eine die Vorschrift eines kantonalen Steuergesetzes über die Bemessungsperiode abändernde, die Steuerpflichtigen aber nicht benachteiligende, mehr als 30jährige Praxis als gewohnheitsrechtlich gelten lassen, während in einem ähnlichen Falle (nicht veröffentl. Urteil vom 16. September 1948 i. S. Wild) eine erst 7jährige Praxis als ungenügend bezeichnet wurde; sodann hat die verwaltungsrechtliche Kammer in BGE 56 I 37 ff. eine durch die Praxis eingeführte Ausdehnung des Anspruchs auf Rückerstattung bezahlter Militärsteuerbeträge als gewohnheitsrechtlichen Bestandteil des Bundesrechtes anerkannt. Ob auch steuerrechtliche Pflichten des Bürgers durch Gewohnheitsrecht begründet und neue Steuern durch solches eingeführt werden können, was *Blumenstein* (Steuerrecht, S. 23/24 und System, S. 13) mit Nachdruck bestreitet, wurde noch nie entschieden und erscheint als zweifelhaft. Die Gründe, welche die Zulassung ergänzenden Gewohnheitsrechts auch im Gebiete des öffentlichen Rechts rechtfertigen, nämlich das Bestehen einer (echten) Lücke im Gesetz und das unabweisliche Bedürfnis nach einer Regelung (vgl. BGE 73 I 346; *Fleiner,* Institutionen S. 87), dürften, soweit der Bestand oder Umfang von Abgabepflichten in Frage steht, kaum je zutreffen und treffen jedenfalls vorliegend nicht zu, da die gesetzliche Ordnung, wie bereits in Erw. 3 ausgeführt wurde, keine Lücke enthält. Ob gleichwohl wenigstens ohne Willkür angenommen werden könnte, eine Abgabe wie die streitige Patentgebühr auf Warenverkaufsautomaten lasse sich auch durch Gewohnheitsrecht einführen, braucht nicht entschieden zu werden, da an die Bildung solchen Gewohnheitrechts besonders strenge Anforderungen zu stellen wären, die im vorliegenden Falle nicht erfüllt sind.

Der Betrieb von Warenverkaufsautomaten wurde im Kanton St. Gallen erstmals in der VV von 1903 patent- und gebührenpflichtig erklärt. Seither haben die Behörden die Erfüllung dieser Pflichten in ständiger Praxis verlangt und auch in allen Fällen durchgesetzt; eine einzige Beschwerde hat der Regierungsrat im Jahre 1927 abgewiesen (st. gall. Verwaltungspraxis, Bd. II, Nr. 701). Eine so lange Uebung dürfte, was die Dauer betrifft, für die Bildung von Gewohnheitsrecht selbst dann genügen, wenn wie hier die Begründung einer Abgabepflicht in Frage steht. Auch eine noch so gefestigte

und langjährige Uebung erzeugt jedoch nur Gewohnheitsrecht, wenn die Rechtsüberzeugnung hinzutritt; auf diese kommt es entscheidend an (BGE 83 I 248/49 und dort zitiertes Schrifttum; *Egger,* N. 28 zu Art. 1 ZGB).

Die Entstehung von Gewohnheitsrecht auf dem Gebiet des öffentlichen Rechts setzt voraus, dass nicht nur die rechtsanwendenden Behörden, sondern auch die vom angewandten Grundsatz Betroffenen davon überzeugt sind, dass dieser auch wirklich Recht ist (*Peters,* Lehrbuch der Verwaltung, S. 80). Für die Bildung von Gewohnheitsrecht, das eine Abgabepflicht begründen soll, kann das jedoch nicht genügen, sondern muss verlangt werden, dass die Rechtsüberzeugung bei der ganzen Rechtsgemeinschaft oder doch bie einem beträchtlichen Teil derselben besteht (vgl. *Forsthoff, Verwaltungsrecht,* 6. Auflage S. 132, wo für das Gewohnheitsrecht generell, nicht nur im Gebiete des Steuerrechts, eine ,,von der Allgemeinheit getragene Rechtsüberzeugung'' verlangt wird). Das ist im vorliegenden Falle nicht dargetan. Wie sich aus den mit der Beschwerdeantwort vorgelegten Aufstellungen des st. gallischen Patentamtes ergibt, gab es bis vor kurzem nur einige wenige Abgabepflichtige. So waren in den Jahren 1935-1951 in Durchschnitt zwar järhlich 77 Warenverkaufsautomaten der Patent- und Gebührenpflicht unterworfen, von denen jedoch 72 der Schweiz. Automatengesellschaft A.-G. in Bern und nur 5 vereinzelten andern Fimqen gehörten; erst seit 1952 d. h. in einem für die Bildung von Gewohnheitsrecht ausser Betracht fallenden Zeitraum, hat die Zahl dieser Firmen stark zugenommen, bis 1957 auf 200. Waren demnach noch während der 17-jährigen Periode von 1935-1951 nur 6 Firmen, darunter an erster Stelle eine nicht im Kanton St. Gallen niedergelassene Unternehmung, von der Abgabepflicht betroffen, so war, selbst wenn Art. 16, Abs. 2 VV von allen als verbindlich betrachtet wurde, diese Rechtsüberzeugung zu wenig verbreitet, um ein Gewohnheitsrecht zu begründen. Dafür, dass die erforderliche Rechtsüberzeugung in weiteren Kreisen bestanden hätte, fehlen genügende Anhaltspunkte, zumal da ein Entwurf für ein neues Warenhandelsgesetz, der die Abgabepflicht ausdrücklich vorsah, im Jahre 1938 von der Mehrheit der Stimmberechtigten verworfen worden ist. Der Umstand, dass die Vollzugsverordnungen des Regierungsrates jeweils in der Gesetzessammlung publiziert worden sind, vermag eine Rechtsüberzeugung der Allgemeinheit ebensowenig darzutun wie die Aufnahme der Patentgebühren in das jährlich dem Grossen Rat vorgelegte Staatsbudget.

5. Da der regierungsrätliche Entscheid, durch den die vom Beschwerdeführer bestrittenen Abgabepflicht bestätigt wurde, demnach mangels gesetzlicher Grundlage wegen Verletzung von Art. 4 BV aufzuheben ist, braucht nicht geprüft zu werden, ob die weiteren, vom Beschwerdeführer erhobenen Rügen begründet wären.

Staatsrechtliche Kammer des Bundesgerichts, 14. Mai 1958, i. S. K.

Source: *Archiv für Schweizerisches Abgaberecht,* Juli-August, 1959.

IV

REVIEWS — COMPTES RENDUS

AUSTRIA

DR. JOSEF ZAPLETAL: *Die neue Lohnsteuer,* einschliesslich der einkommensteuerrechtlichen Vorschriften über die Veranlagung von Arbeitnehmern. *X. Ergänzungslieferung*. Wirtschaftverlag Dr. Anton Orac, Graben 17, Wien I.

Ziel und Aufbau dieses Werkes wurden in der Besprechung in *Bulletin Bd. XI, S. 121* gewürdigt. Die *X. Ergänzungslieferung* enthält die Ergänzung der bisherigen Ausgabe durch inzwischen ergangene VwGH-Erkenntnisse, die Ergänzung des Stichwortverzeichnisses, das Abkommen zwischen der Republik Österreich und der Internationalen Atomenergie-Organisation über den Amtssitz der Internationalen Atomenergie-Organisation und einige Erlässe des Bundesministeriums für Finanzen.

BELGIUM

Le Guide Fiscal Permanent. Publié sous la direction de GASTON van den AVYLE Editions Vioburo, 7, Cantersteen, Bruxelles 1. Avec mises à jour mensuelles.

Dans «*Le Guide Fiscal Permanent*» sont traités les différents impôts et taxes levés par l'Etat belge. Pour faciliter la consultation de l'ouvrage des teintes de papier différentes ont été employées: blanc, commentaires, exposé général, décisions administratives et judiciaires courantes; vert, les lois coordonnées relatives aux impôts sur les revenus, le Code et le Réglement général sur les taxes assimilées au timbre, le Code des droits d'enregistrement, de greffe et d'hypothèque, le Code des droits de successions; jaune, les tables des taux et tarifs modifiés périodiquement; rose, tables alphabétiques des matières, barème des retenues fiscales à la source; bleu, plans analytiques et synthétiques. Afin de conserver à l'ouvrage tout son caractère d'actualité il est publié des mises à jour périodiques. Ces mises à jour sont en principe mensuelles. Les *supplements no: 206,* juillet-aout, *no. 207,* septembre, *no. 208* octobre ont paru.

Les Codes Larcier en cinq Tomes contenant toutes les dispositions législatives d'intérêt général et les lois spéciales les plus usuelles en vigueur en Belgique avec notes de concordance et de jurisprudence fondés par le Bâtonnier LEON HENNEBICQ et publiés sous la direction juridique de JOSEPH GUISSART et JULES CLOSON avec la collaboration de CHARLES GOOSSENS et PAUL SCHETTER. Edition 1959. *Tome IV: Droit Fiscal*. Maison Ferdinand Larcier S.A., 39 Rue des Minimes, Bruxelles 1, 1959, 243+LXXVI pp. Prix 425 Bfrs.

La nouvelle édition du *Code Larcier, Tome IV, Droit Fiscal* comprend toutes les dispositions législatives d'intérêt général et les lois fiscales en vigueur en Belgique, selon les textes publiés au «Moniteur Belge» jusqu'au 1er janvier 1959. Ce volume comprend les tables chronologique et alphabétique de toutes les matières contenues dans les 5 volumes des Codes Larcier. La matière est classée selon l'ordre alphabétique: Droits d'enregistrement, d'hypothèque et de greffe, Droits de succession, Droits de timbre, Impôts sur les revenus, Impôts spéciaux résultant de la guerre, Taxes assimilées au timbre, Taxes particulières. Comme par le passé, l'édition en cours sera régulièrement tenue à jour à l'aide de Compléments annuels, qui paraissent dans les deux

premiers mois de chaque année. Ces Compléments, qui sont toujours fusionnés avec ceux des années précédentes, permettent ainsi d'avoir en tout temps sous la main des Codes entièrement à jour.

VICTOR PAUWELS: *Le nouveau Code des Impôts sur les Revenus*. Les Editions Excelsior, Bvd. de Smet de Naeyerlaan 255, Bruxelles.

Les suppléments 1959 no. 2-3 ont paru contenant des modifications qui mettent à jour ce livre, un compte rendu duquel a été publié dans le *Bulletin Tome XII*, p. 33.

Jurisprudence Fiscale et Sociale. Documentation juridique et Fiscale A. van der Leest, 343, Avenue des Pagodes, Bruxelles II.

Les *suppléments* 1959 nos. 9-11 consistent de 59 fiches numerotées de 124 à 183.

Recueil des lois fiscales sous la surveillance de F. AMERIJCKX. Union Belge des Conseillers Fiscaux, Secrétariat: A. van der Leest, Avenue des Pagodes 343, Bruxelles.

In *"Bulletin" Vol. XII* p. 32 we published a review of this loose-leaf work on Belgian taxation and pointed out its merits. The 8th *supplement* of 1959 contains a number of new pages on Income tax and other taxes.

CANADA

Local Finance. No. 1, July, 1959. Canadian Tax Foundation, 154 University Avenue, Toronto 1.

This is the first number of a new series of reports issued by the *Canadian Tax Foundation* and dealing exclusively with local (as distinct from national and provincial) finance.

J. N. WOLFE: *Taxation and development in the Maritimes*. A study of possible routes to economic development for the maritime provinces. Canadian Tax Papers No. 16. Canadian Tax Foundation, 154 University Avenue, Toronto 1, 1959, 47 pp.

This study attempts to answer the fundamental question of the nature of the economic defeciences which retard the development of the Canadian Maritimes and examines the various possible solutions for overcoming those deficiences. The conclusion is that economic development in the Maritimes is capable of stimulation but that tax incentives would not be enough. Only a fully integrated large-scale development program under the auspices of government will provide the final answer.

EUROPE

The European Common Market and its meaning to the United States. A statement on National Policy by the Research and Policy Committee, Committee for Economic Development. McGraw-Hill Publishing Company Ltd., 95 Farringdon Street, London EC4, 1959, 152 pp.

The profound and far reaching effects of the European Common Market on the political unity and economic growth of Europe, and the importance of this step to American industry, are the subjects of this statement by the Committee for Economic Development. Many important aspects of the Common Market are discussed.

De belastingheffing in de Euromarktlanden. (Taxes in the European Common Market Countries.) Translated and edited by P. DEN BOER. Introduction

and annotations by J. VAN HOORN JR., Managing Director of the International Bureau for Fiscal Documentation at Amsterdam. Æ. E. Kluwer, Deventer, 1959, 152 pp.

Experts from each of the six European Common Market countries give in this booklet a survey of the tax system of their countries. This booklet gives a survey of the taxes levied in these countries and shows the differences and similarities existing in the 6 countries.

De Euromarkt in de praktijk. (The European market in practice). Edited by TH. C. HIJZEN a. o. *Supplements 16a-19a* N. Samson N.V. — Alphen aan den Rijn.

A review of this loose-leaf service on the Common market was published in *Bulletin vol. XII,* p. 168. The *supplements 16a-19a* have recently appeared.

European Economic Community, European Community for Atomic Energy and European Community for Coal and Steel. 3rd delivery. Æ. E. Kluwer, Deventer. Price f 8.72.

The 3rd delivery of this loose-leaf work, a review of which was published in *Bulletin vol. XII,* p. 269, contains new title pages and tabcards, a part of the commentary on the E.E.C.-treaty, introduction, text, annexes and protocol to the Euratom-treaty. The publisher plan to devote a separate section to each part of the treaty. In this way there will be 21 sections. Section II is to contain the measures concerning taxation matters.

The elimination of double taxation. 2nd report by the Fiscal Committee of the O.E.E.C. Published by the Organisation for European Economic Co-operation, 2 rue André-Pascal, Paris 16e, 1959, 51 pp.

In its first Report to the Council in May 1958 the Fiscal Committee submitted proposals to promote the abolition of double taxation between the Member countries. In the conclusions to this second Report, the Fiscal Committee submits to the Council certain concrete proposals concerning the implementation of the ten new articles which are designed to permit further progress in the abolition of double taxation between member countries. A large part of this report has been reproduced in "*Bulletin nr. 5* of this volume."

Company taxation in Western-Europe. Published by R. Mees en Zoonen, Rotterdam, in cooperation with the International Bureau of Fiscal Documentation, Amsterdam, 1959, 56 pp.

This booklet contains a survey of company taxation in the countries of the European Common Market and the United Kingdom. In the forword a discussion is given of the comparison of taxburdens. Apart from giving the essential points of company taxation an attempt has been made to illustrate the contents of the booklet with examples for special given cases. The figures resulting from those examples give an interesting indication as to the relative taxburden on companies in the respective countries.

However, they give only an indication, as the starting point for the example is a same amount of net-income after deduction of costs, depreciation, initial allowances, investment allowances (if any) etc. It will be clear that as those deductible items may vary considerably per country a same amount of gross-income of companies in the respective countries in most cases will result in totally different net-incomes. The ultimate taxburden is as much affected by the computation of taxable income as it is by the rates of tax.

FRANCE

PUBLICATIONS FRANCIS LEFEBVRE — 15 Rue Viète, PARIS — 17ème

1°) *Documentation pratique des impôts directs:* L'envoi de feuillets no 3 de Septembre 1959 contient notamment: la refonte partielle et la mise à jour de notre Série traitant de la *Surtaxe Progressive*. Elle contient également la mise à jour des Séries concernant les Dispositions Communes, le Contentieux des Impôts Directs et le *régime fiscal Algérien*. Elle donne, en outre, les derniers textes signés entre la France et le Danemark, le Luxembourg, la Sarre et la Suisse et un commentaire complet de la Nouvelle *Convention avec le Luxembourg*.

2°) *Documentation pratique des taxes sur le chiffre d'affaires*: L'envoi no 3 Septembre 1959, outre la mise à jour de quelques Séries, comprend essentiellement la refonte complète de la Série qui traite du *Champ d'Application des Taxes sur le Chiffre d'Affaires*.

3°) *Documentation pratique des contributions indirectes:* L'envoi de feuillets no 3 de Septembre 1959 comprend la mise à jour de la Série qui traite des *Contentieux* des Contributions Indirectes.

4°) *Documentation pratique de l'enregistrement et du timbre:* L'envoi de feuillets no 3 de Septembre 1959 met à jour la totalité de l'ouvrage.

5°) *Documentation pratique de securité sociale et de législation du travail:* L'envoi no 3 de Novembre 1959 comprend, en particulier, la refonte de la Législation sur le *chômage et* une étude *d'Assurance chômage* prévue par la Convention du 31 Décembre 1958.

Algeria

LOUIS BROËT: *Guide pratique des Impôts en Algérie. Mise à jour no. 24.* 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 24* containing a number of new pages has recently been published.

GERMANY

HÜBSCHMANN-HEPP-SPITALER: *Kommentar zur Reichsabgabenordnung*. 1.-3. Auflage. *Lieferung 31* (Okt. 1959). Verlag Dr. O. Schmidt. Köln.

Die Abgabenordnung ist das Grundgesetz des Steuerrechts. Ihre wichtigen Vorschriften gelten entweder für alle oder doch für einen grösseren oder kleineren Teil von Steuern.

Diese Lieferung enthält die Erläuterungen zu §§ 208-211 aus der Feder von Prof. Dr. SPITALER und Dr. FELIX. Die Überarbeitung des Abschnitts „Beitreibung", die vor allem durch die Neufassung des § 369 und das Gesetz über die Rechte an Luftfahrzeugen v. 26. 2. 59 notwendig geworden ist, stammt von Geheimrat HEPP, die Überarbeitung der Erläuterungen zu §§ 6 und 7 St AnpG von Prof. Dr. v. WALLIS und zu §§ 9 und 15 StAnpG von Staatsrat LADEMANN. Die 4. Auflage des Kommentars steht unmittelbar bevor.

Dr. HEINZ PAULICK: *Handbuch der stillen Gesellschaft*. Systematische Darstellung in handelsrechtlicher, steuerrechtlicher und betriebswirtschaftlicher Sicht. Verlag Dr. Otto Schmidt, Ulmenallee 96-98, Köln-Marienburg, 1959, 392 S.

Die zahlreichen, vor allem auf dem Gebiet des Steuerrechts kaum noch übersehbaren Entscheidungen, die die stille Gesellschaft betreffen, sind ein Beweis dafür dass diese Art der Beteiligung in der Wirtschaft sehr verbreitet ist. Dieses Buch des bereits mehrfach mit grossangelegten Monographien hervorgetretenen Autors bemüht sich um eine systematische Darstellung des

gesamten Rechts der stillen Gesellschaft und macht dabei die Zusammenschau des Gesellschafts- und Steuerrechts für die Fortentwicklung des Rechts fruchtbar. Auch betriebswirtschaftliche Fragen werden in den Bereich der Betrachtungen einbezogen. Dadurch, dass Schrifttum und Rechtsprechung nahezu erschöpfend verarbeitet, zahlreiche Entscheidungen auszugsweise wörtlich wiedergegeben, ein Vertragsmuster und ein ausführliches Sachregister angefügt sind, wird diese Arbeit zu einem Hand- und Nachschlagebuch über alle einschlägigen Fragen, das Wissenschaft und Praxis gleichermassen nützlich sein wird.

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 Gesetztext in einer kommentarähnlichen Form der Anordnung, besonders auch wegen des ausführlichen Register. Erschienen sind die *Lieferungen 92*, September 1959; *93*, Oktober 1959.

Hübschmann-Grabower-Beck-von Wallis: *Kommentar zum Umsatzsteuergesetz. Lieferung 13,* Sept. 1959. Verlag Dr. Otto Schmidt, Ulmenallee 96-98, Köln-Marienburg.

In diesem Werk werden nicht nur die gesetzlichen Vorschriften eingehend erläutert, sondern auch ein umfassendes wissenschaftlich fundiertes Bild des gesamten Umsatzsteuerrechts gegeben.

Diese *13. Lieferung* enthält außer den Änderungen des AusglStO im Textteil den zweiten Teil der Erläuterungen zu § 4 Ziff. 4 UmsStG von FinPräs. a. D. Beck und eine Kommentierung des § 17 UmsStG von OFinPräs. a. D. Prof. Dr. Dr. Grabower.

Die in die Tiefe gehenden Ausführungen Grabowers beruhen auf langjährigen Erfahrungen im RFM und sind das Ergebnis eingehender Forschungsarbeiten. Das hier erstmalig in diesem Umfang zusammengetragene und verarbeitete Material stellt, auch und gerade insoweit es auf den ersten Blick nur von historischem Wert zu sein scheint, einen der wesentlichsten Beiträge zum Problem der Steueraufsicht dar. Auch die einschlägigen AO-Vorschriften werden in die Erläuterungen einbezogen.

Dr. Edgar Lenski und Dr. Wilhelm Steinberg: *Kommentar zum Gewerbesteuergesetz. Lieferung 7,* Sept. 1959. Verlag Dr. Otto Schmidt, Köln. - Marienburg, Ulmenallee 96-98.

Dieses Loseblattwerk gibt in knapper Form eine möglichst umfassende Erörterung der bisher bekannt gewordenen Fragen des Gewerbesteuerrechts. Den Ausführungen sind Auszüge aus allen wichtigen Urteilen, die nicht nur für besondere Einzelfragen von Interesse sind, beigefügt.

In dieser *7. Lieferung* setzt MinRat Dr. Steinberg seine Erläuterungen zu § 2 fort.

Steuergesetze. Textsammlung mit Verweisungen und Sachverzeichnis. Loseblattausgabe. *6. Ergänzungslieferung* zur 14. Auflage. August 1959. 156 Seiten.

Gesamtwerk: *Steuergesetze.* 14. Auflage. Stand 15. August 1959. 1760 Seiten, davon 247 Seiten Steuertabellen. Verlag C. H. Beck, München und Berlin.

Mit dieser Lieferung werden bereits die lange erwarteten Anordnungen und Neubekanntmachungen der Lohnsteuer-Durchführungsverordnung v. 22.7.59 und der Körperschaft-Steuer-Durchführungsverordnung v. 5.8.59 den Beziehern der Samlung zur Verfügung gestellt. Auch die Durchführungsverordnung zum Sparprämiengesetz ist in der Lieferung enthalten.

JAKOB THEIS: *Praktischer Führer durch das Steuerrecht*. 7. Auflage. *Lieferung 26*. Sept. 1959. 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 26* bringt den gesamten Textteil auf den neuesten Stand. Eine Überarbeitung des Sachregisters wird in Kürze nachfolgen.

Schnellkartei des deutschen Rechts. Verlag Dr. Otto Schmidt, Ulmenallee 96-98. Köln.-Marienburg.

Die „Schnellkartei des deutschen Rechts" bringt die vollständigen amtlichen Texte einschliesslich der ergänzenden Bestimmungen, der Durchführungsverordnungen und der zugehörigen Nebengesetze. Die Texte sind in klarer, übersichtlicher Form angeordnet. Erschienen sind: *Lieferung 94*, Inhalt: Erlasse betr. Wiederaufnahme von Steuerstrafverfahren, Einkommensteuer-Richtlinien 1958, Körperschaftsteuer-Durchführungs-VO 1958, Neufassung des KVStG und WechsSTG; *Lieferung 95*, Inhalt: Erlass betr. Doppelbesteuerungsabkommen mit der Schweiz, Lohnsteuer-Richtlinien 1959, u.a.

RUDOLF THIEL: *Der neue Körperschaftsteuer-Tarif*. Erläuterungen zu § 19 KStG 1958. Heft 2 der Schriftenreihe Rechtsfragen der Handelsgesellschaften. Verlag Dr. Otto Schmidt, Ulmenallee 96-98, Köln-Marienburg, 1959, 60 S.

In dieser Neuerscheinung werden alle wichtigen Zweifelsfragen unter Berücksichtigung der neuen DVO, der Richtlinien und des Schrifttums eingehend erörtert. Dabei wird Wert darauf gelegt, nicht nur die rechtlichen Zusammenhänge aufzuzeigen, sondern auch das Ausmaß der sich ergebenden steuerlichen Belastungen darzustellen. In dieser Ausgestaltung wird der Kommentar den Unternehmern bei ihren Dispositionen und den Steuerfachleuten in Rechtsprechung, Verwaltung und vor allem auch in den beratenden Berufen wertvolle Dienste leisten und unschätzbare Fingerzeige geben.

CARL HERRMANN, Dr. FERHARD HEUER, Dr. ARNOLD HEINING und OTTO VON SCHILLING: *Kommentar zur Einkommensteuer einschl. Lohnsteuer und Körperschaftsteuer*. 7. Auflage. Verlag Dr. O. Schmidt, Ulmenallee 96-98, Köln-Marienburg.

Lieferung 41, August 1959. Diese Lieferung berücksichtigt weitere Änderungen durch das StÄndG v. 18. 7. 58, ua. in den Erläuterungen zu §§ 7 c, 10 b, 23, 33 a und 34 EStG. Die restlichen Änderungen, besonders zur Haushaltsbesteuerung und zur Lohnsteuer, werden in der nächsten Lieferung kommentiert.

Die dieser Lieferung beiliegenden Seiten des Urteilsregisters enthalten die Fundstellen der in den Lieferungen 39-41 zitierten Entscheidungen.

Wirtschaftslage, Haushaltgebarung und Steuersysteme in den Partnerstaaten der Europäischen Wirtschaftsgemeinschaft im Zeitpunkt der ersten EWG-Zollsenkung. Herausgegeben vom Bundesministerium der Finanzen. Wilhelm Stollfuss Verlag, Bonn, 1959, 348 S.

Mit der vorliegenden Arbeit beabsichtigt das Bundesministerium der Finanzen einen ersten Überblick über die finanzwirtschaftliche Lage in den

Mitgliedstaaten der EWG zu bieten, um auf diese Weise die Diskussion um die Fortentwicklung der Europäischen Wirtschaftsgemeinschaft zu erleichtern. Nach einem zusammenfassenden internationalen Überblick über Wirtschaft und Finanzen in den Partnerstaaten der EWG werden die nationalen Gegebenheiten auf den wichtigsten Teilgebieten der Finanz- und Steuersysteme dieser Staaten dargelegt.

JACQUES RUEFF: *Bericht über die Finanzlage Frankreichs*, erstattet dem Herrn Minister für Finanzen und Wirtschaft in Ausführung seiner Entschliessung vom 30. September 1958. Heft 59. Institut „Finanzen und Steuern", Markt 14, Bonn am Rhein, 1959, 91 S.

Der Bericht, mit dem das Institut die Reihe seiner Veröffentlichungen zu internationalen Finanz- und Steuerfragen fortsetzt, enthält die Überlegungen und Vorschläge der Kommission für die finanzielle und wirtschaftliche Gesundung Frankreichs an den Herrn Minister für Finanzen und Wirtschaft.

Das Studium dieses Berichts zeigt, daß es hier wie dort weitgehend die gleichen oder doch ähnlich gelagerten Probleme sind, vor die die öffentliche Hand und die private Wirtschaft beider Länder sich gestellt sehen.

Foreign Business Activities in Germany. An outline for United States and British Nationals and Companies. Compiled and presented by Kontinentale Treuhandgesellschaft m.b.H., Benratherstrasse 12, Düsseldorf, 1959, 43 pp.

This outline deals with the particular problems that face a citizen or company of the United States or the United Kingdom who whises to establish and carry on a business in Germany. The memorandum covers German law in force as of July 1959.

GREAT BRITAIN

H. SIMPSON COOK, J. ANDERSON HERMON and H. PEARSE: *Hire-purchase accounts and finance*. Gee and Dompany (Publishers) Ltd., 27-28 Basinghall Street, London EC2, 1959, 144 pp.

This work covers the whole field of hire-purchase, including law, accounting and finance. The chapters on law give a broad outline of the subject. The chapters on finance cover all the principal methods or raising money for hire purchase and discuss the technical aspects of each. In chapter X the effect of hire-purchase on liability to income tax and profits tax is considered.

Current Law Income Tax Acts Service. Sweet & Maxwell, 11, New Fetter Lane, London EC4.

Release 55, Sept. 30, 1959. This Release includes further digests of cases, an addition to the Extra-Statutory Concessions, the Post-War Credit (Income Tax) Regulations, 1959, and other minor amendments.

CHAS. H. TOLLEY & Co, 33 Nottingham Place, London, W. 1 has issued new editions of the following publications (publications department 15, High Street, Croydon, Surrey):

Tolley's Income Tax Chart-Manual 1959/60 (44th Edition)

This edition incorporates all the provisions of the Finance Act 1959, and all High Court decisions, changes in practice, concessions, etc. up to July 1959. The important new legislation affecting post war credits, investment allowances, "bond washing" etc. is fully covered, as also is the latest step tightening up the anti dividend stripping provisions etc. The whole work is indexed and cross referenced so as to give immediate reference on any subject to the latest law and practice in a condensed but wholly comprehensive form.

Tolley's Synopsis of Profits Tax (23rd Edition)

The increase in the allowances for directors' remuneration in the case of director-controlled companies is dealt with and, at the same time, the whole of the past legislation is explained in detail, with examples, together with numerous High Court decisions and existing concessions and practice.

Tolley's Synopsis of Estate Duty (10th Edition)

The provisions of this year's Act affecting life insurance policies "kept up" by a donor, and exclusion of donor from interest or benefit in a gift, are dealt with, and all concessions, changes in practice and High Court decisions up to July 1959 are included. The work constitutes a completely up to date reference on every aspect of Estate Duty, amply supported by quoted authority.

Tolley's Synopsis of Taxation in the Republic of Ireland

This is a complete summary of Irish taxation law and practice including comparative tables of rates, allowances and reliefs, and with particular reference (with examples) to Double Taxation Relief between the U.K. and the Republic as affecting both double residents and persons residing in one only of the two countries, but having income arising in the other. The differences between U.K. and Irish Law are emphasised, and the latest legislative and other changes, up to July 1959, are covered.

Tolley's Synopsis of Taxation in the Channel Islands and Isle of Man

For each of the Islands Jersey, Guernsey (including Alderney and Herm) and Isle of Man, a very full statement is given of the law and administration, rates of tax, allowances and reliefs, computation of assessable income from every source, etc. etc. The information is up to date with the changes brought about by the 1959 Budgets in each case.

Tolley's Tax Tables - 7/9d. Rate & Reduced Rate Relief etc.

These tables are unique in giving, in one total, the required amount for every *1d. from 1d. to £1* and *for every pound from £1 to £1,000*, thus obviating the nuisance of having to add together separate totals. There are six different tables covering tax at 7/9d. on any given sum, the grossed amount of any net sum, the full range £1 to £360 of reduced rate relief, and the gross amount of dividends subjected to foreign withholding tax. No other tables are so detailed and convenient.

ITALY

BENEDETTO COCIVERA: *Raccolta della circolari ed istruzioni ministeriali relative all'imposta di R.M. e complementare progressiva sul reddito*. Secondo fascicolo di aggiornamento (dal 1° gennaio al 31 dicembre 1958). Dott. A. Giuffrè, editore, Via Solferino 19, Milano, 1959, 114 pp.

In *Bulletin XIII* p. 112 a review was published of the main work of this author and its first supplement. Now the second supplement dealing with the year 1958 has been published. It is a book containing the ministerial circulars and instructions on the Italian schedular income tax and surtax in 1958. An alphabetical and a chronological index facilitate the use of the book.

NETHERLANDS

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. 147-153 of the supplements*, which keep these volumes up-to-date, has 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 46-48 to these loose-leaf volumes have been published.

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

11th Supplement, 1959.

Mr. J. C. DE WAARD, J. TIGGELMAN and R. M. SMITS: *Omzetbelasting* (Sales Tax). Fiscale handleiding voor de praktijk. 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* 36 has 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. *Supplements 26-29* have appeared.

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

Nos. 686-705 of the 18th 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 1959 nr. 2-3 have been received.

J. B. KLOOSTERMAN: *Overzicht van de wetgeving inzake de in-, uit- en doorvoer en de accijnzen in het algemeen*. 4th edition. *Supplement 1*. De Belastingwetgeving Serie I. & A. No. 12. J. Noorduijn en Zoon N.V. — Gorinchem — Netherlands.

P. KARMELK: *Inkomstenbelasting*. (Income Tax). 8th edition. *Supplement 11*, July 28th, 1959. De Belastingwetgeving Serie D.B. No. 2. J. Noorduijn en Zoon N.V. — Gorinchem — Netherlands.

G. LAEIJENDECKER; *Successiewet 1956*. (Death Duties Act 1956). 3rd edition. *Supplement* 2. De Belastingwetgeving Serie R. & D. No. 1 J. Noorduijn en Zoon N.V. — Gorinchem — Netherlands.

Prof. Dr. B. SCHENDSTOK: *Fiscale winstbegrippen in Nederland*. Æ. E. Kluwer, Deventer, 1959.

Diese Arbeit erscheint in Lieferungen. *Lieferung I* enthält neben einer Einführung, eine Uebersicht der Geschichte der steuerrechtlichen Gewinnbegriffe, sowie den Wortlaut der betreffenden Bestimmungen aus den verschiedenen — alten und neuen — Steuergesetzen (in Beilagen aufgenommen). Ein Buch in Lieferungen ist eine moderne Erscheinung. In vielen Ländern kommt es jetzt wiederholt vor; es sind gerade die wertvollsten Werke die in dieser Weise aufgebaut werden. Eventuelle Änderungen können da das Werk in Loseblattform ist einfach angebracht werden. Wir glauben dass das Werk ein Standardwerk werden wird, dass in keiner steuerrechtlich-orientierten Bibliothek fehlen darf.

C. P. TUK: *Omzetbelasting*. (Sales Tax). 6th edition. *Supplement 8,* September 12th, 1959. De Belastingwetgeving Serie I. & A. No. 11. J. Noorduijn en Zoon N.V. — Gorinchem — Netherlands.

P. KARMELK: *Bierwet 1917*. 3rd edition. *Supplement 6,* September 5th, 1959. De Belastingwetgeving Serie I. & A. No. 6. J. Noorduijn en Zoon N.V. — Gorinchem — Netherlands.

A. C. GORREN: *Zegelwet 1917*. (Stamp Duties Act). 2nd edition, Supplement 6, October 1st, 1959. De Belastingwetgeving Serie R. & D. No. 3. J. Noorduijn en Zoon N.V. — Gorinchem — Netherlands.

H. N. J. KUYER: *Levensverzekering en fiscus*. (Life assurance and taxation). Fiscale studieserie Nr. 12. Uitgeverij FED, Roemer Visscherstraat 29, Amsterdam, 1959, 169 pp.

The author of this booklet on life assurance and taxation gives at the side of the current opinions on these questions his own conceptions. A number of examples contributes to clarify the explanations. The main accent is laid on income tax, but the property tax and the succession duties are treated in a separate chapter. Some important resolutions have been included in the appendixes.

W. P. ERASMUS: *Invordering van's Rijks belasting*. (Beitreibung von Steuern.) Fiscale Studieserie Nr. 2 Uitgeverij FED. Roemer Visscherstraat 29, Amsterdam, 1959, 197 S.

Dieses Buch gibt eine Übersicht der wichtigsten juristischen und administrativen Bestimmungen über die Beitreibung von Steuerschulden. Der Autor gibt in seinem kurzen Kommentar eine Besprechung wobei auch der Rechtsprechung ein Platz eingeräumt worden ist. Die Jurisprudenz ist im Text eingearbeitet.

NORWAY

JACOB JAROY: *Skattelovsamling. Supplement Nr. 9*. Baugeidsgt. 16, Skien, Norway.

Supplement Nr. 10 of this loose-leaf work on the Norwegian tax system, a review of which appeared in *Bulletin Vol. XI*, p. 152. has been published. It consists of 66 pages text, and 5 tabcards.

SWEDEN

ERLAND GEYER: *How Swedish tax laws affect persons removing into or from Sweden or residing abroad*. Svenska Handelsbanken, Stockholm, 1959, 122 pp.

The size of the fourth edition of this useful booklet has been enlarged by 40 pages. The increase is mainly due to the section on International Double Taxation where the conventions concluded by Sweden with other countries are discussed. Other sections are on forms of taxation, liability to taxation and place of assessment in Sweden, specific questions, tax liability of diplomatic and consular officials, the tax collecting system, examples of assessment and liability to make income tax returns in different cases. Finally a table is included showing the double taxation conventions so far concluded.

SWITZERLAND

Dr. KURT AMONN: Der *Eigenverbrauch in der eidgenössischen Warenumsatzsteuer*. Abhandlungen zum schweizerischen Recht. Neue Folge, Heft 238. Verlag Stämpfli & Cie., Hallerstrasse 7, Bern, 1957, 109 S.

Die Warenumsatzsteuer ist in der Schweiz unter dem Druck der Finanznöte des zweiten Weltkrieges durch Vollmachtenbeschluss des Bundesrates eingeführt worden. Der Verfasser hat zum Gegenstand seiner Untersuchung den sog. Eigenverbrauch gewählt. Wie er im ersten Teil seiner Arbeit feststellt, handelt es sich dabei um einen subsidiären Ersatzsteuergegenstand. Die Untersuchung des Eigenverbrauchtatbestandes die der Verfasser im zweiten Teil vornimmt bildet umfangmässig und im wissenschaftlichen Gehalt den Hauptbestandteil der Arbeit. Der dritte Teil behandelt unter dem Titel „Die Berechnung der Eigenverbrauchsteuer" Steuerbemessungsgrundlagen und Steuermass.

UNION OF SOUTH AFRICA

A. S. SILKE: *The 1959 Income Tax Legislation*. Being a supplement to "Silke on South African Income Tax" and "The 1958 Income Tax Legislation". Juta & Co., P.O. Box 30, Cape Town, 1959, 44 pp. Distribution in Europe by Sweet & Maxwell, 11, New Fetter Lane, London, E.C. 4.

In this book the Income Tax Act, 1959, is discussed. This Act contains some important amendments to the Income Tax Act, particularly in regard to certain concessions to industrialists and the taxation of insurance companies and building societies.

The effect of this new legislation is fully discussed. Since the publication of *Silke on South African Income Tax* (review in *Bulletin Vol. XI*, p. 339) and *The 1958 Income Tax Legislation* (review published in *Bulletin Vol. XIII*, p. 54) there have been various court decisions and departmental rulings affecting the law, incidence and practice of income tax. The author, Lecturer in Taxation at the University of Cape Town and Co-editor of "The Taxpayer" considers the effect of these court decisions and departmental rulings, thereby ensuring that the main volume is up to date. Also the 1959 South West African Income Tax amendments and the Double Taxation agreement between the Union and South West Africa have been included in this useful book.

UNITED NATIONS

The International Flow of Private Capital 1956-1958. United Nations, Department of Economic and Social Affairs, 1959, 107 pp.

The General Assembly decided, on the suggestion of the Economic and Social Council in 1957, to put the study of the international flow of private capital on a triennial basis, save for interim reports in the intervening years. The present report is the first to be prepared on this new basis. It gives a survey of private foreign investments and assesses their changes during the last few years. Although centred on the period 1956-58, the report refers to earlier developments.

Economic Survey of Latin America 1957. Prepared by the secretariat of the Economic Commission for Latin America. United Nations, Department of Economic and Social Affairs, New York, 1959, 292 pp.

The present Survey is the eighth in the series of annual reports prepared by the secretariat of the Economic Commission for Latin America. In part one the external situation of the Latin American economy is discussed in terms of the world economy. Latin America's internal economic situation is outlined in Part Two of the Survey. Part III consists of a single chapter on the balance of payments in Latin America as a whole and in the individual countries of the region. Lastly, a special study on Latin America's trade in agricultural commodities has been included in the 1957 Survey.

V

EUROPE — LA CONFEDERATION FISCALE EUROPEENNE

Une Confédération des groupements de Conseils fiscaux des pays de la communauté économique européenne vient d'être fondée à Paris.

Cet organisme groupe uniquement les associations: les conseils et fiduciaires ne peuvent donc en faire partie qu'indirectement. En outre seules sont admises les associations nationales dont le niveau moral et intellectuel des membres est le plus élevé, c'est-à-dire qu'elles ne peuvent accepter que des membres ayant fait des études universitaires ou équivalentes.

La Confédération fiscale européenne a pour objet e.a.:

a) de défendre dans le sens le plus large les intérêts professionnels des conseils fiscaux des pays de la Communauté économique européenne, notamment par l'établissement de relations avec les autorités et organismes nationaux et internationaux en vue, éventuellement, de leur représentation au Comité économique et social institué par les articles 193 à 198 du Traité de Rome, ainsi que par des contacts et accords avec les représentants des autres professions libérales;

b) de rechercher l'unification des législations nationales régissant l'exercice de la profession en participant à l'élaboration des directives à intervenir selon l'article 57 du Traité de Rome;

c) d'étudier les législations fiscales nationales des pays de la Communauté économique européenne ainsi que les règles fiscales du Traité de Rome et d'échanger tous renseignements à ce sujet;

d) d'apporter aux autorités de la Communauté économique européenne le concours de leur expérience de praticiens sur toutes matières relatives à la fiscalité et à la profession, et d'intervenir auprès d'elles notamment à l'occasion des travaux de rapprochement des fiscalités nationales visés à l'article 100 du Traité de Rome.

Le conseil d'administration se compose de quatre membres par pays.

La présidence est occupée pendant les deux premières années par M. Caillez (France) et la vice-présidence par M. Tiberghien (Belgique). Pendant la seconde période biennale la présidence sera occupée par un Belge.

Après suivront, dans un ordre désormais immuable, l'Allemagne, l'Italie, les Pays-Bas et le Grand-Duché.

Source: *Bulletin de la Compagnie des Experts Comptables de Belgique*, Juillet, 1959.

RELIURES

Les lecteurs désirant avoir une reliure pour le Vol. XIII sont priés de bien vouloir adresser dès à présent leurs commandes au Bureau au plus tôt possible. On peut en même temps commander des reliures pour les volumes précédents.

Prix par reliure: **f 3.50**

GREAT BRITAIN - EXTRA-STATUTORY CONCESSIONS *)

in operation at 31st December 1957,
in addition to those published in the board's 100th report [1])

The concessions described below are of general application, but it must be borne in mind that in a particular case there may be special circumstances which will require to be taken into account in considering the application of the concession.

ESTATE DUTY

1. *Premium Savings Bonds held by persons who died domiciled in the Channel Islands, Isle of Man or Northern Ireland.*

Premium Savings Bonds held by persons domiciled in the Channel Islands, the Isle of Man or Northern Ireland are treated for estate duty purposes as property situated outside Great Britain.

2. *Probate fees paid in India and Pakistan.*

Under the double taxation agreements with India and Pakistan credit is due in appropriate circumstances in respect of the estate duty imposed under the Indian Estate Duty Act, 1953, and the estate duty imposed by the Central Government in Pakistan. By concession, credit is also allowed in respect of the Court fees paid in India and Pakistan for obtaining probate, letters of administration or a succession certificate.

ALTERATION OF EXISTING CONCESSION

ESTATE DUTY

Number on list in Board's 100th Report.

14. *Civilian deaths in Malaya, Korea and Kenya.*

This concession provided that the relief from estate duty formerly granted by wartime legislation (which expired in October 1950) to the estates of civilians dying from injuries caused by the operations of war is applied to the estates of civilians dying from injuries caused by the operations in Malaya, Korea and Kenya. The concession has been extended to deaths of a like nature occurring in Cyprus.

Source: *Inland Revenue*, March, 31, 1958.

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1) See Bulletin VIII, 1954, p. 210; IX, 1955, p. 56; X, 1956, p. 236.

*) Reproduced with the permission of the Comptroller of Her Brittanic Majesty's Stationary Office.

SUISSE

Circulaire de l'Administration fédérale des contributions, du 29 juin 1959, concernant l'imposition des sociétés suisses qui exercent leur activité commerciale principalement à l'étranger.

Dans notre circulaire no 5, du 23 décembre 1958, nous vous avons rappelé que, pour les sociétés à base de capitaux qui sont constituées en Suisse par des entreprises étrangères mais dont l'activité économique se déploie principalement à l'étranger, on ne peut établir de réglementations particulières qui seraient contraires aux dispositions de l'arrêté concernant l'impôt pour la défense nationale. Nous vous avons aussi invités à prendre contact avec notre division dans tous les cas où il y a des doutes sur l'existence d'un établissement stable à l'étranger ou sur l'étandue d'une déduction pour établissement stable.

Les enquêtes faites depuis lors ont révélé que la taxation des sociétés en question n'a pas toujours été opérée jusqu'ici selon les mèmes principes. Nous vous prions donc, afin que le droit régissant l'impôt pour la défense nationale soit uniformément appliqué, de bien vouloir observer les règles suivantes lors de la taxation de ces sociétés.

1. Application de l'art. 49 AIN

a. Pour les sociétés accordant des droits d'exploitation de licences et les entreprises similaires, qui ont pour but de mettre en valeur quelques droits que ce soit, tous les rendements provenant de Suise et de l'étranger doivent être compris dans le rendement net imposable. Il est exclu de traiter les recettes de ce genre comme des rendements de participations au sens de l'art. 59 AIN (voir ch. 3 ci-après). Les frais généraux découlant des obligations contractées par la société qui se charge de distribuer les droits d'exploitaiton ne peuvent être admis que si les obligations en question sont clairement établies et si les prestations versées ne sont pas manifestement excessives.

b. Les sociétés constituées pour rendre des services à une entreprise, qui s'occupent de surveiller du point de vue technique ou économique les affaires d'une entreprise à laquelle elles touchent de près ou d'accomplir d'autres tâches dans l'intérêt de cette entreprise, doivent ête imposées au moins sur le rendement net qu'une société indépendante retirerait, dans des circonstances analogues, des services ainsi rendus.

La meilleure méthode pour déterminer le rendement net imposable est de pendre pour base le total des prix de revient. Selon les circonstances on pourra aussi utiliser certains chiffres d'affaires, les dépenses pour les salaires et indemnités que touche le personnel, ou d'autres éléments appropriés. Si l'on part du montant des prix de revient, le rendement net imposable devrait s'élever à un dixième au moins de ce montant ou, si l'on part du total des salaires, à un sixième; en outre, il peut être justifié dans certains cas de fixer un minimum déterminé comme rendement net imposable. Au rendement net établi d'après les règles précédentes pour les prestations de services, on ajoutera les autres recettes de la société, par exemple celles qui proviennent de contrats de licence, de placements de capitaux, etc.

c. Aux sociétés qui déduisent des prestations en faveur d'actionnaires ou de personnes leur touchant de près, on demandera la preuve stricte que ces prestations sont conformes à l'usage commercial.

2. Application de l'art. 55 AIN

Les sociétés en question retirent fréquemment des bénéfices notables de leur activité commerciale à l'étranger. La réduction prévue à l'art. 55 AIN ne peut être accordée que pour les bénéfices qui sont obtenus par des établissements stables entretenus à l'étranger et qui sont imputables à ces établissements.

Les sociétés doivent établir, sur la base de données appropriées, l'existence d'un établissement stable à l'étranger au sens de l'art. 6 AIN et des conventions de double imposition que la Suisse aurait conclues avec les pays dont il s'agit. D'après le droit régissant l'impôt pour la défense nationale, sont considérées comme établissement stables les installations permanentes dans lesquelles s'exerce une partie notable de l'activité de la société suisse, en particulier le siège de la direction, les succursales, ateliers, comptoirs d'achat et de vente, ainsi que les représentations permanentes. Les représentations permanentes à l'étranger ont surtout le caractère d'établissement stable lorsqu'il s'agit d'agents ayant pouvoir pour conclure des affaires au nom et pour le compte de leur mandant suisse. Les représentants qui sont seulement des intermédiaires, sans pouvoir permettant de conclure des affaires, ne peuvent qu'exceptionnellement être reconnus comme constituant un établissement stable au sens de l'art. 6 AIN, savoii lorsqu'ils exercent leur activité exclusivement pour une seule entreprise, à laquelle ils sont liés par un engagement, ou lorsqu'ils disposent en permanenc d'un stock de livraison appartenant à l'entreprise représentée, au moyen duquel ils exécutent régulièrement les commandes des clients selon les instructions de leur mandant. En revanche les représentants indépendants (commissionnaires, courtiers, etc.), qui concluent leurs affaires en leur propre nom, bien que pour le compte de leur mandant, ne constituent pas un établissement stable, même s'ils disposent d'un stock de marchandises appartenant à la société suisse. En outre, les sociétés affiliées qui sont juridiquement indépendantes (sociétés mère, fille, soeur) ne sont pas à elles seules un établissement stable de l'entreprise suisse.

Si, lors du calcul de la déduction pour établissement stable d'après l'art. 55 AIN, on accorde un préciput au siège social en Suisse, ce préciput doit ordinairement, selon l'activité de surveillance du siège et l'influence de la direction centrale sur l'exploitation étrangère, être fixé à un taux variant de 10 à 30 pour cent du rendement net imposable. Les redevances de licences, les revenus de valeurs mobilières et les bénéfices en capitaux, s'ils ne sont pas manifestement imputables à un établissement stable à l'étranger, doivent être imposés en entier. La déduction pour établissement stable doit au surplus être calculée comme le prescrit l'art 55 AIN: l'Impôt déterminé sur le bénéfice de l'ensemble de l'entreprise est réduit de la part afférente aux exploitations étrangères, suivant le 1apport des éléments de l'exploitation à l'étranger aux éléments correspondants de l'exploitation totale. Il n'est pas admissible de réduire simplement le rendement net imposable et le capital imposable (déduction opérée sur les éléments euxmêmes).

3. Application de l'art. 59 AIN

Une série de sociétés suisses exerçant leur activité principalement à l'étranger possèdent des participations à des sociétés à base de capitaux ou coopératives étrangères. La réduction prévue à l'art. 59 AIN n'entre en ligne de compte, si les conditions légales sont remplies, que pour les recettes provenant de ces participations, mais non pour celles qui découlent de contrats de licence ou d'autres arrangements contractuels.

Vu les considérations qui précèdent, nous vous invitons à suivre désormais

pour toutes les taxations les règles contenues dans la présente circulaire. Nos inspecteurs se mettront en relation avec vous assez tôt que les cas particuliers puissent au besoin être discutés avant la notification définitive; en particulier, lors de la taxation des sociétés constituées pour rendre des services à une entreprise, ils veilleront à s'assurer la collaboration de la division des droits de timbre et de l'impôt anticipé de notre administration.

Pour chaque période, il faut examiner à nouveau si les conditions qui étaient déterminantes lors de la taxation précédente (existence d'établissements stables à l'étranger; ventilation des éléments entre la Suisse et l'étranger, etc.) subsistent comme auparavant. Il n'est pas admissible de donner l'assurance que la décision prise pour une période déterminée sera valable sans autre examen pour plusieurs périodes ou pour un temps indéterminé.

Vous voudrez bien donner connaissance de la présente circulaire aux sociétés en cause sous une forme appropriée et dans un délai utile.

Source: *Archiv für Schweizerisches Abgaberecht,* Juli—August, 1959.

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DEUTSCHLAND — REFORMVORSCHLÄGE DEUTSCHE UMSATZSTEUER

In Anbetracht der aus der Kumulation herrührenden Auswirkungen des derzeitigen Systems hat das Präsidium des BDI mehrfach — insbesondere in seinen Sitzungen vom 9. Juli und 2. Oktober 1958 — eine möglichst wettbewerbsneutrale Gestalt der Umsatzsteuer gefordert. Unter „Wettbewerbsneutralität" wird dabei verstanden, dass die relative Umsatzsteuerbelastung gleicher Güter stets gleich hoch sein soll, unabhängig davon, welchen Weg das einzelne Wirtschaftsgut nimmt, bis es in die Hand des Verbrauchers gelangt. Die Umsatzsteuer soll die Entscheidung des Unternehmers über die Wahl des Warenweges (ein- oder mehrstufige Produktion; Absatz über eigene Handelsorganisationen oder über selbständige Händler) nicht beeinflussen. Sie soll ausserdem keinen Anreiz zur Betriebskonzentration bieten und eine möglichst vollständige Ent- und Belastung beim grenzüberschreitenden Warenverkehr gewährleisten. Diese Ziele lassen sich entweder durch entsprechende Massnahmen im Rahmen des geltenden Umsatzsteuersystems oder aber durch den Übergang zu einem anderen Umsatzsteuersystem erreichen.

In letzter Zeit sind — insbesondere auch von Mitgliedern des Bundestages — zahlreiche Vorschläge zur Reform der Umsatzsteuer gemacht worden. Wir haben eingehend geprüft, inwieweit sie unseren Forderungen entsprechen und sind zu folgendem Ergebnis gelangt: ZIEROLD-PRITSCH schlägt in enger Anlehnung an die französische Mehrwertsteuer den Übergang zu einer nicht kumulativen allphasigen Umsatzsteuer mit Vorsteuerabzug vor, wobei jedoch bestimmte Beträge nicht unter den Vorsteuerabzug fallen sollen. Dadurch wird nicht nur die praktische Anwendung dieses Systems erheblich erschwert, wenn nicht gar unmöglich gemacht, sondern auch eine gewisse — bei dem hohen Steuersatz unter Umständen sehr beachtliche — Kumulation mit allen daraus sich ergebenden Auswirkungen verursacht. Die an sich einem solchen System innewohnende Wettbewerbsneutralität wird also beeinträchtigt.

Der Vorschlag des Bundestagsabgeordneten BECKER geht dahin, das geltende System durch eine Steuer abzulösen, deren Bemessungsgrundlage die Lohnsumme, die Abschreibungen und der Bodenwert sein sollen. Bei diesem Vorschlag wird das System der Besteuerung des Umsatzes verlassen. Eine Möglichkeit, diese Steuer als Kostenbestandteil genau zu kalkulieren und dadurch auf den Abnehmer abzuwälzen, besteht nicht. Sie gestattet nicht, beim grenzüberschreitenden Verkehr in zufriedenstellender und international nicht angreifbaren Weise das Verfahren der Ent- und Belastung aufrechtzuerhalten. Vor allem wird aber auch die angestrebte Wettbewerbsneutralität nicht erreicht, weil gleiche Waren durch diese Steuerung gleich belastet werden; die Höhe der Warenbelastung ist von den jeweiligen innerbetrieblichen Verhältnissen, insbesondere von der Höhe des Gewinns, abhängig. Die Besteuerung der Abschreibungen wirkt kumulativ. Im übrigen liesse diese Steuer sich ohne eine Änderung des Grundgesetzes nicht verwirklichen. Der Bundestagsabgeordnete NEUBURGER will das geltende Umsatzsteuersystem beibehalten, den Steuersatz auf 2 % senken und dafür die Abzugsfähigkeit der Umsatzsteuer bei den Ertragsteuern beseitigen. Dieser Vorschlag geht von der unrichtigen Vorstellung aus, die Umsatzsteuer werde grundsätzlich vom Unternehmer nicht nur gezahlt, sondern auch getragen. Wir glauben demgegenüber

an dem Grundsatz festhalten zu sollen, dass die Überwälzung die vorausgesetzte Funktion einer jeden Umsatzsteuer ist. Wir halten es nicht für vertretbar, diese als Kostenbestandteil in die Preise einzuberechnende Steuer anders zu behandeln als alle übrigen Kostenbestandteile. Der Bundestagsabgeordnete BUCERIUS möchte den Umsatzsteuersatz nach der Umsatzhöhe staffeln. Unternehmer mit geringen Umsätzen sollen einen Freibetrag erhalten, Wir sind der Meinung, dass eine Differenzierung des Steuersatzes nach der Umsatzhöhe abwegig und mit dem System der Umsatzbesteuerung unvereinbar ist. Der Vorschlag geht von der u. E. irrigen Vorstellung aus, dass man die steuerliche Leistungsfähigkeit des Zensiten an der Höhe des Umsatzes messen könne. Er übersieht, dass die Umsatzhöhe in erster Linie von dem Wert der umgesetzten Ware bestimmt wird. Die angestrebte Wettbewerbsneutralität erreicht dieser Vorschlag nicht. Im Gegenteil werden die Mängel des jetzigen Systems durch die Differenzierung des Steuersatzes noch verstärkt. Eine Reihe von Einzelmassnahmen — darunter auch eine Abstufung des Steuersatzes nach der Umsatzhöhe — im Rahmen des derzeitigen Umsatzsteuersystems sieht der Vorschlag des Bundestagsabgeordneten WIENINGER vor. Wir sind der Meinung, dass auch dieser Vorschlag die angestrebte Wettbewerbsneutralität nicht erreicht. Insbesondere halten wir die Staffelung des Steuersatzes nach der Umsatzhöhe nicht für vertretbar, da wir der Auffassung sind, dass für den Gesichtspunkt der steuerlichen Leistungsfähigkeit des Zensiten in einem Umsatzsteuergesetz kein Raum ist. DISSMANN schlägt den Übergang zu einer einphasigen Einzelhandelssteuer vor, die ausser den Umsätzen im Einzelhandel auch die Umsätze von Investitionsgütern treffen soll. Wir haben gegen die Erhebung der Umsatzsteuer allein auf der Einzelhandelsstufe erhebliche Bedenken allgemeinwirtschaftlicher Art, obwohl bei rein theoretischer Betrachtungsweise dieses System in idealer Weise eine Wettbewerbsneutralität gewährleisten würde. Nicht zuletzt auch im Interesse der Sicherung des Steueraufkommens vermögen wir uns deshalb mit diesem Vorschlag nicht zu befreunden. Der Bundestagsabgeordnete ECKHARDT will bei grundsätzlicher Beibehaltung des derzeitigen Systems den Umsatzsteuersatz halbieren und den dadurch entstehenden Steuerausfall durch die Einführung einer Grossistensteuer decken, die sich eng an das Schweizer Vorbild anlehnen soll. Eine Verbindung zweier verschiedener Steuersysteme, wie sie der Vorschlag vorsieht, würden wir allenfalls für eine Übergangszeit gutheissen können. Auf die Dauer gesehen, würde das Nebeneinanderbestehen zweier Systeme aber zu erheblichen Schwierigkeiten für Wirtschaft und Verwaltung führen. Darüber hinaus sind wir der Meinung, dass die reine Form der einphasigen Grossistensteuer zu Schwierigkeiten in ihrer praktischen Anwendung führen muss. Das gilt insbesondere im Hinblick auf die Notwendigkeit einer Differenzierung des Steuersatzes nach Warenwegen. Ausserdem ergeben sich wirtschaftlich unerwünschte Auswirkungen, weil die Differenzierung dazu anreizen könnte, nicht den wirtschaftlich vernünftigen, sondern den steuerlich günstigeren Warenweg zu wählen. Auf Bedenken stösst auch die vorgesehene Erfassung der Investitionsgüterlieferungen mit der Grossistensteuer. Insbesondere die dadurch bedingte Besteuerung des sogenannten Selbstgebrauchs hätte eine erhebliche Komplizierung zur Folge. In der derzeit vorliegenden Form dürfte der Vorschlag nicht geeignet sein, das Ziel der Wettbewerbsneutralität zu erreichen. Zusammenfassend ist festzustellen, dass keiner dieser Vorschläge unseren Vorstellungen entspricht. Einige von ihnen bergen sogar nicht zu unterschätzende Gefahren für die Wirtschaft in sich. Das gilt insbesondere von allen Entwürfen, die von der Besteuerung des Umsatzes abgehen oder die Steuersätze nach der Umsatzhöhe staffeln wollen. Wir sind daher zu der Erkenntnis gelangt, dass von allen zur Erörterung gestellten Umsatzsteuersystemen nur die einphasige Einzelhandelssteuer oder die all- oder mehrphasige Mehrwertsteuer eine vollständige Wettbewerbsneutralität gewährleisten

können. Für die mehrphasige Mehrwertsteuer gilt das aber nur dann, wenn sie bis zum Einzelhandel einschliesslich durchgeführt wird. Da eine einphasige Einzelhandelssteuer nicht ernsthaft als Ersatz des derzeitigen Umsatzsteuersystems in Betracht gezogen werden kann, bleibt von den anderen Formen nur die Mehrwertsteuer als Reformmöglichkeit übrig. Folgerichtige Durchführung vorausgesetzt, hat die Mehrwertsteuer beachtliche Vorzüge aufzuweisen. Bei diesem System bringt die Ausschaltung von Wirtschaftsstufen oder die Zusammenfassung mehrerer Stufen, gleich in welcher Form, keinerlei steuerlichen Vorteil. Ein rein steuerlicher Einfluss auf die Wettbewerbsverhältnisse zwischen einstufigen und mehrstufigen Unternehmen wird vermieden (Konzentrations- und Konkurrenzneutralität). Die Technik dieser Steuerform gewährleistet die Übereinstimmung von gesetzlichem Steuersatz und tatsächlicher Last (dies gilt allerdings für das Verfahren des Vorumsatzabzugs nur mit gewissen Einschränkungen). Es ist daher auch möglich — jedenfalls im Grundsatz — die genaue Belastung aller Waren mit Umsatzsteuer auf allen Stufen der Erzeugung und Verteilung festzustellen. Dies wiederum erleichtert beim grenzüberschreitenden Warenverkehr die Entlastung der Waren bei der Ausfuhr und die Belastung eingeführter Waren. Das Vorsteuerabzugsverfahren lässt sogar eine vollständige Ent- und Belastung zu, wenn es folgerichtig angewendet wird. Darüber hinaus würden durch die Mehrwertsteuer eine Reihe schwieriger Fragen des jetzigen Systems gegenstandslos werden, wie zum Beispiel die der Organschaft und der Zusatzbesteuerung, der Grosshandelsvergünstigungen und des damit zusammenhängenden Problems der Be- und Verarbeitungen, des Vergütungs- und Ausgleichsverfahrens beim grenzüberschreitenden Verkehr und ähnliches.

Für drei verschiedene Formen der Mehrwertsteuer hat der BDI vollständige Gesetzentwürfe mit Durchführungsbestimmungen und Begründungen sowie Formularen für eine Umsatzsteuer-Voranmeldung und Erklärung ausgearbeitet und von ausgewählten Industrieunternehmen auf ihre praktische Anwendbarkeit hin überprüfen lassen. Es handelt sich um folgende Entwürfe:

1. Allphasige Mehrwertsteuer mit Vorumsatzabzug (Arbeitsmaterial zur Umsatzsteuerreform, Heft 1);
2. allphasige Mehrwertsteuer mit Vorsteuerabzug (Arbeitsmaterial zur Umsatzsteuerreform, Heft 2);
3. mehrphasige Mehrwertsteuer mit Vorsteuerabzug, sogenanntes Zweiphasensystem (Arbeitsmaterial zur Umsatzsteuerreform, Heft 3).

Die Untersuchungen haben ergeben, dass die Einführung der Mehrwertsteuer im allgemeinen bei den Unternehmen — insbesondere bei Mittel- und Kleinbetrieben, die nicht über ein ausgebautes Rechnungswesen verfügen — eine verwaltungsmässige Mehrarbeit verursachen wird, über deren Umfang eine einheitliche Aussage nicht möglich ist. Sie dürfte sich jedoch in vertretbaren Grenzen halten. Bei manchen Unternehmen kann die Mehrwertsteuer auch zu einer arbeitsmässigen Entlastung führen. Sie haben weiter ergeben, dass das mit der Mehrwertsteuer verfolgte Ziel der Wettbewerbsneutralität nur dann erreichbar ist, wenn diese Steuer auch die Einzelhandelsstufe umfasst und grundsätzlich alle steuerbelasteten Vorumsätze oder alle Vorsteuerbeträge zum Abzug zulässt. Die Herausnahme bestimmter mit Mehrwertsteuer belasteter Vorumsätze und bestimmter Vorsteuerbeträge aus der Abzugsfähigkeit würde die Erreichung dieses Zieles verhindern und darüber hinaus die praktische Anwendung der Mehrwertsteuer erheblich erschweren. Die gelegentlich geäusserte Meinung, die Mehrwertsteuer lasse sich nicht genau kalkulieren, ist nicht bestätigt worden. Es hat sich vielmehr gezeigt, dass in kalkulationsmässiger Hinsicht keine Erschwerung gegenüber dem derzeitigen Zustand eintritt. Allerdings setzt die Mehrwertsteuer eine Kalkulation nach dem sogenannten Nettowert-Verfahren voraus, das heisst, es darf nur mit Beträgen ohne Mehrwertsteuer kalkuliert werden. Da die Mehrwert-

steuer auf den Eingangsrechnungen ohnehin für Zwecke der Ermittlung der eigenen Steuerschuld des Unternehmens gesondert erfasst werden muss, bedeutet die Anwendung des Nettowert-Verfahrens keine zusätzliche Arbeit. Von den drei verschiedenen Mehrwertsteuersystemen führt — wie die Untersuchungen gezeigt haben — dasjenige mit Vorumsatzabzug bei einer Differenzierung des Steuersatzes und bei Abzugsfähigkeit gewisser steuerfreier Vorumsätze zu Schwierigkeiten in der praktischen Anwendung, die kaum lösbar erscheinen. Die theoretischen Vorzüge dieses Systems werden durch diese praktischen Schwierigkeiten in Frage gestellt. Das System mit Vorsteuerabzug lässt sich dagegen ohne wesentliche Schwierigkeiten in der Praxis durchführen. Bei der gesetzgeberischen Ausgestaltung eines derartigen Systems wären allerdings noch einige Fragen, wie zum Beispiel das Problem der Nachholwirkung, zu lösen. Die geringsten Schwierigkeiten hinsichtlich der Durchführbarkeit im industriellen Bereich bereitet die mehrphasige Mehrwertsteuer mit Vorsteuerabzug (Zweiphasensystem).

In der Frage, ob das geltende System beibehalten oder durch ein anderes System ersetzt werden sollte, sind die Meinungen geteilt. Es lassen sich beachtliche Gründe für die Beibehaltung des geltenden Systems, aber auch ebenso beachtliche Gründe für einen Systemwechsel vorbringen. Auf jeden Fall sollte man bei der Entscheidung dieser Frage der Entwicklung in der EWG und den hieraus an die Gestaltung der Umsatzsteuer gestellten Anforderungen gerecht werden. Entschliesst man sich für eine Beibehaltung des geltenden Systems, dann müsste man — wie die Anhörung einer Anzahl von Wirtschaftsgruppen durch das Bundesfinanzministerium gezeigt hat — in gewissen Bereichen Ausgleichsmassnahmen treffen. Wenn solche Massnahmen auch nicht eine vollständige Wettbewerbsneutralität herstellen können, so bieten sie doch die Möglichkeit zu einer wettbewerbsneutraleren Gestaltung der kumulativen Umsatzsteuer. Die dann noch verbleibenden wettbewerbsverzerrenden Einflüsse dürften im allgemeinen so geringfügig sein, dass sie hingenommen werden können. Die Zweckmässigkeit und Notwendigkeit derartiger Massnahmen lässt sich jedoch nicht zentral, sondern immer nur aus der Sicht des einzelnen Wirtschaftszweiges beurteilen. Es ist deshalb auch nicht möglich, eine Empfehlung zu geben, in welchen Wirtschaftsbereichen und in welcher Form Ausgleichsmassnahmen getroffen werden sollen. Grundsätzlich ist aber zu fordern, dass sie nicht zu höheren Steuereinnahmen führen dürfen; ein etwaiges Umsatzsteuermehraufkommen ist für Umsatzsteuerentlastungen zu verwenden.

Die Aussprache zwischen dem Bundesfinanzministerium und den einzelnen Wirtschaftsgruppen hat auch gezeigt, dass die gesetzestechnische Gestaltung dieser Ausgleichsmassnahmen in manchen Fällen nicht einfach sein wird und voraussichtlich zu einer erheblichen Unübersichtlichkeit des Umsatzsteuersystems führen dürfte. Ausserdem ist damit zu rechnen, dass im Laufe der Zeit die gesetzlichen Vorschriften den inzwischen eingetretenen wirtschaftlichen Veränderungen mehrfach angepasst werden müssen. Unter diesen Umständen liegt die Frage nahe, ob nicht ein Systemwechsel vorzuziehen wäre. Entscheidet man sich hierfür, so dürfte unseres Erachtens lediglich ein Mehrwertsteuersystem in Betracht kommen, wobei einer mehrphasigen Mehrwertsteuer mit Vorsteuerabzug (Zweiphasensystem) oder einer allphasigen Mehrwertsteuer mit Vorsteuerabzug der Vorzug zu geben wäre.

Sowohl bei der Einführung von Ausgleichsmassnahmen im Rahmen des geltenden Systems als auch beim Übergang zu einem anderen Umsatzsteuersystem wäre noch zu prüfen, welche Veränderungen des Preisstandes, welche Verschiebungen in der Höhe der Steuerzahlungen der Unternehmen und in der Höhe der Steuerbelastung der einzelnen Waren und welche Auswirkungen auf das Steueraufkommen daraus zu erwarten sind.

Source: *Jahresbericht Bundesverband der Deutschen Industrie*, 1. Mai 1958 — 30. September 1959.

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