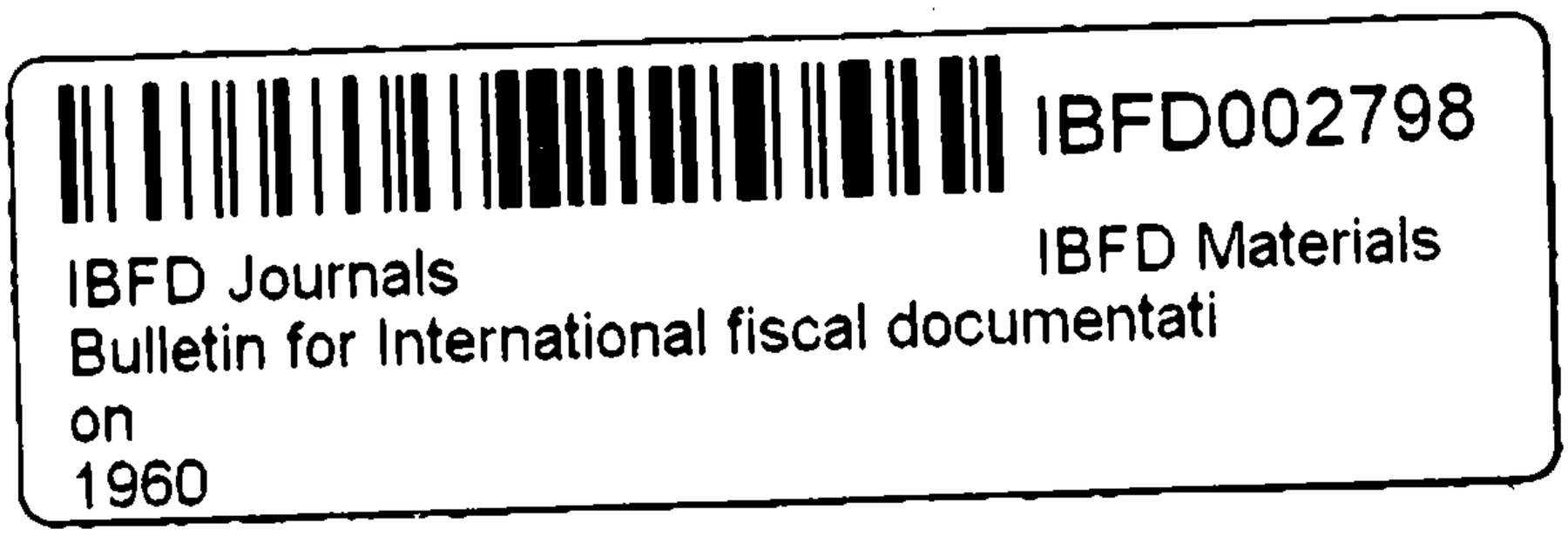

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The INTERNATIONAL BUREAU OF FISCAL DOCUMENTATION was founded in 1939. For reasons of organizing character this Bureau is established as a separate foundation according to Netherlands law. The Bureau is a scientific, independent, non-profit making,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

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

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

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

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

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

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

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b) en fournissant des informations;
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e) en recourant à tous les autres moyens dont on peut disposer.

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a) organizing Congresses;
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I

LES NOUVEAUX TARIFS D'ENREGISTREMENT EN ALGERIE

par

Me Emile BROCHIER, Alger.

Un décret du 13 Juin 1959, homologuant la décision No. 59.005 du Délégué Général du Gouvernement portant fixation des voies et moyens applicables au Budget et au Plan d'investissement de l'Algérie pour 1959 a été inséré au Recueil des Actes Administratifs du 15 Juin 1959. C'est en quelque sorte la Loi de Finances Algérienne pour cet exercice.

Il ne sera traité aujourd'hui dans cette étude que du Titre II en ce qu'il concerne les allègements fiscaux en matière d'enregistrement. Ces nouvelles mesures, réclamées depuis longtemps, ne sont en fait qu'un alignement de certains taux sur les droits d'enregistrement appliqués dans le tarif métropolitain en vertu des Ordonnances no. 1372 et 1374 des 29 et 30 Décembre 1958 (J.O. du 31.12.58). Il était en effet anormal que pour certains actes et opérations, l'Algérie soit plus imposée que la Métropole.

Toutefois, comme l'application de ces textes a produit certaines confusions de la part d'Entreprises intéressées, et même de certaines publications, l'objectif principal de cet article est d'informer exactement les lecteurs sur la véritable portée de ces modifications.

Pour faciliter leur compréhension, il sera utilisé l'ordre numérique des articles du Code Fiscal Algérien de l'Enregistrement, avec, lorsqu'il sera nécessaire, mise en regard du texte ancien et du texte nouveau ou explications y afférentes.

Les articles du Code modifiés par le Décret du 13 juin 1959 sont les articles 275 bis, 355 bis, 379, 413, 443 Quater, 445, 451, 805 bis.

L'article 544 appliquant aux élections aux Chambres d'Agriculture les articles 554 et 572 dudit Code, exemptant d'enregistrement certaines décisions du Conseil de Préfecture en matière d'élections, a été abrogé.

Article 275 bis.

Il a été ajouté à l'article 275 ,un 275 bis ainsi conçu: «Les dispositions des articles 273 et 274 (relatifs à l'obligation de production d'un certificat d'acquit des droits de mutation par décès pour le transfert de rentes sur l'Etat ou de titres nominatifs) ne sont pas applicables lorsque les opérations de transfert, de mutation, de conversion au porteur ou de remboursement peuvent être effectuées dans les conditions prévues par le Décret no. 56.1595 du 7 Décembre 1955 et le Décret no. 56.747 du 25 Juillet 1956.»

Article 355 Bis.

Cet article prévoit l'enregistrement au droit fixe actuellement de 780 francs de divers actes y énumérés. Le décret ajoute à cette liste «les cessions de brevets».

A ce sujet, il est bon de préciser que le droit fixe est applicable à « tous les actes qui ne se trouvent tarifés par aucun article du Code de l'Enregistrement, et qui ne peuvent donner lieu au droit proportionnel ou au droit progressif».

Article 379.

Cet article dispense du droit proportionnel de 1 pour cent les actes constatant une subrogation conventionnelle effectuée en application de l'article 1250 du Code Civil.

En conséquence, ces actes se trouvent dans la catégorie de ceux dispensés de la formalité d'enregistrement par application du Décret du 29 avril 1949.

Article 413-2°-

Ce paragraphe exempte de l'impôt de mutation par décès les successions de militaires qui, soit sont sous les drapeaux, soit après renvoi dans leurs foyers, seront morts dans les trois ans à compter de la cessation des hostilités, de blessures reçues ou de maladies contractées pendant la guerre.

Il est précisé désormais que cette exemption ne profite «qu'aux parts nettes recueillies par les ascendants, les descendants, le conjoint survivant ainsi que par ses frères et soeurs ou leurs descendants, à l'exclusion des autres successibles.

Article 445.

Il a été ajouté à l'article 445, un article 445 sexiès ainsi conçu: . . . «Le droit établi par l'article 445 ter (lequel était de 7,20 pour cent) est réduit à 2.40 pour cent les actes visés aux articles 445 (fusion de Sociétés) et 445 quater (division ou scission de sociétés)».

«Il est ramené à 1,20 pour cent pour ceux de ces actes qui seront enregistrés avant le ler janvier 1961».

Ces tarifs réduits ne s'appliquent qu'aux opérations de Fusions ou de Division de Sociétés ou de Scission de Sociétés telles que prévues par les articles 445 et 445 quater ci-après reproduits:

Article 445 — «Les actes de fusion de Sociétés anonymes, en commandite par actions ou à responsabilité limitée sont dispensés du droit de transcription établi par l'article 444, que la fusion ait lieu par voie d'absorption ou au moyen de la création d'une société nouvelle».

«En outre, la prise en charge par la société absorbante ou par la société nouvelle de tout ou partie du passif des sociétés anciennes ne donne ouverture qu'au droit fixe édicté par l'article 355 bis.. La formalité de la transcription à la Conservation des Hypothèques ne donne pas lieu à la perception de la taxe prévue à l'article 728».

«Le bénéfice des dispositions qui précèdent est subordonné à la condition que la société absorbante ou nouvelle soit de nationalité française».

Article 445 quater — «Est soumise au régime fiscal des Fusions de Sociétés, l'opération par laquelle une Société anonyme, en commandite par actions ou à responsabilité limitée apporte l'intégralité de son actif à deux ou plusieurs sociétés constituées à cette fin sous l'une de ces formes à condition que:

1° Les sociétés bénéficiaires des apports soient toutes de nationalité française au sens de l'article 445;

2° Les apports résultent de conventions prenant effet à la même date pour les différentes sociétés qui en sont bénéficiaires et entraînent dès leur réalisation la dissolution immédiate de la société apporteuse».

Il faut bien remarquer que ces droits réduits de 2,40 pour cent et de 1.20 pour cent ne sont applicables qu'aux actes et opérations de

fusions, division ou scission de sociétés et que notamment le droit proportionnel des augmentations de capital par incorporation de réserves ou capitalisation de bénéfices des Sociétés est toujours de 7.20 pour cent.

Toutefois une exception a été faite pour les augmentations de capital des sociétés à capital variable dans un *article 443 Quater* ainsi conçu: «En ce qui concerne les augmentations de capital des sociétés à capital variable, le droit proportionnel établi par l'article 443 (c'est-à-dire aujourd'hui à 1,20 pour cent) n'est liquidé que sur la fraction du capital social qui à la clôture d'un exercice social, excède le capital précédemment taxé; il est perçu sur le procès-verbal de l'assemblée générale des associés statuant sur les résultats dudit exercice».

Article 451 Septiès.

Cet article soumet à un droit de 4,20 pour cent les acquisitions immobilières effectuées en vue de la création d'une activité nouvelle agréée au Plan d'Industrialisation de l'Algérie, à la condition:

1° Que l'acquisition soit au préalable agréée par Décision de Délégué Général du Gouvernement;

2° Que l'acte constatant l'acquisition soit agréée avant le 1er janvier 1964.

Article 805 bis.

Sont exemptés de la taxe additionnelle de 6 pour cent, dite taxe départementale, les acquisitions ci-dessus visés à l'article 451 Septiès.

Il a été ainsi passé en revue et commenté brièvement toutes les modifications apportées à la Fiscalité Algérienne de l'Enregistrement avec leurs modalités d'application.

Dès que la réforme fiscale à l'étude aura été votée et adoptée en Métropole et que les modalités d'application à l'Algérie auront été fixées, ce bref exposé sera complété par une étude d'ensemble de toute la fiscalité algérienne en matière d'enregistrement avec tableaux de présentation.

II

SURVEYS OF TAX LEGISLATION
APERÇUS DE LEGISLATION FISCALE

AUSTRIA

Published in the period from November 1st until December 31st, 1959

Impôts sur les revenus

Bundesgesetz vom 18. Dezember 1959, mit dem das Einkommensteuergesetz 1953, BGBl. Nr. 1/1954, ergänzt wird. BGBl. 31.12.1959.

Bundesgesetz vom 18. Dezember 1959 mit dem das Gewerbesteuergesetz 1953 abgeändert wird (Gewerbesteueränderungsgesetz 1959) BGBl. 31.12.'59.

Impôt sur le chiffre d'affaires

Bundesgesetz vom 18. Dezember 1959, mit dem das Umsatzsteuergesetz 1959 abgeändert wird. BGBl. 31.12.1959.

Matières diverses

Verordnung des Bundesministeriums für soziale Verwaltung vom 11. Dezember 1959, womit die österreichische Arzneitaxe 1956, BGBl. Nr. 251/1955, neuerlich abgeändert wird (16. Änderung der Arzneitaxe). BGBl. 23.12.1959.

Bundesgesetz vom 18. Dezember 1959, mit dem das Grundsteuereinhebungsgesetz abgeändert wird. BGBl. 30.12.1959.

BELGIUM

Published in the period from November 1st until December 31st, 1959

Généralités

Loi de finances du 25 décembre 1959 pour l'exercice 1960 et postposant la clôture des opérations d'établissement des impôts directs pour l'exercice 1959. Mon. Belge 31.12.1959.

Impôts sur les revenus

Arrêté royal du 14 octobre 1959 modifiant, en ce qui concerne les minima de bénéfices imposables à la taxe professionnelle dans le chef des formes étrangères opérant en Belgique, l'arrêté royal du 22 septembre 1937 d'exécution des lois coordonnées relatives aux impôts sur les revenus. Mon. Belge 3.11.1959.

Arrêté royal du 3 novembre 1959 portant exécution de la loi du 15 juillet 1959 tendant à favoriser l'absorption ou la fusion de sociétés et l'apport de branches d'activité. Mon. Belge 12.11.1959.

Arrêté royal du 12 novembre 1959 modifiant le barême de taxe professionnelle annexé à l'arrêté royal du 22 septembre 1937, d'exécution des lois coordonnées relatives aux impôts sur les revenus. Mon. Belge 19.12.1959.

Arrêté royal du 25 novembre 1959 relatif à l'octroi de la garantie de l'Etat et d'exemptions fiscales à un emprunt de 20 millions de dollars contracté par le Congo Belge. Mon. Belge 27.11.1959.

Droits de douane

Arrêté royal du 25 décembre 1959 relatif au tarif des droits d'entrée. Mon. Belge 31.12.1959.

Taxes assimilées au timbre

Arrêté royal du 31 octobre 1959 modifiant le Règlement général sur les taxes assimilées au timbre. Mon. Belge 3.11.1959.

Arrêté royal du 26 novembre 1959 modifiant le Règlement général sur les taxes assimilées au timbre. Mon. Belge 30.11.1959.

Arrêté royal du 24 décembre 1959 modifiant le Code des taxes assimilées aux timbres. Mon. Belge 31.12.1959.

Droits d'accise

Arrêté royal du 26 novembre 1959 concernant le régime d'accise des benzols et des produits analogues. Mon. Belge 30.11.1959.

Arrêté ministériel du 27 novembre 1959 réglant l'exécution de l'arrêté royal du 26 novembre 1959, relatif au régime d'accise des huiles minérales. Mon. Belge 30.11.1959.

Arrêté ministériel du 27 novembre 1959 réglant l'exécution de l'arrêté royal du 26 novembre 1959 concernant le régime d'accise des benzols et de sproduits analogues. Mon. Belge 30.11.1959.

Arrêté ministériel du 7 décembre 1959 modifiant le règlement établi par l'arrêté ministériel du 22 janvier 1948 pour la perception du droit d'accise sur les tabacs fabriqués. Mon. Belge 9.12.1959.

FRANCE

Published in the period from November 1st until December 31st, 1959.

Généralités

Décret no. 59-1297 du 6 novembre 1959 portant incorporation dans le code général des impôts de divers textes modifiant et complétant certaines dispositions de ce code. J.O. 17.11.1959.

Arrêté du 6 novembre 1959 portant incorporation dans l'annexe IV au code général des impôts des divers textes modifiant et complétant cette annexe. J.O. 17.11.1959.

Loi de finances pour 1960 (no. 59-1454 du 26 décembre 1959) J.O. 26.12.'59, et rectificatif J.O. 30.12.1959.

Loi no. 59-1472 du 28 décembre 1959 portant réforme du contentieux fiscal et divers aménagements fiscaux. J.O. 28.12.1959.

Arrêté du 29 décembre 1959 modifiant, en ce qui concerne les appareils automatiques, les modalités d'application de l'impôt sur les spectacles prévu à l'article 1959 du code général des impôts. J.O. 30.12.1959.

Impôts sur le revenu

Arrêté du 27 novembre 1959 modifiant l'arrêté du 28 mai 1959 complétant, à titre temporaire, la liste des matériels pouvant bénéficier des dispositions de l'article 39 septiès du code général des impôts. J.O. 29.11.1959.

Droits de douane

Décret no. 59-1250 du 31 octobre 1959 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 Bb du tarif des droits de douane d'importation). J.O. 1.11.1959.

Décret 59-1258 du 4 novembre 1959 portant suspension provisoire de la perception des droits de douane applicables à certains produits. J.O.5.11. 1959.

Décret no. 59-1299 du 17 novembre 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. 18.11.1959. et rectificatif J.O. 19.11.1959.

Arrêté du 30 novembre 1959 fixant les conditions d'application de la détaxe sur les carburants consommés en mer par les marins-pêcheurs de la Réunion. J.O. 2.12.1959.

Décret no. 59-1376 du 8 décembre 1959 fixant le régime douanier applicable à l'entrée dans le territoire douanier français aux produits des Nouvelles-Hébrides récoltés ou fabriqués par des établissements commerciaux ou agricoles possédés ou exploités par des Français ou par des sociétés civiles ou commerciales françaises. J.O. 9.12.1959.

Loi no. 59-1452 du 23 décembre 1959 portant ratification du décret no. 59-417 du 13 mars 1959 rétablissant la perception des droits de douane d'importation applicables aux oranges. J.O. 25.12.1959.

Loi no. 59-1453 du 23 décembre 1959 portant ratification du décret no. 59-374 du 6 mars 1959 rétablissant partiellement la perception du droit de douane d'importation sur le cacao en fèves et brisures de fèves. J.O. 25.12.'59.

Loi no. 59-1474 du 28 décembre 1959 portant ratification du décret no. 59-402 du 11 mars 1959 réduisant provisoirement la perception du droit de douane d'importation applicable à l'acide alginique, ses sels et ses esters, à l'état sec. J.O. 28.12.1959.

Loi no. 50-1475 du 28 décembre 1959 ratificant le décret no. 59-357 du 2 mars 1959 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. 28.12.'59.

Loi no. 59-1476 du 28 décembre 1959 portant ratification du décret no. 59-356 du 2 mars 1959 suspendant provisoirement la perception des droits de douane d'importation sur certaines huiles essentielles. J.O. 28.12.1959.

Décret no. 59-1494 du 28 décembre 1959 portant réduction provisoire, quant à la perception, du droit de douane d'importation applicable à l'acide alginique, ses sels et esters, à l'état sec. J.O. 29.12.1959.

Décret no. 59-1495 du 28 décembre 1959 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 de ricin brutes et épurées. J.O. 29.12.1959.

Décret no. 59-1496 du 28 décembre 1959 portant suspension provisoire de la perception des droits de douane applicables aux pilotes automatiques pour la navigation aérienne repris sous la rubrique Ex no. 90.28 Cc du tarif des droits de douane d'importation. J.O. 29.12.1959.

Décret no. 59-1497 du 28 décembre 1959 portant réduction provisoire, quant à la perception, du droit de douane d'importation applicable en régime de droit commun, en tarif minimum, à certaines ébauches en rouleaux pour tôles. J.O. 29.12.1959.

GERMANY

Published in the period from November 1st until December 31st, 1959.

International

Bekanntmachung vom 11.11.1959 der Neufassung des Abkommens vom 15. Juli 1931 zwischen dem Deutschen Reiche und der Schweizerischen Eidgenossenschaft zur Vermeidung der Doppelbesteuerung auf dem Gebiete der direkten Steuern und der Erbschaftsteuern. BGBl II no. 46 vom 25.11.1959.

Gesetz vom 26.11.1959 zum Abkommen vom 23. August 1958 zwischen der Bundesrepublik Deutschland und dem Groszherzogtum Luxemburg zur Vermeidung der Doppelbesteuerungen und über gegenseitige Amts- und Rechtshilfe auf dem Gebiete der Steuern vom Einkommen und vom Vermögen

sowie der Gewerbesteuern und der Grundsteuern. BGBl II no. 48 vom 1.12.1959.

Gesetz vom 26.11.1959 zum Abkommen vom 18. November 1958 zwischen der Bundesrepublik Deutschland und dem Königreich Norwegen zur Vermeidung der Doppelbesteuerung und über gegenseitige Amts- und Rechtshilfe auf dem Gebiete der Steuern vom Einkommen und vom Vermögen sowie der Gewerbesteuer. BGBl II no. 48 vom 1.12.1959.

Income Taxes

Verordnung vom 18.12.1959 zur Änderung und Ergänzung der Verordnung über den Lohnsteuer-Jahresausgleich. BGBl I no. 53 vom 24.12.1959.

Neufassung der Verordnung über den Lohnsteuer-Jahresausgleich. BGBl I no. 53 vom 24.12.1959.

Dritte Verordnung vom 22.12.1959 über die Verlängerung der Geltungsdauer der Verordnung über die Mitwirkung des Bundes bei der Verwaltung der Einkommensteuer und der Körperschaftsteuer. BGBl I no. 54 vom 29.12.1959.

Turnover taxes

Elfte Verordnung vom 10.11.1959 über Änderung der Ausgleichsteuerordnung. BGBl I no. 45 vom 14.11.1959. BGBl I no. 45 vom 14.11.1959.

Gesetz vom 17.11.1959 über eine Gemeindeeinfuhrsteuer auf der Insel Helgoland. BGBl I no. 46 vom 19.11.1959.

Zwölfte Verordnung vom 16.12.1959 über Änderung der Ausgleichsteuerordnung BGBl I no. 52 vom 22.12.1959.

Customs

Einundzwanzigste Verordnung vom 14.10.1959 über Zolltarifänderungen zur Durchführung des Gemeinsamen Marktes der Europäischen Gemeinschaft für Kohle und Stahl. BGBl II no. 43 vom 21.10.1959.

Siebente Verordnung vom 20.11.1959 zur Änderung des deutschen Zollratifs 1959 (Kartoffeln) BGBl II no. 46 vom 25.11.1959.

Achte Verordnung vom 20.11.1959 zur Änderung des deutschen Zolltarifs 1959 (Germaniumabfälle usw.) BGBl II no. 46 vom 25.11.1959.

Zwanzigste Verordnung vom 20.11.1959 über Zolltarifänderungen zur Durchführung des Gemeinsamen Marktes der Europäischen Gemeinschaft für Kohle und Stahl. BGBl II no. 46 vom 25.11.1959.

Neunte Verordnung vom 25.11.1959 zur Änderung des deutschen Zolltarifs 1959 (Butter). BGBl II no. 47 vom 28.11.1959.

Vierte Verordnung vom 8.12.1959 zur Änderung der Erläuterungen zum deutschen Zolltarif 1959. BGBl II. no. 51 vom 12.12.1959.

Zehnte Verordnung vom 16.12.1959 zur Änderung des deutschen Zolltarifs 1959 (Vorprodukte zur Herstellung von Hormonen usw.) BGBl II vom 24.12.1959.

Elfte Verordnung vom 16.12.1959 zur Änderung des deutschen Zolltarifs 1959 (Zolltarifvereinbarungen mit der Schweiz usw.) BGBl II no. 53 vom 24.12.1959.

LUXEMBURG

Published in the period from November 1st until December 31st, 1959

Généralités

Arrêté ministériel du 21 décembre 1959 concernant la perception du supplément de retard en matière d'impôts. Mém. no. 59 du 24.12.1959.

International

Loi du 28 décembre 1959 portant approbation du Protocole entre la Belgique, le Luxembourg et les Pays-Bas pour l'établissement d'un nouveau tarif d'entrée signé à Bruxelles le 25 juillet 1958, ainsi que du Protocole additionnel, signé à Bruxelles le 22 décembre 1958. Mém. no. 60 du 28.12.1959.

Impôts sur les revenus

Arrêté grand-ducal du 30 octobre 1959, déterminant les modalités d'exécution du décompte annuel des retenues d'impôt sur les salaires, prévu par l'article 5 de la 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 . no. 51 du 13.11.1959.

Arrêté ministériel du 19 novembre 1959 portant fixation de la valeur moyenne des rémunérations en nature au point de vue de l'application de la loi du 17 décembre 1925 sur les assurances sociales et en matiére de retenue d'impôt sur les salaires Mem. no. 55 du 4.12.1959.

Droits de douane

Convention sur la nomenclature pour la classification des marchandises dans les tarifs douaniers. Mém. no. 60 du 28.12.1959.

Droits d'accise

Arrêté ministériel du 28 novembre 1959, relatif au régime d'accise des huiles minérales. Mém. No. 54 du 30 .11.1959.

Arrêté ministériel du 28 novembre 1959, concernant le régime d'accise des benzols et des produits analogues. Mém. no. 54 du 30.11.1959.

Arrêté ministériel du 10 décembre 1959 modifiant le règlement établi par l'arrêté ministériel du 25 fevrier 1948 pour la perception du droit d'accise sur les tabacs fabriqués. Mem. no. 58 du 15.12.1959.

NETHERLANDS

Published in the period from November 1st until December 31st, 1959.

Income tax

Law of 5.11.1959, approving the Ministerial decree of 7.1.1959, no. B 8/5780 (Stcrt. 1959 no. 7), which modifies the decree temporizing the accelerated depreciation. Stb. 425 of 27.11.1959.

Decree of 28.12.1959 modifying some regulations on wage tax and income tax. Stcrt. 29.12.1959.

Stamp duty

Royal decree of 26.10.1959 modifying the Royal Decree of 15.12.1917, in respect of exemption from stamp duties. Stb. 375 of 6.11.1959.

Customs of Excise

Law of 2.12.1959, continuing the suspension of customs duties connected with the execution of the Treaty on the European Coal and Steel Community. Stb. 465 of 2.12.1959.

Royal Decree of 4.12.1959, modifying the Decree on the excise duty on wine and other fermented beverages. Stb. 454 of 4.12.1959.

Law of 5.12.1959, approving the suspension of customs duties in connection with the European Common Market Treaty. Stb. 431 of 4.12.1959.

MISCELLANEOUS — FAITS DIVERS

COSTA RICA

Industrial protection and development

Costa Rica will grant substantial exemptions from import duties on materials imported by new or established industries, under its new Law of Industrial Protection and Development, effective September 9. The law includes exemptions from or reductions in various taxes, such as those on real estate, income, and capital and calls for the establishment of a protective impost when deemed necessary on behalf of domestic producers.

The benefits granted *new* industries include 99 percent exemptions from customs duties on imports of construction materials for factory buildings, annexes, and housing for workers; motors, machinery, tools, equipment, accessories; and laboratory instruments. Similar exemptions are granted for importation of some kinds of fuels and lubricants; raw material; semi-manufactured products and packaging materials.

Other benefits for new industries are: a 5-year exemption from land taxes, 100 percent exemption from fiscal taxes on invested capital and on taxable income during the first half and 50 percent during the second half of the exemption period granted to the industry, and exemption from export taxes on articles produced by the plant.

The exemptions granted *established* industries are less far reaching. They will not be granted i.a. exemptions from land taxes and fiscal taxes on invested capital and income. For purposes of the law "*new*" industries are defined as those which propose to manufacture or assemble commodities not produced in the country or, if produced, supply less than 10 percent of national consumption. The exemptions provided for will be granted for a minimum of 5 years, and may not exceed 10 years for established industries.

To provide for adequate protection to industries, the Government when deemed necessary may establish a tax, equivalent to three times applicable duties, on imports of foreign merchandise similar to that produced in the country. Source: *Foreign Commerce Weekly,* November 2, 1959.

FRANCE

Amortissements accélérés de biens d'équipement

Un arrêté ministériel du 28 mai 1959 a étendu, à titre provisoire, à certains matériels expressément désignés le bénéfice de la déduction de 10% du prix de revient prévue, pour la détermination des bénéfices imposables, par l'article 39 septiès du C.G.I. Il limitait l'application de la mesure aux matériels fabriqués sur le territoire métropolitain.

Un arrêté du 27 novembre 1959 modifie sur ce point l'arrêté du 28 mai 1959 en supprimant cette condition. Les matériels de fabrication étrangère peuvent donc bénéficier de la déduction de 10% au même titre que les matériels de fabrication française sous réserve d'entrer dans l'une des catégories de matériels énumérées par l'arrêté du 28 mai 1959 et de remplir les autres conditions fixées par ledit arrêté.

Source: *Bulletin d'information, Impôts et Sociétés,* 7 décembre 1959.

GERMANY

Zuführung von ausländischem Betriebskapital.

Im Gesetz zur Änderung verkehrsteuerrechtlicher Vorschriften vom 25.5.1959 (BGBl. 1959 I S. 261) sind inländische Niederlassungen ausländischer Kapitalgesellschaften in der Rechtsform einer deutschen Kapitalgesellschaft gesellschaftsteuerlich den anderen deutschen Kapitalgesellschaften gleichgestellt worden (§ 2 Nr. 6 KVStG.).

Die Erhebung der Gesellschaftsteuer bildet in den Fällen des § 2 Nr. 5 KVStG. 1955 eine Härte, in denen auf Grund der erläuterten Vorschrift nach Inkrafttreten des Gesetzes zur Änderung verkehrsteuerreshtlicher Vorschriften eine Gesellschaftsteuer nicht mehr entstehen würde. Aus allgemeinen Billigkeitsgründen ist deshalb nach § 131 der Reichsabgabenordnung insoweit in allen noch nicht rechtskräftig abgeschlossenen Fällen die Steuer nicht zu erheben oder zu erlassen.

Source: *Aussenwirtschaftsdienst des Betriebs-Beraters*, 30. Oktober 1959.

ISRAEL

Encouragement of investment

Further to our survey in *Bulletin, Vol. XIII*, p. 203 and 281, we inform our readers that we have received from the Israeli State Revenue Office, Economic Research Department, the complete text of the "Encouragement of Capital Investments Law, 1959" (English translation). According to this text important exemptions will be given, viz.: A corporation owning an approved enterprise is exempt from the 25-percent income tax for five years from the first year in which it has a taxable profit. During that period it pays only the company profits tax at a flat rate of 28 per cent (section 47 (a)).

A person receiving dividends out of such income shall be exempt from any additional tax thereon (section 47 (b)), also for a period of five years.

Individuals or corporations receiving chargeable income from an approved investment will pay a maximum tax rate of 25 percent of such income (section 46), again for a 5-years' period.

An individual, having become a resident of Israel, who receives an income from abroad, will be exempt from Israeli income tax thereon for the first 7 years (section 52).

Depreciation rates will be doubled for approved enterprises for the first 5 years. A variety of exemptions will be granted in the field of customs and excise, purchase tax, property tax and estate duty.

JAMAICA

Encouragement of investment

By law No. 41 of 1959 an amendment has been made to the 1954 Income Tax Law to encourage the investment of foreign capital in Jamaica. The changes are as follows: Nonresidents who have invested in Jamaica now are permitted to be taxed on the interest earned on their investments in the same year in which it was earned, rather than, as heretofore, in the following year. The effect will be to advance by 1 year the income tax credits permitted in the avoidance of double taxation by other countries, including the United States. In general—but with exceptions and qualifications— for 1959 and subsequent years the income taxes on qualified basic industries will be computed on the basis of a 20-percent "investment" allowance on additional capital expenditures, instead of on the previous "initial" allowance permitted by parts I and II of the schedule of the Income Tax Law 1954. Industries affected are specified in the appendix of the law and fall generally in the fields of manufacturing, construction, electricity and steam production, warehousing and cold storage, and dock operation.

Business concerns which already have obtained relief from income tax under the Pioneer Industries (Encouragement) Law, the Saint Andrew Mines (Encouragement) Law, and the Export Industry Encouragement Law may not take advantage of this change.

Source: *Foreign Commerce Weekly,* October 19, 1959.

MOZAMBIQUE

Tax Relief

The Legislative Council of Mozambique is reported to have approved a Bill exempting from taxation new industries established in the Territory. Mining and manufacturing industries with capital from 5 m. to 20 m. escudos will enjoy exemption for six years; those capitalized at from 20 m. to 50 m. escudos will be exempt for eight years; and those whose capital exceeds 50 m. escudos for ten years.

Source: *Bank of London and South America, Fortnightly Review,* November 21, 1959.

NEW ZEALAND

Non-resident traders - Japan

The taxation of non-resident traders who are residents of Japan has been suspended from 1 April 1959.

This is the usual position when negotiations are commenced towards a Double Taxation Agreement. Suspension merely means that income derived after 1 April 1959 will not be assessed. Returns by the New Zealand agents as agent of the non-resident principal are still required and in the event of the abandoning of negotiations the tax — for which there is still a legal liability — will be assessed and demanded.

Source: *New Zealand Current Taxation,* November 1959.

SWEDEN

Sales tax

The steady rise in the budget deficit in recent years resulted in the Government being induced to propose a 4 percent sales tax on practically all articles. The proposal was approved by the Riksdag on 1st December 1959 and the tax comes into force on 1st January, 1960.

The new tax is applicable to both consumer goods and capital goods with the exception of fuels, raw materials, ships and aeroplanes. No sales tax will be levied on rents and such services as travel, entertainment and doctors' and solicitors' fees.

The tax will be in the form of a retail tax, i.e. it will be collected as goods are passed on to the final consumer. To mitigate the effect of the new tax direct taxes on lower income groups will be reduced and children's allowances and old-age pensions increased.

Source: *Svenska Handelsbanken Index* 1959 no. 9

TAX AGREEMENTS

France — Austria

Une convention franco-autrichienne a été signée le 8 octobre 1959 à Vienne, en vue d'éviter les doubles impositions et d'organiser l'assistance administrative réciproque en matière d'impôts sur le revenu, sur la fortune et sur les successions. Lorsque cette convention entrera en vigueur, ses dispositions se substitueront à celles de la convention franco-allemande du 9 novembre 1934, que avait été déclarée provisoirement applicable dans les rapports entre la France et l'Autriche. Source: *Droit Fiscal,* 4 décembre 1959.

Germany

Further to our survey in *Bulletin Vol. XIII* (1959) p. 200 we can give the following supplement.

1. *Egypt.* The double taxation agreement has been signed on 17.11.59.
2. *Ceylon.* The negotiations have come to an end. The agreement will be signed in the near future.
3. *Denmark.* The negotiations have come to an end.
4. *France.* A new agreement was signed on 21.6.59.

Source: *Aussenwirtschaftsdienst des Betriebs-Beraters*, 30 November 1959.

Union of South Africa — Portugal

An Agreement between these countries for the avoidance of double taxation in respect of income derived from the business of sea and air transport came into force on 10th April 1959, and shall have effect as respects all income derived on or after 1st July, 1951. Source: *The Taxpayer*, October 1959.

Union of South Africa — South West Africa

This Agreement for the avoidance of double taxation and the prevention of fiscal evasion in respect of taxes on income came into force in both countries on 29th May 1959. It shall have effect in respect of assessments for the year of assessment ended on 30th June, 1955, and subsequent years.

Source: *The Taxpayer*, October 1959.

U.S.A.-India

A treaty between the United States and India for the avoidance of double taxation with respect to taxes on income was signed on October 11, 1959. It will be brought into force by the exchange of instruments of ratification and will be effective in the United States for taxable years beginning on or after January 1 of the year in which such exchange takes place and in India for "previous years" beginning on or after January 1 of the year in which the exchange takes place. An important feature of the treaty, not found in other such treaties in force, is a provision under which the United States will allow a credit against United States tax on income derived by American enterprises from operations in India even though India has granted an exemption from tax, while 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.

Source: *Prentice-Hall, Federal Tax Treaties Report*, November 27, 1959.

U.S.A. — Norway

A supplementary treaty in respect of withholding tax on dividends has come into force on January 1, 1960. The Treaty provides for a withholding rate of 15 percent on dividends paid by a corporation of one country to recipients in the other country. This reduced rate, however, will not apply to a recipient of dividends engaged in business through a permanent establishment in the country from which the dividends are paid. With certain qualifying limitations, the withholding tax shall not exceed 5 percent on dividends paid by a corporation in one country to a corporation in the other.

Source: *Prentice-Hall, Federal Tax Treaties Report*, November 27, 1959.

III

FRANCE — ENTREPRISES FRANÇAISES POSSEDANT DES FILIALES A L'ETRANGER OU CONTROLANT DES ENTREPRISES SITUEES A L'ETRANGER

Impôt sur les sociétés. — Détermination du bénéfice imposable. Entreprises françaises possédant des filiales à l'étranger ou contrôlant des entreprises situées à l'étranger. Réintégration des bénéfices indirectement transférés à l'étranger. Tolérance administrative.

Quand une entreprise française contrôle une entreprise étrangère ou se trouve placée sous la dépendance de celle-ci, ou encore lorsque des entreprises les unes françaises, les autres étrangères, sont simultanément placées sous le contrôle d'une même entreprise ou d'un même groupe, l'article 57 du Code général des Impôts prescrit de réintégrer éventuellement dans les bénéfices imposables des entreprises françaises les profits qui auraient été indirectement transférés aux entreprises étrangeres, soit par voie de majoration ou de diminuation des prix d'achat ou de vente, soit par tout autre moyen. Les Servic : locaux des Contributions directes sont invités à faire preuve de modération dans l'application de cette règle, lorsqu'il s'agit de l'imposition d'entreprises françaises titulaires de la carte d'exportateur; en particulier, aucune réintégration ne doit être exigée lorsque les entreprises de l'espèce sont en mesure d'établir que les ventes consenties à leurs filiales étrangères à des prix voisins des prix de revient répondent, non au souci d'effectuer des transferts frauduleux de bénéfices, mais à des nécessités commerciales (V.J.C.P. 59, éd. CI, no. 65671).

Source: *Juris Classeur Périodique,* No. 42, 15 Octobre 1959.

SCHWEIZ — WEHRSTEUER

Einkommen natürlicher Personen. — Gratisaktien als steuerbares Einkommen (Art. 21, Abs. 1, lit. c WStB). — Die Ausschüttung von Gratisaktien bildet beim Empfänger auch dann steuerbaren Vermögensertrag, wenn die Gesellschaft die Mittel zur Liberierung der Aktien ihrer Agioreserve entnommen hat.

Revenu des personnes physiques. — Actions gratuites constituant un revenu imposable (art. 21, 1er al., lettre c, AIN). — La distribution d'actions gratuites constitue pour le bénéficiaire un rendement imposable de la fortune, même si la société prend sur sa réserve d'agio les fonds nécessaires pour libérer les actions.

Aus dem Tatbestand:

A. Die niederländischen Aktiengesellschaften Royal Dutch Co. und Unilever Broth. Co. teilten ihren Aktionären im Jahre 1954 Stockdividenden (Gratisaktien) von 20 bzw. 25% zu, wofür sie Agioreserven verwendeten. Der Beschwerdeführer erhielt 147 neue Aktien Royal Dutch und 50 neue Aktien Unilever, im Nennwert von hfl. 100 je Aktie. Bei seiner Einschätzung zur Wehrsteuer der 8. Periode wurden diese Gratisaktien als Kapitalertrag im Sinne von Art. 21, Abs. 1, lit. c WStB erfasst . . .

Erwägungen:

1. Durch die Verteilung von Gratisaktien verschafft die Aktiengesellschaft den Aktionären Gewinnanteile aus gesellschaftlicher Beteiligung und damit Einkommen aus beweglichem Vermögen im Sinne von Art. 21, Abs. 1, lit. c WStB. Das ist ständige Rechtsprechung des Bundesgerichts (BGE 70 I 319[1], 80 I 40[2]; Urteil G. vom 8. März 1957, wiedergegeben im Archiv Bd. 25, S. 492, und in der Steuerrevue Bd. 12, S. 406) . Was der Beschwerdeführer dagegen unter Berufung auf viel Literatur vorbringt, ist im wesentlichen nicht neu, sondern eine Wiederholung von Einwendungen, mit denen der Gerichtshof sich bereits früher auseinandergesetzt hat. Es wird namentlich auf die dem Beschwerdeführer bekannten Erwägungen des zitierten Urteils G. verwiesen. Das Gericht hat keine Veranlassung, von der dort bestätigten Praxis abzugehen.

Der Beschwerdeführer macht hauptsächlich geltend, im Gegensatz zur Dividendenausschüttung sei die Zuteilung von Gratisaktien keine geldwerte Leistung im Sinne von Art. 21, Abs. 1, lit. c WStB. Der Aktionär habe nach dem Bezug der Gratisaktien denselben Anspruch auf einen verhältnismässigen Anteil am Reingewinn und am Liquidationsergebnis wie vorher, da die Quote seiner Beteiligung am Aktienkapital unverändert bleibe. Durch die Umwandlung von Reserven in Aktienkapital erhalte er kein neues Recht, sondern er behalte einfach die bisherige Anwartschaft. Die Massnahme komme ausschliesslich den Gesellschaftsgläubigern zugute; die wirtschaftliche Stellung des Aktionärs werde dadurch nicht verbessert, sondern im Gegenteil verschlechtert, da die zur Liberierung der Gratisaktien verwendeten Mittel nicht mehr als Dividende verteilt werden könnten, sondern definitiv dem eine Garantiesumme für die Gläubiger darstellenden Aktienkapital einver-

[1]) Archiv Bd. 13, S. 511.
[2]) Archiv Bd. 23, S. 96.

leibt seien. Gemäss Art. 21, Abs. 1, lit. c WStB sei der Nominalbetrag der Gratisaktie bei der Rückzahlung anlässlich der Liquidation der Gesellschaft, nicht schon bei der Emission, als Einkommen des Aktionärs zu besteuern. Dieser Betrachtungsweise kann nicht zugestimmt werden.

a) Bei der Ausgabe von Gratisaktien bleibt die bisherige blosse Anwartschaft des Aktionärs auf einen Anteil an dem nun zur Liberierung der neuen Aktien verwendeten Betrag nicht bestehen, sondern sie wird umgewandelt in eine neue feste Beteiligung in bestimmter Höhe (zit. Urteil G., Erw. 1 a.) Der Vorgang begründet dergestalt ein neues Recht (Guthaben) des Aktionärs, das im gleichen Umfange rechtlich geschützt ist wie das Aktienkapital als Ganzes. Gewiss dient der Schutz des Aktienkapitals vorab den Interessen der Gesellschaftsgläubiger, aber zugleich auch denjenigen der Aktionäre. Das Zivilgesetz gewährleistet dem Aktionär die Erhaltung des von ihm (oder für ihn von der Gesellschaft) in Aktien investierten Vermögens; er hat einen durch Klage gegen die Gesellschaft durchsetzbaren Anspruch darauf, dass das Aktienkapital — mit Einschluss seines Anteils daran — nicht geschwächt werde (Art. 646 ff. OR, mit dem Randtitel: "Schutz der Aktionäre und des Grundkapitals"; *Siegwart,* Kommentar zu Art. 620—659 OR, Einleitung, N. 247 f.). Er kann normalerweise damit rechnen, dass der Nennbetrag seiner Aktien stets durch die Aktiven der Gesellschaft gedeckt bleiben und dereinst zurückbezahlt werden wird. Freilich ist seine Beteiligung am Grundkapital nach der Verteilung von Gratisaktien quotenmässig gleich wie vorher, aber dies ändert nichts daran, dass er durch diese Massnahme ein neues Vermögensrecht erhält.

b) Diesem Recht muss Geldwert zuerkannt werden. Wohl wird infolge seiner Entstehung der Handelswert der Aktie vielfach etwas sinken, "verwässert" werden; aber darauf kann es nicht ankommen. Die gleiche Erscheinung kann auch eintreten, wenn der Aktionär anstelle einer Gratisaktie, beispielsweise im Nennewert von Fr. 1000, eine ausserordentliche Dividende in gleicher Höhe erhält, und doch lässt sich nicht bestreiten und wird auch von niemandem bestritten, dass in diesem Falle eine geldwerte Leistung der Aktiengesellschaft an den Aktionär vorliegt, die ihm Einkommen im Sinne von Art. 21, Abs. 1, lit. c WStB verschafft, und zwar im Betrage von Fr. 1000. Der Aktionär, der von der Gesellschaft eine Gratisaktie empfängt, befindet sich aber in einer ähnlichen Lage wie derjenige, der eine Dividende im gleichen Betrage bezieht. Dem Vermögen, das der Aktionär nach der in der einen oder der anderen Form vorgenommenen Verteilung angesammelter Gewinne (Reserven) besitzt, ist das bisherige Vermögen richtigerweise in dem Stande gegenüberzustellen, der sich ergibt, wenn die Anwartschaft auf einen Anteil an diesen Gewinnen ausser Betracht bleibt. Diese Vergleichung lässt deutlich werden, dass auch die Ausrichtung eines Gewinnanteils in Form von Gratisaktien die Vermögensrechte des Aktionärs vermehrt. Der Mehrwert wird im Kurs des Titels zum Ausdruck kommen. Er ist also realisierbar. Er darf — von hier nicht in Betracht kommenden Ausnahmen abgesehen — dem Nominalbetrage der dem Aktionär zugewiesenen neuen Beteiligung gleichgesetzt werden (Urteil G., Erw. 2).

Ein geringerer oder überhaupt kein Mehrwert läge allenfalls dann vor, wenn der Aktionär damit rechnen müsste, dass inskünftig für die alten und neuen Aktien zusammen kein höherer Dividendenbetrag als bisher für die alten Aktien allein zur Ausschüttung gelangen werde. So verhält es sich indessen in der Regel nicht, wie die von der eidgenössischen Steuerverwaltung mitgeteilten Erfahrungen zeigen. In der Tat wird die Aktiengesellschaft nach der Ausgabe von Gratisaktien normalerweise auch dann, wenn ihre Tätigkeit zunächst im bisherigen Rahmen bleibt, die Dividenden so festsetzen, dass ein grösserer Gesamtbetrag als bisher verteilt wird. Eine solche Dividendenpolitik ist geeignet, einen unerwünschten Rückgang des Kurses des Titels zu verhindern. Sie ist um so eher gerechtfertigt, als schon die Umwandlung von

Reserven, über welche die Gesellschaft bisher frei verfügen konnte, in zusätzliches Aktienkapital den Kredit des Unternehmens verbessert und höhere Gewinne erwarten lässt.

c) Die Auffassung des Beschwerdeführers, dass die Auszahlung des Nennwertes der Gratisaktien bei der Liquidation der Gesellschaft keine Kapitalrückzahlung darstelle und dass dementsprechend erst diese Leistung, nicht schon die Zuteilung der Gratisaktien, der Wehrsteuer für Einkommen unterliege, ist mit Art .21, Abs. 1, lit. c WStB nicht vereinbar (Urteil G., Erw. 1 d; BGE 83 I 279[1]].

2. Der Beschwerdeführer meint, die hier streitigen Gratisaktien seien auf jeden Fall deshalb nicht in die Berechnung der Wehrsteuer für Einkommen einzubeziehen, weil die zu ihrer Liberierung verwendeten Mittel (Agioreserven) aus Einzahlungen der Aktionäre selber stammten. Auch dieser Eventualstandpunkt ist unbegründet.

a) Nach dem schweizerischen Aktienrecht besteht ein wesentlicher Unterschied zwischen der Einzahlung von Grundkapital und der Zahlung eines Aufgelds (Agio), die bei einer Erhöhung des Aktienkapitals der neue Aktionär über seine Kapitalzahlung hinaus zu leisten hat. Mit der Einzahlung auf das Grundkapital investiert der Aktionär Vermögen; er erhält ein Guthaben im Betrage des einbezahlten Kapitalanteils, welcher Betrag dereinst von der Gesellschaft zurückzuzahlen sein wird; diese Rückzahlung verschafft ihm kein Einkommen (Art. 21, Abs. 1, lit. c WStB). Das Agio dagegen wird nicht auf Rechnung des Grundkapitals entrichtet und entgegengenommen, sondern ist dem gesetzlichen Reservefonds zuzuweisen, soweit es nicht zur Deckung der Emissionskosten, zu Abschreibungen oder zu Wohlfahrtszwecken verwendet wird (Art. 624, Abs. 3; Art. 671, Abs. 2, Ziffff. 1 OR). Es bildet einen Bestandteil der Gewinnrechnung der Aktiengesellschaft (vgl. BGE 58 I 11, Erw. 2; 81 I 215; Urteil SMUV vom 29. Oktober 1948, Erw. 4 b, Archiv Bd. 17, S. 402). Der neue Aktionär kauft sich mit der Agiozahlung in die Reserven der Gesellschaft ein. Das Aufgeld stellt zwischen ihm und dem alten Aktionär, dessen Aktie über pari steht, einen Ausgleich her; es soll eine Benachteiligung des alten Aktionärs, eine Verminderung des Wertes seiner Beteiligung verhindern. Der neue Aktienzeichner entrichtet das Agio à fonds perdu. Die Gesellschaft zahlt es in keinem Falle zurück, auch nicht dadurch, dass sie es — wenn und soweit Art. 671, Abs. 3 OR dafür Raum lässt — zur Ausschüttung von Dividenden oder zur Liberierung von Gratisaktien verwendet. Diese Leistungen werden sämtlichen Aktionären nach Massgabe ihrer Beteiligung am Grundkapital ausgerichtet, auch denjenigen, die kein Agio bezahlt haben. Es kann keine Rede davon sein, dass die Zuweisung der aus Agioreserven liberierten Gratisaktien — einzig für einen Teil der Empfänger — einer Rückzahlung einbezahlten Grundkapitals gleichzustellen ist. Vielmehr erhalten durch diese Leistung alle Aktionäre einen Kapitalertrag (Gewinnanteil aus gesellschaftlicher Beteiligung,) also Einkommen im Sinne von Art. 21, Abs. 1, lit. c WStB.

b) Nicht anders verhält es sich mit den hier in Frage stehenden Gratisaktien zweier holländischer Gesellschaften. Wenn das niederländische Recht, wie der Beschwerdeführer erklärt, im Unterschied zum schweizerischen (Art. 671, Abs. 3 OR) die Verwendung von Agioreserven für die Ausgabe von Gratisaktien ohne Einschränkung zulässt, so ist dies unerheblich. Sobald die schweizerische Gesellschaft über die Agioreserven zu diesem Zwecke verfügen kann, befindet sie sich in der gleichen Lage, in der die holländische — nach der Darstellung des Beschwerdeführers — von Anfang an war. Die streitigen Gratisaktien, welche die Royal Dutch Co. und die Unilever Broth. Co. unter Verwendung solcher Reserven geschaffen haben, unterliegen der Besteuerung nach Art. 21, Abs 1, lit. c WStB so gut wie Gratisaktien, die von schweizerischen Gesellschaften unter gleichen Bedingungen ausgegeben werden.

[1]) Archiv Bd. 26, S. 283.

c) Der Beschwerdeführer beruft sich für seinen Eventualstandpunkt zu Unrecht auf die Richtlinien der eidgenössischen Steuerverwaltung betreffend die Besteuerung amerikanischer Gratisaktien, Richtlinien, welche das Bundesgericht als grundsätzlich richtig anerkannt hat (Urteil G., Erw. 2; BGE 83 I 292, Erw. 2 c [1]).

Bei der Gründung amerikanischer Aktiengesellschaften werden häufig Aktien ohne Nennwert oder zu einem ein Vielfaches des Nennwertes betragenden Preise ausgegeben. Die Gesellschaft, welche bei der Verbuchung des Emissionserlöses weitgehende Freiheit geniesst, schreibt diesen in der Regel nicht ganz dem eigentlichen Kapitalkonto (capital account), sondern zum Teil einem Reservekonto (capital surplus account) gut. Die so verbuchten Leistungen der Aktionäre entsprechen den ursprünglichen Einzahlungen auf Rechnung des Grundkapitals der schweizerischen Aktiengesellschaft. Ihr Umfang kann nachträglich oft nicht mehr genau, sondern nur annähernd, schätzungsweise festgestellt werden, weil auf dem capital surplus account mitunter auch Beträge aufgeführt werden, die aus anderen Quellen stammen, so Aufgelder, welche bei der Emission neuer Aktien bezahlt werden. Die von der eidgenössischen Steuerverwaltung — im Einvernehmen mit der Schweizerischen Bankiervereinigung — ausgearbeiteten Richtlinien tragen diesen besonderen Verhältnissen Rechnung. Sie sollen verhindern, dass bei der Besteuerung amerikanischer Gratisaktien als Einkommen Beträge miterfasst werden, welche von den Aktionären selber bei der Gesellschaftsgründung auf Rechnung des Aktienkapitals einbezahlt worden sind. Der Einfachheit halber werden in allen Fällen $^{9}/_{10}$ des bei der Ausgabe von Gratisaktien vom capital surplus account auf das capital account überschriebenen Betrages steuerfrei belassen. Damit wird aber der Grundsatz, dass die Verteilung von Agioreserven durch Emission solcher Aktien keine steuerfreie Kapitalrückzahlung darstellt, nicht verlassen, sondern aufrecht erhalten. Mit der Besteuerung des verbleibenden Zehntels soll gerade auch die Zuweisung derartiger Reserven erfasst werden.

Wenn die Anwendung dieses Pauschalsatzes dann und wann zur Folge hat, dass die Empfänger amerikanischer Gratisaktien bei der Besteuerung etwas zu gut wegkommen, so kann der Beschwerdeführer daraus nichts zu seinen Gunsten ableiten. Sein Hinweis auf den Fall der Ohio Edison Co. geht daher fehl. Würde sich herausstellen, dass die Richtlinien eine sachgemässe Anwendung des Wehrsteuerbeschlusses nicht gewährleisten, so wären sie zu ändern. Jedenfalls können Fehler, die bei der Veranlagung von Bezügern amerikanischer Gratisaktien unterlaufen mögen, nicht ein Grund sein, die vom Beschwerdeführer bezogenen holländischen Gratisaktien entgegen der gesetzlichen Ordnung von der Wehrsteuer für Einkommen auszunehmen. Der Einwand des Beschwerdeführers, die "konsequente und rechtsgleiche" Anwendung der Grundsätze der Richtlinien müsse in seinem Falle zur Steuerbefreiung führen, hält nicht stand.

Bundesgericht, 15. Mai 1959, i. S. H. K. gegen Wehrsteuer-Rekurskommission des Kantons Zürich.

Source: *Archiv für Schweizerisches Abgaberecht,* Heft 4, Oktober 1959.

[1]) Archiv Bd. 26, S. 280.

UNITED KINGDOM

In Unit Construction Co. Ltd. v. Bullock the House of Lords allowed the taxpayer's appeal.

The appellant, resident in the United Kingdom, was a subsidiary of Alfred Booth & Co. Ltd. also resident, which had three subsidiaries registered in Kenya under the laws of that territory. In 1952 and 1953 Unit Construction Ltd. made subvention payments which it would be entitled to deduct as expenses for tax purposes if the three subsidiaries would be "resident in the United Kingdom and carrying on a trade wholly or partly in the United Kingdom."

The Special Commissioners found as a fact that the boards of directors of the African subsidiaries were standing aside in all matters of real importance and in many matters of minor importance affecting the central management and control, and that the real control and management was being exercised by the board of directors of Alfred Booth & Co. Ltd. in England.

The Crown had contended that, if by the constitution of a company, interpreted in the light of the relevant law (i.e. Kenya law) the management of the company's business was contemplated as being exercised, and ought therefore to be exercised, in Kenya, then for the purpose of British income tax the actual facts of management were to be disregarded and the control and management were to be deemed to be in Kenya.

Rejecting this, Viscount Simonds said that the business was not the less managed in London because it ought to have been exercised in Kenya; the company's residence was determined by the solid facts, not by the terms of its constitution. The other noble lords concurred.

Source: *The Accountant,* December 5th, 1959.

UNITED STATES

Resident or non-resident foreign corporation?

United States tax legislation distinguishes between a foreign corporation not being resident in the United States and a foreign corporation being resident within that country. This distinction is made because of a difference in liability to the American income tax. A nonresident foreign corporation, e.g. a corporation with no trade or business within the United States, is not liable to the American income tax, whereas a resident foreign corporation, e.g. a corporation trading or doing business within the United States is liable to this tax with respect to its profits arising from sources within the United States. As to this tax liability the substance of the matter is the question whether a foreign corporation is engaged in trade or business within the United States and, if so, whether it derives gross income from sources within the United States. To this point it seems a good thing to give a brief summary of the following case. [1])

A company, whose main shareholder was an American citizen, had been incorporated in Panama to meet the need of an American corporation of its demand for sperm oil. The main shareholder of the Panamanian company was a director and vice-president of the American corporation. The Panamanian company was a whaling company and, newly incorporated, needed a factory ship. This ship could be obtained from a British corporation. However, as Panama does not belong to the countries which signed the International Whaling Agreement the British Government refused its consent to obtain a charter from the British corporation with respect to the ship. Both parties, the Panamanian company and the American corporation, tried to find a way out and found another American corporation prepared to charter the British ship in its behalf, the United States being a party to the Whaling Agreement. It may be remarked that the main shareholder of the Panamanian company also was a main shareholder in the American corporation which chartered the factory ship.

As to the facts two contracts were executed, one between the Panamanian Whaling Company and the American corporation which chartered the ship, the other between the chartering corporation and the American sperm oil corporation. Under the terms of the first contract both parties agreed that the chartering corporation should pay the Panamanian company for its services and for undertaking the burdens, expense and risks, which meant (as stipulated in the contract) that it should receive the entire balance of the proceeds to be received by the chartering corporation from the sale of the oil, minus a certain amount, whereas the chartering corporation should receive the oil produced to sell it to the American sperm oil corporation. Furthermore this contract contained the conditions that the Panamanian company would exonerate the chartering corporation from any liability for any obligation under any charter party relating to any of the vessels used and also from any liability for any tax upon the production, delivery and sale of the oil. The second contract executed in the United States contained amongst others that the chartering corporation was the seller and that the sperm oil would pass to the American sperm oil corporation at the time that it was delivered in

[1]) U.S. Tax Court; Docket No. 54931. Filed June 13, 1958.

New York City. All the contracts made on repairing and reconditioning the factory ship and catchers, like all other repairs, equipment etc. were carried out in Norway by Norwegians. Also the crews were Norwegian.

It is not possible to enumerate all facts concerned but the above mentioned are the most striking fundamentals on which was based the opinion of the Court. In this case the opinion of the Court was not uniform because of the problem of judging according to the written contracts or according to the substance of the matter. Tne majority decided in favour of the instruments as a legal title. The minority referred to several decisions of the Supreme Court where it says: "We cannot too often reiterate that "taxation is not so much concerned with the refinements of title as it is with actual command over the property taxed—the actual benefit for which the tax is paid" . . . . "And it makes no difference that such "command" may be exercised through specific retention of legal title or the creation of a new equitable but controlled interest, or the maintenance of effective benefit through the interposition of a subservient agency" . . . .

It may be remarked that the Commissioner had characterized the whole business as a transaction through a straw man, i.e. the chartering corporation.[1]) However, the majority basing its opinion on the written agreements decided that the Panamanian Whaling Company was not engaged in any substantial, regular, or continuous ordinary business activity in the United States and therefore not a resident foreign corporation engaged in trade or business within the United States. It was not taxable as provided in sections 14 (c) (1) and 15 of the Internal Revenue Code of 1939 (I.R.C. 1954 sections 882 and 11).

Source: *Tax Court of the United States*, Vol. 30 No. 3, page 618.

[1]) *Remark:* The Panamanian corporation had to use the Amercan chartering corporation to charter the factory ship which it could not charge itself.

AUSTRALIA - SOURCE OF DIVIDEND

If a non-resident company derives income from Australia and subsequently pays a dividend out of that Australian income to shareholders on shares registered on an ex-Australian share register, the question arises whether the shares located outside Australia, or the Australian profits will be considered the source of the dividends. [1])

On this matter an important decision has been given by the Australian High Court, which we will reproduce in full, as far as this question is concerned.

Parke Davis & Co. v. Federal Commissioner of Taxation

Income Tax — Assessable income — Distribution by liquidator in the course of winding up of non-resident company which derived income from sources in Australia — Deemed dividend — Non-resident shareholder — Application of particular enactment to foreign company — Source of dividend — Locality of share — Territorial limits — General and Particular enactments — Exemption — Income Tax — Assessment Act 1936-1947, ss. 23 (r), 44 (1) (b), 47.

This was an appeal by way of a stated case against an amended assessment based upon the income of an accounting period of twelve months ended 31st October 1946.

The appellant, Parke Davis & Co., is a company incorporated under the laws of Michigan, U.S.A., and has its headquarters at Detroit. For a considerable period the company carried on business as a manufacturing chemist in the U.S.A. and it also carried on business by means of branches in other parts of the world, including Australia. On the 1st July, 1945, a company was incorporated under the laws of Colorado to carry on business in places outside the U.S.A. including the business carried on in Australia. The issued capital of the Colorado Company comprised 1,000 shares at $1 each of which 995 were issued to the appellant company and 1 share each to five (5) nominees of the appellant company who were the directors of the Colorado company. Neither company came within the definition of "resident" for the purposes of the *Income Tax Assessment Act* 1936-1947.

From 1st July, 1945, the Colorado company carried on business in Australia, but on the 30th April, 1946, the businesses outside of the U.S.A. were restored to the appellant company which carried on the Australian business from 1st May, 1946, by means of a branch. The Colorado company passed resolutions to the effect, that a plan of liquidation of the corporation should be adopted by which all the property of the Colorado company should be distributed to its shareholders. The distributions of the Assets during the accounting period ended 31st October, 1946, by the Colorado company to the appellant company included income derived by the Colorado company from sources in Australia amounting to £106,414.

The appellant company was assessed to tax in respect of the year ended 31st October, 1946, but the sum of £106,414 was not included in the assessable income. In 1952, however, the Commissioner forwarded to the appellant a notice of amended assessment in respect of that year of income. In the amended assessment the Commissioner began by including the £106,414 as part of the assessable income of the appellant company pursuant to ss. 44

[1]) See the article of Charles J. Berg in *Bulletin Vol. X (1956)*, p. 138 et seq.

and 47 of the *Income Tax Assessment Act* 1936-1947. It appeared, however, that certain taxes had been paid in respect of the income of the previous accounting period of the Colorado company and the Commissioner reduced the £106,414 by the amount of those taxes which left a balance of £65,179 included in the assessable income of the appellant company and the main question in the case stated was whether this amount of £65,179 should have been included in such assessable income.

Held (*Dixon, C. J., Fullagar, Kitto, Menzies* and *Windeyer, JJ.*) that the amount of £65,179 was properly included as income for the purpose of calculation of the taxable income derived by the appellant.

The judgement of the Court was delivered by *Dixon, C. J.* This is a case stated under s. 198 of the *Income Tax Assessment Act* 1936-1947. The appeal in respect of which the case has been stated is an appeal against an amended assessment. The amended assessment was based on an accounting period of twelve months ended 31st October, 1946; that accounting period formed the year of income.

The appellant, Parke Davis & Co., is a company incorporated under the laws of Michigan, and has its headquarters at Detroit. For a considerable period that company carried on business as a manufacturing chemist in the United States of America, and it also carried on business, by means of branches, in other parts of the world, including Australia.

However, in 1945 a decision was made to incorporate another company which would carry on the business of Parke, Davis and Co., in places outside the United States of America. A company was then incorporated under the laws of Colorado and called Parke Davis and Company Limited and in accordance with the purposes for which it was so incorporated it took over, among other businesses, the business carried on by the parent company in Australia. It was incorporated on 1st July, 1945, and its issued capital comprised 1000 shares at one dollar each. Of these shares, 995 were issued to the parent company; the five remaining shares were issued to five persons who were nominees of Parke Davis and Co.; they were in fact the directors of Parke Davis and Co. Ltd., that is to say, the company incorporated under the laws of Colorado. Accordingly neither company came within the definition of a "resident" as applied to a company contained in sub-s. (1) of s. 6 of the *Income Tax Assessment Act;* both were companies resident outside Australia.

From 1st July, 1945, the new company carried on business in Australia, but for reasons which are not explained it was determined to recall the decision to carry on the business abroad by a company constituted in Colorado and revert to the previous practice. On 30th April, 1946, only ten months later, the overseas business was, so to speak, restored to the parent company. Because the accounting period for which the returns under the *Income Tax Assessment Act* were made up ended on 31st October, each year, the period of activity of the Colorado company extended over two accounting periods or years of income. For the determination of the question in the case stated however we are substantially concerned only with the later of the two years of income.

The decision to terminate the arrangement was given effect on 18th February, 1946. On that date resolutions were passed at meetings of directors of each company which provided for carrying out the decision. In order to revert to the former position certain measures of a formal nature were necessarily required and they were taken by the directors of each of the two companies concerned at Detroit.

There was a special meeting of the board of directors of Parke Davis & Co. Ltd., that is, the subsidiary company incorporated in Colorado. A number of formal steps was taken to see that the meeting was properly constituted and then resolutions in substance were passed which had the following effect: it was resolved that a plan of liquidation of the corporation should be adopted.

The plan adopted was based upon an agreement which had been made between the two companies. The agreement recited the material facts, to which I have briefly referred, and went on to recite that it was desired to distribute the transfer within the fiscal and taxable year, namely, the year ended November 30, 1946, all of the property of the Colorado Company in complete cancellation or redemption of all its shares. The agreement then proceeded to state that therefore the parties thereto adopted a plan of liquidation of the Colorado company consisting in the distribution to the Michigan company, the parent company, of all of the property of the Colorado company in complete cancellation or redemption of all of the shares of the Colorado company and the transfer to the Michigan company of the property of the Colorado company, subject to any and all debts, liabilities and obligations of the Colorado company, which should be assumed and discharged by the Michigan company. The Michigan company agreed, upon receipt of the property to surrender to the Colorado company all the shares of the latter company issued and outstanding in complete cancellation or redemption thereof. The parties further authorised the dissolution of the Colorado company in accordance with the laws of the State of Colorado.

The resolutions which adopted this plan of liquidation proceeded to authorize the complete liquidation of the corporation in accordance with the plan and in conformity with the laws of Colorado and to authorize the President and Secretary of the corporation to execute and deliver the plan of liquidation of Parke Davis & Co. Ltd., i.e. of the Colorado corporation. It was further resolved that the consent of the sole stockholder, Parke Davis & Co., incorporated in Michigan, should be procured and that all should be done that was necessary to effect the dissolution of the corporation in accordance with the requirements of the corporation laws of the State of Colorado.

The appellant, Parke Davis & Co., of Michigan, also held a special meeting of directors: the meeting adopted the plan and passed complementary resolutions to those passed by the Colorado company. The case stated also says that, as one step in what is called by the case the liquidation and dissolution of the Colorado company under the agreement, the Michigan company, being the sole stockholder, having voting power of all the issues of outstanding stock, consented in writing to the liquidation and dissolution of the company, and that thereafter, on or about 22nd July, 1946, the consent was filed. It adds that the corporation laws of Colorado, in the events which had happened required that the consent should be filed.

That agreement was, according to the statement in the case stated, duly and fully carried into effect during the accounting period ended 31st October, 1946, that is, the Australian accounting period. The Colorado company ceased business in Australia on 30th April, 1946, and the Michigan company resumed business in Australia by means of the branch on 1st May, 1946.

It is said in the case stated that the distributions made to the Michigan company, as shareholder of the Colorado company, during the accounting period in Australia ended 31st October, 1946, pursuant to the agreement that was entered into, included profits derived by the company from sources in Australia amounting to the sum of £106,414. It is further stated, and it is of course a most important fact, that the said distributions represented income derived by the company, that is, other than income which had been applied to replace a loss of paid up capital.

The appellant company was assessed to tax in respect of the year ended 31st October, 1946, but the sum of £106,414 was not included in the assessable income which formed the basis of the assessment. In 1952, however, the Commissioner forwarded to the appellant an amended assessment in respect of that year of income. In the amended assessment the Commissioner began by including the £106,414 as part of the assessable income of the Michigan company. He did so on the footing of s. 47 of the *Income Tax Assessment Act*

1936-1947 and its operation on s. 44. It appeared, however, that certain tax had been paid in Australia in respect of the earlier accounting period, for, as we have said, the period during which the business was conducted by the Colorado company covered two accounting periods. Not only had tax been paid in Australia, but tax had been paid in the United States in respect of the same profits. The Commissioner therefore decided to reduce the £106,414 by figures which we need not go into, representing these taxes and the reduction left a balance of £65,179. The question in the case stated is really whether that £65,179 should have been included in the assessable income in respect of the Michigan company for the accounting period ended 31st October, 1946. The exact form of the questions asked must, however, be considered a little more closely later.

We think that the answer to the question which we have formulated is that that sum should be included in the assessable income. We shall state the positive reasons for arriving at that conclusion before going to the arguments by which it was sought to intercept the conclusion.

We have said that both companies were residents outside Australia, and that that followed from s. 6 (1). If one passes from s. 6 (1) to the very general provisions of s. 25, it will be found that it is provided that the assessable income of the taxpayer shall include, where the taxpayer is a non-resident, the gross income derived directly or indirectly from all sources in Australia, which is not exempt income. Section 23 exempts from income tax specific incomes and classes of income described in lettered paragraphs. Paragraph (r) exempts income derived by a non-resident from sources wholly out of Australia. Subdivision D of Divn 2, ss. 44-47, deals with dividends, and s. 44 deals with the assessability of dividends. Sub-section (1) of s. 44 is as follows "The assessable income of a shareholder in a company (whether the company is a resident or a non-resident) shall, subject to this section—(a) if he is a resident—include dividends paid to him by the company out of profits derived by it from any source; and (b) if he is a non-resident—include dividends paid to him by the company to the extent to which they are paid out of profits derived by it from sources in Australia."

From that provision it is necessary to turn to s. 47. Sub-section (1) of s. 47 provides: "Distributions to shareholders of a company by a liquidator in the course of winding up the company, to the extent to which they represent income derived by the company (whether before or during liquidation) other than income which has been properly applied to replace the loss of paid up capital, shall, for the purposes of this Act, be deemed to be dividends paid to the shareholders by the company out of profits derived by it."

For reasons which will subsequently appear the taxpayer is bound to treat certain of the conditions stated in s. 47 as fulfilled; certain of them it is open to him to dispute. But we think that s. 47 (1) should be treated as having an application which is independent of considerations of locality and the like and as being concerned only with a certain kind of transaction; that kind of transaction it brings within the ambit of the provisions of s. 44 (1) which relate to the assessability of dividends. Accordingly, we think that in this particular case the transaction does fall within s. 47 (1). It falls within it because the assets which were handed over by the liquidator to the parent company included as an unseparated part profits made in the requisite accounting period. That the assets included income derived in Australia is a fact admitted in the case stated, and it is also stated, as has been pointed out that those assets distributed represented such income derived by the company other than income properly applied to replace a loss of paid up capital. The handing over of assets to the parent company was a distribution to shareholders of the Colorado company in the course of winding up that company falling within the opening words of s. 47 (1). The extent to which the profits distributed as part of the assets handed over represented such income attributable to the year of

income ended 31st October, 1946, has been ascertained. We will have something to say about the question of a winding up under Colorado law and of a liquidator's powers under the law of Colorado, but, accepting the view that there was a liquidator and that there was a winding up of the Colorado company, it appears to us that it follows that by consequence of s. 47 (1) the distribution to the parent company should to the extent stated be deemed to be dividends paid to it as a shareholder by the Colorado company out of profits derived by it.

Taking the view that s. 47 is independent of considerations of locality, and is concerned solely with what we may term the abstract question, whether a given transaction is to be brought within the provision that deals with the assessability of dividends, we then go back to that provision, namely, s. 44 (1). We think that s. 44 (1) is intended to provide the territorial *criteria* for including a dividend in the assessable income of a shareholder. Section 44 (1) (b) gives the criterion for judging the source of a dividend in the case of a shareholder who is a non-resident. For s. 44 (1) (b) provides that the assessable income of a shareholder in a company shall, if he is a non-resident, include dividends paid to him by the company to the extent to which they are paid out of profits derived by it from sources in Australia. By force of s. 47, the transaction we have described must be treated as having resulted to the extent of £106,414 in a dividend. By that we do not mean an actual dividend, but part of a distribution which in terms is to be deemed to be a dividend. The question that remains under s. 44 (1) (b) is whether the source from which that dividend was paid was in Australia, and that question is answered by the facts in the case stated which shew that to the extent of £106,414 the profits included in the distribution represented income earned in Australia. So far as ss. 44 (1) and 47 are concerned that would appear to bring the imputed dividend, if we may so call it, within the assessable income. But there remains to be considered the operation of s. 23 (r). Considered, of course, in conjunction with s. 25 (1) (b). Section 23 (r), it has been argued, is an overriding provision which must be considered before you go to the process through which we have gone of applying s. 44 (1) (b), or for that matter, s. 47. Doubtless it is not impossible to construe the Act so as to give s. 23 (r) an overriding effect, an effect which would mean that at all hazards and despite all other considerations it must be applied to control every other provision and to do so independently of what subsequently appears. At all events the argument began with that contention; it was then said that it is well settled that *prima facie* the source of a dividend paid to a shareholder is the share, that the locality of the share is fixed by the register upon which the shareholder is registered and that therefore the register determines conclusively in point of law what is the locality which is the source of the dividend. An alternative view of the construction of the Act is that s. 23 (r) is a general provision expressing a policy of the Act, a general provision that you might expect the Act to carry into effect as to particular subjects by specific provisions, and that where in the rest of the Act there are specific provisions with respect to sources of income, those provisions may be taken as fulfilling or carrying out or, if the word is preferred, as being epexegetical to, s. 23 (r).

We take the latter view of the place of s. 23 (r) in the Act, and we are of opinion that s. 44 (1) (b) is an explicit provision to which effect must be given. It is true that the paramount policy expressed in s. 23 (r) of confining the assessable income of a non-resident to his income from sources wholly within Australia remains, but it is not right to interpret s. 23 (r) independently of every other provision of the Act. It is not right to suppose that in its application to income consisting of dividends it must have an operation that is independent of anything that may be found upon the same subject in any subsequent provision of the Act and on that supposition to treat it as necessarily meaning that inasmuch as a shareholder derives his dividend from his

share the locality of the source of the dividend is the locality of the share and that that is the place of the register upon which the shareholder is registered in respect of the share. On the contrary, it must be read with s. 44 (1) (b) which is the particular provision giving specific effect to s. 23 (r) in the case of dividends. When s. 44 (1) (b) is read with s. 23 (r) there is no apparent inconsistency; on the contrary s. 44 (1) (b) appears to carry out the scheme of the general provision in providing that the assessable income of a shareholder in the company, when the shareholder is non-resident, is to include dividends paid to him by the company to the extent only to which they are paid out of profits derived from sources in Australia. The case stated says in terms that part of the assets of the Colorado company was profit derived here by it and that that profit was transferred to the Michigan company in the transaction of 18th February, which we have described. Section 47 operates upon the transaction so that the income derived from Australia is deemed to be a dividend paid to the shareholder, the appellant company, and, in the view which we have expressed, that completes the chain of provisions operating against the taxpayer so as to expose the residue of the £106,414. namely, £65,179, to assessment.

From that positive statement we pass to the arguments which are advanced against the conclusion. The first argument was that in fact there was no liquidator and no winding up which would satisfy s. 47. The reasons for that lay in some extracts from the Corporation Laws of Colorado which were annexed to some amendments of the case stated. An objection was taken by the respondent to the admissibility of such an argument and a preliminary question was embodied in the case stated inquiring whether it was open to the appellant to maintain the contention. The objection was that such a contention lay completely outside the appellant's notice of objection. It is desirable to interpolate at this point a short account of the course of the proceedings before us.

Notices of objection were delivered to the amended assessment, which accepted the assumption that there was a winding up and that there were liquidators. The grounds of the notice of objection proceeded on the footing that the words of s. 47, "by a liquidator in the course of winding up the company" were satisfied, at all events, except for the words "course of". A case was stated on that basis. Reasons were subsequently discovered for doubting whether, under the laws of Colorado, there had been a winding up or a liquidator within the meaning of s. 47 and of the definition of "liquidator" contained in s. 6 (2). Proposed amendments to the case stated was inclined to entertain them provided that further rectifications were made in the statements of fact. The amendments having been amended they were incorporated into the case stated. But unfortunately the notice of objection necessarily stood and, after hearing a preliminary argument as to the admissibility of the contention that there was no liquidator and no winding up, we gave a ruling which I shall repeat for the purposes of record. We said: "We take the first question in the amended case stated as directed to a contention on behalf of the taxpayer that there was, on the facts of this case considered in relation to the law of Colorado, no winding up and no liquidator within the meaning of s. 47 of the *Income Tax Assessment Act* 1936-1947 and that the case falls within *Stevenson's Case*[1] and *Blakeley's*[2] case. We think that the contention does not fall within the notice of objection and therefore cannot be advanced by the taxpayer." It was for that reason that we said that it must be assumed by us as it had been originally by the parties that under the laws of Colorado there was a winding up, that the winding up was by a liquidator, and that the conditions of s. 47 to that extent were satisfied.

We must add, for ourselves that having studied the plan of liquidation, the

[1]) (1937) 59 C.L.R. 80; 4 A.T.D. 415
[2]) (1951) 82 C.L.R. 388: 9 A.T.D. 239.

agreement, and the resolutions which were passed at Detroit by the directors of the two companies, we feel considerable misgiving as to the foundation in fact of the contention which it was sought to advance, namely, that there was no proper winding up and no proper liquidator under the laws of Colorado. There seem to us to be reasons for believing that, in all probality, those who drew up these very carefully worded documents knew what they were doing; an interpretation of the corporation laws of Colorado seems open which would justify the view that there was a proper winding up by liquidators. But we may pass that by. Under our ruling the argument has proceeded on the basis that, for the purpose of s. 47 (1), there was a liquidator and there was a winding up.

It was said, however, that even if you accepted that view nevertheless you could not conclude, when you looked at the laws of Colorado and looked at the facts, that the assets were distributed and the distribution was made in the course of that winding up. I have some doubt whether such a contention is consistent with the grounds of the notice of objection, but be that as it may, the contention is based on the view that the supposed liquidators undertook the discharge of the debts, and that that was not in accordance with what we know of the laws of Colorado.

But the acceptance of this hypothesis does not, in our view, mean that the liquidation or the winding up fell outside s. 47 because the distribution was not in the course of that winding up. It seems clear enough that what was done was done in purported pursuance of a regular winding up and if there were deviations from what the law of Colorado provided they were not enough to take the winding up outside s. 47 and bring the transaction inside the doctrine of *Stevenson's Case*, and *Blakeley's Case*, which is the purpose of the appellant's argument.

The third point taken was that on its terms s. 47 was not applicable to foreign companies. The argument was supported by reference to s. 23 (r) and, to some extent, to s. 25 (1) (b), but in the main the argument was based on the terms of s. 47 (1) itself.

There is, we think, no real foundation for the argument. Section 47 (1) is a provision dealing with a transaction according to its character. Its purpose is obvious enough. The section was first enacted in an earlier form to meet the situation, made clear enough by *Burrell's Case*[5] which decided in effect that a distribution of a mass of assets, although in a colloquial sense they represented or contained profits, was a distribution of capital. There is no ground, we think, for adding territorial restrictions to s. 47. That does not mean, of course, that in the description of the transactions s. 47 gives, in reference to winding up and to a liquidator, and so on, grounds may not be found for saying that some particular procedure or process prescribed by a foreign law will be outside the terms of the section. But it is, we think, of general application, quite independently of questions of locality. It is when a transaction comes within the terms of s. 47 that you go back to the provisions relating to locality if the case be one of a non-resident. It is at that stage that you consider the source of the imputed dividend.

It was strongly contended, as we have said, that s. 23 (r) is an overriding provision, and we think, in justice to the contention, we should go back to it although in describing our positive view we have already said something about its place in the Act. The contention is based upon the view that nothing really can rise higher than s. 23 (r), and that you begin by applying that; that you apply it according to your conception of the general law as to what is "source"; and that any other provisions of the Act are subordinate to that conception and must be read subject to it. An analogy was sought in *Reid's Case*[6]. That case which was decided on s. 23 (q) and has no direct relation to

[5]) (1924) 2 K.B. 22.
[6]) (1942) 73 C.L.R. 282; 8 A.T.D. 255.

s. 23 (r), deals with exemptions by reason of the income in question having already borne tax. It appears to us to lend no assistance to the argument on s. 23 (r) but it is perhaps desirable to point out that the legislature immediately overruled it by the enactment of s. 44 (1A). It was further sought to rely on *Freeman's Case* (*supra*). That is not reported in *Commonwealth Law Reports*, and we shall not give references to all the collateral reports in which it is to be found, but for present purposes, we have been using the report in the *Australian Law Journal*, vol. 30, p. 42. That case was concerned with certain provisions of the *Income Tax* (*Management*) *Act* 1936 of New South Wales the last year of the operation of which was, I think, 1942-1943. We think that it would not be useful to institute a comparison between the provisions of the Commonwealth legislation and those of the *New South Wales Income Tax* (*Management*) *Act* 1936 as amended. It is enough to say that at one point in the complicated facts of *Freeman's Case* a question did arise as to the source of a dividend, and that for the purposes of the expression used in the New South Wales Act, we thought that the fact that the dividend was derived from a share on a register in New South Wales shewed that the source was in New South Wales. The joint judgment of the Court concludes by a reference to *Nathan's Case*[7]. That case, which involved the consideration of the *Commonwealth Income Tax Assessment Act* 1915 fastened on the place where the profits were made as the source from which the dividend was derived. At p. 48 of the report of *Freeman's Case*[8], the Court said: "We do not understand *Nathan's Case* to decide that the locality where a company derives the profits from which it pays dividends must be regarded *exclusively* as the source of a shareholder's dividend receipts. If it does, it is, it seems to us, in conflict with the reasoning in such cases as *Canadian Eagle Oil Co. Ltd.* v. *The King*[9] and *Inland Revenue Commissioners* v. *Reid's Trustees*[10]." The judgment went on to discuss those cases briefly.

It will be apparent from the emphasis placed on the word "exclusively" that the Court, in deciding *Freeman's Case* (*supra*), was contemplating the possibility that a dividend may be attributed to different sources according to the character of the enactment dealing with the matter and perhaps according to the facts, and that the Court did not intend to say that the only source to which a dividend could be imputed was the locality of the share. In the present case we are of opinion that the answer to the contention lies in the view we take of the relationship of s. 44 (1) (b) and s. 23 (r). The view we take of the relationship is that s. 44 (1) (b) is not cumulative upon and independent of s. 23 (r), but is carrying out s. 23 (r) and stating what, in the case of a dividend received by a non-resident, is the source for the purposes of s. 23 (r). If it were treated as cumulative and independent it would mean that in the case of a non-resident holding shares in an Australian company, assuming that for the purpose of s. 23 (r) so construed the share was regarded as the source of a dividend upon it, he would be liable to tax on dividends paid out of Australian profits if his shares were upon an Australian register of the company but not liable to such tax if his shares were upon a register kept in some place out of Australia by the company.

A further argument was advanced, an argument on the construction of s. 47, and though for myself I have a little difficulty in apprehending its full significance, it was, if I correctly understand it, as follows: Section 47 deems what is not a dividend to be a dividend. It deems what in fact is a capital distribution under, for example, *Burrell's Case* to which I have already referred to be a dividend. But is goes no further. In an earlier shape, namely, as the *Income Tax Assessment Act* stood from 1928 to 1934, the provision now stand-

[7]) (1918) 25 C.L.R. 183.
[8]) 30 A.L.J. 42; 11 A.T.D. 21.
[9]) (1946) A.C. 119.
[10]) (1949) A.C. 361.

ing as s. 47 contained words which are not there now, and the words are these: "To the extent to which it" (that is the distribution) "represents income derived by the company . . . which would have been assessable in the hands of the members or shareholders if distributed to them by a company not in liquidation". It is said that without this qualification, of which the new s. 47 has been deprived, or something like it, you cannot dissect the imputed or fictional dividend deemed to exist by s. 47, or trace it for the purposes of or under s. 44 (1) (b).

Mr. Wallace, who advanced that argument, quoted a passage from the judgment of Sir *George Rich* in *International Hotel Ltd.* v. *McNally*[11] "The word deemed' introduces an artificial definition which in my view is only intended to be applied as long as the conditions exist for which it is intended to apply." The learned counsel went on to say that the submission that he made was that s. 47 creates à fiction which is incomplete for the purpose of applying it to s. 44 (1) (b). He suggested that what is lacking in s. 47 when you come to apply it to a non-resident, is this: it should contain and in fact before 1934 it did contain, words saying that, to the extent to which it represents income which had been derived by the company from sources in Australia, the distribution should be deemed to be dividends paid to the shareholders in and out of profits derived by it from sources in Australia. Then, he concluded, you could apply s. 44 (1) (b). That is, the suggestion is that since these words are absent you are thrown back to a position where you are adding a fiction to a fiction, and that you cannot do that; nor, to express it according to an amended statement, can you add a fact to the fiction. Whatever may be the precise significance of this contention the answer is provided simply by the words of s. 47; they are explicit, and go back obviously to s. 44 (1) (b). You take the terms of s. 47 (1): you have only to identify the transaction and find that there is a distribution to shareholders of the company and that the transaction fits that description; then, subject to its being in the course of a winding up, it must, for the purposes of the Act, be deemed to be dividends paid to the shareholders by the company. That in our view, brings them immediately within the terms of s. 44 (1) (b). Perhaps you do insert a fiction into s. 44 (1) (b) but, when you have done that, you treat it as a reality. And, for the purposes of s. 44 (1) (b), you proceed to do the tracing of the source of that imputed dividend to the profits from which it comes. That, no doubt, sets an extremely difficult task in some circumstances, but it is a task of accountancy and not of law. Difficult as it may be, it cannot disturb the real meaning of the two sections stated in combination, and, so far as the present case is concerned, the agreed facts between the parties shew that it has already been done.

The questions in the case stated are these:

(1) Were the distributions referred to in par. 12 of the case stated "distributions by a liquidator in the course of winding up the company" within the meaning of s. 47 of the said Act?

(2) If not whether it is open to the appellant to maintain that the distributions referred to in par. 12 of the case stated were otherwise than by a liquidator in the course of winding up the company?

(3) Whether the said sum of £65,179 or any, and if so what, part thereof is to be included as income for the purpose of calculation of the taxable income derived by the appellant during the accounting period ended on the 31st day of October, 1946?

We preferred to hear the objection which is the subject of question (2) argued first and we shall answer that question thus:—In response to question (2), declare that it is not open to the appellant to maintain that the distributions referred to in par. 12 of the case stated were otherwise than by a liquidator in the course of winding up the company, except insofar as the

[11]) (1940) 64 C.L.R. 24, at p.p. 27-28.

words "in the course of" may be relied upon. We shall declare that for that reason question (1) ought not to be considered or answered.

G. Wallace, Q.C. and *R. J. Ellicott*, instructed by *Sly & Russell*, for the appellant.

J. D. Holmes, Q.C. and *B. J. F. Wright*, instructed by *H. E. Renfree*, Crown Solicitor for the Commonwealth, for the respondent.

Source: *Australasian Tax Decisions*, Vol. 11, Part 10.

IV

REVIEWS — COMPTES RENDUS

AUSTRIA

A. ALVARADO-DUPUY und DR. ROBERT ROTTENSTEINER: *Das Einkommensteuergesetz und die Einkommensteuernovelle 1957 mit Erläuterungen.* Wien, Manzsche Verlags- und Universitätsbuchhandlung, Kohlmarkt 16, 1958, 202 S.

Die Verfasser der vorliegenden Ausgabe haben der Praxis einen Dienst erwiesen, indem sie das Einkommensteuergesetz in der nunmehr geltenden Fassung bringen: *Abschnitt A* des Bandes. Dabei wurden alle Änderungen seit dem Einkommensteuergesetz 1953 durch Kursivschrift kenntlich gemacht und überdies auf die Quelle der Änderungen in Fussnoten hingewiesen. Der *Abschnitt B* des Bandes enthält die Einkommensteuernovelle 1957. Auch alle jene Gesetzesstellen des Einkommensteuergesetzes, welche durch die Einkommensteuernovelle 1957 zwar keine sachliche Änderung erfahren haben, aber in ihrer geltenden Fassung gewissermassen wiederverlautbart wurden, sind im Abschnitt B des Buches enthalten. Da im Gesetzestext des Einkommensteuergesetzes (Abschnitt A) überall ersichtlich ist, ob eine bestimmte Stelle auf der Einkommensteuernovelle 1957 basiert, kann mühelos nachgelesen werden, welche Erläuterungen zu der betreffenden Gesetzesstelle im Abschnitt B enthalten sind. In einem Nachtrag ist das Bundesgesetz vom 10. Juli 1958, BGBl. Nr. 147, mit dem das Einkommensteuergesetz 1953 und das Bewertungsfreiheitsgesetz 1957 abgeändert werden, verarbeitet, soweit der Text des Einkommensteuergesetzes davon betroffen wurde.

Dr. KARL FELLNER: *Stempel- und Rechtsgebühren, Grunderwerbsteuer, Erbschaft- und Schenkungssteuer.* Gesetze, Kommentar mit Entscheidungen, Bewertung, Bilanz- und Berechnungsbeispiele. *Ergänzung D zur 5. erweiterten Auflage.* (Stand vom 30. September 1959.) Unter Mitarbeit von Dr. HELMUT WILDMOSER. Im Selbstverlag, Röntgenstrasse 4, Linz.

Über Ziel und Aufbau des Werkes orientiert die Besprechung in *Bulletin Bd. XI*, S. 122. Das Gebührengesetz 1946 wurde durch seine Neuverlautbarung in der Kundmachung der Bundesregierung v. 2. Dez. 1957, BGBl. 267/57 zum Gebührengesetz 1957 .Der wieder verlautbarte Gesetzestext ist auf den Einlageblättern 19 C/1 bis 19 C/28 der im April 1958 herausgegebenen Ergänzung C abgedruckt. Durch diese Wiederverlautbarung hat sich die Unterteilung in Absätzen bei den Tarifposten und damit die Zitierweise geändert. Zur leichteren Auffindbarkeit wird bei den neugefassten Stellen daher auch der neugefasste Gesetzestext des GebG. 57 wiederholt. Die *Ergänzung D* besteht aus Einlage- und Austauschblättern. Die Einlageblätter werden zusätzlich, die Austauschblätter anstatt herauszunehmender Seiten bei der Seite eingelegt, die nach ihrer Zahl der Seite der Stammausgabe entsprechen. Diese Ergänzung wird in einer neuen und grösseren Mappe eingelegt geliefert, da die bisherige Mappe zu klein geworden ist.

AUSTRALIA

JOHN MCKELLAR WHITE: *The Taxpayers' Association's income tax guide;*

1959-60 edition. Taxpayers' Publishers Pty. Ltd, 11c Castlereagh Street, Sydney, 1959, 81 pp.

The purpose of this handbook is to provide taxpayers with a simple and concise guide through the intricate maze of Commonwealth income tax. This edition is based on the income tax law as it stood at June 30, 1959 with variations and amendments announced in the Commonwealth Treasurer's 1959/60 Budget speech delivered on August 11, 1959. There are chapters on income tax returns, deductions and depreciation, personal and family allowances, examples of income tax returns, rates of income tax, tax instalment deductions and company taxes.

BELGIUM

Le Guide Fiscal Permanent publié sous la direction de GASTON van den AVYLE. Editions Vioburo, 7, Cantersteen, Bruxelles 1.

Cet ouvrage de 3500 pages mobiles, avec mises à jour paraîssant mensuellement sur feuilles mobiles interchangeables, contient 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 Juillet-Décembre 1959 ont paru.

FERNAND BAUDHUIN: *Précis de finances publiques*, 3me édition; Première Partie: *Budget, dépenses, Organisation financière*, 1958, 278 pp. Deuxième Partie: *Impôt, recettes non fiscales, crédit public*, 1957, 287 pp. Établissements Emile Bruylant, Rue de la Régence, 67, Bruxelles 1.

Ce précis constitue le seul traité décrivant à la fois d'une façon concise et complète l'ensemble du système financier belge. Dans la *première partie* est exposée avant tout la technique budgétaire largement entendue. Il y est traité des principes généraux d'administration financière, et des dépenses de l'Etat prises dans leur ensemble ainsi que l'essentiel des règles applicables aux provinces et aux communes. De copieuses annexes reproduisent les textes principaux qui concernent la matière, depuis la Constitution belge, jusqu'aux arrêtés d'après-guerre. On y trouve également les données essentielles du Budget pour 1958, des tableaux synoptiques des finances provinciales et communales, ainsi que les dispositions récentes relatives au contrôle des parastataux. Dans la *deuxième partie* est exposée avant tout la technique des impôts et de la dette publique; l'ouvrage se place non pas au point de vue de celui qui doit payer l'impôt ou souscrire à l'emprunt, mais au point de vue des pouvoirs publics. Sans s'attarder outre mesure aux aspects historiques de ces problèmes, il en donne cependant les antécédents. On y trouve notamment le schéma de l'administration belge et du régime des agents de l'Etat chargés de percevoir les impôts.

L'ouvrage mentionne les diverses initiatives prises depuis dix ans en matière d'impot et de dette publique.

Des annexes copieuses réunissent une foule de données que pratiquement on ne trouve pas ailleurs. Citons notamment les tableaux résumant l'histoire des principaux impôts depuis leur création ou au moins depuis 1919.

Cet ouvrage contient donc à la fois un exposé des principes applicables en matière de finances publiques, des exemples empruntés à l'actualité toute récente, et aussi une description des initiatives qui ont été prises au cours des derniers temps. La bibliographie mentionnée constitue une source à laquelle pourront puiser tous ceux qui seront amenés à traiter ces problèmes. La consultation du Précis est d'autre part grandement facilitée par les excellentes tables alphabétiques et analytiques dont l'auteur a pourvu les volumes.

Algemeen Fiscaal Tijdschrift. Directie: JUR. DR. ALBERT TIBERGHIEN. Instituut voor Financie- en Belastingwezen, Josef II straat 153, Brussel.

The Belgian periodical "*Algemeen Fiscaal Tijdschrift*" celebrates its 10th anniversary. On this occasion a special number has been issued containing a.o. an article on the interpretation of tax Acts by Dr. A. TIBERGHIEN. We send our congratulations to the editor of this excellent periodical that keeps its readers so well informed about taxes in Belgium.

CANADA

JOHN G. MCDONALD: *Canadian Income Tax. Thirteenth (cumulative) Supplement*. Butterworth & Col. (Canada) Ltd., 1367 Danforth Avenue, Toronto, 1959, 168 pp.

This Supplement incorporates all current amendments to the statute law and brings the case law up to August 15, 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.

Report of proceedings of the 12th annual tax conference convened by the Canadian Tax Foundation at Winnipeg, November 13-15, 1958. Canadian Tax Foundation, 154 University Avenue, Toronto 1, 1959, 470 pp.

The present is the fourth comprehensive 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. Some of 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.

DENMARK

V. SPANG-THOMSEN: *Skattelove 1959-60*. Nyt Nordisk Forlag Arnold Busck, København, 1959, 367 pp.

In the 59-60 edition of Spang Thomsen's Skattelore the text is given of the national and municipal income taxes, the old age pensions contribution, the child allocation law and the savings premium laws. The author has added commentary, footnotes, references and an alphabetical index to the text of the Acts and thus gives a practical and useful handbook to all those who need information about taxes in Denmark.

V. SPANG-THOMSEN: *Skattetabeller 1959-1960*. 14. udgave. Nyt Nordisk Forlag Arnold Busck, København, 1959, 67 pp.

This booklet contains the rates of income and property tax in Denmark for the period 1959-1960 with examples and explanations.

EIRE

COMMISSION ON INCOME TAXATION: *First and Second Report*. Stationery Office, Dublin. To be purchased from Government Publications Sale Office, G.P.O. Arcade, Dublin.

The basis of income taxation in the Republic of Ireland is still the British Income Tax Act of 1918. In February 1957 the Minister for Finance set up a

Commission to inquire generally into the system, including ist effects on the economy and the equity of the incidence of the taxes. In its first report the Commission recommends the introduction of pay-as-you-earn, but excluding farm workers, controlling directors, and employees with very heavy admissible expenses. Its second report deals with three separate topics: the principle of "one taxpayer, one charge"; the administration of surtax; and the taxation of buildings and land. In the field of property taxation, the Irish Commission recommends the abolition of Schedule A and B assessments on land and buildings occupied by their owners and used for a trade, profession or vocation. It also recommends that ground rents and head rents should not ordinarily be subject to deduction of income tax at the source; instead they should be assessed on the recipients direct, and not necessarily in the place where the property is situated. As regards house property let for non-business use, the Irish Commission recommends assessment on the basis of net rent received.

FRANCE

Code des Impôts Directs. Traité de la Patente. Mise à jour Mai 1959. Seteca, 14 Rue Clapeyron, Paris-8e.

A review of this volume of Collection B of the Codes annotés des Impôts Directs was published in *Bulletin XI,* p. 332. The present supplement consists of 27 pages to be inserted.

Code de l'Enregistrement. Envoi no. 3, 4, Mai-Octobre 1959. 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 supplements consist of 36 and 15 pages.

Code Général des Impôts. Impôts directs Collection C: Recouvrement et contentieux Fraude fiscale. Impôts et Sociétés, 14 rue Clapeyron, Paris (8e).

Reviews of Collection A of the Codes Annotés des Impôts Directs were published in *Bulletin Vol. XI,* p. 126, 332 while the first two volumes of Collection B were announced in *Bulletin Vol. XIII,* p. 159. In the present two volumes of Collection C the articles 1649 bis — 2020 of the "Code Général des Impôts" are treated. There are 9 parts: Assiette et Contrôle de l'Impôt, Payement de l'Impôt, Pénalités, Fraude fiscal, Procédures de recouvrement, Privilèges, Dégrèvements et Restitutions, Prescriptions, Droit de Communication et secret professionnel. Like the previous produced by the editor "Impôts et Sociétés" these also contain the text of the "Code Général des Impôts" with a clear commentary and elucidating examples. All volumes of this work are kept up-to-date by means of loose leaves which are published regularly.

The *International Chamber of Commerce,* 38, Cours Albert ler, Paris has published the following brochures:

1. *Settlement of difficulties and disputes arising out of double taxation agreements.* 1959, 19 pp.
2. *Taxation of income originating in countries in process of development.* 1959, 27 pp.
3. *Attracting foreign investment.* 1959, 12 pp.

FRANCIS LEMEUNIER: *Pourquoi et comment constituer une Société Anonyme,* 4e édition. J. Delmas et Cie, 13, rue de l'Odeon, Paris (VIe), 1959, 182 pp. Collection «Ce qu'il vous faut savoir».

L'auteur, sans altérer la clarté et la méthode qui ont fait le succès des 3 premières éditions a enrichi cette nouvelle refonte des sources jurisprudentielles les plus importantes et des références indispensables; suivant une conception inédite de la Collection, ces notes sont placées en marge. L'ouvrage constitue le «digest» le plus actuel de la Loi de 1867 et tient compte des toutes dernières Ordonnances aussi bien dans le domaine juridique que sur le plan fiscal et social; tous ceux qui ont apprécié les précédentes éditions seront heureux de «faire le point» en se procurant cette nouvelle édition et nous nous devons de la recommander à tous ceux qui ne connaissent pas encore la «Méthode Lemeunier" pour appliquer le droit des sociétés.

LUCIEN MEHL: *Science et technique fiscale.* Tome I: *Eléments de science fiscale.* Tome II: *Technique et droit de la fiscalité.* Collection Thémis. Presses Universitaires de France, 108 Boulevard Saint-Germain, Paris VIe, 1959, 784 pp. Avec mises à jour au 1er mai 1959.

A l'intention de tous ceux qui veulent s'initier aux principes et aux techniques du droit fiscal cet ouvrage, après un exposé doctrinal, donne une étude technique des différents impôts, et n'hésite pas à prendre parti à l'occasion sur certains problèmes philosophiques ou politiques que l'on doit évoquer en marge de la technique fiscale. Dans le deuxième tome l'auteur passe en revue les divers impôts qui constituent l'actuel système fiscal français. Ensuite il donne un aperçu des principaux systèmes fiscaux étrangers, et se tourne enfin, vers les aspects juridiques de la fiscalité: interprétation de la loi fiscale interne, rapports internationaux en matière fiscale, application de la loi fiscale, contentieux fiscale. Ces deux volumes constituent un excellent instrument de travail et une contribution importante à la connaissance des mécanismes qui régissent le milieu social de notre temps.

JEAN-MARIE PETIT et PIERRE FRANCESCHINI: *La pratique du commerce extérieur; exportations-importations, douanes.* J. Delmas & Cie, 13 rue de l'Odéon, Paris 6e, 1959.

Cet ouvrage s'adresse à tous ceux qui ont à traiter avec la Douane. Il constitue l'exposé complet des règles concernant l'importation, l'exportation, la Douane; par suite, il traite des questions qui sont essentielles dans ce domaine: le contingentement et le mécanisme du régime d'importation et d'exportation, leur contentieux, la déclaration en douane qui doit être faite par l'importateur et l'exportateur, et notamment la question brûlante de la valeur en douane telle qu'elle est déterminée par la convention de Bruxelles, ainsi que les infractions auxquelles ces opérations peuvent donner lieu. L'Importateur, l'Exportateur et tous ceux qui ont à résoudre des questions douanières ont intérêt à consulter cet ouvrage.

Algeria

LOUIS BROËT: *Guide pratique des Impôts en Algérie. Mise à jour no. 24,* Juin 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 24,* Juin 1959 containing a number of new pages has recently been published.

GERMANY

Die *Verlagsbuchhandlung des Instituts der Wirtschaftsprüfer,* Cecilienallee 36, Düsseldorf hat die folgenden Publikationen veröffentlicht:

1. *Die Veranlagung zur Einkommensteuer für 1958.* 688 S. 2. *Die Veranlagung zur Körperschaftsteuer für 1958,* 219 S. 3. *Die Veranlagung zur Gewerbesteuer*

für 1958. 174 S. 4. *Die Veranlagung zur Umsatzsteuer für 1958* (59). 272 S.
Die Wert dieser Reihe liegt in der Zuordnung der zusammengehörenden Vorschriften von Gesetz, Durchführungsverordnung und Richtlinien, der Ergänzung durch sonstige im Zusammenhang mit der Veranlagung zu beachtende wichtige gesetzliche Vorschriften und Verwaltungsanweisungen, den verbindenden Hinweisen und nicht zuletzt der korrekten Bearbeitung.

Dr. EBERHARD LITTMANN: *Die Einkommensbesteuerung 1958 und 1959*; gleichzeitig 1. Nachtrag zur 6. Auflage des "Einkommensteuerrechts". Fachverlag für Wirtschafts- und Steuerrecht Schäffer & Co. Stuttgart, Hackländerstrasse 33, 1959, 187 S.

Die Broschüre von LITTMANN stelt eine empfehlenswerte Hilfe für die Anfertigung der Einkommensteuererklärungen der Veranlagungszeiträume 1958 und 1959 dar. Sie hebt für diese Veranlagungszeiträume die Neuerungen und Änderungen hervor, die sich in den EStR 1958 und der EStDV 1958 gegenüber vorher finden und beleuchtet sie kritisch. Erfreulich ist eine gründliche Darstellung und Kommentierung der einkommensteuerlichen Bestimmungen aus den Saareingliederungsgesetzen sowie ein Kurzkommentar zum Saar-DM Bilanzgesetz, Vorschriften, die bereits ab Mitte 1959 gelten und einen weit größeren Kreis von Steuerpflichtigen unmittelbar berühren, als es zunächtst den Anschein hat. Der Band ist sowohl einzeln verwendbar als auch als Nachtragsband des Littmannschen Kommentars zum Einkommensteuerrecht, 6. Aufl., in dem das Einkommensteuergesetz 1958 eingehend an Hand zahlreicher Beispiele erläutert worden ist.

Dr. HEINRICH MEGOW: *Erbschaftsteuergesetz in der Fassung vom 1. April 1959 mit Durchführungsverordnung und Verwaltungsanordnung*, 4. völlig neubearbeitete Auflage. Verlag Franz Vahlen GmbH, Berlin-Lichterfelde-West, Willdenowstrasse 6, 1959, 587 S.

Die jetzt erschienene 4. Auflage des Kommentars von Megow ist von ganz wesentlich grösserer Bedeutung als eine Neuauflage im sonst üblichen Sinne. Auf Grund des Erbschaftsteuer-Änderungsgesetzes hat das Werk eine grundlegende Neubearbeitung erfahren. Neben der eingehenden Kommentierung der Änderungsbestimmungen — zwei wichtige Vorschriften sind völlig neu: die Vorschrift über die erbschaftsteuerliche Behandlung des Zugewinn-Ausgleichs und die Vorschrift über die Anrechnung ausländischer Erbschaftsteuer — ist die Erörterung von Zweifelsfragen erweitert und bei besonders aktuellen Problemen wesentlich vertieft worden. Vor allem ist dabei die klare Stellungnahme zu der Frage zu begrüßen, ob und inwieweit rechtsgeschäftliche Handlungen zur Einsparung von Erbschaftsteuern (z.B. die frühe Beteiligung der Kinder am Geschäftsvermögen oder Zuwendungen unter Nießbrauchvorbehalt) steuerlich zulässig sind bzw. wann hierin ein steuerlich nicht anzuerkennender Mißbrauch von Formen und Gestaltungsmöglichkeiten des bürgerlichen Rechts zu erblicken ist. Sehr anschaulich ist auch dargelegt, wann sich an Stelle einer Vorerbschaftseinsetzung, die steuerlich oftmals sehr unzweckmässig sein kann, ein den gleichen wirtschaftlichen Erfolg herbeiführendes Nießbrauchsvermächtnis empfiehlt. Auch die wichtigen Fragen der Wertermittlung sind eingehend erörtert. Der Kommentar von Megow ist aus der Praxis heraus für die Praxis geschaffen. Das Werk stellt eine Gemeinschaftsarbeit eines als besonderer Sachkenner auf dem Gebiete des Erbschaftsteuerrechts bekannten Anwalts und Steuerberaters und eines erfahrenen Fachmannes der Finanzverwaltung dar. In dieser Vollständigkeit und umfassenden Behandlung aller erbschaftssteuerrechtlichen Fragen ist die Neuauflage in noch stärkerem Maße als bisher ein wertvoller Berater für die Finanz-und Steuerbehörden, für Gerichte, Rechtsanwälte, Notare, Wirtschaftsprüfer und Steuerberater sowie nicht zuletzt für die Steuerpflichtigen selbst.

GERHARD ZETTEL: *Die Steuerlastverteilung in der Bundesrepublik Deutschland.* J. C. B. Mohr (Paul Siebeck), Wilhelmstrasse 18, Tübingen, 1959, 166 S.

Die Arbeit untersucht die Auswirkungen der Steuerpolitik in der Bundesrepublik Deutschland auf die Verteilung der Gesamtsteuerlast. Im Mittelpunkt der Erörterungen stehen die Fragen nach dem kumulativen Steueranfall bei der Endnachfrage nach Konsum-, Investitions- und Exportgütern auf Grund der gesamten Steuerzahlungen in den einzelnen Wirtschaftsbereichen sowie nach den Beziehungen zwischen Gesamtsteuerlast und Einkommenshöhe bei privaten Haushalten. Zugleich sollen fruchtbarere Ansätze für international und intertemporal vergleichende Untersuchungen der Steuerbelastung aufgezeigt werden, als sie die üblichen Globalbetrachtungen darstellen. Im Anschluß an einen Überblick über die steuerpolitischen, insbesondere die tarifpolitischen Maßnahmen seit der Währungsreform erfolgt eine kritische Diskussion der Möglichkeiten zur Ermittlung des gesamten Steueranfalls bei einzelnen Gütergruppen, vor allem aus den verschiedenen "Kostensteuern". Entsprechend den hierbei gewonnenen Ergebnissen werden die quantitativen Ermittlungen vorgenommen, die auf den besonders festgestellten Werten einer 38poligen Input-Output-Matrix basieren. Die Beziehungen der Gesamtsteuerlast zur personellen Einkommenschichtung bilden den Gegenstand der Untersuchung im letzten Hauptteil. Nach der entsprechenden Darstellung für einzelne Steuergruppen wird zusammenfassend für ausgewählte Haushaltungen quantitativ geprüft, inwieweit die Gesamtsteuerlast in der Bundesrepublik progressiv gestaltet ist.

Dr. WALTER BLÜMICH†, Dr. LUDWIG FALK und Dipl.-Kfm. WERNER STEINBRING: *Einkommensteuergesetz,* 8. neubearbeitete Auflage, 1. Band. Verlag Franz Vahlen GmbH, Berlin-Lichterfelde-West, Willdenowstrasse 6, 1959. 971 S.

Die dringend erwartete Neuauflage dieses bewährten Standardkommentars ist zur Ausgabe gelangt. Das Werk, das jetzt in zwei Bänden erscheint, hat eine völlige Neubearbeitung erfahren. Neben den zahlreichen Änderungen und Ergänzungen sind bereits auch die Einkommensteuer-Durchführungsverordnung 1958 und die Einkommensteuer-Richtlinien vom 1. August 1959 verarbeitet. Die Rechtsprechung des Reichsfinanzhofs, des Obersten Finanzgerichtshofs, des Bundesfinanzhofs und, soweit erforderlich, auch die der Finanzgerichte sind, ebenso wie das Schrifttum, nach neuestem Stande erschöpfend berücksichtigt. Auch die wichtigsten Länder-Erlasse und Verfügungen der Oberfinanzdirektionen sind in der Kommentierung enthalten. Zahlreiche praktische Beispiele tragen wesentlich zum besseren Verständnis schwieriger Fragen bei. Der jetzt erschienene 1. Band enthält die §§ 1 bis 12 EStG, wobei die Vorschriften über die steuerliche Gewinnermittlung das Kernstück dieses Bandes bilden. Die Fragen des betrieblichen Steuerwesens (z.B.: Herstellungskosten, eiserner Bestand, Preissteigerungsrücklage, Bewertungsabschlag für bestimmte Importwaren, degressive Abschreibung usw.)haben entsprechend ihrer Bedeutung für die Wirtschaft eine eingehende Würdigung gefunden. Besonders hervorzuheben ist noch die nach heutigem Stande völlig neu gestaltete Kommentierung zu § 6a EStG (Rückstellung für Pensionsanwartschaften) und § EStG (Sonderausgaben). So wendet sich das Buch auch diesmal wieder an alle, die in irgendeiner Form mit dem Einkommensteuerrecht zu tun haben. Es bietet wie bisher das Rüstzeug für die Praktiker in freien Berufen und in der Wirtschaft, für die Finanzverwaltungen wie auch für die Wissenschaftler und nicht zuletzt für die Steuerpflichtigen selbst. Ihnen allen will das Werk — nicht nach einseitigen fiskalischen Bedürfnissen, sondern im Bewußtsein der Verantwortung als Mittler zwischen Staat und Steuerzahler — ein zuverlässiger Ratgeber sein.

Dr. J. ESSER: *Die Gliederung der Bilanz und die übrige Rechnungslegung in internationaler Sicht.* Heft 56, Band 2. Institut "Finanzen und Steuern", Markt 14, Bonn am Rhein, 1959, 90 S.

Mit dieser Untersuchung erfährt die im September 1958 unter dem Titel "Die Gliederung der Gewinn- und Verlustrechnung in internationaler Sicht" als Heft 56 veröffentlichte Darstellung eine Ergänzung. Der Verfasser hat sich der mühevollen Arbeit unterzogen, anhand der Geschäftsberichte die geschäftlichen Gepflogenheiten, d.h. die in der Praxis üblichen Darstellungsformen für die Bilanz und die Gewinn- und Verlustrechnung in den einzelnen Ländern zu untersuchen. Dabei wurde auf die Darstellung der in den USA üblichen Formen, weil diese vielfach als sehr aussagefähig angesehen werden, besonderer Wert gelegt.

Dr. CLAUS GRIMM: *Besteuerung und Grundgesetz:* die Rechtsprechung des Bundesfinanzhofs zum Bonner Grundgesetz. Fachverlag für Wirtschafts- und Steuerrecht Schäffer & Co, Stuttgart, Hackländerstrasse 33, 1959, 72 pp. Buchreihe "Spezialfragen im Steuerrecht".

In der verfassungsrechtlichen Rechtsprechung der Gerichte spiegelt sich die Fülle der verfassungsrechtlichen Fragen wieder, deren Klärung zur Sicherung einer rechtsstaatlichen Ordnung vielfach von größter Bedeutung ist. Auch das höchste Steuergericht der Bundesrepublik hatte und hat sich als einer der Exponenten der Dritten Gewalt immer wieder mit solchen Fragen zu befassen und über sie zu entscheiden. Die vorliegende Schrift hat es unternommen, diese Entscheidungen unter Abwägung ihres Inhalts in übersichtlicher Form, nach den Artikeln des Grundgesetzes geordnet darzustellen. Es wird damit all denjenigen, die sich mit Verfassungsrecht und mit Steuerrecht zu befassen haben, ein Hilfsmittel an die Hand gegeben, das es ermöglicht, ohne mühsames und zeitraubendes Zusammensuchen die entsprechenden Entscheidungen des Bundesfinanzhofs aufzufinden und deren Aussage zu erkennen.

Dr. HEINZ PAULICK: *Handbuch der stillen Gesellschaft;* systematische Darstellung in handelsrechtlicher, steuerrechtslicher und betriebswirtschaftlicher Sicht. Verlag Dr. O. Schmidt, Ulmenallee 96-98, Köln-Marienburg, 1959, 392 pp.

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 auszugsweize 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.

Dr. FRANZ SCHOLZ: *Bewertung und Besteuerung des Grundbesitzes. Lieferung F II,* November 1959, *7. Ersatz und Ergänzungslieferung.* Verlag Dr. Otto Schmidt, Köln.

Neben umfassender und systematischer Behandlung der Bewertung des Grundbesitzes, der Grundsteuer und des Grunderwerbsteuerrechts, sowie der Berücksichtigung des Grundbesitzes bei der Gewerbesteuer, Umsatzsteuer und Erbschaftsteuer, enthält dieses grosse Loseblattwerk auch die Darstellung der Vorschriften des Körperschaftsteuer- und des Vermögensteuerrechts,

soweit es den Besitz von Grundvermögen oder den Grundstücksverkehr betrifft. Die *11. Lieferung* enthält eine völlige Überarbeitung des Teils "Lastenausgleich" von Rechtsanwalt HERRMANN unter Mitwirkung von Dipl.-Verw. HANDROCK.

JAKOB THEIS: *Praktischer Führer durch das Steuerrecht. 7. Auflage 19. Lieferung.* 27. November 1959. Verlag Dr. Otto Schmidt, Ulmenallee 96-98, Köln-Marienburg.

Dieses Loseblattwerk bringt das Gebiet des gesamten Steuerrechts in einfacher Sprache, veranschaulicht durch Verwendung zahlreicher Beispiele, nahe. Die *27. Lieferung* bringt neben einigen Ergänzungen im Textteil eine Neubearbeitung des Sachregisters, das aus dem Jahre 1956 stammte. Der "Theis" befindet sich nunmehr in jeder Hinsicht auf dem neuesten Stand.

HÜBSCHMANN-GRABOWER-BECK-VON WALLIS-SCHWARZ: *Kommentar zum Umsatzsteuergesetz. Lieferung 14,* Dez. 1959. Verlag Dr. Otto Schmidt, Ulmenallee 96-98, Köln-Marienbrug.

Die *14. Lieferung* enthält neben einer Überarbeitung der Erläuterungen zu den §§ 1 Ziff. 3 und 4 Ziff. 1a und b (ORR Dr. SCHWARZ) die vollständige Kommentierung des § 16 aus der Feder von BR Prof. Dr. v. WALLIS. Mit der nächsten Lieferung werden voraussichtlich die Erläuterungen zu den §§ 7 Abs. 3 und 10 ausgeliefert werden.

In der Reihe *Finanzwissenschaftliche Forschungsarbeiten,* herausgegeben von Prof. Dr. G. Schmölders, Universität Köln, Verlag Duncker & Humblot, Geranienstrasse 2, Berlin-Lichterfelde-West, sind die folgenden Hefte veröffentlicht worden: Heft 19. OTTO SCHNEIDER. *Die Finanzpolitik des Kurfürsten Klemens Wenzeslaus von Trier.* 1958, 190 S. Heft 20. Dr. HEINER BOEHME. *Preissubventionen,* ein Beitrag zur Theorie der Ausgabeninzidenz. 1959, 109 S.

Dr. LORENZ GÜRSCHING und Dr. ALFONS STENGER: *Kommentar zum Bewertungsgesetz und Vermögensteuergesetz. Lieferung.* 9 Dezember 1959. Verlag Dr. Otto Schmidt, Köln.

In diesem grossen Kommentar werden die beiden wichtigen, in engem sachlichen Zusammenhang stehenden Steuergesetze umfassend und erschöpfend behandelt. Die Loseblattform wurde mit gutem Grund gewählt, um das Werk in Anbetracht der im Fluss befindlichen gesetzlichen Regelungen stets auf dem letzten Stand von Gesetzgebung und Rechtsprechung zu halten. *Die Lieferung 9. Dezember 1959,* ist erschienen. In dieser Lieferung, die eine Überarbeitung verschiedener Vorschriften des BewG und VStG enthält, werden ua. dargestellt: das Gesamtgebiet der betrieblichen Altersversorgung, die Fragen des Bewertungsstichtags, des Schuldenabzugs beim Gesamtvermögen und der Ermittlung des Inlands vermögens unter Berücksichtigung der neuesten Beschlüsse der Bewertungs- und Vermögensteuerreferenten der Länder.

KURT MAASSEN: *Regelungen mit dem Finanzamt; Auskünfte, Zusagen und Vereinbarungen im Steuerrecht.* Der Rechts- und Steuerdienst, Kölner Schriftenreihe zeitnaher rechtswissenschaftlicher Abhandlungen, Heft. 42. Verlag Dr. O. Schmidt, Köln, 1959, 127 S.

Die Praxis wird es begrüssen, von einem hervorragenden Kenner der Materie erstmals in einer zusammenfassenden grösseren Abhandlung die augenblickliche Situation auf dem Gebiet der Auskunfterteilung durch die Finanzämter, der Zusagen, Vereinbarungen und sonstigen Regelungen im

Steuerrecht aufgezeigt zu erhalten. Wegen der Wichtigkeit gerade der neuesten BFH-Rechtsprechung sind einige Urteile im Anhang auszugsweise wiedergegeben worden. Diese Neuerscheinung wird dazu beitragen, die durch die Macht des Faktischen bestimmten Formen von Regelungen und Regelungsversuchen, wie sie sich in der Praxis einzuspielen beginnen, zu einem vollwertigen Rechtsinstitut auszubauen.

KLAUS VOGEL: *Die Berichtigungsveranlagung; systematischer Kommentar zu § 222 AO, unter besonderer Berücksichtigung des Betriebsprüfungsverfahrens.* Der Rechts- und Steuerdienst, Kölner Schriftenreihe zeitnaher rechtswissenschaftlicher Abhandlungen, Heft 42. Verlag Dr. O. Schmidt, Ulmenallee 96-98, Köln-Marienburg, 1959, 92 S.

Durch seine unklare Fassung ist § 222 Ao zu einem der größten Unruhefaktoren im Bereich der innerbetrieblichen Planung und Kalkulation geworden. Jeder Unternehmer, mag er seine steuerlichen Pflichten noch so sorgfältig erfüllt haben, muß heute damit rechnen, daß er im Rahmen einer Berichtigungsveranlagung zu irgendeinem zukünftigen Zeitpunkt steuerliche Nachforderungen zu gewärtigen haben wird. Dieser unsicheren Rechtssituation will der Verfasser mit dieser Neuerscheinung ein Ende bereiten. Seine Untersuchungen wollen nicht nur der wissenschaftlichen Auseinandersetzung, sondern in erster Linie den Bedürfnissen der steuerberatenden und -verwaltenden Praxis dienen. Daher wird besonders auf diejenigen Fragen Auskunft gegeben, die sich bei der täglichen Handhabung des Steuerrechts zu § 222 AO dem Steuerberater und Anwalt, dem Veranlagungsbeamten und dem Betriebsprüfer immer wieder stellen.

GREAT BRITAIN

Current Law Income Tax Acts Service. Sweet & Maxwell, 11, New Fetter Lane London, E.C. 4

Release 56: Nov. 19, 1959. This release reflects the changes introduced by the Finance Act, 1959, and the Income Tax (Repayment of post-war credits) Act, 1959. In addition, in the Profits Tax section, a number of cases from the digest have been incorporated into the text.

ITALY

Prof. Rag. FRANCESCO MARTINENGHI: *Imposta Complementare,* Quarta edizione. Edizione L. di G. Pirola, Via Cavallotti 16, Milano, 1959, 171 pp.

Professor MARTINENGHI describes in the fourth edition of his handbook the Italian complementary Income Tax. Because of the fact that the new fiscal codification has entered into vigour in 1958 the new edition will be welcome by all who practice Italian tax law.

Prof. Rag. FRANCESCO MARTINENGHI: L'*Imposta di Ricchezza Mobile,* Quinta edizione. Manuale pratico aggiornato con Testo Unico delle Leggi sulle imposte dirette, 29 gennaio 1958, n. 645 .Edizione L. di G. Pirola, Via Cavallotti 16, Milano, 1959, 441 pp.

In Italy a new codification of direct taxes entered into vigour in 1958. Professor MARTINENGHI gives in the fifth edition of his well-known handbook a systematic description of the Italian tax on income from movable capital, A bibliography and an alphabetical index are given at the end of the book.

VICTOR UCKMAR: *Principi comuni di diritto costituzionale tributario,* Casa Editrice Dott. Antonio Milani, Via Jappelli 5, Padova, 1959, 110 pp.

This is a fundamental study on the constitutional principles of tax law.

The author has divided his work into three chapters: the legal principle, the principle of equality and the principle of competency. Each of these chapters has been divided into sections such as special procedure for the approval of tax laws, equality in juridical and economic sense, justification of progressive taxation, distribution of the power to levy taxes in a decentralized state. Those interested in fundamental tax problems will find in this book much material that will arouse their interest and stimulate their thinking.

Finanza Locale. Testo Unico 14 settembre 1931, N 1175 coordinato con le modificazioni successive. Collezione Legale Pirola N. 839. Edizione L. di G. Pirola, Via Cavallotti 16, Milano, 1959, 117 pp.

The Pirola publishers' firm at Milano has published the text of the local and provincial tax codification of 1931 with the royal decree considering the position of the tax payer. The text of other local tax laws has been added.

Luigi Einaudi: *Miti e paradossi della giustizia tributaria*. Giulio Einaudi Editore, Via Umberto Biancamano 1, Torino, 1959, 311 pp.

This volume which was published for the first time 1938 and amended and extended in the subsequent editions, deals with the subject saving and taxation. It is not possible to give a detailed review of the rich contents of this important work, and therefore we confine ourselves to mentioning the titles of the chapters.

I. Il mito del contribuente che paga fino all'ulitmo centesimo; II. Il mito dei doppi d'imposta; III. Il mito dei sovrappiú; IV. Esistono vere esenzioni d'imposta?; V. Fantasmi illusioni ed eleganze dei debiti pubblici; VI. La vuota boria dei sommi principii utilitaristici dell'imposta; VII . E quella della ricerca contabilistica della base imponibile; VIII. Esiste l'imposta?; IX. Si, se da imposta si fa taglia; X. La scienza italiana e la imposta ottima; XI. Il supremo paradosso tributario; XII. Schemi storici e schemi ideali.

Dr. Dino Angeli: *Commento testo unico imposte dirette*. Edizione Consulente delle azienda, Via Mameli 10, Milano, 1959, 574 pp.

The new "Testo Unico" of January 29th ,1958, conprises a century of Italian tax legislation from 1865 to 1956, absorbing and modifying thousands of articles. This work is an excellent working tool not only for taxpayers, but also for the Tax Administration and for students. It gives a complete survey of the new Act and a commentary that makes it easily understandable.

Imposta di fabbricazione sugli oli minerali e sui gas liquidi. Legislazione vigente Collezione Legale Pirola N. 1196. Casa Editrice L. de G. Pirola, 16, Via Cavalotti, Milano, 1959, 117 pp.

The tax on the production of mineral oil and gas was constituted by the Act of 28 February 1939 nr. 334 .This Act has been reproduced in this brochure together with its alterations.

NETHERLANDS

P. Karmelk: *Suikerwet 1924*. (Sugar tax Act 1924). 2nd edition. *Supplement 6*, December 28th, 1959. De Belastingwetgeving Serie I. & A. no. 9. J. Noorduyn en Zoon N.V., Gorinchem, Netherlands.

P. Karmelk: *Statistiekwet*. 3rd edition. *Supplement 3*, January 11th, 1960. De Belastingwetgeving Serie I. & A. no. 13. J. Noorduyn en Zoon N.V., Gorinchem, Netherlands.

Dr. M. J. H. SMEETS and J. H. MEIHUIZEN: *Beknopte Belastinggids.* (Concise tax guide) 10th edition. *Supplement 8.* L. J. Veen's Uitgeversmij., Leidsegracht 78, Amsterdam, Price: f 6.13.

This guide to Dutch taxation contains a concise survey of the most important parts of the various tax Acts. Recently *Supplement 8* has appeared containing a number of pages intended for replacement of out-dated sections and tax tables valid as from January 1st, 1960.

PORTUGAL

MANUEL ALVES VALENTE: *Codigo do imposto sucessorio e sisa.* Livio I *Codigo do imposto sucessorio.* Colecçâo "Reforma Fiscal" No. 1. Ediçâo de Manuel Alves Valente, Secretario de Finanças, Lisboa, 1959, 199 pp.

In the course of the tax reforms that are being carried through in Portugal this is the first book which has appeared to give a picture of the new situation. It contains the text of the Succession Duties Act, 1958. The author MANUEL ALVES VALENTE has added to this next numerous explanations, notes, circulars, ministerial decrees and examples.

In this way practitioners, students and scientists are provided with a practical handbook that gives an answer to the questions that may arise concerning Succession duties in Portugal. Excellent general and alphabetical indexes facilitate the finding of the subject wanted.

SPAIN

Manual de la Administración. T-A-L-E, Hortaleza 20, Madrid. 600 ptas.

This Spanish loose-leaf service has been especially conceived for the use of those who have to do with tax problems in business. The book consists of three Parts: juridical legislation concerning corporations, tax legislation, social security legislation. In this way all texts that one may need have been brought together in one handy binder. The systematic arrangement of subjects and the tabcards are helpful to find quickly the subject needed. Moreover the book is kept up-to-date by means of monthly "*Boletines de Información*" (450 ptas) which contain legislation, case law, articles and commentary. This publication much facilitates the study of Spanish taxes.

FEDERICO BAS and RIVAS: *Impuestos de Derechos Reales.* Editorial de Derecho Financiero, Quintana 15, Madrid, 1956, 769 pp.

In this volume, which has appeared in the Series "Textos fiscales anotades" of Editorial de Derecho Financiero, Madrid, the taxation of the transference of properties has been treated. After the text of the Act follow extracts of the resolutions of the Tribunal Económico Administrativo Central and the sentences of the Tribunal Supremo. Moreover the authors refer to books and articles from Spanish periodicals in order to orientate the reader as completely as possible about the subject under discussion. A chronological table of sentences and resolutions and an alphabetical index complete this most useful work.

N. AMORÓS and H. RODRIGUEZ: *Contribución sobre la Renta.* Editorial de Derecho Financiero, Quintana 15, Madrid, 1955, 317 pp.

This excellent book which has appeared in the Series "Textos fiscales anotades" contains the text of the Spanish Income Tax Acts of 20th December 1932 and 16th December 1954 with explanations, annotation forms and an alphabetical index. A separate appendix contains the regulations issued until 31st July, 1956. This is one of the few books in which the Spanish

Income Tax is completely treated and which contains copious references to further literature and case law in books and periodicals. In this way the authors give the reader a complete documentation about the development of Spanish income tax legislation since its inauguration in 1933. They have rendered a most welcome service to the students of Spanish taxation.

SWITZERLAND

Die Praxis der Bundessteuern. Verlag für Recht und Gesellschaft, Bundesstrasse 15, Bâle. Première partie: *L'impôt pour la défense nationale,* par ANTON PESTALOZZI, *10e supplement 1959.* Deuxième partie: *Droits de timbre, impôt sur les coupons et impôt anticipé,* par R. PFUND, *15e supplément 1959.* Troisième partie: *La double imposition intercantonale,* par K. LOCHER, *5e supplément, 1959.*

Ces suppléments mettent à jour l'excellent recueil de jurisprudence fiscale que nous avons déjà signalée ici (voir notamment *Bulletin Tome XI,* p. 155).

Cette publication présente selon un plan systématique et avec des répertoires détaillés, des extraits ou des résumés de toute la jurisprudence relative aux impôts fédéraux et à la double imposition intercantonale.

Les Impôts de la Suisse. Recueil rédigé par l'administration fédérale des contributions. Verlag für Recht und Gesellschaft, Bâle. *1re partie:* impôts sur le revenu et sur la fortune des personnes physiques, *supplément 24,* 1959. *IIe partie:* impôts sur le rendement et sur le capital des personnes morales, *supplément 22,* 1959. *IIIe partie:* impôts sur les successions et les donations, impôts sur les transferts de propriété, impôts sur la consommation et sur la dépense, *supplément 21,* 1959.

Sous forme de feuilles mobiles qui s'intercalent dans l'ouvrage de base ou en remplacent certaines pages, ces trois suppléments mettent à jour la précieuse encyclopédie du droit fiscal suisse que nous avons plusieurs fois déjà signalée à nos lecteurs. Rappelons qu'en plus d'une bibliographie très complète et d'une série d'exposés généraux sur la fiscalité en Suisse, on y trouve des indications précises sur les bases légales, les conditions d'assujettissement, l'assiette et les taux de tous les impôts perçus en Suisse par la Confédération, les cantons et les communes.

Dr. KURT LOCHER: *Das schweizerisch-deutsche Doppelbesteuerungsabkommen,* Textausgabe und Praxis, Lieferung 1/1959. Basel, Verlag für Recht und Gesellschaft AG, Bundesstrasse 15, 1959.

Das schweizerisch-deutsche Abkommen zur Vermeidung der Doppelbesteuerung auf dem Gebiete der direkten Steuern und der Erbschaftssteuern vom 15. Juli 1931 war das erste der vom Bunde im eigenen Namen abgeschlossenen Doppelbesteuerungsabkommen. Am 20. April und 25. September 1959 sind zwei Zusatzprotokolle, das erste vom 9. September 1957, das zweite vom 20. März 1959, in Kraft getreten, die das Abkommen von 1931 grundlegend geändert und ergänzt haben. Diese Umstand rechtfertigt es, dem Praktiker, eine durch die Übersicht über die Praxis der schweizerischen und deutschen Steuerverwaltungs- und Steuerjustizbehörden ergänzte Textausgabe des schweizerisch-deutschen Doppelbesteuerungsabkommens vorzulegen. Das vorliegende soll in Lieferungen erscheinen und laufend nachgeführt werden. Die erste Lieferung bringt neben einem ausführlichen Literaturverzeichnis eine systematische Sammlung aller geltenden, auf die Doppelbesteuerung im schweizerisch-deutschen Verhältnis Bezug nehmenden amtlichen Texte. In der nächsten Lieferung soll die Praxis zum Abkommen, ebenfalls systematisch geordnet, dargestellt werden.

WILHELM WELLAUER: *Die eidgenössische Warenumsatzsteuer*. Verlag für Recht und Gesellschaft, Bundesstrasse 15, Basel, 1959, 509 S. Die eidgenössischen Steuern, Zölle und Abgaben, Band 1.

Dieses Buch gibt dem Praktiker der Wirtschaft, der sich mit der Warenumsatzsteuer zu befassen hat, Rat und Auskunft. Die systematische Darstellung des Stoffes dient dem Bedürfnis der Praxis, und bringt Klarheit in die umsatzsteuerliche Behandlung der mannigfaltigen Wirtschaftsvorgänge. Zum Gesetzestext angebrachte Hinweise auf die entsprechenden Erläuterungsstellen verbinden die Vorzüge der gewählten Darstellungsweise mit jenen der üblichen Kommentar-Form. Die Probleme, welche den Unternehmer am häufigsten beschäftigen oder für diesen am schwersten zu überblicken sind, haben eine ausführliche Erörterung erfahren. Wo es der Erleichterung des Verständnisses dienlich schien, wurden Entstehungsgeschichte und Zweck der Vorschriften näher dargelegt und die Auswirkungen an zahlreichen, aus der Praxis geschöpften Beispielen aufgezeigt. Die Darlegungen berücksichtigen die Verwaltungspraxis sowie die Rechtsprechung des Schweizerischen Bundesgerichtes und der Zollrekurskommission nach ihrem heutigen Stande. Ausser Urteilen zur Warenumsatzsteuer sind auch Entscheidungen aus andern Rechtsgebieten, die für die Anwendung des Umsatzsteuerrechts von Bedeutung sind, herangezogen worden. Ein Verzeichnis der in den Erläuterungen zitierten Entscheidungen verschaft einen Überblick über die Rechtsprechung.

Dr. JAKOB WUEST: *Die Besteuerung der Konzerne in der Schweiz*. Zürich, Polygraphischer Verlag, Zürcherhof/Limmatquai 4, 1959, 273 S. Veröffentlichungen der Handels-Hochschule St. Gallen, Heft 54.

Es gibt heute kaum mehr ein schweizerisches Gemeinwesen, das Konzernunternehmungen, sofern sie als Holding- oder Beteiligungsgesellschaften ausgestaltet sind, nicht in irgendeiner Form einer Sonderregelung unterwirft. Es ist daher vielerorts als ein Mangel empfunden worden, dass die Durchführung der Konzernbesteuerung bisher noch keine umfassende und systematische Abklärung gefunden hat. Diese Lücke schliesst die vorliegende Arbeit, und zwar unter Erfassung sämtlicher schweizerischer Steuererlasse, wobei vor allem die angefügten, sehr ausführlichen Steuerbelastungsvergleiche auf verbreitetes Interesse stossen werden. Die letzteren zeigen mit aller Deutlichkeit, dass einerseits die von Kanton zu Kanton bestehenden Unterschiede in der Besteuerung der Konzerne ein ausserordentlich grosses Ausmass annehmen und anderseits die Besserstellung der betrachteten Unternehmungen gegenüber einer nicht privilegierten Gesellschaft in den einzelnen Kantone verschieden stark ausfällt. Ergänzt werden die Untersuchungen u.a. durch Angaben über die Bewertung der Konzernbeteiligungen, die verdeckte Gewinnausschüttung und die Behandlung schweizerischer Gesellschaften mit ausländischen Verflechtungen.

TUNESIA

ARVIDS KALNINS: *l'Aide de l'Etat Tunisien aux entreprises industrielles*. Librairie "Publicia" 56, Avenue de Paris, Tunis, 1959, 49 pp.

Ce travail constitue une synthèse de toutes les mesures législatives édictées en faveur du développement économique de la Tunisie; on y trouve non seulement le libellé des textes qu'il doit connaître, mais également leur économie et les moyens d'en bénéficier.

UNION OF SOUTH AFRICA

D. MEYEROWITZ: *Supplement to the law and practice of administration of estates and Estate duty and donations tax*. Cape Town, Juta & Co., P.O. Box 30, 1959, 69 pp.

Since the publication of the second edition of this author's standard work "The law and practice of administration of estates", in May 1954, and of his "Estate duty and donations tax" in December, 1955, a review of which was published in *Bulletin, Vol. X*, p. 227, there have been several amendments to the various Acts involved. In addition there have been alterations in tariffs, in fees, a further agreement in respect of double death duties, the promulgation of life-interest tables, and a substantial amount of case law. This supplement is designed therefore to bring the two works up to date. It follows the sequence of the main texts and deals with the Administration of estates, Estate duty and Donations tax, in that order. Page references referring to the relevant pages in the two main volumes are printed in heavy type throughout this supplement, so that there is an easy cross-reference between them.

A. S. SILKE: *The 1959 income tax legislation in the Federation of Rhodesia and Nyasaland.* Juta & Co, P.O. Box 30, Cape Town, 1959, 51 pp.

The Income tax amendment Act, 1959, the Taxes charging Act, 1959, and the Territorial surcharges Act, 1959, which have recently been promulgated, contain some very important amendments to the income tax laws. Some of the important aspects which these amendments affects are annuities, pension funds and benefit funds, interest received by non-residents, insurance companies, new machinery allowances, supertax rebates, "dividend stripping" arrangements and the incidence of Territorial surcharge. The main purpose of this work is to discuss fully the effect of the new legislation. Whenever necessary the amendments are explained by practical illustrations. The full texts of the new legislation have been reproduced. A review of the main work was published in *Bulletin, Vol. X*, p. 112.

U.S.A.

CLINTON V. OSTER: *State retail sales taxation.* Published by the Bureau of business Research, College of Commerce and Administration, Bureau of Business Research Monograph no. 90. The Ohio State University, Columbus Ohio, 1957, 241 pp.

This book summarizes more than two decades' experience with sales taxes by the American states. It provides a wide range of historical, economic, statistical, and legal analyses of sales tax practices and problems in 33 states. The development of sales taxation is traced from antiquity to modern times, including European and Canadian sales taxes. Primary attention is given to the American states, with a detailed treatment of historical developments in the leading sales tax states.

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* 18-25 have been published.

Federal Taxes. Published by Prentice-Hall, 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. 33-52 which keep these volumes up to date have been published.

Prentice-Hall, Englewood Cliffs, New Jersey has published in its series

Federal tax report bulletin 1959, Section 2, the following brochures: No. 38. *Tax ideas for professionals.* 29 pp. No. 44. *Internal Revenue Service Special enrollment examination, questions and answers.* 48 pp.

Depreciation and taxes, Symposium conducted by the Tax Institute, November 20-21, 1958. Princeton, Tax Institute, Inc., 457 Nassau Street, 1959 248 pp.

The many-faceted problem of the tax treatment of depreciation is discussed from the points of view of the various tax-oriented professions — accountants, lawyers, corporate executives, economists — and the federal government, in this Tax Institute symposium volume. This is the second in a series of publications on "The Impact of taxation on management responsibility". The proceedings of a seminar on "The effect of tax policy on executive and worker compensation" were published a year ago. Fundamentals of depreciation policy are outlined in Part One of the current volume. Part Two is devoted to a consideration of depreciation and the changing price level. Specific aspects of tax policy and management decisions are discussed in Part Three. Part Four is concerned with considerations in depreciation reform. As background, Harvey Perry, Director, Canadian Tax Foundation, outlines depreciation practices in foreign countries.

V

FRANCE — IMPOT SUR LE REVENU DES PERSONNES PHYSIQUES

Impôt sur le revenu des personnes physiques — Impôt sur les sociétés — Entreprises françaises possédant des filiales à l'étranger ou contrôlant des entreprises situées à l'étranger. Notions de transfert de bénéfices.

Afin d'éviter certaines combinaisons tendant à transférer à l'étranger tout ou partie des bénéfices normalement imposables en France, l'art. 57 du C.G.I. dispose que pour l'établissement de la T.P. (1) 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 les comptabilités.

Le même article prévoit, en outre, qu'il est procédé de même à l'égard des entreprises qui sont sous la dépendance d'une entreprise ou d'un groupe possédant également le contrôle d'entreprises situées hors de France.

L'attention a été appelée sur les inconvénients que présenterait dans certains cas, pour les entreprises possédant des filiales à l'étranger, l'application trop stricte de ces dispositions alors qu'il convient, au contraire, en vue de développer au maximum les exportations, de faciliter l'établissement ou le fonctionnement à l'étranger d'installations permanentes destinées à permettre la vente de produits français sur les marchés extérieurs.

Dans ces conditions, lorsqu'il se trouvera en présence d'entreprises françaises possédant des filiales à l'étranger ou contrôlant des entreprises situées à l'étranger, le Service ne devra pas manquer, d'une manière générale, pour apprécier s'il y a lieu ou non de faire application des dispositions de l'art. 57 susvisé, de prendre en considération les conditions de fonctionnement commercial de ces filiales ou entreprises.

En particulier, il conviendra de ne pas faire jouer ledit article lorsque des entreprises titulaires de la carte d'exportateur seront en mesure d'établir que les cessions consenties à leurs filiales étrangères à des prix de vente voisins du prix de revient répondent non au souci d'effectuer des transferts de bénéfices mais à des nécessités commerciales.

Source: *Revue des Impôts sur le Commerce et l'Industrie*. Nos. 503-504, Octobre-Novembre, 1959.

1) et par voie de conséquence de l'impôt sur les sociétés.

INTERNATIONAL CHAMBER OF COMMERCE.

Bilateral agreements for the avoidance of double taxation of income and property for the most part express in simple language the intentions of the contracting parties to provide reciprocal exemptions and reliefs from taxation in defined circumstances and in relation to particular classes of income and property. The texts of the agreements are not complicated by carefully constructed legal formulae for reconciling the detailed statutory provisions and administrative regulations of the contracting parties. It is therefore inherent in the agreements themselves that difficulties and disputes should arise in their interpretation and application.

The nature and number of such difficulties increase as the network of bilateral agreements becomes more widespread, and the longer the time during which an agreement has been in operation the more likely it is that conflicts in its interpretation and application will arise. Decisions of the national courts and rulings by the central taxing authorities on difficult cases are handed down, with the consequence that individual tax officers become bound by precedent or instruction and cannot exercise discretion in cases of a similar nature. Bases of agreement between countries at different stages of development may be evolved in the near future, and this will be followed by a considerable increase in the number of bilateral agreements in operation. Such agreements will not only add to the number of potential disputes, but by reason of the absence of complete reciprocity may also tend to be interpreted more rigidly, with less opportunity for compromise and equitable solution of difficulties.

A study of bilateral agreements currently in operation shows that the remedies provided by national laws and by the agreements themselves for solution of difficulties and disputes frequently fail to provide satisfactory redress for the taxpayer aggrieved by the action of one or other of the contracting States. In the opinion of the International Chamber of Commerce, the avoidance of double taxation through the medium of bilateral agreements demands not only a common high level of effectiveness in the provisions themselves, but also a high degree of efficiency in the machinery for resolving difficulties and disputes arising out of the agreements. Any recommendations made in this regard must—if they are to be practical—recognize the fact that the habit of international co-operation has not yet developed to the stage where governments would be willing to surrender a material part of their sovereignty. The ideal of an international court to which an aggrieved taxpayer might submit his own case directly, or to which the taxpayer might compel his own government to state a case, is not practical at the present time.

The first practical step towards the solution of problems of double taxation which remain after a treaty has become operative is for the treaty itself to provide for their solution either by consultation and agreement between the competent authorities, or by reference to a conciliation commission, or by reference to an arbitrator acceptable to the two contracting States. The immediate aim should be to arrange that all treaties currently in force are so amended, and all new treaties are so drawn, that the remedies generally available for solution of disputes and difficulties are no less effective than those embodied in the more progressive of recently concluded treaties. The

measures required to be taken in order to achieve this limited objective may be summarized as follows:

a) each contracting State should provide for its treaties to have the force of law within that State, so that an aggrieved taxpayer has a right of action in the national courts;
b) each treaty should provide for difficulties or doubts arising in connection with its interpretation or application to be submitted to a conciliation commission composed of representatives of the competent authorities;
c) the treaty should further provide that a taxpayer who claims to have been assessed to tax contrary to the provisions of the treaty may have direct recourse to the conciliation commission, and until such time as the case has been heard collection of the tax in dispute will be deferred;
d) the treaty may further provide that in the event of failure of the conciliation commission to provide a solution in any case, either of the contracting States may submit the difficulty to the Court of International Justice at The Hague, on the understanding that the decision of the Court will in that event be binding upon both the contracting States and the taxpayer. Pending the ruling of the Court the collection of tax in dispute will be deferred.

From this starting point it may be possible to move forward in the future towards procedures of a more independent judicial nature. As the habit of submitting difficulties to a mixed conciliation commission becomes firmly established, with occasional reference to the International Court of Justice at the discretion of the contracting States, present insistence on unfettered national sovereignty in this field may gradually be revised. The way may then be open to the evolution of arbitration procedures as a means of resolving difficulties. In the early stages of this secondary development, bilateral treaties might merely provide for arbitration by a body acceptable to the two parties. As more treaties are made to include such provision there would grow a habit of choosing the same arbitral body, and the nucleus of an international court of first instance in matters of double taxation would come into being.

The development suggested will depend for its progress on further studies in the field of international fiscal law. Each country is exhorted to give thorough consideration to this problem in concert with other countries with which it has negotiated or is negotiating bilateral agreements. It is recommended, in particular, that the Fiscal Committee of the Organization for European Economic Cooperation should include the subject in the program of studies now proceeding with a view to inclusion of improved remedies in the draft convention which will be the culmination of the Committee's work.

Bilateral agreements for the general avoidance of double taxation of income and property now exceed two hundred in number. In addition, there are agreements dealing with estate duty, gift taxes, transport enterprises and certain specialized aspects of commercial activity. In view of the extent of this network of agreements, it is perhaps inevitable that difficulties and disputes should emerge, and the question arises whether satisfactory machinery exists for resolving them. In particular, it has been suggested that some form of international court or tribunal should be constituted to decide issues which cannot be dealt with satisfactorily by any other means. This study discusses the nature of the problem, the processes of law and administration which already exist to deal with it, and the further remedies which may be necessary or desirable, including the possibility of creating some form of international authority.

In principle, every conflict of laws or practice in the interpretation and application of a double taxation agreement between two States should be capable of submission to an independent court or tribunal. If this principle were accepted by contracting States and national sovereignty were sacrificed

sufficiently to permit the creation of an international court to resolve difficulties and disputes between the States themselves, it might soon be possible to take the further step of allowing taxpayers a direct right of appeal to the court. The evolution of a right of process for the taxpayer whose interests are directly affected by failure of two States to resolve a conflict of laws, or provide an equitable remedy, in any case of double taxation, must be regarded as an essential future development in the field of human rights.

On the other hand it would be unrealistic to ignore the present situation in which no State has so far abandoned or even appears likely to abandon its national sovereignty in relation to the interpretation and application of double taxation agreements. For as long as the terms of an agreement are interpreted and applied by the national courts or administrations of each State independently, the possibility of conflict and residual double taxation will remain. A radical change in this situation is not likely to be achieved in a short time. Therefore, whilst recognizing that there are ultimate, ideal solutions which may be capable of achievement in the very distant future, this study will be mainly concerned with immediate possibilities.

To some extent, the unsatisfactory nature of the remedies now available for resolving difficulties and disputes is a corollary of the abandonment of early plans for avoidance of double taxation by multilateral agreements, and adoption of the alternative bilateral method. Without some form of conjoint office comprising representatives of subscribing States and some form of arbitral body exercising an authority superior to national law, multilateral agreements would have quickly foundered. The emergence of the Common Market in Europe and subsequently the Free Trade Area will probably give rise to multilateral agreements for avoidance of double taxation, and this in turn may stimulate the development of more effective remedies in cases where difficulties in interpretation and application arise. To this extent, the beginnings of an approach to the ideal of an international court or tribunal to which the taxpayer may resort directly may be less remote than this study contemplates.

NATURE OF BILATERAL AGREEMENTS

Double taxation arises when the jurisdiction of the tax authority where income arises overlaps the jurisdiction of the tax authority where the taxpayer resides. Agreements for the avoidance of double taxation are agreements between the two taxing authorities to limit their jurisdiction either by one surrendering to the other the right to tax certain types of income, or, where that cannot be done, by the country of residence abating its claim by reason of the tax paid to the country of origin.

From this statement flow two initial observations which are relevant to the study of the nature of the problem. The first is that the parties to a bilateral agreement are primarily concerned with removing an obstacle to the flow of trade and investment between their two countries. The States which are parties to the agreement do not enter into negotiations with the expectation that they can achieve the ideal and that by virtue of the agreement no resident or national of either territory will thereafter suffer double taxation. As between the contracting States the main purposes of an agreement may still be achieved even if some cases of double taxation continue to arise. It is important to bear in mind therefore that the mere fact of double taxation persisting in some circumstances is not in itself evidence of a difficulty or dispute which needs to be resolved. It may be a point on which agreement could not be reached in negotiation, owing to the impossibility of reconciling in detail the provisions of dissimilar tax laws or to the absence of a basis for agreement on points at which the economic circumstances of the parties differ.

The second observation concerns the position of the taxpaying individual

or entity in relation to a double taxation agreement. At the present stage of development of international law, taxpayers are the objects of such an agreement; they are not parties to it. Each contracting State which is a party to an agreement may, of course, take such legal or administrative steps as are necessary to make the provisions of the agreement effective within its own jurisdiction, and frequently such steps involve enactment of national laws or amendments to national laws under which the interested taxpayer acquires enforceable rights against the taxing authority. In many cases the treaty itself acquires the status of national law by reason of the nature of the authority vested in the head of State or minister empowered to conclude the treaty. If the treaty is not given the force of a national law, the taxpayer has no rights of appeal against the decisions of the tax authorities individually; when the treaty has the force of national law in each territory, he has no right to sue on the treaty itself when the decisions independently taken by the national authorities are in conflict, leaving him exposed to double taxation contrary to the intentions of the agreement.

When a taxpayer continues to suffer double taxation contrary to the provisions of a bilateral double taxation agreement, it might appear that in all cases he should have the right to require one or other State to join with him in an action before an independent court or tribunal against the State in which his grievance arises. It is assumed in this study, however, that in practice some limitation of this right would be unavoidable. Following precedents in other branches of international law, no State may be expected to allow itself to be arraigned before an international authority by one of its own citizens, or in particular allow its own citizens to invoke the assistance of another State in such an action.

TYPES OF DIFFICULTY OR DISPUTE

The types of difficulty or dispute which may arise out of double taxation agreements may be illustrated as follows:

a) failure of the two States to adopt a common interpretation and application of the terms used but not defined in the agreement, and failure to adopt a common measurement of the income which is the subject of the agreement;
b) the rigid application of general provisions to particular cases with an inequitable result;
c) the conflict of law which arises from the use of terms and phraseology which are appropriate to the national law of one State but not to that of the other State;
d) discrepancies between the two texts when the agreement is concluded in two languages;
e) ambiguity in the text;
f) failure to include provisions for avoidance of double taxation in certain cases; this may be due to failure to negotiate an agreed solution or by oversight;
g) failure of the agreement to cover certain cases of double taxation which subsequently arise as a result of changes in national tax laws;
h) the omission of a general direction to improvise an equitable solution for cases for which provision is not made or the provision made is ineffective.

All the above faults are faults in either the quality or the scope of an agreement. Items a) to e) are mainly difficulties of interpretation. Items f) to h) are faults of omission. In addition to the above, there is the insoluble difficulty which arises when one State levies its tax in breach of a clearly understood provision of its agreement with the other State. For this, once all the opportunities for discussion and negotiation have been exhausted, there is no sanction but to denounce the agreement, in which case double taxation becomes the result of the normal operation of the national law.

OMISSIONS FROM AGREEMENTS

Faults of omission are quite different in character from difficulties of interpretation or application and breaches of the agreement. The taxpayer may be aggrieved, but he has no cause for action under national laws and no essential right to expect the omission to be remedied by the contracting parties. In relation to the subject matter omitted, there is no agreement and no rights or obligations on either side.

Nevertheless, in the last twenty years more than thirty agreements between European States have included a clause empowering the chief revenue authorities of the two States concerned to "conclude special arrangements" for the avoidance of double taxation in cases for which the agreement does not explicitly provide. A clause of this kind may appear to reveal an intention to avoid double taxation generally, but in fact it is little more than an opportunity for the parties to examine whether an omission is unintentional and therefore remediable by amendment of or addition to the agreement. In any event, the procedure so provided to deal with omissions from the principal agreement is discretionary and incapable of complete enforcement by national judicial authorities. A writ of mandamus might be secured by a taxpayer which would oblige an unwilling administration to enter into discussions with a view to concluding such special arrangements, but a national court cannot compel the administration actually to conclude arrangements.

The agreements themselves usually provide for automatic extention of their application to any new taxes of a substantially similar nature to those specified. In this respect therefore there is adequate protection against changes in national tax laws, introduced subsequently to conclusion of an agreement, which changes might otherwise render the agreement ineffective. There is no protection, however, against changes in the principles upon which a national tax law is based, or changes of a technical nature, such as substitution of a turnover tax for income tax on some classes of income, or large-scale transfer of taxing powers from State to provincial or municipal governments. So far as lacunae in the provisions for avoidance of double taxation arise from events subsequent to conclusion of an agreement, it is entirely a matter for the contracting parties to consider in the light of the main purposes of the agreement and the facts and circumstances upon which it was based. Some authorities believe that, as the force of a treaty is superior to that of national law, a fundamental change in national law which renders a treaty wholly or in part ineffective is a breach of the treaty. This is a difficulty which the contracting governments alone can resolve.

DIFFICULTIES OF INTERPRETATION

Problems arising out of difficulties of interpretation must be considered against the background of law and administration in which the agreement has to operate. There are two distinctly different backgrounds. In most countries a double taxation agreement is given the force of, and becomes part of, the national law. In consequence, a claim by a taxpayer resident in either State will be enforceable in the national courts, and the courts will be prepared to interpret the provisions of the agreement in relation to such a claim. In the other case, exemplified by France, a claim may be valid under the national law but, if the issue turns on the meaning of a term or stipulation in a double taxation agreement, the courts will refrain from giving a decision. The agreement itself not having the force of a national law in France, it is regarded as an act of the administration which only the administration can interpret. The solution of any doubt or difficulty is therefore solely in the hands of the national administration, and whether or not the case is answered at all is at the discretion of the administration.

Remedies in British Agreements

The provisions to be found in double taxation agreements for dealing with the difficulties of interpretati n closely follow the above division. In British agreements there is rarely anything more then a formula which has a parallel in many British national laws, namely, that in the application of the provisions of the agreement by one contracting party any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the tax laws of that contracting party. The same formula has been widely employed in agreements entered into by the United States. It is a definition clause for the guidance of the national courts upon which will rest the duty of interpretation. The absence of any other guidance recognizes the absolute sovereignty of the national courts. The possibility of an appeal against the decisions of those courts either to the State of which the claimant is a national or to some form of international court is simply not contemplated. It is difficult to imagine that British, and other territories which confer on the national courts the powers of interpretation of double taxation agreements, will ever allow the decisions of those courts to be reviewed by any external authority.

Remedies in Other Agreements

Agreements concluded by the United States and by most European States, other than with the United Kingdom, appear to assume in all cases a reserve of interpretative powers in the hands of the national administrations. Between 1935 and 1955, more than fifty new agreements included provisions relating to the settlement of difficulties or doubts arising as to interpretation or application of the agreements. In every case the competent authorities or chief revenue authorities were empowered to "conclude special arrangements" or to "settle the questions by mutual agreement". It may be argued that in practice these powers are rarely used or are not used sufficiently. Their existence is however significant, for an amicable procedure is provided for arriving at an interpretation or application of the provisions of an agreement whenever a definitive decision of a national court of law is not competent. It is probable for instance that an application to the Conseil d'Etat might be competent to move an unwilling administration to find a solution. If, however, the administration is unwilling or unable to do by direct negotiation what the treaty directs it to do, the hopes are not very good that they will accept independent adjudication as a regular machinery.

When in any particular case a decision of a national court is competent, the procedure cannot be regarded as a possible means of varying the decision of the courts. It may be therefore that, in relation to the majority of agreements, the procedure is properly regarded as a means whereby the revenue authorities may clarify and concert their respective interpretations generally rather than in relation to particular cases.

THE RIGHTS OF THE TAXPAYER

Although the taxpayer may from time to time be dissatisfied with the operation of a double taxation agreement, the area within which he can be regarded as having acquired rights is strictly limited. He cannot sue either taxing authority directly or through any international court in respect of omissions from a treaty; nor can he expect the State of which he is a national or any international authority to interfere with the interpretation given to a national law by the courts of the State concerned. There could, however, be a possibility of the contracting parties without loss of sovereignty permitting a taxpayer to submit a difficulty of interpretation or application to an international court or to an independent tribunal, when the administrative authorities alone are competent to reach a decision and they cannot or will not do so.

In some sixty agreements, other than those to which the United Kingdom is a party, there is a standard provision that where a taxpayer shows or proves that the action of the revenue authorities has resulted in double taxation in his case, he shall be entitled to lodge a claim or protest with the State of which he is a national. If the claim is upheld or the protest is regarded as justified, the revenue authority of such State shall be authorized to come to an arrangement with tbe other State with a view to an equitable solution.

In a number of agreements refinements have been made to the standard provision. Time limits of one or two years have sometimes been laid down. Many of the agreements concluded by the United States require the State to which the protest is made to take action only if the subject matter is "worthy of consideration". In recent agreements entered into by Switzerland, it is made clear that the first duty of the State to which the protest is made is to consider whether it should waive its own claim to tax. A minority of the agreements further provides that recourse to the "amicable procedure" provided by the agreements shall not pre-suppose exhaustion by the taxpayer of all available channels of legal redress, and conversely such recourse shall not preclude resort to ordinary methods of legal redress. At least one agreement under negotiation provides for the setting up of a conciliation commission composed of representatives of the contracting States.

It is important to note that all the agreements concerned provide for direct relations between the revenue authorities of the contracting parties, thereby avoiding the formal use of diplomatic channels. It is also significant that the purpose of the procedure is to find an *equitable* remedy. One agreement, which has now been superseded, specifically provided that the resulting decision of the revenue authorities should be final and might not be tested in the national courts.

There is clearly scope for some form of arbitration, adjudication or international fiscal court, in cases where a national of one State is unable to obtain redress by action in the national courts of the other Stae. The particular form of authority is less important than the principle that the exercice of discretion by an administrative authority should be subject to review by an independent body. Provisions for consultations between the administrative authorities of the contracting States are no substitute for such review, because there is no remedy if consultations are not undertaken or if, being undertaken, no decision is reached. On the other hand, where the national law provides for such a review by a national court, that court must be regarded as an independent body for this purpose and when redress is available through legal process in national courts, the intervention of an authority outside the State in question raises insuperable problems of national sovereignty.

GENERAL ADVANTAGES AND DISADVANTAGES OF AN INTERNATIONAL COURT

An important advantage which might be expected to flow from the establishment of an international court would be the accumulation of authoritative decisions which, without necessarily being binding upon national courts, would be taken into account by them in dealing with cases of a similar nature within their competence. The very existence of the court would call for a more or less permanent representation by member States, and it is possible to foresee the creation of an international conjoint office composed of representatives who would be invaluable in arriving at settlement of disputes to the satisfaction of taxpayers without actual litigation. On the other hand, the creation of an international court could give rise to consequences which would not be in the best interests of avoidance of double taxation. Assuming that contracting States were to declare themselves willing in principle to accept the decisions of the court on matters directly submitted

by aggrieved taxpayers, the effect in practice might be to deter governments from entering into further agreements or renewing or extending old agreements. Governments which are presently careful to reserve to themselves the powers of interpretation and application of agreements into which they enter might well insist on such precision in the texts of future agreements as might seriously limit their scope and effectiveness.

CONCLUSION

The Possible Scope of an International Court

From this study it appears that the possible field open to an international court would be:

a) under the system whereby undefined expressions in the treaty are left to be defined by reference to the domestic law of each of the contracting parties, cases in which there is a conflict between the two national laws;
b) under the system whereby the administration is authorized by the treaty to make equitable settlements for cases not provided for, or insufficiently provided for, in the treaty so as to leave a taxpayer doubly taxed after applying the other terms of the treaty—cases where the taxpayer remains aggrieved.
His grievance can arise (i) where the national law provides for a review by a national court but the taxpayer remains aggrieved by the verdict, (ii) where there is no review by a national court of an administrative decision which is unfavourable to the taxpayer, and (iii) where the administration takes no action.

Attitude of Governments

Having narrowed down as described above the scope of the questions which might come up for supra-national determination in the field of double taxation agreements, and having considered the general advantages and disadvantages of having such a supra-national authority, the practical question remains of estimating how far national governments are likely to accept such an authority at the present time or in the foreseeable future.

The conclusion is that national governments would not accept it for the following among other reasons:

a) the exceptional cases where double taxation remains are not so large or so critical as to affect the flow of investment;
b) the governement would say that in most cases it would be less trouble for the taxpayer to change his investments, than for them to get agreement amongst themselves or for the parties to incur the costs of litigation;
c) the habit of international co-operation has not yet developed to such a stage that governments would surrender any part of their sovereignty except for a major benefit or in face of a great danger. Residual cases of double taxation do not come in this class.

For these reasons, the ideal of an international court, to which an aggrieved taxpayer might submit his own case directly, or to which the taxpayer might compel his own government to state a case, is impractical at the present time.

Gradual Development of Improved Remedies

This conclusion, however, is not final. International feeling develops and that which is impossible in this generation may be possible in the next. International law grows slowly and international fiscal law is still in its early stages. The promotion of the study of international fiscal law can bring into being principles of international taxation which are acceptable to the generality of governments without the existence of formal agreements to record them. There has been great progress since the League of Nations first undertook the

study of the origins and the remedies for double taxation. Certain principles are acceptable now and are apparent in the double taxation treaties which have been made. As thought and study develop, revisions of existing treaties and the drafting of new treaties mark an advance on their predecessors.

The first modest step towards the solution of problems of double taxation which remain after a treaty has become operative is for the treaty itself to provide for their solution either by consultation and agreement between the competent authorities, or by reference to a conciliation commission, or by reference to an arbitrator acceptable to the two contracting States. The immediate aim should be to arrange that all treaties currently in force are so amended, and all new treaties are so drawn, that the remedies generally available for solution of disputes and difficulties are no less effective than those embodied in the more progressive of recently concluded treaties. The measures required to be taken in order to achieve this limited objective may be summarized as follows:

a) each contracting State should provide for its treaties to have the force of law within that State, so that an aggrieved taxpayer has a right of action in the national courts;
b) each treaty should provide for difficulties or doubts arising in connection with its interpretation or application to be submitted to a conciliation commission composed of representatives of the competent authorities;
c) the treaty should further provide that a taxpayer who claims to have been assessed to tax contrary to the provisions of the treaty may have direct recourse to the conciliation commission, and until such time as the case has been heard collection of the tax in dispute will be deferred;
d) the treaty may further provide that in the event of failure of the conciliation commission to provide a solution in any case, either of the contracting States may submit the difficulty to the Court of International Justice at The Hague, on the understanding that the decision of the Court will in that event be binding upon both the contracting States and the taxpayer. Pending the ruling of the Court the collection of tax in dispute will be deferred.

From this starting point it may be possible to move forward in the future towards procedures of a more independent judicial nature. As the habit of submitting difficulties to a mixed conciliation commission becomes firmly established, with occasional reference to the International Court of Justice at the discretion of the contracting States, present insistence on unfettered national sovereignty in this field may gradually be revised. The way may then be open to the evolution of arbitration procedures. as a means of resolving difficulties. In the early stages of this secondary development, bilateral treaties might merely provide for arbitration by a body acceptable of the two parties. As more treaties are made to include such provision there would grow a habit of choosing the same arbitral body, and the nucleus of an international court of first instance in matters of double taxation would come into being.

Importance of Further Studies in International Fiscal Law

The development suggested depends for its progress on the prosecution of the study of international fiscal law. It is therefore relevant to refer to the inter-governmental machinery for this study. The Fiscal Committee of the League of Nations was succeeded by the Fiscal Commission of the United Nations in the study of problems arising from international double taxation. The latter Commission has been suppressed by the United Nations on grounds of economy and the staff of the United Nations Organization (Fiscal Division) is continuing a study of development in the field of international double taxation so far as its resources and experience permit.

A regional substitute for the Fiscal Commission of the United Nations exists in the form of the Fiscal Committee set up by the Organization for European Economic Co-operation (OEEC). On this Committee representatives of the taxing authorities of the member countries are endeavouring to define the principles to be followed and the definitions to be used in agreements for the avoidance of double taxation. There is more hope of achieving unanimity in this regional group because the countries concerned have more in common than the members of the Fiscal Commission of the United Nations which were drawn from a wider field. The Fiscal Committee of the OEEC should be asked to take up the study of providing in treaties themselves a method of resolving disputes by reference of such disputes to mixed conciliation commissions, with the possibility of review by an independent authority in the event of failure of the conciliation commission to arrive at a solution.

Source: *I.C.C. Brochure*, No 196, February 1959.

In its report on "Avoidance of Double Taxation" (Brochure No. 180), the International Chamber of Commerce stated the principles which should govern the tax treatment of income arising in one country to persons domiciled or resident in another country. The document recognized the sole right of the country of origin to tax income arising within its jurisdiction. It exhorted each other country to abstain voluntarily from taxing income arising outside its jurisdiction (1).

At the Naples Congress (Resolution No. 9) the International Chamber of Commerce noted the increasing tendency of countries in process of development to offer special tax concessions of various kinds to attract private capital and enterprise. Whilst expressing qəlified approval of this practice, the ICC pointed out that the interests of countries in process of development would best be served in the long term by the imposition of consistently low rates of tax and a liberal approach to the measurement of profits.

The practice of granting special tax concessions has gathered impetus. The appendix to this statement summarizes the income tax incentives offered by fifty-five territories. It does not purport to be complete, but illustrates the extent and diversity of special concessions now being offered. The ICC regrets that in many cases special concessions are offered in the context of high general rates of tax. Short term speculative capital may be attracted by such consessions, but permanent capital can be attracted in the long term only by low rates of tax consistently maintained.

To some extent, the tendency of countries in process of development to impose high general rates of taxation on profits and dividends may be attributed to the failure of capital-exporting countries to adopt the principle of exemption of foreign income. So far as capital is derived from countries which employ the tax credit method of double taxation relief, countries in process of development are encouraged to exhaust the taxable capacity which would otherwise be used elsewhere.

Pending adoption of the exemption principle, capital-exporting countries which at present afford double taxation relief by the tax credit method should take steps to ensure that their tax systems do not frustrate the efforts of countries aiming to attract capital and enterprise by maintaining consistently low rates of tax, without special tax concessions. Such steps may be taken either unilaterally by amendment of national laws or in treaties with countries in process of development.

The most likely possibility is by bilateral treaties. Such treaties might make effective tax measures adopted by countries in process of development—

1) The Swiss National Commitee voted against the adoption of this first paragraph.

whether such measures take the form of low tax rates alone or both low tax rates and special tax concessions—by providing for reduction of taxes in the capital-exporting country on income subject to a low rate of tax or enjoying a tax concession in the country of origin.

Where it is not possible to negotiate bilateral treaties of this kind, capital-exporting countries may nevertheless consider it desirable to avoid complete frustration of special tax concessions of a kind designed to overcome the initial difficulties of pioneer businesses in territories where the normal tax regime is not discouraging to long-term development. This might be achieved by according the same treatment to the income as if it had been taxed by the country in-which it arises. Such a policy would involve special reliefs as follows:

a) capital-exporting countries using the tax-credit method of relief would allowa credit for the foreign tax which would have been payable in the absence of special concessions;
b) capital-exporting countries which under existing law exempt income which has been taxed in the country of origin would grant exemption also to income not taxed by reason of special concessions.

(In the *I.C.C. Brochure No.* 197, February 1959, from which it has been reproduced, the above statement was accompanied by a table showing tax incentives offered by 55 developing countries)

UNITED KINGDOM : PENALTY PROVISIONS IN THE INCOME TAX ACTS

Memorandum submitted to the Board of Inland Revenue by the Association of Certified and Corporate Accountants

1. There are at present over fifty sections providing for penalties or penal duties. They may be grouped under the following main headings:

a) those which impose a penalty on officials charged with the administration of the Acts, for example, Sections 7, 13 and 16 of the Income Tax Act, 1952; [1])

b) those which impose a penalty on persons who refuse to co-operate in the application of the machinery of taxation so far as concerns the taxation of the income of other persons, for example, Sections 30, 90, 506 and the P.A.Y.E. penalty provisions of the Income Tax Act, 1952;[1])

c) those which impose a penalty for conspiring with another in order to reduce the other person's tax liability; or for committing an act which is declared to be unlawful, for example, Sections 43 (3) and 468 of the Income Tax Act, 1952;[1])

d) those which impose a penalty on a person for failing to give information necessary for the correct determination of his own liability or who gives incorrect information, for example, Sections 20, 25, 48 and 235 of the Income Tax Act, 1952.[1])

2. It is often difficult to determine which of the provisions is applicable to any particular offence since many offences seem to fall within the provisions of more than one section, and the language used in some of the sections often seems to be somewhat obscure. Further, it is considered undesirable for the penalty sections to be so widely scattered throughout the Income Tax Act, 1952. The Council therefore submits the following recommendations:

a) the whole of the law relating to offences and penalties should be re-enacted as a single body of legislation;

b) each offence should be made the subject of precise definition in unambiguous language;

c) the legislation should be so drafted that no single infringement may be publishable under more than one provision;

d) for offences which are similar in kind or gravity, the penalties should likewise be similar.

Moreover, the Council thinks it undesirable that some offences may be dealt with both under the Income Tax Act, 1952, and the Perjury Act, 1911, and is of the opinion that where proceedings are contemplated under the Perjury Act, 1911, the penalty provisions under the Income Tax Act, 1952, should not apply.

3. The Council feels that the penalty sections lend themselves to the co-ordination, regrouping and simplification already recommended. The offences may then be grouped under the following headings:

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[1]) The sections quoted above are referred to by way of example only and do not comprise an exhaustive catalogue of the various penalty sections.

a) failure to make a return;
b) making an incorrect return;
c) claiming allowances to which there is no entitlement;
d) submitting incorrect accounts;
e) failing to produce books and papers when demanded in accordance with the provisions of the Income Tax Act, 1952.

The penalties might be laid down as falling within three scales according to whether:

(i) there was fraud and wilful default;
(ii) although there was neither fraud nor wilful default, tax was lost to the Revenue;
(iii) there was a technical offence involving no loss of tax.

4. The Council takes the view that in such cases pecuniary penalties should be exigible, and in all cases involving loss of tax and in those cases involving fraud or wilful default, the penalty of possible imprisonment should also be retained. In both types of case the pecuniary penalties should be related to the amount of the tax lost. The Council is not in favour of penalties being related to the total tax chargeable upon the whole of the income of a taxpayer, since apart from the more obvious inequities of such a system, the result would be that a precisely similar offence might give rise to widely differing penalties according to the personal circumstances of the taxpayer.

5. The Council is of the opinion that the scale of pecuniary penalties for cases involving fraud or wilful default should be higher than for other cases. It suggests that a scale of three times the tax lost and twice the tax lost respectively might be appropriate. The Council considers that it may be desirable to increase the existing fixed basic penalty of £20 in order that the Revenue may have adequate negotiating power in small cases, and accordingly it suggests that appropriate amounts might be perhaps a sum not exceeding £500 for cases involving fraud or wilful default and a sum not exceeding £100 in other cases involving loss of tax.

6. The Council suggests that in those cases which do not involve loss of tax a fixed penalty of (say) £5 might be imposed in the event of successful penalty proceedings being taken, together with a penalty of a further £5 per day from the time when the penalty was imposed for so long as the offence continued.

7. The Council is conscious of the fact that most cases involving penalties are settled without the formality of penalty proceedings, and it is strongly in favour of this practice being continued. Nevertheless, the Council feels that where penalty proceedings are commenced the present position is not entirely satisfactory. Proceedings may be taken either before the Appeal Commissioners or in the High Court, and while the Commissioners in the case of proceedings before them can impose either the maximum penalty or some lesser sum, the High Court has no such power of mitigation.

8. The Council suggests that where penalty proceedings are contemplated in cases involving fraud or wilful default it should be necessary to bring those proceedings to the High Court in view of the serious nature of the offence. The Council also suggests that if penalty proceedings are commenced in other cases they should always be taken before the General or the Special Commissioners in the first instance, with the right of appeal to the High Court.

9. The Council also takes the view that both the Commissioners and the High Court should have power to impose penalties at a lower level than the statutory maximum, and that where these bodies impose penalties the Board of Inland Revenue should have no further power to modify them.

10. The Council regards as unsatisfactory the attitude of the Revenue in refusing, in back duty cases, to make available to the taxpayer the information which may be available to the Revenue. Where fraud or wilful default

is alleged, or where additional assessments are made, it feels that the Revenue official should be obliged to disclose to the taxpayer the information on which he is proceeding.

11. It is understood that the present policy of the Revenue is to inform offending taxpayers that while it is not possible to promise more lenient treatment if they make full disclosures of their offences and co-operate in dealing with them, the Revenue has power to make pecuniary settlements and to mitigate penalties in suitable cases. The result in many cases is satisfactory, but in other cases the taxpayer remains obdurate because it has not been possible to make a specific promise and thus damages his own position. In other cases taxpayers have been known to give considerable assistance to the Revenue in the hope of obtaining more lenient treatment only to find that when the full facts become known they face the full rigours of prosecution.

12. The Council feels that a taxpayer who, on his own initiative, makes a voluntary and complete disclosure should be entitled to less severe treatment than one whose offences are discovered by the Revenue and who perhaps does not co-operate in the subsequent investigation.

13. A further point which causes the Council some disquiet is the interpretation to be placed on the word 'discovers' in Section 55 (1) of the Income Tax Act, 1952. It will be recalled that this subsection is designed to enable the taxpayer to avoid the penalties which would otherwise be exigible as a result of omissions or incorrect statements where he 'discovers' these. The word 'discovers' is used in Section 41 of the Income Tax Act, 1952, in relation to additional assessments and has been held to mean 'finds out' in that section. Thus in the case of Section 41 of the Income Tax Act, 1952, the Revenue may be said to have made a discovery where it finds out that the law has been wrongly interpreted upon a contentious point despite the fact that the Revenue has been fully informed of all the relevant facts. On the other hand, the Revenue does not accept that this interpretation of the meaning of the word 'discovers' applies within the context of Section 55 of the Income Tax Act, 1952. The Council finds it difficult to believe that a different and narrower interpretation should be placed upon this word in the latter context. It suggests that amending legislation should be drafted if a different interpretation was intended. Similarly, if no distinction is intended, the Council recommends that the appropriate sections of the Income Tax Act, 1952, should be clarified.

14. Where penalties under Section 468 of the Income Tax Act, 1952, are involved, subsection (5) of that section imports a presumption of committing an offence unless the contrary is proved and so places the onus of proof on the director of the company concerned. The Council considers that this provision runs contrary to the generally accepted principles of English law and that the section should be amended so as to shift the onus of proof to the Revenue.

15. The Council is aware of the various observations of the Royal Commission on the Taxation of Profits and Income and is in agreement with most of the views expressed in its Final Report. It cannot, however, agree that the rule applicable to the estate of a deceased person, whereby back duty assessments may be related back for only six years from the date of assessment, as opposed to six years from the date of death, is in need of amendment. Moreover, if, as the Royal Commission on the Taxation of Profits and Income proposed in paragraph 1068 of its Final Report, a committee were to be set up to examine back duty legislation and penalty provisions, the Council is of the opinion that this committee should include representatives of the accountancy profession, since it is the accountants who are very largely responsible for the negotiation and settlement of back duty cases.

16. The Council regards the prevention of offences to be preferable to

punishment by penalties, and it recommends that more attention should be paid to informing taxpayers of the offences relating to returns and accounts and of the penalties attached thereto. It suggests that consideration should also be given to devoting, if necessary, a complete page in the income tax return form to a clear statement of both offences and penalties, printed in large and easily readable type. The taxpayer who knows that his returns are, or have been, incorrect will at least then be forced to consider the matter once in each year. If, in accordance with the earlier recommendation, a distinction should be drawn between voluntary disclosure and other forms, there would appear to be a greater likelihood that voluntary disclosure would be made.

Source: *The Accountants Journal*, February 1960.

PROFESSOR ERIK LINDAHL †

With deep regret the Director of the International Bureau of Fiscal Documentation has to perform the sad duty of announcing that Prof. Erik Lindahl, member of the Bureau's Board of Protection, passed away in Sweden on January 6th, 1960.

Prof. Erik Lindahl, together with his compatriots Gunnar Myrdal and Bertil Ohlin belonged to the leading scholars of the famous Swedish School in theoretical economics, which dates from the thirties. Lindahl was privileged to be an extremely talented pupil of one of the greatest economic geniuses of all times, Knut Wicksell, whose ideas he elaborated and deepened in a shrewd way in various fields of the economic science. Of the three aforementioned top scholars of the Swedish School, Lindahl has in all probability been the most influential so far (apart at least from Ohlin's contributions to the theory of the international trade), which may be ascribed to his exceptionally lucid argumentation and to his thoroughness in analysis (which is so particularly attractive for the conscientious theorist).
Lindahl's first great publication ("Die Gerechtigkeit der Besteuerung", The Justness of taxation, 1919), which drew much attention everywhere, was more than a mere important contribution to the economic theory of taxation. Following the steps of Wicksell, Lindahl in his work tried to come to a consistent application of the Austrian theory of value to the whole theory of public finance. His individualistic approach to the problem of the optimal scope of the public provisions and of the burden of taxation has, in the long run, not been able to stand the test of the criticism, to which it has been subjected particularly in the Italian and American literature, but the shrewd way of analyzing has nevertheless made Lindahl's first work one of the classics in the field of public finance and it should be considered as of enduring importance. With this work Lindahl became also the most renowned critic of the theory of the proportional distribution of tax burden propagated by the so-called Dutch School in the science of taxation.

Renown in a much wider circle of students in economical science was acquired by Lindahl in the thirties by his pioneering work in the field of the setting up of dynamic economic models—in which the conceptions "planned savings and investments" play a leading role, closely related to (but not identical with) Myrdal's equally famous conceptions "ex ante savings and investments"—the theory of business cycles, the theory of the monetary equilibrium and the monetary policy and the theory of the anti-cyclical budgetpolicy, Lindahl being the first to develop the last mentioned theory systematically.

His ideas in the fields mentioned here have been propagated in many countries since his most important works, which were originally published in Swedish, have appeared in an English edition (1939). In a number of articles in periodicals he further made i.a. important contributions to the field of statistical analysis, the statistical determination of the burden of taxation, the compilation and interpretation of price index figures and the system of national accounts.

Many times Lindahl has given advice to the Swedish government. Particularly famous has become his advice regarding the reform of the set-up of the budget in view of the anti-cyclical policy.

After the second world war he also took an important part in the inter-European cooperation in the economic field, notably within the framework of the O.E.E.C.

I

THE "SOURCE OF INCOME" IN MUNICIPAL AND INTERNATIONAL TAXATION

by

Dr. E. W. KLIMOWSKY, Israel

I. Incidence as to place and time.

The importance of the "source of income" in international taxation is rather considerable. The most prominent features are:

(1) the source in its geographical sense (1), when income is received in country B and the recipient contends that, its "source" being in country A and it having been subject to tax there, country B should refrain from taxing that income again, even so if country B is prepared to allow the deduction of the tax paid in country A as an expense from the respective amount of income or, in the case of a double-taxation agreement between countries A and B, to grant an exemption or other reliefs from the very amount of tax imposed on that income by country B.

(2) Of no less consequence is the question of tax incidence in *time*. This problem is known in British international taxation as that of taxation from foreign possession(2) and as such it is prevailing in the numerous countries which follow the British tax pattern. In the United States, it is called the taxation of income from foreign sources(3). If the origin of income from securities is in country A, and in a certain year part of those securities does not yield any income therefrom, there is no influx of income to country B in that year or, if part or all of those securities were abolished or sold in a specific year, but taxable income emanating therefrom is being received after that year in country B, the respective year of assessment in country B for both cases has to be fixed. "If in the year of assessment a source of income should

1) J. P. Hannan and A. Farnsworth, The Principles of Income Taxation, London 1952, p. 295.
2) Hannan and Farnsworth, l.c., pp. 314-320.
3) Harvard Law Review, vol. 68, p. 1036.

dry up and no income accrue, then no tax could be levied or collected in respect of a non-existing income."([4]).

As far as the geographical problem is concerned, the English conception distinguishes between income from employment, on the one hand, where the place of the contract of service and that of the actual payment are decisive as indicating "the locality of the source of income", and not "the place where the activities of the employee are exercised"([5]), whilst in the case of a self-employed assessee, "it is impossible to put a finger on a particular contract as the source of the income. The profits of the profession and the profits of the trade come from the general state of activity of the trader and of the professional man" (Sir Wilfrid GREENE, in BENNETT v. MARSHALL).

In English tax law, a special difficulty arises sometimes from the attribution of the income to Schedule E (employment), on the one hand, and to Schedule D (trades and professions, foreign securities and possessions), on the other, so that chargeability of the various parts of foreign income of the same person, if he is at the same time e.g. an employee of one company and an auditor of another company, will be completely different, although in both cases a similar quantity of work at the same foreign locality may have been supplied by him([6]).

As far as time is concerned, the House of Lords had in WHELAN v. HENNING([7]) reiterated the rule that, although tax is imposed on the income from a source and not upon the source itself, but where the source had ceased to exist, no assessment could be made in respect of any income in future years still emanating from that source. That rule had been first established in English Tax Law in 1920 in NATIONAL PROVIDENT INSTITUTION v. BROWN([8]). An application of this principle are the well-known cases of PURCHASE v. STAINER'S EXECUTORS([9]) and CARSON v. PETER CHEYNEY'S EXECUTORS([10]), as well as CHIBBETT v. BROOKFIELD LTD.([11]) where

([4]) Lord Atkinson, in The National Provident Institution v. Brown, 8 TC 9.
([5]) Bennet v. Marshall, 22 TC, pp. 73 and 86. Different views, however, prevail, e.g. in the Union of South Africa (ITC 100, 3 SATC 250) and Australia (Challoner & Collins, Income Tax, Sydney 1953, pp. 118-121).
([6]) cf. Newport & Shaw, Income Tax. London, 25th ed., p. 75.
([7]) Whelan v. Henning, 10 TC, 263.
([8]) National Provident Institution v. Brown, 8 TC, 57.
([9]) Purchase v. Stainer's Executors, 32 TC, 367-413.
([10]) Carson v. Peter Cheyney's Executors, (HL) 1958 AER, 3, 573-585.
([11]) Chibbett v. Harold Brookfield & Son Ltd. (CA), 33 TC 483.

it was held on highest authority that, once a person has ceased in his lifetime or by his death to exercise his trade or profession as the source of this income, any payments coming in thereafter have lose the character of taxable income.

Whilst this last mentioned rule, though having been subjected to much criticism, is still valid, the consequences of the BROWN and HENNING cases were expressly set aside by section 149 of the Income Tax Act, 1952, which provides that the tax computed on income in the preceding year from a source under Schedule D "shall be charged for that year of assessment notwithstanding that no profits or gains or income arise from that source for or within that year of assessment".

II. The source - concept.

The concept of source of income is one of the two basic theories of income tax, the other being the *net-accretion* concept of income.

The *source*-concept imagines a tangible or intangible source from which the taxable income flows in a regularly repeated manner; accordingly, mere windfalls of income are tax-free and isolated transactions give rise to an ever-lasting controversy. Connected with that concept is also the deductibility of expenses made for servicing the source of income, like repairs. In this last respect, we had in Israel an interesting example by allowing a doctor of dentistry who is a specialist in orthodentry to deduct his expenses for the annual conferences of such specialists abroad, the reason recognised by our Supreme Court being that the doctor had to keep up his professional level of specialised skill and knowledge([12]).

That source-concept has been adopted as corner-stone of taxation in many countries, such as Great Britain and most of the states within the British Commonwealth. The American income taxation is theoretically based on the source-concept, viz., as laid down in the Sixteenth Amendment to the Constitution, on "gains or profits and income derived from any source whatever"([13]), but the rather unlimited range of the source brings practically, as NEUMARK([14])

([12]) Civil Appeal 141/54, Piskei Din, vol. 10, p. 441.
([13]) IRS s. 22(a); cf. 22 US 206-8.
Stanley S. Surrey and William C. Warren, Federal Income Taxation, Brooklyn 1955, p. 195.
([14]) Friedrich Neumark, Theorie und Praxis der modernen Einkommenbesteuerung, Bern 1947, S. 341, 40.

aptly remarks, the American income concept near the theory of the acroissement de valeur. However, e.g. the State of Georgia, according to the opinion of its Attorney General, does not impose tax on "isolated or occasional activities which are incidental to a corporation's income producing activities elsewhere"([15]). Of the European states, France had her income taxation originally built on the source concept but, in effect, recently went over to the value-increase theory and, therefore, the incidence of tax falls on profits and losses from capital and recurrent income alike. In Germany, the state of Prussia had in 1891 based its income tax on the source concept which, however, was weakened in 1916 in order to tax extraordinary war profits, and only its shadow remained in the present Einkommensteuergesetz which, though mentioning in section 2, seven sources, ([15a]) in fact, imposes the tax upon the "Unterschiedsbetrag zwischen dem Betriebsvermögen am Schluss des Wirtschaftsjahres und dem Betriebsvermögen am Schluss des voraufgegangenen Wirtschaftsjahres, vermehrt um den Wert der Entnahmen und vermindert um den Wert der Einlagen", which represents a clear-cut net-accretion concept. Switzerland had the source-concept, but the Cantons have abandoned it to a considerable degree. In Asia, big countries like India, Pakistan, and small ones like Israel still stick to the source-concept, and in 1957 Israel went even so far as to make it a condition for the wife's right to claim tax calculation separately from her husband on income from personal exertion "that the source of her income should be independent from the source of income of her husband".

III. What is a "source of income"?

In view of the still very wide-reaching international and municipal importance of the source-concept, it is surprising how very much the contents of this concept remain shrouded in obscurity.

First of all, it appears that none of the tax laws adhering to the source-concept contain a definition of "source of income", a feature comparable only to the well-known lack of any definition of "in-

([15]) John A. Wilkie, Uniform Division of Income for Tax Purposes, Taxes, vol. 37, pl 67 note 10.

([15a]) Vergl. Ottmar Buehler, Steuerrecht I. Allgemeines Steuerrecht, Wiesbaden 1951, S. 11, 223.

come" in most of income tax legislation, with very few exceptions, amongst them Canada.

Nevertheless, the necessity for such a definition of "source of income" remains, if not by law then at any rate by the courts of the different countries and finally by the science of comparative tax law.

It is the aim of these present lines to make an attempt in that direction. For this purpose, we shall deal especially with the British and the American material.

In England, Lord ATKINSON([16]) held that "the principle that the duty is imposed in respect only of an existing source is really no more than an implication which arises from the terms of its imposition in each case (land, a business, an office, a permanent investment, a foreign security or possession) and from the machinery erected for its collection. There is no general enactment which expresses it". Accordingly, English Courts have held Treasury Bills, Exchequer Bonds and shares to be sources of income, and in the case of BENNETT v. MARSHALL, ROMER, L. J., asked: "Take the case of a partner, resident here, in a trade carried on wholly abroad. What is the source of his income? Is it the partnership deed which secures to him a share in the profits in the partnership? Is it the activities of himself or his co-partners exercised abroad, or is it the body of commerical contracts entered into with traders that produces the money out of which the profits and, therefore, the income ultimately is derived? Or can it be said that the Customers themselves are the source of income?" It seems difficult to imagine a greater variety of possible answers to so fundamental a question, and this merely shows that there exists an urgent need for a thorough research into the problem of the "source of income" and, if only possible, the finding of a consolidated formula for its solution.

In Canada, the "chief source of income" is made expressly the cornerstone of assessment and section 13 of the Income Tax Act provides that the income of "a person for a taxation year shall be deemed to be not less than his income for the year from his chief source of income", and that the Minister of National Revenue "may determine which source of income or sources of income combined is a

(16) Lord Atkinson, in The National Provident Institution v. Brown, 8 TC 69.

taxpayer's chief source of income for the purpose of this section". This provision expresses in a frank manner the lack of any methodical or legally qualified soluton to the riddle of the "source of income". In the case of MINISTER OF NATIONAL REVENUE v. ROBERTSON([17]), Judge POTTER of the Exchequer Court of Canada reviewed a number of definitions of "source", such as the Shorter Oxford English Dictionary, vol. 58, p. 811, of Corpus Juris, and the judgment of ISAACS, J., in NATHAN v. FEDERAL COMMISSIONER OF TAXATION (N. S. WALES)([18]) who declared that "the legislature in using the word 'source' meant, not a legal concept, but something which a practical man would regard as a real source of income". This flight into tautology did not bring the problem nearer to any solution whatsoever.

Israel adheres to the English source-concept and, therefore, enumerates in section 5 of the Income Tax Ordinance, 1947, eight specific sources and a comprehensive "any other source", and restricts the set-off of losses against business income and allows to carry forward losses only to the extent to which they could not have been fully set off against gross income from other sources during one tax year.

The source of income has repatedly been defined as one of the right or title to the actual income. When a house-owner gave to a building contractor the right to sell the flats which the contractor would build at his own expense, and to collect the proceeds for himself to cover his expenses and profit, then the house-owner had alienated the source of income and that source belonged to the contractor. As such source of income was considered "the right to let (on lease for 999 years as equivalent of sale) the empty flats"([19]). In section 23 of the Income Tax Ordinance, the right of the husband or his wife to ask for separate computation of their respective income is restricted to the wife's income from trade, business, profession, vocation or remuneration from employment, so that the *activities* of a self-employed assessee in trade etc. are placed on the same level with the *remuneration* from employment.

([17]) Minister of National Revenue v. Robertson (1954) CTC 110, in John G. Mc Donald, Cases and Materials on Income Tax, Toronto 1957, p. 681.
([18]) Nathan v. Federal Commissioner of Taxation (N.S. Wales), 25 Austr. C.L.R., p. 189, in Mc Donald. l.c. p. 681.
([19]) Civil Appeal 341/54, Psakim Elyon, vol. 17, p. 409.

The District Court of Tel-Aviv-Jaffa has recently expressed its surprise about such an apparent lack of methodology([20]).

In American precedents, there are some which offer but little guidance, such as "the source of income is the place where it is produced"([21]). A clearer view is taken in the dictum: "the source of income is the situs of the income-producing service"([22]), or the "place where work is done is 'source of income' of a non resident alien, where the income is from the exercise of profession or vocation"([23]).

The American view has recently been analysed by John A. WILKIE([24]), and he discusses four "sources of income" methods, though for the purpose restricted to defining jurisdiction to tax. The first method is to take "any tangible property owned or leased . . and held or leased for the purpose of obtaining ultimate profit, as well as any service or act performed for the same purpose, furthermore any securities, patents, copyrights, trade-marks, franchises or other intangible property and any sale or exchange where the stock-in-trade, tangible or not, is delivered all within the boundaries of the respective state".

A second method would exclude sales or exchanges where the tangible or intangible property is not delivered to a destination within the state, and a third method would be that of "property sited and activities carried on" only if done not by persons independent from the respective assessee but by his employees. The fourth method is based upon a "substantial place of business" being located within the respective state. WILKIE cautiously rejects this method as "much too restrictive for net income tax purposes".

IV. The methodological problem.

Now, when we come to the methodological problem how to find a common denominator for the diversified "sources" of income, we detect that there exists a quality and a quantity foundation in

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([20]) District Court Tel-Aviv — Jaffa, Income Tax Appeal 545/59.
([21]) Union Electric Co. v. Coale, 146 SW 2nd 631, 635, 347; Jackling v. State Commission, 58 P 2nd 1167, 1171; 40 NM 241.
([22]) Commissioner of Internal Revenue v. Piedras Negras Broadcasting Co., C.C.A. Tax. 127 F. 2nd 260, 261.
([23]) Ingram v. Bowers, NCNY 42 F 2nd 925, 927.
([24]) John A. Wilkie, l.c., pp. 65-73.

every "source", and that only those two elements *together* are able to form the "source".

The *qualitative* element is based on a specified kind of activity or property, irrespective of the character of the active individual or legal person as an independent income-earner or as an employee, and also irrespectively of whether the activity or the property are being exercised or owned or otherwise held by a single person or jointly with others.

In the case of activities, these might be trade, profession like cases I and II of the Schedule D of the English Income Tax Acts, as well as any "office or employment" under the English Schedule E and "labor or personal services" under the American Internal Revenue Code, and denominations similar to them in other income tax codifications.

As for the items of property qualification, we have in England the "lands, tenements and hereditaments in the United Kingdom" (Schedules A and B) as well as public revenue (Schedule C) and any interest of money, any annuities or other annual payments, securities in and out of the Kingdom([25]), and in U.S.A. rentals and royalties from property, interest in such property including patents, copyrights, trade-marks, gains and profits and income from the purchase and sale of real property within or without the United States([26]).

However, how strenuous the activity in a certain case or how valuable a piece of property might be, income flowing from it has to pass through a quantifying channel in order to become a definite source of income. The same amount of activity may, if done under favourable conditions as agreed between two independent parties or between the employer and the employee, yield splendid results for the favoured party or, if conditions for that party are poor, bestow upon it a correspondingly poor income. This aspect seems not always to have been duly appreciated. Sir Wilfrid GREENE, M. R., in BENNETT v. MARSHALL, distinguishes between "a trade and a profession on the one hand and an employment on the other, when one is considering the essential question which is to be looked at,

([25]) Therefore, in Imperial Chemical Industries Ltd. v. Caro (1959 AER 3, 750 seq.) additional shares acquired were considered to constitute a new source of income or an addition to a source of income within the meaning of s. 134 of the Income Tax Act, 1952.

([26]) Sections 861, 862 Internal Revenue Code.

namely, what is the source of income". Whilst "in the case of employment the contract is the first thing that must be looked at", it is different in the case of a self-employed assessee. "A trade or profession is not attached to some specific contract, and, acordingly, in such a case it is impossible to put a finger on one particular contract as the source of income. The profits of the trade come from the general state of activity of the trader or the professional man".

On the other hand, the quantifying importance of the contract was recognised clearly by Lord ASQUITH of BISHOPSTONE in his speech GOSPEL v. PURCHASE([27]) where he described the contracts entered into by the late film actor STAINER alias LESLIE HOWARD as being "incidental machinery regulating the measure (sic!) of the services to be rendered by him, on the one hand, and on the other, that of the payments to be made by his employers". This was quite an accurate and felicitous language, whilst the subsequent words, viz. that those contracts "were not the source but the instrument of payment" might at the first glance appear rather as a stumbling-stone on the way to the solution of the source-of-income problem. In order to understand better why Lord ASQUITH in the STAINER case and later VISCOUNT SIMONDS in CARSON v. PETER CHEYNEY'S EXECUTORS([28]) who quoted with consent the above speech, laid so much stress on the activities of the film-actor STAINER-HOWARD and the author PETER CHEYNEY respectively, and attributed to their contracts the part of "merely incidental machinery" or "instrument of payment", it should be remembered that both eminent judges wanted to classify the source of income of those assessees as emanating from activities under Case II of Schedule D (profits of a profession or vocation) and not, as the Crown contended, as emanating from *property* under Case III or IV of Schedule D (interest, annuities, annual profits or gains). "I reject, therefore," said Viscount SIMONDS in the CHEYNEY case, "the plea that the royalty payments (i.e. to Mr. CHEYNEY or his executor) could, whether during the carrying on of the profession or after its discontinuance, be regarded as 'income from property, constituting a substantive subject-matter of taxation under Schedule D' — I use the words of the Crown's formal case" In

([27]) Gospel v. Purchase (1951) 2 AER 1076.
([28]) Carson v. Peter Cheyney's Executor (1958) 3 AER 576.

other words, weighing up the importance of the qualifying activity and the quantifying element (both as the measure of activity and as that of the payment for it), Lord ASQUITH and Viscount SIMONDS considered the scale of the activity showing much heavier weight than that of the contract under which the activity was performed and the consideration paid. But that does not deprive the quantifying element of its task and contributory impact on the composition of the "source of income". This becomes still more evident in every case of a composite structure of a business or profession. With the same amount of activity of a partner and the income of a partnership given, the source of income of that partner is neither his activity by itself nor the income of the partnership by itself, without the quantifying element of his specific share in the partnership, and this element is an integral part of the source of his income.

The English Income Tax Act, 1952, goes farther in section 223 (proviso II) and says that "the income of a partner . . . shall be deemed to be the share (sic!) to which he is entitled . . . in the partnership profits". The American Internal Revenue Code fixes in sections 722, 723 an "adjusted basis" of a contributing partner's interest and property and makes in section 731 the excess above that adjusted basis of the partner's interest immediately before a distribution of gains, his source of income. The correctness of this view is emphasized by the fact that, if no such quantification has been made by contract, that contract has to be substituted by either the fixation of a quantum meruit or, in the case of a partnership, by a statutory provision like those mentioned before.

Special mentioning deserves, however, the self-employed assessee who is in active in trade, vocation or profession without any framework of a partnership, company or other fixed connection with third persons. There, it could be contended with Sir Wilfrid GREENE, it should be impossible to ascertain the quantifying element and "to put a finger on a particular contract as the source of income". On the other hand, the contractual influence as the quantifying element of the source cannot be excluded or denied simply because it is not so easily discernible as in the cases of an employee, a partner, a shareholder etc. In fact, here again as in these cases, it is not only the activity as such of a brilliant lawyer or physician or a versatile trader, but the terms of the contractual relations with

their respective clients, patients and customers which have the quantifying effect on their income, in many cases an effect which is much more important than the very activity by itself. So the man, excellent in his professioin, may be, for general or personal economic reasons, compelled to offer his services at very low fees, and a similar situation may arise with a trader in straitened circumstances, whilst a mediocre or poor professional man or a trader with a not very valuable merchandise may succeed in obtaining very favourable contracts and so enrich the source of their income to a considerable extent. In other words, the existence and extent of the quantifying element, the contractual relationship between the assessee and the party supplying the income, are of no less importance for the creation and definition of the "source of income" than the bare income-producing activity itself.

V. Conclusion.

Our conclusion may, therefore, be summed up as follows:-

A. Every source of income has a quality and a quantity element.

B. The quality element relates to the substance and specialty of the activity of the assessee, and the quantity element to the relation between the assessee and supplier of goods or the benefits of goods (e.g. leasehold) or services to the person paying for them.

C. The particulars of that quantifying relation may be laid down in an express or an implied contract or, as in the case of compulsory supply of goods or services, by law or regulation.

D. For neither of both elements, the difference between a self-employed assessee and an employee is of importance, nor does it matter whether the assessee is supplying goods, benefits or services only by himself or in conjunction with others or as having a share in a legal body.

E. As both elements have to be present in order to constitute a source of income, as a subsequent result the geographical determination of the source is to adhere to the place where both elements are present; if there is a difference between the locality of the two, then the way of thought advocated in this study leads to the following consequences:

(a) the source of income is composite, viz. made up of the qualita-

tive and the quantitative parts which *jointly* and by their combined effect lead to the income itself;

(b) this income is *due* at a certain place, irrespectively of where it is actually paid or otherwise supplied;

(c) the place where the income is due, is determined by the terms of an express or implied contract or by the law of the state within whose jurisdiction the express or implied contract was made.

(d) the place where income is due is, therefore, the place of the geographical incidence of tax of that pertaining income;

(e) if the state of the residence of the individual or corporate assessee imposes tax also on income mentioned under (d) (if such income was due outside its own jurisdiction), then the remedy against any iniquity caused thereby to the assessee concerned is to be granted by double taxation agreement or, in default thereof, by unilateral tax relief.

II

SURVEY OF TAX LEGISLATION
APERÇU DE LEGISLATION FISCALE

AUSTRIA — *Period from January 1st until February 29th, 1960*

General

Bundesgesetz vom 16.12.1959 betreffend das Bundesfinanzgesetz für das Jahr 1960. BGBL. Rep. Österr. 2.1.1960.

Miscellaneous

Bundesgesetz vom 18.12.59, über die Mineralölsteuer (Mineralölsteuergesetz 1959-MinStG. 1959). BGBL. für die Rep. Österr. 2.1.1960.

BELGIUM — *Period from January 1st until February 29th, 1960*

Conventions

Loi du 11.12.1959 portant approbation des actes internationaux suivants: Convention sur la nomenclature pour la classification des marchandises dans les tarifs douaniers, signée à Bruxelles, le 15.12.1950. Protocole de rectification de cette convention, signé à Bruxelles le 1.7.1955. Mon. Belge, 16.2.1960.

Loi du 11.12.1959 portant approbation du protocole entre la Belgique, le Luxembourg et les Pays-Bas, pour l'établissement d'un nouveau tarif des droits d'entrée, signé à Bruxelles le 25.7.1958. Mon. Belge, 16.2.1960.

Taxes assimilées au timbre

Arrêté royal du 30.12.1959 modifiant le Code des taxes assimilées au timbre. Mon. Belge, 1 et 2.1.1960.

Arrêté royal du 26.2.60 modifiant l'arrêté royal du 11.3.53 majorant le taux de la taxe de transmission à l'importation. Mon. Belge, 29.2.60.

Douanes et accises

Arrêté royal du 25.12.1959 relatif au régime d'accise des gaz de pétrole et des autres hydrocarbures gazeux, liquéfiés. Mon. Belge, 9.1.1960.

Arrêté ministériel du 4.1.60 réglementant la perception du droit d'accise sur les gaz de pétrole et les autres hydrocarbures gazeux, liquéfiés. Mon. Belge, 9.1.60.

Arrêté ministériel du 4.1.60 modifiant l'arrêté ministériel du 1.9.1952, accordant des délais pour le paiement des droits d'accise. Mon. Belge, 9.1.60.

Arrêté ministériel du 17.2.60 relatif au Tarif des droits d'entrée. Mon. Belge, 18.2.60.

Arrêté ministériel du 17.2.60 relatif à l'importation de marchandises relevant des Traités instituant les Communautés Européennes. Mon. Belge, 18.2.60.

Arrêté ministériel du 17.2.60 réglant les franchises en matière de droits d'entrée. Mon. Belge, 18.2.60.

Arrêté ministériel du 17.2.60 réglant les franchises en matière de droits d'accise à l'importation. Mon. Belge, 18.2.60.

Arrêté ministériel du 17.2.60 réglant les restitutions en matière de droits d'entrée et de droits d'accise à l'importation. Mon. Belge, 18.2.60.

Arrêté royal du 28.1.60 relatif au Tarif des droits d'entrée. Mon. Belge, 16.2.60. Rectificatif: Mon. Belge, 19.2.60.

FRANCE *Period from January 1st until February 29th, 1960*

Conventions

Décret no. 60-70 du 20.1.60 portant publication de la convention douanière relative au transport international de marchandises sous le couvert de carnets TIR du 15.1.59. J. O., 22.1.60.

Décret no. 60-84 du 21.1.60 portant publication de la convention douanière relative aux containers, de la convention douanière relative à l'importation temporaire des véhicules routiers commerciaux, de la convention douanière relative à l'importation temporaire pour usage privé des embarcations de plaisance et des aéronefs, de la convention relative au régime fiscal des véhicules routiers à usage privé en circulation internationale, signées à Genève le 18.5.56. J.O. 26.1.60.

Décret no. 60-86 du 22.1.60 portant publication de l'accord général portant réglementation économique des transports routiers internationaux et cahier des charges, signé à Genève le 17.3.1954, de l'acte final de la conférence des Nations Unies sur les formalités douanières concernant l'importation temporaire des véhicules de tourisme et le tourisme, ouvert à la signature à New York le 4.6.1954, de l'accord relatif à la signalisation des chantiers, signé à Genève le 16.12.1955, de l'accord concernant l'adoption de conditions uniformes d'homologation des équipements et pièces de véhicules à moteur, ouvert à la signature à Genève le 20.3.1958. J.O. 27.1.60..

Douanes et accises

Décret no. 60-8 du 12.1.60 prorogeant, pour certaines denrées, la période d'application des dispositions du décret no. 59-1258 du 4.11.1959 portant suspension provisoire de la perception des droits de douane applicables à certains produits. J.O. 13.1.1960.

Décret no. 60-17 du 9.1.60 portant concession des droits de douane d'importation du tarif minimum en faveur des produits originaires de la Bulgarie. J.O. 15.1.60.

Décret no. 60-53 du 18.1.60 portant suspension, jusqu'au 31.3.1960, de la perception des droits de douane d'importation sur certains produits. J.O. 19.1.60.

Décret ministériel no. 60-107 portant modification du tarif des droits de douane d'importation en ce qui concerne certains produits sidérurgiques (rectificatif), J.O., 20.2.60.

Décret ministériel no. 60-160 du 20.2.60 portant relèvement du taux de perception des droits de douane applicables au glucose du no. 17-02 B du tarif des droits de douane d'importation en régime de droit commun. J.O. 21.2.60.

Droits de timbre

Décret n° 60-137 du 12.1.60 abrogeant l'alinéa c du paragraphe I de l'article 313 bis de l'annexe III au code général des impôts. J.O. 17.2.60.

Matières Diverses

Arrêté du 31.12.1959 fixant la date d'application des art. 68 à 74 de la loi no. 59-1472 du 28.12.1959, portant réforme du contentieux fiscal et divers aménagements fiscaux. J.O., 1.1.60.

Rectificatif de la Loi No. 59-1472, portant réforme du contentieux fiscal et divers aménagements fiscaux, et rectificatif sur la Loi de finances rectificative pour 1959. J.O. 29.1.60.

GERMAN FEDERAL REPUBLIC

Period from January 1st until February 29th, 1960

Conventions

Gesetz vom 15.1.60 zu dem Sechsten Berichtigungs- und Änderungsprotokoll vom 11.4.57 zum Wortlaut der dem Allgemeinen Zoll- und Handelsabkommen beigefügten Zollzugeständnislisten. BGBl. Tl. II, 26.1.60.

Gesetz vom 9.2.60 zu dem Berichtigungsprotokoll vom 1.7.1955 zu dem Abkommen über das Zolltarifschema für die Einreihung der Waren in die Zolltarife. BGBl. Tl. II, 19.2.1960.

Income Tax

Verordnung vom 30.12.1959 zur Änderung und Ergänzung der Lohnsteuer-Durchführungsverordnung, BGBl. Tl. I, 6.1.60.

Customs and Excise Duties

23. Verordnung vom 2.2.60 über Zolltarifänderungen zur Durchführung des Gemeinsamen Marktes der Europäischen Gemeinschaft für Kohle und Stahl (Spezialwalzdraht). BGBl. Tl. II, 6.2.60.

5. Verordnung vom 2.2.60 zur Änderung der Erläuterung zum Deutschen Zolltarif. BGBl. Tl. II, 6.2.60.

12. Verordnung vom 30.12.59 zur Änderung des Deutschen Zolltarifs 1959 (Gefriergemüse usw.). BGBl. Tl. II, 7.1.60.

22. Verordnung vom 30.12.59 über Zolltarifänderungen zur Durchführung des Gemeinsamen Marktes der Europäischen Gemeinschaft für Kohle und Stahl (Wälzlagerstahl usw.). BGBl. Tl. II, 7.1.60.

13. Verordnung vom 8.2.1960 zur Änderung des Deutschen Zolltarifs 1959 (Gefriergemüse, usw). BGBl. Tl. II, 13.2.1960.

21. Verordnung vom 8.2.1960 über Zolltarifänderungen zur Durchführung des Gemeinsamen Marktes der Europäischen Gemeinschaft für Kohle und Stahl (Hochofenstaub). BGBL. Tl. II, 13.2.1960.

Miscellaneous

Bekanntmachung vom 25.1.1960 der Neufassung des Salzsteuergesetzes. BGBl. Tl. I, 3.2.60.

LUXEMBURG

Period from January 1st until February 29th, 1960

Douanes et accises

Arrêté ministériel du 10.12.1959 modifiant le règlement établi par l'arrêté ministériel du 25.2.1948 pour la perception du droit d'accise sur les tabacs fabriqués. Mémorial, 15.12.1959, no. 58.

NETHERLANDS

Period from January 1st until February 29th, 1960

Conventions

Supplementary convention of 28.10.59 amending the convention between the Kingdom of the Netherlands and Canada for the avoidance of double taxation and the prevention of fiscal evasion in relation to taxation on income, signed in London on 2.4.1957. Tractatenblad 1959, no. 173.

Customs and Excise Duties

Royal Decree of 20.1.60 containing publication of the text of the Tariff Decree 1960. Stb. 1960, no. 30.

Royal Decree of 12.2.60 containing the provisional putting into operation of an amendment of the Tariff of import duties, adjustment of some measures regarding import duties to the new Tariff of import duties. Stb. 1960, no. 43.

Royal Decree of 12.2.60 containing transitory provisions regarding the Tariff Decree 1960. Stb. 1960, no. 44.

Royal Decree of 12.2.60 containing amendments to the Regulations 1954 to the Turnover Tax, and to the Decree Turnover Tax, special regulations II, Stb. 1960, no. 45.

Royal Decree of 12.2.60 containing a list of the import wares, of which the turnover tax on import will be increased. Stb. 1960, no. 46.

Royal Decree of 12.2.60 containing amendment III to the Decree Im- and Export of Agricultural Products 1958. Stb. 1960, no. 63.

Royal Decree of 19.2.60 containing an amendment to the Royal Decree of 12.2.60 (Stb. 1960, no. 46, see above). Stb. 1960, no. 65.

MISCELLANEOUS-FAITS DIVERS

CHILE

Codification

The Minister of Finance has stated that the Government is preparing a Taxation Code Bill (Proyecto de Código Tributario) which would introduce important changes into the present taxation system.

A committee was set up in 1959 to revise, rearrange and simplify the existing tax laws within the limits imposed by Law No. 13305, using as a basis the report prepared by a United Nations expert during the previous Administration.

Source: *Bank of London and South America, Fortnightly review,* 27 February, 1960.

CONGO

La république africaine Congo (ancien territoire français d'Outre-Mer en Afrique Equatoriale) a modifié les mesures prises en faveur des entreprises nouvelles et les investissements de capitaux comme suit:

A. - *Entreprises nouvelles*

Pour entraîner l'exonération de l'impôt sur les bénéfices industriels et commerciaux, l'installation nouvelle devra être postérieure au 31 décembre 1959 et non plus au 31 décembre 1956. Le simple développement d'une ou plusieurs activités déjà exercées par la même entreprise ne permet pas de bénéficier de l'exonération. L'entreprise nouvelle ne doit pas concurrencer les activités exercées d'une manière satisfaisante dans le territoire par des entreprises déjà existantes.

Une décision du Premier Ministre est nécessaire pour conférer l'exonération qui est désormais applicable aux bénéfices réalisés jusqu'à la fin de la cinquième année civile qui suit celle du début de l'exploitation.

Les dispositions antérieures qui prévoyaient l'exonération des bénéfices réalisés au cours des deux premières années et le versement d'un impôt réduit au cours des quatre années suivant l'expiration de la première période ont été abrogées mais, semble-t-il, les entreprises déjà installées doivent continuer à bénéficier des avantages acquis jusqu'à la fin de la période prévue précédemment.

On notera que les nouvelles mesures adoptées sont plus favorables à un développement économique rationnel que les précédentes.

B. - *Investissements de capitaux*

Les réductions d'impôts accordées dans certaines conditions aux personnes physiques et morales investissant des capitaux pour leur propre compte au Congo, sont désormais étendues aux contribuables (particuliers ou sociétés) qui apportent des capitaux à une personne physique ou morale en vue de permettre à celle-ci d'effectuer au Congo les investissements prévus précédemment.

Le bénéficiaire de l'apport doit notamment prendre l'engagement de renoncer pour lui-même, et à concurrence des capitaux apportés et investis, aux avantages auxquels il aurait pu prétendre au cas où les capitaux lui auraient appartenu.

Notons enfin que ces avantages ne se cumulent pas avec les exonérations d'impôts accordées aux bénéfices provenant d'installations nouvelles et aux plus-values résultant de la cession d'éléments de l'actif en cours d'exploitation, en fin d'exploitation, ou de la cession partielle d'entreprise.

En outre le Code de l'Enregistrement, du Timbre et sur le Revenu des Valeurs Mobilières a été modifié et complété ainsi:

a) *Enregistrement*

Les cessions et autres mutations à titre onéreux de créances sont désormais assujetties à un droit de 1 franc par 100 francs.

D'autre part, il est ajouté au Code, un Chapitre XV qui énumère les sommes et valeurs atteintes par la prescription et, par suite, définitivement acquises à la République.

b) *Timbre*

Les modifications apportées à cette partie du code concernent surtout les prohibitions en matière de papier timbré.

c) *Revenu de valeurs mobilières*

Sont désormais exemptées de l'impôt sur le revenu des valeurs mobilières, les parts d'intérêt dans les sociétés civiles assujetties à l'impôt foncier (ou exemptées temporairement par la réglementation) constituées entre co-propriétaires, et ayant uniquement pour objet la gestion de leurs immeubles à l'exclusion de toutes opérations commerciales se rattachant à la profession d'intermédiaire.

D'autre part, il est précisé que sont considérés comme revenues distribués et imposables comme tels à l'impôt sur le revenu des valeurs mobilières:

a) sauf preuve contraire, les sommes mises à la disposition des associés directement ou par personnes ou sociétés interposées à titre d'avances, de prêts ou d'acomptes;

Lorsque ces sommes sont remboursées à la personne morale, elles viennent en déduction des revenus imposables pour la période d'imposition au cours de laquelle le remboursement est effectivement intervenu;

b) Les sommes ou valeurs attribuées aux porteurs de parts bénéficiaires ou de fondateur au titre du rachat des parts;

c) Les rémunérations et avantages occultes.

Source: *Problèmes d'Outre-Mer*, 15 Janvier, 1960

LES ETATS DE L'AFRIQUE EQUATORIALE

La coopération douanière et fiscale entre les Républiques Gabon, Congo, Centrafricaine et Tchad

Les territoires de la France d'Outre-Mer en Afrique Equatoriale se sont transformés en républiques autonomes au début de l'année 1959.

Il s'agit des Républiques Gabon, Congo (Moyen-Congo), Centrafricaine (Oubangui) et Tchad.

Ces quatre Etats se sont accordés à coopérer entre autres sur le point de l'unité douanière et fiscale.

A cette fin on a pris des mesures dont voici les principales:

L'Union douanière économique et fiscale

Le plus important des accords conclus peut être examiné sous ses deux aspects.

a) *Union douanière*

«L'Union douanière équatoriale» est constituée par les quatre Républiques. A l'intérieur de cette union, la circulation des marchandises, des biens et des capitaux est libre.

La législation et la réglementation douanières en vigueur à la date de signature de la convention forment la législation et la réglementation communes. Sous réserve des compétences de la Communauté, les modifications à y apporter tant au point de vue textes que tarifs sont soumises au Comité de Direction de l'Union Douanière.

La Comité de Direction de l'Union Douanière comprend deux représentants par Etat, dont le Ministre des Finances, ainsi qu'avec voix consultative, le Président de la Banque Centrale de l'Afrique Equatoriale, un représentant de la Communauté et un représentant de la République Française (au titre de l'Assistance Technique).

Sur les projets qui lui sont présentés, le Comité de Direction peut, soit:
- approuver à l'unanimité, et le texte est rendu immédiatement applicable;
- donner un avis défavorable, et le projet est rejeté;
- donner un avis favorable à la majorité, et le projet est transmis pour décision à la Conférence des Premiers Ministres.

Le Comité de Direction exerce en outre, sous l'autorité de la Conférence, les pouvoirs réglementaires et de tutelle en matière de douanes, conditionnement des produits et contrôle des poids et mesures, notamment en matière de transactions[1]), remises de débets et décharges de responsabilité, etc.

Un Fonds de solidarité inter-Etats est constitué pour tenir compte des inégalités résultant du versement des droits à l'importation au budget de l'Etat dans lequel la marchandise est déclarée mise en consommation. Le rôle de transit des Etats du Sud, de la République du Congo par exemple, les fait en effect bénéficier de la majeure partie de ces déclarations.

Le Fonds de solidarité est alimenté par un prélèvement sur les droits perçus à l'importation, selon un pourcentage qui sera fixé annuellement par le Comité de Direction de l'Union. Pour 1959, 2ème semestre, le prélèvement a été fixé à 20 %.

La répartition du Fonds de solidarité est effectuée sur les bases suivantes;

République du Gabon	0,15 %
République du Congo	3 %
République Centrafricaine	35 %
République du Tchad	61,85 %

Le Fonds de solidarité n'intervient pas au titre des produits et taxes à l'exportation, la détermination exacte de l'origine des marchandises à la sortie ne présentant pas de difficulté.

Un prélèvement est enfin effectué sur l'ensemble des droits perçus par le Service des Douanes, pour assurer son fonctionnement et couvrir ses dépenses.

b) *Coordination fiscale*

Afin d'harmoniser et de coordonner leurs législations et réglementations fiscales, les Etats ont arrêté les dispositions ci-après:
- une étude sera faite en vue de proposer l'unification ou l'harmonisation des législations en vigueur, et sera soumise à la Conférence des Premiers Ministres après avis du Comité de Direction de l'Union Douanière.
- les projets de modifications envisagés par les Etats concernant:

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[1]) Lorsque le litige porte sur des sommes inférieures á 500.000 Frs CFA de droits fraudés ou compromis ou 2 millions de valeurs s'il n'y a pas de droits compromis, le contentieux est du ressort du chef du Service des Douanes.

1) l'assiette de l'impôt:

- sur les bénéfices industriels et commerciaux
- intérieur sur le chiffre d'affaires
- sur le revenu des valeurs mobilières
- sur le revenu.

2) les tarifs des trois premiers de ces impôts sont présentés au Comité de Direction de l'Union Douanière. La procédure est identique à celle concernant la législation et la réglementation douanières. En outre, le Comité se prononce également sur la possibilité pour un ou plusieurs Etats d'adopter les textes proposés, sans qu'il soit opportun de les étendre simultanément aux quatre Républiques. Dans le domaine des tarifs et pour l'assiette des impôts sur les salaires et sur le revenu, un appel des décisions du Comité peut être fait devant la Conférence des Premiers Ministres.

les taxes uniques instituées en vertu de la réglementation antérieure sont confirmées. Il est également décidé d'étendre ce régime à certains produits de fabrication locale et de consommation intérieure à l'Union. La liste des entreprises soumises à ce régime est arrêtée annuellement par le Comité de Direction; ces entreprises devront justifier l'utilisation des produits, importés par elles en franchise douanière.

Le taux de la taxe unique sera fixé par la Conférence, après avis du Comité de Direction. La procédure de modification des législations et réglementations concernant les taxes uniques est la même qu'en matière douanière.

Les recettes des taxes uniques sont versées au budget de l'Etat où les produits auront été consommés.

Source: *Problèmes d'Outre-Mer,* 15 Décembre, 1959.

GERMANY

Besteuerung ausländischer Filmverleihgesellschaften

Die Finanzbehörde Hamburg gibt durch Erlass 53 - S 2501 - 29 - v. 29.6.59 zur Frage der steuerlichen Behandlung ausländischer Filmverleihgesellschaften folgendes bekannt:

„Bei den Vergütungen, die an ausländische Filmverleihgesellschaften für die mietweise Überlassung von Filmkopien zum Zweck der Aufführung in deutschen Lichtspieltheatern gezahlt werden, handelt es sich um Vergütungen für die zeitlich begrenzte Überlassung von künstlerischen Urheberrechten. Sofern die ausländ. Filmverleihgesellschaft im Inland eine Betriebstätte unterhält oder einen ständigen Vertreter bestellt hat, handelt es sich bei den Vergütungen um inländ. Einkünfte aus Gewerbebetrieb, die nach § 49 Abs. 1 Ziff. 2 EStG der beschränkten EStpfl. unterliegen. Wird eine inländ. Betriebstätte nicht unterhalten oder ist ein ständiger Vertreter nicht bestellt, so gehören die Vergütungen zu den Einkünften aus Vermietung und Verpachtung iS des § 21 Abs. 1 Ziff. 3 EStG, die nach § 49 Abs. 1 Ziff. 6 EStG beschränkt stpfl. sind.

Es ist jedoch in jedem Fall zu prüfen, ob und ggf. inwieweit Regelungen in den geltenden Abkommen zur Vermeidung einer Doppelbesteuerung einer deutschen Einkommensbesteuerung im Wege stehen. In das Bundesgebiet werden Filme vor allem von amerikanischen, englischen, französischen, italienischen und schwedischen Gesellschaften verliehen, wobei folgendes zu beachten ist:

Nach den mit den USA, Grossbritannien, Frankreich, Italien und Schweden abgeschlossenen Doppelbesteuerungsabkommen (DBA) steht das Besteuerungsrecht grundsätzlich der Bundesrepublik zu, wenn die Vergütungen den ausländischen Filmverleihgesellschaften im Rahmen einer von ihnen unter-

haltenen inländ. Betriebstätte oder ständigen inländ. Vertretung ihres gewerblichen Unternehmens zufliessen (Art. 3 der DBA mit Frankreich, Italien und Schweden; Art. III iVm. Art. II Abs. 1 Buchst. k des DBA mit Grossbritannien; Art. III des DBA mit den USA). Zu beachten ist noch, dass die Begriffe „Betriebstätte" und „ständiger Vertreter" für die Anwendung der in Betracht kommenden Bestimmungen der bezeichneten Abkommen enger auszulegen sind als für die Anwendung des § 49 Abs. 1 Ziff. 2 EStG.

Fliessen Einnahmen aus der Überlassung von Filmkopien den ausländ. Filmverleihgesellschaften nicht im Rahmen einer inländ. Betriebstätte oder ständigen Vertretung zu, so steht das Besteuerungsrecht an den Vergütungen im Verhältnis zu Frankreich, Grossbritannien, Italien und Schweden diesen Staaten zu (Art. 11 des DBA mit Frankreich; Art. II Abs. 1 Buchst. k iVm. Art. III und Art. VII Abs. I und Abs. 2 Buchst. b des DBA mit Grossbritannien; Art. 10 des DBA mit Italien; Art. 8 des DBA mit Schweden). Eine Besteuerung nach § 49 Abs. 1 Ziff. 6 EStG kommt in diesen Fällen somit nicht in Betracht. Im Verhältnis zu den USA steht nur diesen das Besteuerungsrecht für die Vergütungen zu, wenn die Gesellschaft überhaupt keine Betriebstätte in der Bundesrepublik hat. Dagegen ist ein deutsches Besteuerungsrecht an den Vergütungen gegeben, wenn die amerikanische Filmverleihgesellschaft im Bundesgebiet eine Betriebstätte iS von Art. II Abs. 1 Buchst. c des Abkommens unterhält. (Art. VIII Buchst. b des DBA mit den USA). Es ist nicht erforderlich, dass die Vergütungen der Betriebstätte zufliessen oder dass die Betriebstätte in Verleihangelegenheiten überhaupt tätig wird. So unterliegen die Vergütungen der deutschen Einkommensbesteuerung zB auch dann, wenn die amerikanische Filmverleihgesellschaft im Bundesgebiet lediglich einen Synchronisationsbetrieb unterhält, der mit dem eigentlichen Verleih nichts zu tun hat.

Soweit Vergütungen an Filmverleihgesellschaften in anderen als den oben bezeichneten Staaten gezahlt werden, gelten die Bestimmungen der mit diesen Staaten ggf. abgeschlossenen DBA.

Steht das Besteuerungsrecht der Bundesrepublik Deutschland zu, so ist ab Veranlagungszeitraum 1959 gem. § 50 a Abs. 4 b EStG (bis 1958 nach der Verordnung v. 6.2.35) die ESt. bezw. KSt. durch Steuerabzug zu erheben. Der Steuerabzug beträgt nach diesen Bestimmungen 25 vH der Einnahmen, wenn der beschränkt Stpfl. die Steuer trägt. Nachprüfungen haben jedoch ergeben, dass ein Gewinn oder ein Überschuss der Einnahmen über die Werbungskosten, der einen Steuersatz von 25 vH der Einnahmen rechtfertigen würde, von den Filmgesellschaften im allgemeinen nicht erzielt wird. Wenn auch die Verhältnisse bei den einzelnen ausländ. Filmverleihgesellschaften sehr stark voneinander abweichen, so dürfte doch nach den bisherigen Feststellungen ein ESt.-(KSt-) Satz von 5 vH der Vergütungen in der Mehrzahl der Fälle einer Besteuerung nach den tatsächlichen Einkünften auch unter Berücksichtigung der anteiligen ausländ. Produktionskosten sehr nahekommen. Ich bin deshalb damit einverstanden, wenn in den in Rede stehenden Fällen die ESt/KSt. gem. § 50 a Abs. 4 b EStG iVm. § 50 Abs. 5 EStG im Wege des Steuerabzugs nur in Höhe von 5 vH der Einnahmen erhoben wird, wenn die Verhältnisse des einzelnen Falles nicht dagegen sprechen.

Nach dem Wortlaut des § 50 a Abs. 4 EStG ist der Steuerabzug ohne Rücksicht darauf vorzunehmen, ob diese Vergütungen in einer inländ. Betriebstätte anfallen oder nicht".

Source: *Finanz-Rundschau,* 20. Dezember, 1959.

IRELAND

From next October the Republic of Ireland will introduce a tax collection scheme for the taxation at source of salaries and wages: one interesting

innovation is the omission of code numbers and the printing on employees personal tax cards of cumulative tax-free allowances.

Source: *The Income Tax Digest and Accountants' Review,* February 1960.

PARAGUAY

Tax changes

Tax charges on exchange operations were increased by a decree dated 25th January 1960: the tax on sales of exchange to banks is increased from 2 per mil to 3 per mil, and on purchases from 4 per mil to 5 per mil.

A new income tax scale has been announced. Tax in Paraguay is levied only on income from capital and not on income from personal employment. A 3 per cent tax has been established on the estimated income derived from premiums contracted in Paraguay by insurance companies and their agents whether or not established in Paraguay.

A law providing for the optional revaluation of assets comprising specified production goods, has been introduced. Revaluation may be effected subject to a tax of 4 percent on the difference.

Source: *Bank of London and South America, Fortnightly Review,* 27 February, 1960.

TAX AGREEMENTS

Canada-Netherlands

A supplementary convention between Canada and the Netherlands has been signed, but is not yet in force. It amends the provisions of the original convention which permitted the payment of dividends free of withholding tax to companies owning at least 50% of the voting stock of the payor. The amendment now provides that a tax of 2 ½% is to be withheld from dividends paid to a company in one of the States by a company resident in the other State if, during the whole of the taxation year, the parent company owned all of the voting stock (except director's qualifying shares), either alone or in association with not more than three other companies each of whom owned at least 10% of the voting stock. Where the gross income of such a payor company is entirely (95% for the taxation years 1957, 1958 and 1959) derived from dividends or interest received from non-resident companies, dividends paid by it are not subject to any withholding tax provided that this condition has obtained for the three years preceding the year in which the dividend is paid. Where the foregoing conditions are not met, tax at the rate of 15% must be withheld at source.

Source: *The Canadian Chartered Accountant,,* January 1960.

German Federal Republic - United Arab Republic

Between these two countries agreement has been reached about a double taxation treaty. On the Arabian side it relates only to the Egyptian province, and the whole treaty will retroactively apply from January 1st, 1958. The signing can be looked forward to shortly.

In this connection the Treasurer of the Land Nordrheinland-Westfalen has decided to suspend, till the moment of coming into force of the agreement, the final assessments over the year 1958 regarding the Einkommensteuer and the Körperschaftsteuer (income tax and corporation income tax) to be levied from:

a. taxpayers in the Federal Republic having derived income from Egypt
b. taxpayers, having domicile or being registrated in Egypt, who have derived income from the Federal Republic.

Source: *Die Wirtschaftsprüfung,* 15 December, 1959.

SCHWEIZ - DEUTSCHLAND
DOPPELBESTEUERINGSABKOMMEN

Grundstückgewinn- und Handänderungssteuer. Das deutsch-schweizerische Doppelbesteuerungsabkommen bezieht sich nicht auf die zürcherische Handänderungssteuer, wohl aber auf die zürcherische Grundstückgewinnsteuer. Haben die in Deutschland wohnenden deutschen Aktionäre einer Immobiliengesellschaft mit zürcherischem Grundstück ihre Aktien veräussert, so verletzt die aus diesem Anlass vom zürcherischen Grundstückgewinn erhobene Grundstückgewinnsteuer das deutsch-schweizerische Doppelbesteuerungsabkommen nicht.

Die deutschen, in Deutschland wohnenden Aktionäre einer zürcherischen Immobiliengesellschaft verkauften ihre Aktien gesamthaft an einen Dritten. Die Gemeindebehörde und die Finanzdirektion entschieden, die Aktionäre hätten durch den Aktienverkauf das zürcherische Gesellschaftsgrundstück tatsächlich und wirtschaftlich veräussert und es sei eine Grundstückgewinnsteuer sowie eine Handänderungssteuer geschuldet; das deutsch-schweizerische Doppelbesteuerungsabkommen stehe dieser Steuererhebung nicht entgegen.

Die Oberrekurskommission bestätigte die Steuerpflicht gemäss §§ 161 Abs. 2 lit. a und 178 Abs. 2 lit. a StG, im wesentlichen unter Hinweis auf den Entscheid vom 2. Mai 1958 (RB 1958 Nr. 112). Zur Anwendung des deutsch-schweizerischen Doppelbesteuerungsabkommens erwog die Oberrekurskommission im wesentlichen folgendes:

„Das Abkommen zwischen der Schweizerischen Eidgenossenschaft und dem Deutschen Reich zur Vermeidung der Doppelbesteuerung auf dem Gebiete der direkten Steuern und der Erbschaftssteuern vom 15. Juli 1931 (BS 12, 601, im nachfolgenden DBA-D genannt) bezieht sich nach dem Titel und Art. 1 neben den Erbschaftssteuern nur auf die direkten Steuern. Als direkte Steuern im Sinne des DBA-D sind gemäss Art. 1 Abs. 1 solche Steuern anzusehen, die auf der Grundlage der in jedem der beiden Staaten geltenden Gesetzgebung unmittelbar von den Einkünften oder von dem Vermögen oder dem Vermögenszuwachs erhoben werden. Als direkte Steuern werden insbesondere angesehen die in „Anlage A" aufgeführten Steuern (BS 12, 611).

Die zürcherische Handänderungssteuer fehlt in Anlage A. Da die Aufzählung gemäss Schlussprotokoll zu Art. 1 und 9 nicht abschliessend ist, muss die Frage in Auslegung von Art. 1 Abs. 1 DBA-D entschieden werden. Der Umstand, dass die Handänderungssteuer im Gesetz über die direkten Steuern vom 8. Juli 1951 geordnet ist, erlaubt nicht die Annahme, die genannte Steuer sei eine direkte Steuer im Sinne von Art. 1 DBA-D; denn es kann nicht dem Ermessen des kantonalen Gesetzgebers überlassen sein, durch eine rein redaktionelle Massnahme eine Steuer dem sachlichen Geltungsbereich des DBA-D einzuordnen oder zu entziehen. Der Entscheid ist vielmehr durch Auslegung von Art. 1 Abs. 1 DBA-D nach allgemein schweizerischer Rechtsauffassung zu treffen (BGE 66 I 270). Darnach gehören Handänderungsabgaben als Rechtsverkehrssteuern zu den indirekten Steuern (Blumenstein, Das Doppelbesteuerungsabkommen mit dem Deutschen Reich, Archiv 1, 9 und 13; Siegrist, Staatsverträge zur Beseitigung der Doppelbesteuerung, 1939, S. 107; Lenz, Les conventions suisses de double imposition, 1951, S. 63). Auf die zürcherische Handänderungssteuer ist demnach das DBA-D nicht anwendbar.

Die zürcherische Grundstückgewinnsteuer, welche den durch Handände-

rung realisierten Grundstückgewinn zum Gegenstand hat und hinsichtlich gewisser Tatbestände den Charakter einer Wertzuwachssteuer trägt, ist dagegen eine Steuer, die im Sinne von Art. 1 DBA-D unmittelbar von Einkünften bzw. vom Vermögenszuwachs erhoben wird (Blumenstein, a.a.O., Archiv 1, 13; Irene Blumenstein, Inhalt und System der ersten Doppelbesteuerungsabkommen des Bundes, aufgezeigt am Abkommen mit Ungarn, Archiv 17, 373). Sie ist in der erwähnten „Anlage A" als direkte Steuer genannt, weshalb das DBA-D auf sie anwendbar ist.

Unbewegliches Vermögen und Einkünfte daraus werden gemäss Art. 2 Abs. 1 DBA-D, vorbehältlich Art. 2 Abs. 4 und 5, nur in dem Staate besteuert, in dem sich dieses Vermögen befindet. Einkünfte aus unbeweglichem Vermögen sind gemäss Schlussprotokoll zu Art. 2 DBA-D auch die Einkünfte aus Veräusserungsgeschäften. Kapitalvermögen und Einkünfte daraus werden gemäss Art. 6 Abs. 1 DBA-D nur in dem Staat besteuert, in dem der Steuerpflichtige seinen Wohnsitz hat. Für die Frage, ob ein Vermögensgegenstand als unbeweglich anzusehen ist, sind gemäss Art. 2 Abs. 3 DBA-D die Gesetze in dem Staat massgebend, in dem der Gegenstand liegt. Für die Auslegung der in Doppelbesteuerungsabkommen nicht bestimmten Begriffe kommt es allein auf das nationale Recht des Vertragsstaates an, der die Besteuerung durchführt (Bundesfinanzhof, 20. Januar 1959, in *Bulletin for International Fiscal Documentation* 13, 144).

Die angefochtene Grundstückgewinnsteuer erfasst, obgleich sie aus Anlass einer Aktienveräusserung erhoben wird, nicht einen Gewinn auf beweglichem Kapitalvermögen, sondern einen Gewinn auf unbeweglichem Vermögen, nämlich den auf dem in Zürich gelegenen Grundstück erzielten Gewinn. Die einheitliche Veräusserung aller Aktien der X AG, einer Immobilienaktiengesellschaft, wird nach § 161 Abs. 2 lit. a StG als Veräusserung des genannten Gesellschaftsgrundstückes gewürdigt. Dies ist mit Art. 2 Abs. 1 und 3 DBA-D vereinbar, weil es sich um ein zürcherisches Grundstück handelt. Wenn gemäss Art. 2 Abs. 2 DBA-D Nutzungsrechte an unbeweglichem Vermögen sowie Rechte, die auf unbeweglichem Vermögen sichergestellt sind, dem unbeweglichen Vermögen gleichzuachten sind, so muss dies hinsichtlich jedes im Eigentum einer Immobilienaktiengesellschaft stehenden Grundstückes auch für die Gesamtheit der betreffenden Immobilienaktien gelten; denn diese Aktiengesamtheit ist insoweit, als sie alle den Gesellschaftsgrundstücken innewohenenden Chancen und Risiken einschliesst, in stärkerem Masse als ein blosses Nutzungsrecht an unbeweglichem Vermögen oder eine grundpfändlich sichergestellte Forderung mit dem Ort der gelegenen Sache verbunden. Die Finanzdirektion hat zutreffend darauf hingewiesen, dass bei gegenteiliger Entscheidung in Deutschland wohnende Personen durch den Handel mit Beteiligungen an Immobilienaktiengesellschaften, denen zürcherische Grundstücke zustehen, den Wertzuwachs zürcherischer Grundstücke der zürcherischen Besteuerung entziehen könnten; das könnte ebensowenig dem Sinn des DBA-D entsprechen, wie eine zürcherische Kapitalgewinnbesteuerung auf Immobilienaktien, soweit diese die Herrschaft über deutsche Grundstücke verkörpern und deren Wertzuwachs einschliessen (vgl. zum interkantonalen Verhältnis RB 1958 Nr. 11, Minderheitsbegründung). Die Lehrmeinung, ein anlässlich der Veräusserung von Aktien des Privatvermögens erzielter Gewinn sei ausschliesslich im Wohnsitzstaat steuerbar (Blumenstein, Die Besteuerung von Gewinnen aus Aktienverkauf nach dem Doppelbesteuerungsabkommen mit Deutschland, Archiv 5, 227), ist hinsichtlich des besonderen Tatbestandes der Immobilienaktien nicht begründet worden; es kann ihr nach dem Gesagten nicht beigetreten werden. Die gesetzmässige Grundstückgewinnbesteuerung verletzt demnach das DBA-D nicht." (Oberrekurskommission, 4. Juni 1959, R. 27-29/1958.)

Source: *Schweizerisches Zentralblatt für Staats- und Gemeindeverwaltung*, 15. Februar, 1960.

SUISSE
REVENU DES PERSONNES PHYSIQUES
TOTALISATION DU REVENU (ART. 44, AIN)

La convention germano-suisse de double imposition ne s'oppose pas à ce que l'on prenne en considération, pour déterminer le taux d'impôt, le revenu du travail, imposable en Allemagne, d'un contribuable domicilié en Suisse.

H.N. est domicilié à S. Il était professeur à l'Université de cette ville jusqu'au printemps 1955. Il enseignait, en outre, à l'Université de M., en Allemagne occidentale. Lors de la taxation ordinaire en vue de l'impôt pour la défense nationale, 8e période (1955 et 1956), il a été imposé sur la base du revenu acquis en Suisse, le taux étant toutefois fixé en fonction du revenu total comprenant le revenu acquis en Allemagne.

Le 1er avril 1955, H. N. a été mis à la retraite par l'Université de S. Il a continué son enseignement en Allemagne. L'autorité de taxation a procédé à son égard une taxation intermédiaire pour la période allant du 1er avril 1955 au 31 décembre 1956. Comme pour la taxation ordinaire, le taux a été fixé en fonction du revenu total.

Le contribuable a recouru au Tribunal fédéral, demandant qu'il ne soit tenu compte pour déterminer le taux que du revenu acquis et imposable en Suisse. Le Tribunal fédéral a rejeté le recours.

(Résumé.)

Considérants (traduction):

1. Le calcul des éléments imposables du contribuable n'est pas contesté, tant en ce qui concerne la taxation ordinaire que la taxation intermédiaire pour la période postérieure au 1er avril 1955. Le recours porte uniquement sur la détermination du taux applicable et, plus précisément, sur la question de savoir si l'on doit aussi tenir compte, pour déterminer ce taux, du revenu de 15 200 francs acquis en Allemagne par le recourant et qui, aux termes de la convention germano-suisse en vue d'éviter les doubles impositions n'est pas imposable en Suisse. L'article 44, 1er alinéa, AIN, dispose ce qui suit à ce sujet:

> «Les contribuables qui ne doivent payer l'impôt pour la défense nationale que sur une partie de leur revenu doivent être classés d'après leur revenu total. L'impôt n'est calculé, toutefois, que sur la base du revenu assujetti à l'impôt pour la défense nationale, mais au taux correspondant au revenu total.»

Le sens de cette disposition est clair. Il correspond au système général adopté en matière d'impôt pour la défense nationale et, en particulier, au principe de la progression du taux de l'impôt consacré par l'article 40 AIN et par les tarifs y afférents. Comme le relève à juste titre le recourant, la progression du taux de l'impôt est fondée sur l'idée que la charge fiscale doit être proportionnée à la capacité économique du contribuable et que cette capacité augmente avec le revenu en relation non seulement proportionnelle mais progressive. Cela vaut aussi pour les contribuables qui ne doivent payer l'impôt que sur une partie de leur revenu. Leur capacité économique n'est pas déterminée par cette seule partie du revenu mais par le revenu total.

C'est pourquoi le taux de l'impôt — qui n'est perçu que sur une partie du revenu — doit être fixé en fonction du revenu total. L'article 44, 1er alinéa, AIN, n'a trait qu'à l'imposition de la partie du revenu soumis à l'impôt pour la défense nationale; le reste du revenu n'en est pas touché. Il n'existe aucune relation entre l'impôt perçu sur la partie du revenu imposable en Suisse et l'impôt perçu d'autre part, notamment par un Etat étranger, sur le reste du revenu. En matière d'impôt pour la défense nationale, ne jouent un rôle ni l'imposition à l'étranger, ni la charge totale qui en résulte pour le contribuable. Ce dernier est frappé pour la partie du revenu imposable en Suisse et il l'est selon sa capacité économique, elle-même déterminée par son revenu total, sans que l'on doive examiner si le reste du revenu est imposé ailleurs et quelle est l'importance de cette imposition.

L'arrêté concernant l'impôt pour la défense nationale a force de loi. En vertu de l'article 114 bis, 3e alinéa, de la constitution fédérale, il lie le Tribunal fédéral. Celui-ci n'a donc pas à examiner si l'article 44, 1er alinéa, AIN, est conforme à la constitution. Le recourant ne prétend, du reste, pas que cette disposition soit contraire à la constitution. Il se réfère, incidemment, à l'article 4 de la constitution, garantissant l'égalité de droit, mais seulement pour y voir le fondement de l'imposition égale des contribuables selon leur capacité économique. Ce principe, sur lequel repose aussi l'article 44, 1er alinéa, AIN, n'est pas violé par la décision attaquée.

2. Le recourant fait valoir que la convention germano-suisse en vue d'éviter les doubles impositions est aussi fondée sur le principe de l'imposition selon la capacité économique et il soutient que ce principe a été ignoré en l'espèce. Il se plaint ainsi, sinon expressément du moins implicitement, d'une violation de la convention.

Le Tribunal fédéral a toujours considéré qu'il n'y a pas double imposition internationale lorsque le taux de l'impôt sur le revenu est fixé en fonction du revenu total, mais que ce taux n'est appliqué qu'au revenu imposable en Suisse (voir le dernier arrêt sur cette question dans le RO 82 I 7 cons. 5, lettre b, arrêt concernant la convention entre la Suisse et les Etats-Unis)[1]). En ce qui concerne la convention avec l'Allemagne. Il s'est exprimé comme il suit dans l'arrêt publié au RO 62 I 99, cons. 3[2]): «Ce taux (le taux correspondant à la fortune totale et au revenu total) n'est appliqué qu'à la fortune et au revenu imposable en Suisse. Le recourant n'est pas imposé plus fortement sur ses immeubles sis en Suisse et sur les revenus qui en proviennent du fait qu'il est aussi soumis à une autre souveraineté fiscale; il lui est seulement appliqué, comme à tous les contribuables, un taux d'impôt correspondant à sa capacité économique. Il ne doit payer sur ses immeubles sis en Suisse et sur les revenus qui en proviennent que les impôts qu'il devrait sur ces mêmes éléments s'il n'était soumis qu'à la souveraineté fiscale suisse, sa fortune et son revenu restant les mêmes.» Contrairement à l'opinion du recourant, l'impôt à payer dont il est question dans cette dernière phrase ne concerne que l'impôt suisse. Cela est évident, car, selon la convention germano-suisse, il ne peut être question d'un autre impôt pour des immeubles sis en Suisse et pour leur rendement. La réserve que la Suisse a toujours faite en faveur de l'application du taux correspondant au revenu total et à la fortune totale est inscrite maintenant sous le chiffre 14 du protocole additionnel à la convention germano-suisse, du 9 septembre 1957, et a été reconnue expressément par l'Allemagne (FF 1957 II 615).

Du principe de l'imposition d'après la capacité économique inhérent à cette réglementation découle le droit pour les Etats contractants d'imposer la part du revenu soumis à leur souveraineté fiscale au taux correspondant au revenu total, car seul le revenu total exprime la capacité économique du contribuable. On ne peut pour autant en déduire une limite maximum de la

[1]) Archives 25, 132 et RDAF 1957, 128.
[2]) Archives 5, 299.

charge fiscale que ne devrait pas dépasser le montant total des impôts perçus par les deux Etats. Chaque Etat juge la capacité économique du contribuable d'après son droit, indépendamment de la mesure adoptée par l'autre Etat et sans prendre en considération les impôts perçus par ce dernier. La convention germano-suisse en vue d'éviter les doubles impositions répartit les éléments imposables entre les deux Etats; chacun ne peut imposer que les éléments attribués à sa souveraineté fiscale; mais, sur le mode de leur imposition — et la détermination du taux de l'impôt en fait partie — chacun reste libre et n'a pas à tenir compte de la charge totale qui résulte du fait que les deux Etats imposent les objets qui leur sont attribués selon leur propre législation. L'opinion du recourant aurait pour conséquence que l'Etat qui juge avec plus de modération la capacité économique et, partant, perçoit des impôts moins élevés devrait encore les réduire, le cas échéant, parce que l'autre Etat, appliquant une notion plus sévère de la capacité économique, perçoit des impôts plus élevés et que, de ce fait, la charge totale devient plus lourde. Le présent cas démontre clairement ce fait: L'Allemagne a des impôts plus élevés que la Suisse et impose le recourant pour son revenu acquis en Allemagne plus fortement que ne le ferait la Suisse pour un revenu semblable; dès lors, la charge fiscale qui le frappe est plus élevée qu'elle ne le serait si tout son revenu était imposable en Suisse, mais aussi moins élevée qu'elle ne le serait s'il n'était imposable qu'en Allemagne. Cependant, ni la loi suisse, ni la loi allemande, ni la convention ne prévoient un maximum que la somme des impôts perçus dans des deux Etats ne devrait pas dépasser. Le fait que la charge totale excède peut-être la capacité économique du recourant jugée d'après le droit suisse n'est pas dû aux impôts suisses, mais aux impôts allemands calculés sur la base d'une notion plus sévère de la capacité économique et il ne saurait être question d'obliger la Suisse à en tenir compte en réduisant les impôts dus en vertu de sa propre législation. Inversément, on pourrait dire que la capacité économique du recourant jugée d'après le droit allemand n'est pas épuisée puisqu'il paie moins d'impôt sur son revenu acquis en Suisse qu'il n'en paierai en Allemagne. Le recourant étant soumis à deux souverainetés fiscales, sa situation est moins favorable que s'il était imposable en Suisse seulement et elle est en même temps plus favorable que s'il n'était imposable qu'en Allemagne. Ni le principe de l'égalité devant la loi ni celui de la bonne foi, ni celui de l'imposition selon la capacité économique ne peuvent amener la Suisse à renoncer à imposer le revenu soumis à sa souveraineté fiscale conformément à sa législation pour le motif que l'Allemagne impose plus fortement la part du revenu qui lui et attribuée. Une telle restriction constituerait une immixtion inadmissible du droit allemand dans le domaine de la souveraineté fiscale suisse, qui n'aurait rien à voir avec la répartition des éléments imposables opérée par la convention.

(Tribunal fédéral, 2 mai 1958, *H. N. c. Commission de recours du canton de St-Gall;* Archives 27, 178.)

Source: *Revue de droit administratif et de droit fiscal,* Novembre-Décembre 1959.

SUISSE

REVENU DES PERSONNES PHYSIQUES. - IMPOSITION DES BÉNÉFICES EN CAPITAL D'UNE SOCIÉTÉ EN NOM COLLECTIF (ART. 21, 1er AL., LETTRE D, AIN)

Un immeuble qui est la propriété des membres d'une société en nom collectif, qui est mis gratuitement par ces derniers à la disposition de la société et qui figure dans la comptabilité commerciale, fait partie de la fortune commerciale de la société et non de la fortune privée des associés. Il en est ainsi même lorsque l'immeuble, en partie, n'a pas été utilisé qu'indirectement à des buts commerciaux.

Les frères St. exploitaient, sous la forme d'une société en nom collectif, un atelier de réparation d'autos et de motos ainsi qu'un garage à Z. Ils étaient, en outre, propriétaires à parts égales de l'immeuble B. dans lequel se trouvait l'exploitation de la société en nom collectif. L'immeuble figurait dans la comptabilité de la société. Au registre foncier, toutefois, il était inscrit sous le nom des associés.

Au cours des années 1945 à 1950, les frères St. comptabilisèrent des plus-values sur l'immeuble pour un montant total de 78 000 francs, plus-values qui furent imposées.

En 1950, les frères St. conclurent un contrat de vente de l'immeuble pour le prix de 180 000 francs. Dans un contrat complémentaire, l'acheteur s'engagea à payer aux vendeurs une somme de 70 000 francs à titre d'indemnité pour le manque à gagner résultant de la cessation de l'exploitation dans l'immeuble vendu, ainsi que pour les frais de démontage, de transport et d'entreposage des installations.

En 1951, les frères St. extournèrent par le débit du compte de profits et pertes les plus-values comptabilisées et imposées dans les années précédentes. En même temps, ils amortirent le compte immeuble d'un montant de 70 000 francs correspondant à l'indemnité due par l'acquéreur et comptabilisée dans le même exercice, bien qu'elle ne leur ait été versée qu'en 1952. Quant au prix de vente de 180 000 francs, il fut payé en 1953, au moment du transfert de la propriété de l'immeuble.

Lors de la taxation en vue de la 7e période (1953 et 1954; 1951 et 1952 étant les années de calcul), un litige survint entre les associés et les autorités fiscales sur l'imposition de l'indemnité de 70 000 francs et sur l'amortissement de 78 000 francs opéré par l'extourne des plus-values comptabilisées autrefois. L'autorité de taxation refusa de reconnaître cet amortissement; elle considéra aussi comme élément du revenu imposable des associés, à raison d'une moitié chacun, l'indemnité de 70 000 francs. La Commission cantonale de recours confirma cette taxation.

Le recours de droit administratif ne portait que sur l'imposition de l'indemnité de 70 000 francs. Le Tribunal fédéral a rejeté le recours.

(Résumé.)

Extrait des considérants (traduction):

1. . . .
2. . . .
3. . . .

4. En matière d'impôt cantonal, la commission supérieure de recours du canton de Zürich a considéré que l'indemnité de 70 000 fr. provient de la vente de l'immeuble et doit être prise en considération pour le calcul du bénéfice soumis à l'impôt zurichois sur les bénéfices immobiliers. En ce qui concerne l'impôt pour la défense nationale, l'Administration fédérale des contributions ne peut se raillier à ce point de vue, que les recourants ont fait leur. Il s'agit, à son avis, d'une indemnité versée pour la renonciation à une activité à but lucratif ou l'inaccomplissement de celle-ci, indemnité soumise à l'impôt pour la défense nationale en vertu de l'article 21, 1er alinéa, lettre a, AIN, que l'immeuble fasse partie ou non de la fortune commerciale. La Commission cantonale de recours de l'impôt pour la défense nationale considère, quant à elle, que la somme de 70 000 francs entre de toutes façons dans le calcul du revenu soumis à l'impôt, qu'on la considère comme bénéfice commercial ordinaire ou comme prix de vente de l'immeuble.

En fait, on peut se dispenser d'examiner si l'on a affaire à un revenu acquis en compensation au sens de l'article 21, 1er alinéa, lettre a, AIN, ou à une partie du prix de vente de l'immeuble. Dans le premier cas, on se trouverait évidemment en présence d'un revenu commercial imposable auprès des associés selon leur participation, soit à raison d'une moitié chacun (art. 18, 2e al., AIN). Mais il n'en va pas différemment dans le second cas.

Le bénéfice provenant de la vente de l'immeuble B. a été réalisé dans l'exploitation astreinte à tenir des livres de la société en nom collectif; il entre donc dans le calcul du revenu imposable en vertu de l'article 21, 1er alinéa, lettre d, AIN. Le fait que l'immeuble n'était pas inscrit au nom de la société dans le registre foncier n'est pas déterminant puisqu'il appartenait aux propriétaires (associés) de l'entreprise et non à des tiers indépendants. La société a utilisé l'immeuble à des fins commerciales; elle y a exploité son atelier de réparation et son garage. Les associés l'ont mis à sa disposition à cet effet et cela gratuitement. Ils l'ont aussi, très logiquement, fait figurer dans la comptabilité de la société; ils ont, dans les années 1945 à 1950, comptabilisé des plus-values sur cet immeuble et en ont crédité le compte de résultat. Si, en partie, l'immeuble n'a pas servi ou n'a servi qu'indirectement à des buts commerciaux, cela est irrelevant. Aucun partage n'a été opéré dans la comptabilité et il ne saurait l'être, non plus,pour l'imposition. On doit admettre, d'après l'ensemble des circonstances, que tout l'immeuble faisait partie de la fortune commerciale de la société et non de la fortune privée des associés (arrêt non publié du 26 septembre 1958 en la cause H. et B. [1]). Si donc l'indemnité de 70 000 francs représente une partie du prix de vente, elle doit être comprise dans le calcul du revenu imposable conformément à l'article 21, 1er alinéa, lettre d, AIN.

5. Les recourants objectent en vain que cette indemnité a déjà été grevée par l'imposition des plus-values de 78 000 francs comptabilisées dans les années 1945 à 1950. Ces deux articles doivent être traités séparément. La société a comptabilisé dans ces années des augmentations de valeur et ces augmentations ont été imposées en vertu de l'article 21, 1er alinéa, lettre f, AIN. L'indemnité de 70 000 fr. représente un nouveau revenu; elle est soit une indemnité versée pour la cessation d'une activité ou pour l'inaccomplissement de celle-ci (art. 21, 1er al., lettre a, AIN), soit la contrepartie d'une nouvelle plus-value de l'immeuble. En fait, la comparaison entre le prix de vente augmenté de cette indemnité (250 000 fr.) et la valeur comptable augmentée des plus-values comptabilisées de 78 000 fr. (150 000 fr.) fait ressortir un bénéfice en capital beaucoup plus important que cette indemnité.

6. On ne saurait soutenir que l'incorporation de ces 70 000 fr. dans le calcul du revenu imposable de la 7e période constitue une imposition anticipée inadmissible. Il n'est pas contesté que ce montant a été comptabilisé en

[1]) Archives 27, 333.

1951 et touché par la société l'année suivante. L'autorité fiscale était en droit de l'ajouter aux recettes de la période de calcul comprenant les années 1951 et 1952. Si, en définitive, cette somme avait du être remboursée, il aurait été question d'une déduction lors de la taxation en vue de la période ultérieure entrant en ligne de compte. Pour le reste, il est clair qu'aux fins de l'imposition, en 8e période, du bénéfice en capital (restant), seul devra être pris en considération le montant de 180 000 fr., l'indemnité de 70 000 fr. ne devant pas être comprise dans ce calcul; en outre, la valeur comptable devra être augmentée des plus-values comptablilisées dans les années 1945 à 1950 (cons. 5 in fine).

(Tribunal fédéral, 3 octobre 1958, *M. St.-L. c. Commission de recours du canton de Zurich;* Archives 27, 330.)

Source: *Revue de droit administratif et de droit fiscal*, Novembre-Décembre, 1959.

LUXEMBOURG - UNION ECONOMIQUE BELGO - LUXEMBOURGEOISE

COUR SUPERIEURE DE JUSTICE (CASSATION CRIMINELLE)

19 novembre 1959

1° **Union Economique belgo-luxembourgeoise — Défense de percevoir des droits ou taxes quelconques dans les relations des deux pays de l'Union — Défense ne visant que les taxes de douanes ou d'accises à l'exclusion d'autres mesures et dispositions de caractère fiscal — Convention belgo-luxembourgeoise du 25 juillet 1921, approuvée par la loi du 5 mars 1922, art. 3.**

2° **Taxe d'importation — Caractère — Impôt intérieur luxembourgeois — Taxe d'importation ne constituant pas un droit de douanes ou d'accises — Marchandises importées de Belgique — Perception de la taxe d'importation pas contraire aux dispositions de la convention d'Union Economique belgo-luxembourgeoise — Taxe perçue à l'occasion du passage des marchandises sur la frontière — Irrelevance — Convention belgo-luxembourgeoise du 25 juillet 1921, approuvée par la loi du 5 mars 1922, art. 3; arr. g.-d. du 26 octobre 1944, art. 1er et 2.**

1° *L'article 3 de la convention d'Union Economique belgo-luxembourgeoise du 25 juillet 1921, lequel prévoit la défense de percevoir des droits ou taxes quelconques dans les relations des deux pays de l'Union, ne vise que l'incompatibilité de l'établissement de taxes de douanes ou d'accises avec les principes de l'Union dans les relations entre les deux pays, à l'exclusion des mesures et des dispositions de caractère fiscal généralement quelconques, pour autant que celles-ci ne peuvent être considérées comme droits de douanes ou d'accises.*

2° *La taxe d'importation constitue un impôt intérieur luxembourgeois et non pas un droit ayant le caractère d'une taxe douanière ou d'accise.*

Il s'ensuit que les dispositions légales relatives à la taxe d'importation ne tombent pas sous la défense de la perception des droits ou taxes prévue à l'article 3 du traité d'Union Economique belgo-luxembourgeoise du 25 juillet 1921 en ce qui concerne les marchandises importées de Belgique.

La circonstance que la taxe d'importation est perçue à l'occasion du passage des marchandises sur la frontière constitue une simple mesure d'exécution touchant le lieu de la perception de la taxe et n'est pas de nature à imprimer à cette taxe le caractère d'un droit de douane.

MIN. PUBL. — BRANDENBURGER.

Sur le moyen unique,

tiré de la violation des articles 3 et 9 de la convention établissant une Union Economique entre le Grand-Duché de Luxembourg et la Belgique, signée à Bruxelles le 25 juillet 1921 et approuvée par la loi du 5 mars 1922, des dispositions de la convention instituant entre le Grand-Duché de Luxembourg et la Belgique un régime commun en matière de réglementation des importations, des exportations et du transit, signée à Bruxelles le 23 mai 1935 et approuvée par la loi du 15 juilllet 1935, des paragraphes 1er et 15 de la loi allemande du 16

octobre 1934 dite «Umsatzsteuergesetz», ensemble les articles 1er et 2 de l'arrêté grand-ducal du 26 octobre 1944 concernant les impôts, taxes, cotisations et droits, qui a maintenu en vigueur ladite loi du 16 octobre 1934, et de l'article 29 de la loi du 28 janvier 1948 tendant à assurer la juste et exacte perception des droits d'enregistrement et de succession,

en ce que l'arrêt attaqué, sans examiner en fait si le prévenu avait commis les infractions mises à sa charge, a prononcé son acquittement, au motif erroné que les textes légaux et réglementaires dont la violation lui était reprochée, pour autant qu'ils concernent les importations de Belgique, seraient contraires aux traités susdits liant le Grand-Duché à ce pays voisin, lesquels prévoient qu'il y aura entre les deux pays liberté de commerce pleine et entière sans entraves ni prohibition d'importation et a, par conséquent, refusé d'appliquer la sanction prévue à l'article 29 de la loi du 29 janvier 1948 pour le cas de non-paiement frauduleux de la taxe dite d'importation,

alors pourtant que cette taxe n'est pas un droit de douane, mais un impôt sur le chiffre d'affaire qui ne constitue, ni en droit, ni en fait, une entrave à l'importation et ne porte aucune atteinte à la liberté du commerce entre les pays de l'Union;

Attendu que Brandenburger était prévenu d'avoir, en contravention de la loi du 28 janvier 1948 tendant à assurer la juste et exacte perception des droits d'enregistrement et de succession et de l'arrêté grand-ducal du 28 juin 1946 concernant la taxe d'importation, importé de la Belgique dans le Grand-Duché une quantité de café torréfié, en se soustrayant au paiement de la taxe d'importation de 2%;

que la Cour d'appel a décidé que la taxe d'importation perçue à la frontière belge constituerait une entrave à l'importation, de sorte que les dispositions afférentes seraient inconciliables avec celles du traité d'Union Economique entre le Grand-Duché et la Belgique, lesquelles prévoient qu'il y aura, entre les pays de l'Union, liberté de commerce pleine et entière, sans entraves, ni prohibition d'importation, de transit ou d'exportation et sans perception de droits ou taxes quelconques;

qu'en cas de conflit, la loi internationale devant prévaloir sur la loi nationale, la sanction pénale prévue pour la prévention mise à charge de Brandenburger n'aurait pas de base légale;

Attendu qu'aux termes de la convention établissant une Union Economique entre le Grand-Duché de Luxembourg et la Belgique, les dispositions luxembourgeoises concernant la douane et les accises sont abrogées et remplacées par les dispositions belges afférentes, que les deux Etats seront considérés comme ne formant qu'un seul territoire au point de vue de la douane et des accises communes et que le produit des droits d'entrée, de sortie, de transit, des droits d'accises et de recettes douanières extraordinaires sont à considérer comme recette commune de l'Union;

Attendu que dans les conditions données et en présence encore de la stipulation expresse que la frontière douanière entre les deux pays sera supprimée, le Grand-Duché a renoncé nécessairement à maintenir et à créer des droits et taxes quelconques pouvant avoir le caractère de droits de douanes ou d'accises;

Attendu que l'art. 3, al. 1, de la convention de l'Union Economique qui prévoit la défense de percevoir des droits ou taxes quelconques dans les relations des deux pays de l'Union ne fait qu'exprimer la conséquence se dégageant des stipulations internationales sus-indiquées et ne peut donc viser que l'incompatibilité de l'établissement de taxes de douanes ou d'accises avec les principes de l'Union dans les relations entre les deux pays;

Attendu pourtant qu'aucune disposition du traité d'Union Economique du 25 juillet 1921, ni encore de la convention du 23 mai 1935 sus-spécifiée, n'interdit aux Etats contractants d'établir des mesures et de prendre des

dispositions de caractère fiscal généralement quelconques, pour autant que celles-ci ne peuvent être considérées comme droits de douanes ou d'accises;

Attendu qu'il y a donc lieu de déterminer la nature de la taxe d'importation;

Attendu que l'art. 1 de l'arr. g.-d. du 26 octobre 1944 concernant les impôts, taxes, cotisations, et droits dispose que sont tenues pour valables et continuent à être appliquées toutes les dispositions et mesures prises par l'ennemi avant le 10 septembre 1944 relatives aux impôts, taxes, cotisations et droits; que l'art. 2 précise que l'art. 1 vise entre autres l'impôt dénommé par sa désignation allemande: «Umsatzsteuer»; que l'art. 6 du même arrêté grand-ducal édicte des prescriptions spéciales au sujet de cet impôt sur le chiffre d'affaires et du mode de perception de la taxe d'importation (Ausgleichsteuer), pour autant que les importations proviennent de la Belgique;

Attendu que la loi allemande du 16 octobre 1934 relative à cet impôt, visée par les dispositions ci-dessus énoncées, prévoit dans son paragr. 1 qu'est soumise à l'impôt sur le chiffre d'affaires (Umsatzsteuer) l'importation de marchandises dans le pays, en spécifiant qu'il s'agit d'un impôt compensatoire (Ausgleichsteuer); qu'il est encore précisé au paragr. 15 que cet impôt est à considérer comme un impôt de consommation au sens de la loi générale des impôts;

Attendu qu'il s'ensuit que la taxe d'importation constitue un impôt intérieur luxembourgeois et non pas un droit ayant le caractère d'une taxe douanière ou d'accise;

Attendu que la disposition de l'art. 4 de la loi du 25 mai 1946 apportant certaines modifications au régime de l'impôt sur le chiffre d'affaires, qui charge l'Administration de l'Enregistrement de la perception de l'impôt sur le chiffre d'affaires et de la taxe d'importation, ensemble la disposition de l'art. 29 de la loi du 28 janvier 1948 tendant à assurer la juste et exacte perception des droits d'enregistrement et de succession, qui prévoient les sanctions pénales pour les infractions aux dispositions relatives aux impôts, droits et taxes dont la perception est attribuée à l'Administration de l'Enregistrement, constituent des mesures d'exécution et d'application des dispositions légales de la loi organique sur la taxe d'importation et sont partant de la même nature que cette dernière loi;

Attendu dès lors que tant les dispositions légales relatives à la taxe d'importation que celles visées à l'alinéa qui précède ne tombent pas sous la défense de la perception des droits ou taxes prévue en l'art. 3 du traité;

Attendu au surplus que cette taxe ne saurait être considérée comme une entrave à l'importation et à la liberté de commerce entre les deux pays de l'Union Economique;

Attendu en effet que par la loi belge du 28 août 1921 il a été établi une taxe spéciale, dite taxe de transmission, qui de façon générale a le même objet que la taxe d'importation luxembourgeoise; que l'application de ces mesures fiscales tant en Belgique qu'au Grand-Duché n'a cependant pas troublé l'équilibre commercial entre les deux pays;

Attendu que ces taxes, loin de créer une discrimination à l'égard des importations de marchandises de l'un des pays de l'Union dans l'autre, n'ont pour résultat que de mettre au même niveau les charges grevant les transactions afférentes traitées dans chacun des pays; que ces taxes perçues dans les deux Etats ne sont donc pas de nature à influencer défavorablement les libres relations commerciales à l'intérieur de l'Union Economique, ni à entraver le trafic des importations et exportations entre les deux Etats;

Attendu d'ailleurs qu'aucun des pays contractants n'a dans le passé soulevé le moyen de l'incompatibilité de ces taxes avec les principes posés au traité; que bien au contraire, en les appliquant constamment depuis le début de l'Union Economique, tant la Belgique que le Grand-Duché ont

manifesté clairement que dans leur intention commune le traité les liant s'accommode de la création des taxes en question;

Attendu enfin que la circonstance que la taxe d'importation est perçue à l'occasion du passage des marchandises sur la frontière constitue une simple mesure d'exécution touchant le lieu de la perception de la taxe et n'est pas de nature à imprimer à cette taxe le caractère d'un droit de douane;

Attendu qu'il s'en dégage que l'arrêt attaqué a faussement interprété les textes visés au mémoire et qu'il est à casser pour violation de la loi;

Par ces motifs,

la Cour de cassation, ouï M. le Vice-président en son rapport et M. le Procureur général d'Etat en ses conclusions conformes,

reçoit le recours en la forme;

le déclare fondé;

en conséquence casse et annule, *mais dans l'intérêt de la loi seulement.* l'arrêt attaqué du 20 janvier 1956;

ordonne que le présent arrêt sera transcrit sur les registres de la Cour d'appel et que mention en sera faite en marge de la décision annulée;

laisse les frais à charge de l'Etat.

Source: *Pasicrisie Luxembourgeoise,* 1960, 1re et 2e livraisons.

IV

REVIEWS - COMPTES RENDUS

AUSTRALIA

N. E. CHALLONER, J. M. GREENWOOD and D. L. MAHONEY: Challoner and Collins *Income Tax law and practice* (Commonwealth). *Fourth cumulative supplement* (June 1958). The Law Book Co. of Australasia Pty. Ltd., 140 Phillip Street, Sydney, 1958, 459 pp.

A review of the main work of this voluminous work on Australian income tax was published in *Bulletin* Vol. X, p. 162. The present *fourth cumulative supplement* contains all income tax legislation passed subsequently to the publication of the parent volume and up to 30th June, 1958. Decisions of the High Court of Australia reported up to 1st June 1958 and decisions of the various Boards of Review which are considered of sufficient importance have been included or noted, while reference is also made to relevant English decisions. As in the main volume the subject matter is indexed by paragraph numbers. The user first refers to the index of the parent volume and to the paragraph number there given and for additional matter turns to that number if it occurs in the fourth supplement. The supplement is cumulative and, therefore, reference need not be made to previous supplements unless it is desired to ascertain the law as it stood at an earlier date.

AUSTRIA

Dr ERNST FRITSCH: *Das Recht der Einkommen- und Körperschaftsteuer. 22.-25. Ergänzungslieferung*. Industrieverlag Peter Linde, Dominikanerbastei 10, Wien I.

Eine Würdigung dieser Loseblattausgabe des Oesterreichischen Einkommen- und Körperschaftsteuerrechts ist im *Bulletin* Bd. XI, S.120/121 erschienen. Die *Ergänzungslieferungen 22 und 23* enthalten u.a. die Doppelbesteuerungsabkommen mit England und U.S.A., Erlässe über Saarland, ausländische Versicherungsgesellschaften, Bausparverträge, Pauschalierung und die Einkommensteuernovelle 1957. Die *24. Ergänzungslieferung* bringt u.m. die Einkommensteuernovelle 1958 und Erlässe über Progressionsvorbehalt, Seeschiffahrt, Kraftfahrzeugpauschale, Flugzulage.
Mit der *25. Ergänzungslieferung*, März 1959, wird eine Auswahl aus der Rechtsprechung gebracht. Sie erstreckt sich auf die Erkenntnisse von etwa Juli 1957 bis September 1958. Eine entsprechende Auswahl ist getroffen und der Inhalt kurz und prägnant wiedergegeben. Weiter bringt diese Lieferung eine grosse Anzahl von Erlässen und ein neues Gesamtschlagwortverzeichnis.

Dr. ERNST STRACK: *Das Umsatzsteuerrecht in Theorie und Praxis*. 3. Auflage. Wirtschaftsverlag Dr. Anton Orac, Graben 17, Wien I.

Eine Besprechung der neuen Auflage dieses Werkes wurde in *Bulletin* 1959, S.295 veröffentlicht.

Nunmehr ist auch der *II. Teil* dieser Loseblattausgabe in der Umfang von 484 Seiten erschienen und zugleich der *erste Nachtrag* zum I. Teil.

Dr. ERNST FRITSCH: *Das internationale Steuerrecht. 4. Nachtrag* (September 1957). Industrie-Verlag Peter Linde, Dominikanerbastei 10, Wien I.

Eine Besprechung dieses Werkes wurde im *Bulletin* Bd. XI, S-216 veröffentlicht. Der vorliegende *4. Nachtrag* bringt die neuen Doppelbesteuerungsverträge mit England und den U.S.A. Darüber hinaus bringt er neben einigen Erlässen eine eingehende Darstellung des deutschen Steuerrechts. Schliesslich sind auch Erlässe über die Steuer-Erstattungen auf Grund des Artikels 25 des Staatsvertrags abgedruckt worden.

BELGIUM

VICTOR PAUWELS: *Le nouveau Code des Impôts sur les Revenus*. Les Editions Excelsior, Bvd. de Smet de Naeyerlaan 255, Bruxelles.

Le *supplément*, 1959, no. 4 a paru contenant des modifications qui mettent à jour ce livre, un compte rendu duquel a été publié dans le *Bulletin* Tome XII, p. 33.

Analyse économique et fonctionnelle des dépenses de l'Etat en Belgique, aux Pays-Bas et au Luxembourg 1957-1958-1959. Sécretariat Général de L'Union Douanière Néerlando-Belgo-Luxembourgeoise, 170, rue de la Loi, Bruxelles, 40 pp.

Le présent rapport analyse, suivant les critères économiques et fonctionnels les dépenses de l'Etat, en Belgique, aux Pays-Bas et au Luxembourg, afférentes aux années 1957-59; les chiffres pour 1959 ont trait aux projets de budgets.

EDGARD SCHREUDER: *Les impôts sur les revenus*. Précis de législation et de jurisprudence. *Complément*. Etablissements Emile Bruylant, Rue de la Régence, 67, Bruxelles, 1960, 301 pp.

Le présent *Complément* vise à rendre compte des innovations intervenues au cours des deux dernières années et des acquisitions jurisprudentielles les plus marquantes. Plusieurs chapitres du *Précis* ont été complètement remaniés, notamment ceux qui traitent de la procédure en ses différentes phases. L'introduction a été augmentée de quelques aperçus sur le caractère de l'impôt et de la loi fiscale. Un sommaire de la fiscalité d'Etat et de la parafiscalité y a également été ajouté. Un compte rendu du chef d'oeuvre a été publié dans le *Bulletin* Vol. XII, p. 156/157.

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 9 et 10, 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 Lois et arrêtés divers relatifs aux impôts sur les revenus; Code des taxes assimilées au timbre.

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

Les *Suppléments 1959 no 12* et *1960 nos. 1 et 2* de cette documentation sur la jurisprudence fiscale belge ont paru.

CANADA

JOHN G. MCDONALD and DAVID A. WARD: *Canadian Income Tax. Fourteenth (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 November 15, 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.

The *Canadian Tax Foundation,* 154 University Avenue, Toronto 1, has issued the following publications: 1. *The National Finances 1959-60,* 164 pp.

This is the fifth edition of this analysis of the revenues and expenditures of the Government of Canada. *The National Finances* has become a familiar feature of the Foundation's annual publishing program.

2. GWYNETH MCGREGOR: *Personal Corporations,* 28 pp.

This study of the background and the treatment under the Canadian Income Tax of the Personal Corporations has appeared as No. 18 in the series *Canadian Tax Papers.*

FRANCE

Code Annoté des Impôts Directs. Publiés par les Editions d'Impôts et Sociétés, 14, rue Clapeyron, Paris-8e.

Des comptes rendus de ces tomes excellents sur le système fiscal français ont paru dans le *Bulletin* Tome XI, p. 126 et 332. La *Mise à jour de janvier 1960* qui a été publiée récemment contient des pages nouvelles pour les tomes I, II et III. Compte tenu de ces 109 feuillets de refonte les tomes indiqués du Code annoté sont à jour à Octobre 1959.

LES PUBLICATIONS FRANCIS LEFEBVRE, 15, rue Viète, Paris (17e).

Les *Feuillets de documentation pratique* constituent une encyclopédie des impôts sur feuillets mobiles. Tous les impôts directs sont répartis en trois tomes sous fort reliure Tim. Deux volumes sont consacrés respectivement aux Taxes sur le Chiffre d'affaires et aux Contributions indirectes. Un autre volume est consacré au Securité sociale et Legislation du travail. Les *"Feuillets"* constituent une documentation essentiellement pratique. Au point de vue fond, ils excluent les considérations purement théoriques. Ils regroupent les différentes décisions prises par l'Administration et par la jurisprudence autour d'idées générales et dégagent clairement les principes qui en découlent.

Les *Feuillets de documentation pratique* sont classés en un certain nombre de Séries. Chaque Série est consacrée à l'étude d'un sujet bien déterminé: soit un impôt, soit une catégorie de revenus, soit encore un ensemble de dispositions se rapportant au même problème. La plupart des Séries sont elles-mêmes découpées en plusieurs Divisions. Chaque Division comporte à son tour un certain nombre de paragraphes faisant l'objet d'un numérotage continu. Périodiquement les abonnées reçoivent un envoi de nouveaux feuillets destinés à mettre à jour leur collection. Chaque envoi comprend en général des feuillets blancs (feuillets de refonte) qui remplacent en tout ou en partie les anciens feuillets de la Série ou Division correspondante, et des feuillets de mise à jour (feuillets verts de première mise à jour ou feuillets jaunes de seconde mise à jour) destinés à compléter les feuillets existants.

Quant aux solutions récentes, parues postérieurement aux derniers feuillets classés dans la collection Impôts directs, celles-ci sont publiées dans le Bulletin mensuel de documentation pratique (sous couverture bleue).

Quant aux solutions récentes, parues postérieurement aux derniers feuillets classés dans les collections Impôts directs et Chiffre d'Affaires celles-ci sont publiées dans le *Bulletin mensuel de documentation pratique des impôts directs et des droits d'enregistrement* et dans le *Bulletin de documentation pratique des taxes sur le chiffre d'affaires et des contributions indirectes.* Ces

Bulletins reprennent, toujours suivant la même classification (par Série, Division, paragraphs) toutes les informations parues dans le courant du dernier mois. Celles de ces informations qui, en raison de leur importance ou de leur urgence, ne peuvent attendre la publication du prochain bulletin mensuel, sont immédiatement diffusées aux abonnés par des *"Feuillets rapides"* envoyés aussi souvent qu'il est nécessaire. Les solutions publiées dans les feuillets rapides et bulletins mensuels sont ultérieurement reprises dans les *Feuillets* de base lors des refontes ou mises à jour périodiquement.

E.-P. PLAGNOL: *Les Impôts*. Théorie et pratique fiscales. Troisième édition. Juin 1958. *Mise à jour au 1er Octobre 1959*. En vente chez l'auteur, 6, Rue George Eastman, Paris (XIIIe).

Un compte rendu de cet ouvrage sur le système fiscal français a été publié dans le *Bulletin* Tome XII, p. 356. La présente mise à jour comporte les dispositions nouvelles entrées en vigueur entre le 1er juillet 1958 et le 30 septembre 1959 et l'analyse du projet de Réforme Fiscale soumis à la Commission des Finances à la date du 1er octobre 1959.

WILLIAM GARCIN ET FRANÇOIS HEPP: *Receuils pratiques du droit des affaires dans les pays du marché commun*. Tome I Régime des Sociétés, *Supplements 5, 6 et 7,* Collection Jupiter. Editions Jupiter, 23 Rue du Mont-Thabor, Paris Ier.

Un compte rendu de cet ouvrage sur le droit des affaires dans les pays du Marché Commun a été publié dans le *Bulletin* Vol. XIII p. 105, Les *Supplements 5, 6 et 7* ont paru et consistent en 76, 86 et 28 pages. Ils contiennent en outre suite et fin de la traduction de la loi sur les sociétés par actions en Allemagne (Aktiengesetz) et quelques textes législatifs de la France et des Pays-Bas.

Editions Techniques, 128 rue de Rivoli, Paris (1e) a publié les mises au courant suivantes à l'oeuvre *Juris Classeurs, Droit Fiscal*, un compte rendu duquel a été publié dans le *Bulletin* Tome XII, p. 356.

JURIS-CLASSEUR. *Code fiscal.-Impôts directs*. 1959, no. 117, 118.
JURIS-CLASSEUR. *Commentaires «Impôts directs»*. 1959, no. 1038, 1039.
JURIS-CLASSEUR. *Code fiscal «Chiffre d'affaires»*. *1959*, no. 5517, 5118.
JURIS-CLASSEUR. *Commentaires «Chiffre d'affaires»* . 1959, no. 6038, 6039.
JURIS-CLASSEUR. *Droit fiscal d'Outre Mer*. 1959, no. 3035, 3036, contenant un nombre de feuillets sur le système fiscal marocain.

GERMANY

KORN-DIETZ: *Doppelbesteuerung*. Loseblattsammlung mit Einführung und Erläuterungen. 5. *Ergänzungslieferung Januar 1960*. 152 Seiten. Preis DM 10.50 *Gesamtwerk,* ergänzt bis 1. Januar 1960, 745 Seiten 8°. In Leinenordner DM 38.— Verlag C. H. Beck, München und Berlin.

Die 5. *Ergänzungslieferung* umfasst: die Abkommen zur Vermeidung der Doppelbesteuerung und über gegenseitige Amts- und Rechtsfälle bei Steuern vom Einkommen, vom Vermögen, bei Grund- und Gewerbesteuern mit dem Grossherzogtum Luxemburg vom 23.8.1958 und mit dem Königreich Norwegen vom 18.11.1958; die Abkommen über die Vermeidung der Doppelbesteuerung bei den Einkünften aus dem Betrieb der Seeschiffahrt und der Luftfahrt mit der Südafrikanischen Union vom 17./28.9.1956 und mit dem Libanon vom 26.7.1958/12.3.1959; das Abkommen über die Vermeidung der Doppelbesteuerung auf dem Gebiete der Luftfahrt mit Brasilien vom 18.7. 1958; die Abkommen betreffend die Vermögensabgabe aus dem deutschen Lastenausgleich mit dem Königreich Belgien vom 24.9.1956 und mit Spanien vom 8.4.1958; das Zusatzprotokoll vom 20.3.1959 über Änderungen des deutsch-schweizerischen Abkommens vom 15.7.1931 in der Fassung des

Zusatzprotokolls vom 9.9.1957; deutsche Verwaltungsvorschriften über die Erstattung der Kapitalertragsteuer im Verhältnis zur Schweiz. Ferner sind einige Blätter zwecks Ergänzung und Überarbeitung ausgewechselt worden. In Vorbereitung ist die Neufassung des deutsch-schweizerischen Abkommens von 1931 nach den Zusatzprotokollen vom 9.9.1957 und 20.3.1959 sowie das neue Abkommen mit Pakistan.

Im *Titz-Verlag,* Gartenstrasse 32, Mondorf (Rhein) sind erschienen:
1. *Einkommensteuer 1958.* Körperschaftsteuer. Im Bundesgebiet und in Berlin (West) mit der Einkommensteuer-Tabelle für 1958. Bearbeitet von Dr. HANS EICHE.
2. In der Reihe *Internationale Steuern* herausgegeben von Dr. HANS EICHE: *13. Lieferung. Niederlande.* Bearbeitet von J. VAN HOORN Jr. und D. A. VAN WAARDENBURG.

Steuergesetze. Textsammlung mit Verweisungen und Sachverzeichnis. *Ergänzungslieferung Januar 1960.* 192 Seiten. In Schlaufe DM 4.20 Hauptband: 15. Auflage. Stand 6. Januar 1960. 1702 Seiten Dünndruckpapier. In Leinenordner DM 28.— Verlag C. H. Beck, München und Berlin.

Mit der Ergänzungslieferung Januar 1960 werden die Änderungen der Lohnsteuer-Durchführungsverordnung und die neue Fassung der Lohnsteuer-Jahresausgleichsverordnung, die am 24. Dezember 1959 bzw. am 6. Januar 1960 verkündet wurden, gebracht. Ferner sind das Zehnte Gesetz zur Änderung der Ausgleichsteuerordnung, die Verordnung zur Änderung der Beförderungsteuer-Durchführungsverordnung vom 29. August 1959 sowie das Gesetz über steuerliche Massnahmen bei Erhöhung des Stammkapitals aus Gesellschaftsmitteln und bei Überlassung von eigenen Aktien an Arbeitnehmer vom 30. Dezember 1959 berücksichtigt. Schliesslich enthält diese Lieferung noch die Texte der Verkehrsteuergesetze in der Fassung, die sie durch die Bekanntmachungen vom 24. Juli 1959 erhalten haben, sowie die Änderungen, die sich bei den Durchführungsverordnungen zu den Verkehrsteuergesetzen ergeben haben.

CARL HERRMANN, Dr. GERHARD HEUER, Dr. ARNOLD HEINING und OTTO VON SCHILLING: *Kommentar zur Einkommensteuer einschl. Lohnsteuer und Körperschaftsteuer.* 8 Auflage. *Lieferung 42,* Dezember 1959, Verlag Dr. Otto Schmidt, Ulmenallee 96-98, Köln-Marienburg.

Ausser allen wichtigen Gesetzestexten enthält das Werk auch ein umfangreiches Sachregister. Die bewährte Loseblattform hält den Kommentar stets auf dem laufenden. Fundstellen zu Rechtsprechung und Schrifttum sind übersichtlich in Registern angeordnet.

Mit der vorliegenden Lieferung werden die Erläuterungen zum Lohnsteuerrecht auf den neuesten Stand gebracht.

Für die nächste Lieferung ist insbesondere eine Erläuterung der Bestimmungen über die Veranlagung von Ehegatten und den Tarif (§§ 26 ff., 32 ff. EinkStG) vorgesehen.

Dieser Lieferung wird auch der Text der KörpStDV 1959 beigegeben.

Steuerrechtsprechung in Karteiform. Verlag Dr. OTTO SCHMIDT, Ulmenallee 96-98, Köln-Marienburg.

Das Werk ist die Fortführung der von Senatspräsident Mrozek begonnenen Sammlung höchstgerichtlicher Entscheidungen in Steuersachen, der „Mrozek-Kartei", die bis 1944 erschienen ist. Die StRK enthält als vollständige Sammlung: 1. die Entscheidungen des Bundesfinanzhofes, 2. Urteile des RFH von 1944 bis zu dessen Auflösung im Jahre 1945 und 3. die Entscheidungen des OFH in München. Die StRK wird besonders wertvoll durch den

gleichzeitigen Abdruck der vollständigen Urteilsbegründungen mit dem Gesetzestext in einer kommentarähnlichen Form der Anordnung, besonders auch wegen der ausführlichen Register. Erschienen sind die *Lieferungen* 96, Dezember 1959, und 97, Januar 1960.

Schnellkartei des deutschen Rechts. Reihe III. Verlag Dr. Otto Schmidt, Ulmenallee 96-98, Köln-Marienburg.

Die „Schnellkartei des deutschen Rechts" ist die umfangreichste Sammlung von deutschen Gesetzestexten, Verordnungen und Richtlinien. Sie bringt die vollständigen amtlichen Texte einschliesslich der ergänzenden Bestimmungen, der Durchführungsverordnungen und der zugehörigen Nebengesetze. Die Texte sind in klarer, übersichtlicher Form angeordnet. Das Gesamtwerk erscheint in drei Reihen. Die Reihe III enthält Steuerrecht mit Lastenausgleich.

Erschienen ist die *Lieferung* 96, Oktober 1959, Inhalt: KStR 1959, Änderungen der BefStDV, GewStR 1958 u.a.m.

Die *Verlagsbuchhandlung des Instituts der Wirtschaftsprüfer*, Cecilienallee 36, Düsseldorf, hat die folgenden Werke veröffentlicht:

1. Dr. HEINZ-JURGEN WERTH: *Vorstand und Aufsichtsrat in der Aktiengesellschaft*, 1960, 125 S.

Bei den Ausführungen wird zunächst vom Aktiengesetz ausgegangen und danach auf Grund einer Enquete gezeigt, wie die Praxis die rechtliche Norm ausgefüllt hat. Schliesslich werden die Reformvorschläge zum Aktienrecht behandelt.

2. In der Schriftenreihe des Instituts für Steuerrecht der Universität zu Köln herausgegeben von Prof. Dr. ARMIN SPITALER:

Band 6 ARNOLD DITZ: *Pensionsrückstellungen im Einkommensteuerrecht*, 1959, 296 S.

Die Arbeit zeichnet sich dadurch aus dass sie im breiten Umfang die arbeitsrechtliche Lage, namentlich auch die neueste Rechtsprechung des Bundesarbeitsgerichts, berücksichtigt.

Band 7 KLAUS TOMFOHRDE: *Die dynamische Bilanzauffassung und das Bilanzsteuerrecht*, 1959, 194 S.

Die Zusammenschau wirtschaftswissenschaftlicher Erkenntnisse und rechtlicher Gebote ist dem Autor dieses Buches sehr gut gelungen.

Band 8 WILHELM WESTERHOFF: *Unklare Rechtsgestaltungen in ihrer Bedeutung für das Steuerrecht*, 1959, 106 S.

Die Untersuchung des Autors ist gründlich und wirft klärendes Licht auf viele schwierige Frage.

Band 9 WOLFGANG KÖHLER: *Probleme des Umwandlungs-Steuerrechts*, 1959, 74 S.

Die Verbindung des Umwandlungs-Steuergesetzes mit dem übrigen Steuerrecht wirft eine Reihe von Fragen auf. Der Autor hat es übernommen eine Reihe der umstrittenen Fragen zu klären.

Band 10 GERD MÜLHAUSEN: *Der Verspätungszuschlag nach § 168 Abs. 2 AO*, 1959, 91 S.

Der Autor liefert hier die erste zusammenfassende Darstellung dieser Rechtsmaterie.

Band 11 FRIEDHELM BREUERS: Die Rechtszüge im französischen Steuerrecht, 1959, 170 S.

Die vom deutschen Recht abweichende Regelung der Rechtszüge im französischen Steuerrecht ist vom Autor gründlich durchforscht worden.

Band 12 RICHARD JUNG: *Die freigebige Zuwendung im Erbschaftsteuerrecht*, 1959, 72 S.

Es handelt sich hier um einen steuerrechtlichen Wirtschaftsbegriff, dessen Auslegung und Anwendung in der Praxis immer Schwierigkeiten macht. Die Untersuchung von Richard Jung ist die gründlichste die bisher erschienen ist.

GREAT BRITAIN

G. S. A. WHEATCROFT: *The taxation of gifts and settlements including pension provisions by Stamp Duty, Estate Duty, Income Tax and Surtax.* Third edition. Sir Isaac Pitman & Sons, Ltd., Barker Street, Kingsway, London W.C. 2, 1958, 249 pp.

The second edition of this book appeared in 1954 and a review of it was published in *Bulletin* Vol. XI, p. 48. Since then a large number of legislative and judicial changes in the relevant law has taken place. The main legislative changes relate to Estate Duty and are contained in Sect. 38 of the Finance Act, 1957, which alters the basis of ascertainment and valuation of gifts, and Sect. 23 of the Finance Act, 1958, which imposes a charge for duty on a number of transactions in connection with settled property. Apart from the changes the original arrangement of the book has been maintained, although a large number of passages have been rewritten or amplified to bring them into line with modern knowledge on the subject. The length of the book has increased by some 55 pages.

MOROCCO

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

A review of this looseleaf book on the tax system of Morocco was published in *Bulletin* Vol. XI, p. 37. The *Supplement of August, 1959* contains a number of pages to bring subscribers up to date as regards new tax measures. It contains texts on Taxe des Prestations, Impôts des Patentes, Impôts sur les bénéfices Professionels, Organisation générale des douanes, Importation-Exportation, Régimes douaniers spéciaux, Taxes intérieurs de consommation, Impôts sur produits miniers, Enregistrement.

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. *Supplement 37* 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. *Supplement 30* has appeared.

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

Nos 706-725 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 *Vol. 12, nr. 5* has 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 154-156 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 49-53 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 *Bulletin* XII p. 271.
The *Supplement 20* has appeared.

A. van Keulen: Familie-Naamloze Vennootschappen. 2nd edition. Fiscale Monografieën, No. 2. AE. E. Kluwer, Deventer, 1959, 144 pp. Price f 7,20.

In this book the author discusses the tax problems which confront the family company during its foundation, existence and liquidation. Attention is paid to companies established abroad, the shareholders of which have residence in the Netherlands, and to Dutch companies with shareholders living abroad. Not only the tax problems of the family company itself are treated but also those of the founders, the shareholders, the managers and the directors.

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: American foreign investments; Development of economic integration; Agricultural policy; European Parliament.

DR. H. L. DROST: *De Personeelsvoorzieningen.* Fiscale Monografieën No. 14. AE. E. Kluwer, Deventer, 1959, 246 pp.

In this book the consequences in taxation of the provisions in the labour contract for the employer and employee are treated extensively. The authors' considerations include not only the income and company tax but also the property and directors' tax, the succession and stamp duties. Much attention is paid to case law and important cases are explained and discussed extensively.

C. VAN SOEST and A. MEERING: *Leidraad bij de Belastingstudie.* Volume I. *Supplement 4.* S. Gouda Quint. D. Brouwer en Zoon. Uitgevers in het Huis de Crabbe, Arnhem.

This is the *fourth supplement* to this loose-leaf work on Dutch taxation, a review of which has been published in *Bulletin,* Volume XI p. 229.

P. KARMELK: *Besluit op de Vennootschapsbelasting* 1942. (Company tax Act, 1942) 4th edition. *Supplement 7,* February 1st, 1960. De Belastingwetgeving. Serie D.B. No. 13. J. Noorduijn en Zoon N.V. — Gorinchem — Netherlands.

NEW ZEALAND

Taxation Tables 1959. 15th edition. Incorporating a commentary on the 1959 Land and Income Tax Amendment Acts contributed by CHARLES A. STAPLES. Financial Publications Ltd., 33 Jessie St., Wellington, N.Z., 1959, 112 pp.

This edition, like the previous one, (review in *Bulletin* Vol. XIII, p. 115) has been compiled in two parts. Part I incorporates reviews of the two Land and Income Tax Amendment Acts, 1959, contributed by Mr. CHARLES A. STAPLES in collaboration with Mr. FRANK H. RODWAY. The tables applicable to the income year 1960 will be published in a special edition coming out in March, 1960. In Part II the Estate and Gift Duties section has been replaced with new material. The 1959 Amendment Act is reviewed and examples show the calculation of the widow and child exemptions where the exemptions are subject to a maximum allowance.

SPAIN

Manual de la Administración. Boletines de Información. T.A.L.E., Hortaleza 20, Madrid.

In *Bulletin* Vol. XIV p. 31 a review of part one of this *"Manual de la Administración"* was published. This second part is a binder containing the monthly Bulletins which are sent to subscribers regularly. There are two Sections. In Section one recent legislation and case law can be found while Section two is devoted to studies and commentary. In this Section problems of general and topical interest are discussed. These volumes are practical guides for those who have to do with Spanish taxation and they can be recommended as reliable and useful sources of reference.

SWEDEN

MARTIN NORR, FRANK J. DUFFY and HARRY STERNER: *Taxation in Sweden.* World Tax Series, The Law School of Harvard University. Little, Brown and Company, 34 Beacon Street, Boston 6, Massachusetts, 1959, 723 pp.

Taxation in Sweden is the first book in the English language to give a complete and authoritative survey of one of the world's most advanced tax systems. With a high standard of living and a well-developed industrial structure, Sweden has more taxpayers than many countries vastly larger in size. While tax rates are high, Sweden's tax provisions give business taxpayers a degree of flexibility in the determination of taxable income that is scarcely matched elsewhere in the world. To an unusual extent Sweden's tax structure reflects an effort to use taxation not only as a revenue device but also as an instrument of economic policy designed to enlist private capital in the task of leveling the business cycle.

Like other volumes in the WORLD TAX SERIES, *Taxation in Sweden* has been prepared by the staff of Harvard Law School's International Program in Taxation, in consultation with the United Nations Secretariat. The text follows the pattern of other books in the Series and so provides opportunity for comparison of the Swedish tax system with others. The introductory chapter of the book gives the reader a survey of the Swedish tax system against the background of a highly developed industrial, commercial, and social welfare system. This is followed by a summary presentation of the integrated national and local income taxes to acquaint the reader with the basic principles of these major levies. The detailed analysis of the income tax covers nine chapters, including one on the international aspects of income taxation. A special chapter deals with the national net wealth tax, an annual levy on the capital of individuals and some other taxpayers. Other chapters

are devoted to inheritance and gift taxes and to excise taxes. Import duties are outlined in summary form. Sweden's methods of tax administration, including the relatively new National Tax Board, which provides taxpayers with advisory opinions on the tax consequences of proposed activities, are also considered, and examples of income tax computations and reproductions of income tax forms, with translations, are included.

SWITZERLAND

Rechtsbuch der schweizerischen Bundessteuern. Begründet von Dres. J. und E. HENGGELER, fortgeführt von Dr. ANTON PESTALOZZI. *Nachtrag 31* - September 1959. Verlag für Recht und Gesellschaft, Bundesstrasse 15, Basel.

Eine Besprechung dieses vorzüglichen Werkes, das eine Sammlung der eidgenössischen Steuergesetzgebung enthält, ist im *Bulletin XI*, S. 153 erschienen.

Die vorliegende *31. Ergänzungslieferung* bringt das Doppelbesteuerungsabkommen auf dem Gebiete der direkten Steuern und der Erbschaftssteuern zwischen der Schweizerischen Eidgenossenschaft und der Bundesrepublik Deutschland mit Abänderungen und Ergänzungen gemäss Zusatzprotokoll vom 9. September 1957 und Zusatzprotokoll vom 20. März 1959. Weiter enthält diese Lieferung einige Kreisschreiben und Bundesratbeschlüsse über u.a. das revidierte Doppelbesteuerungsabkommen zwischen der Schweiz und der Bundesrepublik Deutschland, die Ausführung des Doppelbesteuerungsabkommens mit den Vereinigten Staaten von Amerika, Grossbritannien, Dänemark, den Niederlanden, Vereinbarungen zwischen der Schweiz und Frankreich über die Durchführung der Entlastung von den im Abzugswege an der Quelle erhobenen Steuern vom Einkommen aus beweglichem Kapitalvermögen und zwischen der Schweiz und Oesterreich über die Durchführung der Rückerstattung der im Abzugswege an der Quelle erhobenen Steuern von Einkünften aus beweglichem Kapitalvermögen. Schliesslich bringt dieser Nachtrag die Notenwechsel zwischen der Schweiz und Belgien betreffs der Besteuerung von Unternehmungen der Schiff- und Luftfahrt und das Merkblatt 35 für Grossisten. Zur besseren Orientierung über die sehr umfangreich gewordene Abteilung I B (Internationale Verträge) enthält der vorliegende Nachtrag für jedes Land eine besondere Leitkarte in welcher alle Bestimmungen des betreffenden Landes aufgeführt sind.

UNITED STATES

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 18-24* contain the Indian tax treaty, and revisions of and amendments to the Pakistan, Switzerland, Belgium and Norway income tax treaties.

NORTHEASTERN UNIVERSITY, Institute of Taxation: *Sixth Annual Federal Tax Forum,* September 18 and 19, 1959. Northeastern University, 360 Huntington Avenue, Boston 15, Massachusetts.

These Proceedings contain a.o. the following sections: Proposed changes in Subchapter C, K and J; The handling of tax matters before the Internal Revenue Service; Procedures at the Informal conference level; Procedures at the appellate division level; The technical amendments Act; Recent tax developments affecting business decisions; recent developments affecting depreciation.

Papers and Proceedings of the Conference on agricultural taxation and economic development. Held under the auspices of the International Program in Taxation, January 28 - February 3, 1954. Edited by HASKELL P. WALD and JOSEPH N. FROOMKIN. Law School of Harvard University, Cambridge, Massachusetts, 1954, 439 pp.

In this publication is put at the disposal of research workers, officials of government and international agencies the combination of factual knowledge, preliminary analyses, exchanges of thinking and research suggestions which the Conference brought into focus on the agricultural tax problem. The Papers and Proceedings are divided into four parts. Part One presents "The Work of the Conference" including a summary of the discussions and the reports of the four working groups. The remainder of the volume is made up of working papers, arranged in groups which proceed from general problems of fiscal policy in relation to economic development, to more specific treatments of agricultural taxation, and finally, to detailed studies of methods of agricultural taxation in selected countries.

STANFORD G. ROSS and JOHN B. CHRISTENSEN: *Tax incentives for industry in Mexico.* A report of a study carried out in Mexico during the summer of 1958. Law School of Harvard University, Cambridge, Massachussets, 1959, 256 pp.

This report makes a useful contribution to the literature on tax incentives. The selection of Mexico for a case study resulted primarily from an awareness that Mexico has had some 20 years of experience with tax incentives, much of it during Mexico's period of rapid industrial expansion. In this case study first a brief review of the industrial development of Mexico is presented, then follows an analysis of the major factors, governmental and nongovernmental, which, in addition to tax exemption, have promoted such development. Next, the tax exemption program itself is analysed from the standpoint of its legislative development over the years. Then the present legislative pattern and the current practice are presented in detail. The study concludes with an analysis of the economic effects of the Mexican tax exemption program.

Prentice-Hall, Inc., Englewood Cliffs, New Jersey has published the following brochures in Section 2 of the Federal Tax Report Bulletin:

1. *1959 Year-end tax tactics,* 1959, 16 pp.
2. *How to get favorable capital-gain treatment,* 1960, 28 pp.
3. *Key moves to cut company taxes,* 1960, 30 pp.
4. *Individual Federal income tax specimen returns.* Completely worked out for filing in 1960, 48 pp.
5. *Corporation, Partnership and Fiduciary Federal income tax specimen returns.* Completely worked out for filing in 1960, 64 pp.

The SOUTHWESTERN LEGAL FOUNDATION, Hillcrest at Daniels, Dallas 5, Texas has published: *Proceedings of the Tenth Annual Institute on Oil and Gas law and taxation as it affects the Oil and Gas Industry.* Editor ARMINE CAROL ERNST. Matthew Bender & Company, 255 Orange Street, Albany, New York, 1959, 566 pp.

In this volume important present-day problems of the Oil and Gas Industry are discussed by a distinguished group of lawyers who are acknowledged authorities on specific phases of oil and gas law and taxation as it affects the oil and gas industry. These articles form the basis for the several lectures delivered during the three-day session of the Tenth Annual Institute on Oil and Gas Law and Taxation presented by the *Southwestern Legal Foundation*

in cooperation with the SMU School of Law. The articles have been expanded beyond their original lecture form and enjoy the advantage of footnote quotations and other helpful addenda. We mention the following articles on taxation: Another look at the economic interest concept; Estate and Gift tax consequences of Oil and Gas ventures; Recent developments in Oil and Gas taxation; 1958 amendments to subchapter C and I affecting Oil and Gas interests; subchapter S — election of taxable status for Oil and Gas operations; What can Oil and Gas expect in federal taxation?

Federal income, estate and gift tax project. Income tax problems of corporations and shareholders. The American Law Institute, 133 South 36th Street, Philadelphia 4, Pa., 1958, 496 pp.

This is a report of working views of a study by the American Law Institute Staff and American Bar Association, Section of Taxation Liaison Committee. The topics considered involve corporate distributions to shareholders, corporate liquidations, the formation of corporations, corporate reorganizations and divisions, collapsible corporations, corporate transfers involving net loss carryovers, multiple corporations, the definition and treatment of debt, attribution of stock ownership and allied matters. In effect, nearly all the principal problems in the corporation area have been under consideration. The study has resulted in working views in the form of tentative suggestions for a number of considerable changes in subchapter C of the Internal Revenue Code.

The *Practising Law Institute,* 20 Vesey Street, New York 7, N.Y. has published in its Series Current Problems in Federal Taxation a revised edition of JOSEPH TRACHTMAN: *Estate Planning.*

The State and Local system of New York 1959. State Office Building, Department of taxation and finance, Albany 1, N.Y. 29 pp.

This booklet contains a chapter on the historical development of the State tax system, chapters on the taxes imposed in New York State, tables on tax collections and charts.

V

DEUTSCHE BUNDESREPUBLIK - UMSATZSTEUERREFORM

Nachdem wir im Bulletin, Vol. XIII, Seiten 365-368, bereits einen Artikel über die Reformvorschläge (aus dem Jahresbericht Bundesverband der Deutschen Industrie) abgedrückt haben, möchten wir unten einige Regierungsstandpunkte geben.

Der Bundesminister der Finanzen ETZEL *sagte in der 93. Plenarsitzung des Bundestages:*

Zu unserer steuerpolitischen Generallinie gehört in diesem Jahr vor allem die *Reform der Umsatzsteuer*. Die vorbereitenden Arbeiten sind inzwischen so weit fortgeschritten, dass sich gewisse Lösungen abzeichnen.

Alle Überlegungen müssen davon ausgehen, dass die Steigerung der Bundesausgaben keine Verminderung des Umsatzsteueraufkommens zulässt; dieses Aufkommen muss auch künftig den wachsenden Sozialprodukt folgen. Eine Änderung des Umsatzsteuersystems, etwa der Übergang zu einer Mehrwertsteuer mit Vorsteuerabzug, darf daher kein Risiko für den Haushalt enthalten. Nach den angestellten Untersuchungen ist ausserdem zu erwarten, dass ein solcher Systemwechsel zu erheblichen Änderungen der Preiskalkulation in der Produktion, im Grosshandel und im Einzelhandel führen würde. Hieraus könnte sich je nach der Konjunkturlage eine Verzerrung des Preisgefüges und damit die Gefahr von Preissteigerungen ergeben. Schliesslich ist z. B. eine Mehrwertsteuer, wie die Untersuchungen technischer Sachverständiger ergeben haben, für Wirtschaft und Verwaltung schwerer zu handhaben als die jetzige Umsatzsteuer. Besonders im Übergang würden Verwaltungsschwierigkeiten auftreten. All diese Gründe sprechen dafür, dass eine *schnelle Umstellung auf ein anderes Steuersystem* nicht möglich ist, also die Einführung eines anderen Systems noch in dieser Legislaturperiode undurchführbar wäre.

Unter diesen Umständen ist es erklärlich, dass weite Kreise der Öffentlichkeit und auch des Parlaments uns empfohlen haben, auf eine Systemänderung zunächst zu verzichten und statt dessen im Rahmen der geltenden Allphasen-Bruttoumsatzsteuer vordringlich gewisse Teilreformen vorzunehmen, die dieses System wettbewerbsneutraler machen sollen. Ich habe für diese Überlegungen Verständnis und meine, dass jetzt zweierlei geschehen sollte.

Erstens: Die Bundesregierung wird in einigen Wochen einen Gesetzentwurf zur Verbesserung des heutigen Umsatzsteuerrechts vorlegen, um gewisse ungünstige Einflüsse der Allphasenbesteuerung auf die Wettbewerbsneutralität und zugunsten der Wirtschaftskonzentration zu verringern. Zweitens beabsichtigt das Bundesfinanzministerium, der Öffentlichkeit in der erste Hälfte des nächsten Jahres einen Studienentwurf für ein neues Umsatzsteuersystem vorzulegen, damit es allen interessierten Kreisen möglich ist, in aller Ruhe und Sorgfalt die Voraussetzungen und die Folgen einer Systemänderung bei der Umsatzsteuer durchzudenken.

Mit der für das nächste Jahr geplanten gesetzgeberischen Überarbeitung der Umsatzsteuer im Rahmen des geltenden Systems werden die eigentlichen Steuerreformmassnahmen für diese Legislaturperiode im wesentlichen abgeschlossen sein.

Nach 1961 werden die neue Bundesregierung und der Bundestag zu

prüfen haben, ob noch weitere Steuerarten, die in ihrer Rechtfertigung und ihrer Ausgestaltung auf die wirtschaftlichen Verhältnisse der 20er Jahre oder noch viel frühre zurückgehen, einer inzwischen wesentlich veränderten Wirtschafts- und Gesellschaftsordnung angepasst werden sollten. Dabei werden wahrscheinlich echte Reformen bei der Vermögensteuer, bei der Erbschaftsteuer und vor allem bei den Realsteuern erörtert werden müssen. Unverzüglich muss dann auch ein neues Bewertungsgesetz eingebracht werden.

Am 15.10.59 beantwortete Bundeswirtschaftsminister prof. Erhard die grosse Anfrage der CDU (CSU über die Absichten der Bundesregierung zur Eindämmung unerwünschter Konzentration. Die Aktuelle Steuerrundschau, *21.12.59 geht kurz ein auf einige Stellen der Regierungserklärung:*

Über das Ausmass, in dem steuerrechtliche Bestimmungen den Konzentrationsprozess begünstigen, können nach Ansicht der Bundesregierung eindeutige Feststellungen von allgemeiner Bedeutung kaum getroffen werden, weil die mögliche Konzentrationswirkung der Steuer ganz von den gegebenen wirtschaftlichen und steuerlichen Verhältnissen im Einzelfall abhängen. Hierbei müssten auch die Gesamtsteuerbelastung und das Zusammenwirken der verschiedenen Einzelsteuern berücksichtigt werden.

Trotz dieser sehr vorsichtigen allgemeinen Aussage kommt die Regierungserklärung doch zu einigen bemerkenswerten Einzelfeststellungen:

Über das gegenwärtige Umsatzsteuerrecht wird eindeutig geklärt, dass es eine die Konzentration begünstigende Wirkung ausübt. Des weiteren werden konzentrationsgünstige Eigenschaften der verschiedenen Organschaften (bei der Umsatzsteuer, Körperschaftsteuer und Gewerbesteuer) mehr oder weniger eindeutig angeführt. Es heisst in diesem Zusammenhang: „Insgesamt ergibt sich aus der Organschaft insoweit eine gewisse Begünstigung der Konzentration, als die steuerliche Behandlung den Zusammenschluss von Unternehmen in der loseren Konzentrationsform des Konzerns durchaus interessant machen kann." Auch hinsichtlich des Schachtelprivilegs spricht die Regierungserklärung von der Möglichkeit einer Konzentrationsförderung.

Nach diesen teilweise klaren, teilweise aber auch recht verschwommenen Äusserungen beschäftigt sich die Antwort der Bundesregierung mit den Massnahmen zur Abschwächung der konzentrationsfördernden Wirkungen des Steuerrechts. Dabei steht wieder einmal mehr die Frage der Reformierung des gegenwärtigen Umsatzsteuersystems im Vordergrund. Unter Hinweis auf die Umsatzsteuer-Denkschrift des Bundesfinanzministeriums wird die Alternative aufgezeigt, entweder den Übergang zu einem anderen Umsatzsteuersystem oder blosse Reparaturmassnahmen am geltenden System vorzunehmen. Eine Entscheidung darüber, welchen der beiden Wege die Bundesregierung vorzuziehen gedenkt, fehlt allerdings in der Regierungserklärung. Es wird jedoch erklärt, dass die Stellungnahmen der verschiedenen Gutachtergremien bis Dezember vorliegen werden und anschliessend die Bundesregierung den gesetzgebenden Körperschaften ihre Vorschläge unterbreiten wird.

Das Standpunkt des Herrn Ministerialdirektors MERSMANN *ist zu finden in seinem Heidelberger Vortrag (siehe Seite 114)*

DEUTSCHE BUNDESREPUBLIK - STEUERPROBLEME DER EUROPÄISCHEN WIRTSCHAFTSGEMEINSCHAFT

Sechs führende Steuer-Verlage aus jedem der sechs EWG-Staaten haben sich auf Anregung des französischen Verlegers Raison schon zu Beginn des Jahres 1958 zu gemeinsamer Arbeit zusammengefunden. Auf einer Tagung dieser Verlage, die am 24. und 25. Oktober 1959 in Heidelberg stattfand, wurde die Herausgabe einer mehrsprachigen Steuer-Zeitschrift für das Gebiet des Gemeinsamen Marktes beschlossen, die erstmals Anfang 1960 erscheinen wird. Auf einer bei dieser Tagung abgehaltenen Pressekonferenz hielt Herr Ministerialdirektor MERSMANN *als Mitherausgeber der „Deutschen Steuer-Zeitung" den nachfolgenden veröffentlichten Vortrag.*

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Zunächst einige Worte über die

Verschiedenheit der Besteuerung

in den EWG-Ländern. Wenn die Steuersysteme in den sechs Ländern sich in den Grundzügen ähnelten, würde eine Anpassung keine allzu grossen Schwierigkeiten machen. Das ist aber leider nicht der Fall. Es gibt im Gegenteil Länder ausserhalb der EWG, mit denen die Bundesrepublik sehr viel leichter zu einer Steuerangleichung kommen könnte als mit einigen Staaten der EWG. So wäre sehr leicht zwischen Deutschland und Österreich eine vollkommene Steuerangleichung durchzuführen. Aber auch im Verhältnis der Bundesrepublik zu den skandinavischen Staaten würden einem solchen Bestreben verhältnismässig geringe Schwierigkeiten entgegenstehen.

Innerhalb der EWG sind die Steuersysteme in Holland und Deutschland recht ähnlich. Auch Luxemburg ist ohne weiteres vergleichbar. Dagegen sind die Steuersysteme Frankreichs, Belgiens und vor allem Italiens von dem deutschen Steuersystem sehr verschieden.

Allerdings sind die

Unterschiede der gesamten Belastung

mit Steuern, am Bruttosozialprodukt zu Marktpreisen gemessen, nicht allzu gross. Die Gesamtbelastung mit Steuern, Zöllen und Sozialversicherungsbeiträgen — die man in diesem Zusammenhang meistens mitrechnet — beträgt im Jahre 1956

für die *Bundesrepublik 31,8 v. H.*
des Bruttosozialprodukts — hier sind die Steuern des Bundes, der Länder und Gemeinden zusammengerechnet —,
für *Frankreich 29,9 v. H.*,
also nicht sehr verschieden,
für *Luxemburg 30,9 v. H.*,
doch sind die Steuersätze in Luxemburg trotz dieses hohen Prozentsatzes, absolut gesehen, verhältnismässig gering,
für die *Niederlande 28,3 v. H.*,
für *Italien 30,3 v. H.*,
und aus dem Rahmen fallend:
für *Belgien* nur *22,7 v. H.*
Die verhältnismässig geringe Steuerbelastung in Belgien ist wohl hauptsächlich damit zu erklären, dass dieses Land bisher aus dem Kongo und anderen Kolonien Vorteile gezogen hat.

Die am Bruttosozialprodukt bemessene Gesamtbelastung, mit Ausnahme der in Belgien bestehenden, liegt demnach ungefähr zwischen 28 und 32 v. H. Unter diesem Gesichtspunkt scheint auf den ersten Blick eine Anpassung verhältnismässig leicht möglich zu sein.

Das Problem wird aber schon durch das verschiedene

Verhältnis der direkten zu den indirekten Steuern

ausserordentlich erschwert. Die Ausdrücke „direkte" und „indirekte" Steuern sind ungenau. Ich gebrauche sie hier nur der Einfachheit halber und bezeichne als „direkte Steuern" die Steuern vom Einkommen, Ertrag und Vermögen und als „indirekte Steuern" die Steuern von der Einkommensverwendung. Die direkten Steuern betrugen 1957

in der *Bundesrepublik 52,8 v. H.*
der Gesamtbelastung mit Steuern und Zöllen,
in *Luxemburg* sogar *66,1 v. H.*,
in den *Niederlanden 60,9 v. H.*,
also auch erheblich mehr als in Deutschland,
dagegen in *Belgien 51 v. H.*,
in *Frankreich* nur *40 v. H.*
und in *Italien* nur *33,1 v. H.*

. . . . . .

Der grosse Unterschied in dem Verhältnis der direkten zu den indirekten Steuern ist auch deshalb von Bedeutung, weil nach einer schon länger bestehenden internationalen Übung für die wichtigsten indirekten Steuern beim grenzüberschreitenden Verkehr ein Ausgleich erfolgt, nicht aber für die direkten Steuern. Dieser Ausgleich ist sowohl bei den Verbrauchsteuern als auch bei der allgemeinen Umsatzsteuer in der Zeit zwischen den beiden Weltkriegen in vielen Ländern eingeführt worden. Er besteht zunächst darin, dass bei der Einfuhr einer Ware eine sogenannte Ausgleichsteuer in der Höhe erhoben werden kann, in der entsprechende Waren im Inland mit Verbrauchsteuern oder Umsatzsteuer belastet sind. Diese von den Zollbehörden erhobenen Ausgleichsteuern sind mit einem Zollschutz für die inländische Verbrauchsteuer- oder Umsatzsteuerbelastung vergleichbar. Auf der anderen Seite wird anerkannt, dass die eingeführte Ware bei der Ausfuhr aus dem anderen Land von den auf ihr ruhenden Verbrauch- oder Umsatzsteuern entlastet werden kann; denn sonst würde die mit der Ausgleichsteuer belastete eingeführte Ware gegenüber den inländischen Waren im Nachteil sein. Ausfuhrvergütungen und Ausfuhrbefreiungen einerseits und die Ausgleichsteuern bei der Einfuhr andererseits gehören also aufs engste zusammen. Wenn die Ware bei der Ausfuhr von der Umsatzsteuer vollständig entlastet, bei der Einfuhr aber auf das Steuerniveau der inländischen Ware im Importland gebracht wird, trägt sie die Umsatzsteuerbelastung des Bestimmungslandes. Das ist — wenn der Ausgleich nicht die vergleichbaren Belastungen überschreitet — sowohl nach dem GATT-Vertrag als auch nach den Grundsätzen der OEEC zulässig.

Die Tatsache, dass ein solcher

Ausgleich an der Grenze für die indirekten Steuern

gewährt wird und nicht für die direkten Steuern, führt nun dazu, dass ein Land mit relativ hohen indirekten Steuern, wie im EWG-Raum z. B. Italien und Frankreich, vor einem Land, das relativ geringe indirekte, dafür aber höhere direkte Steuern hat, bevorzugt ist. Denn wenn ein Ausgleich der Steuerbelastung an der Grenze stattfindet, müsste dieser sich eigentlich auf alle Steuern erstrecken, die in den Warenpreis eingehen. Das ist aber nach der in der Bundesrepublik überwiegend vertretenen Meinung, jedenfalls in gewissem Umfang — die Gelehrten streiten sich darüber, in welchem Mass —, auch bei den direkten Steuern der Fall. Gerade aus diesem Grunde sind vor Abschluss des Römischen Vertrages Zweifel geäussert worden, ob im Rahmen der EWG der Ausgleich an der Grenze allein bei den indirekten Steuern

aufrechterhalten werden könne. Tatsächlich enthält der EWG-Vertrag in Artikel 98 auch die Möglichkeit, zeitweilig einen Ausgleich auch bei den direkten Steuern vorzunehmen. Es erscheint aber praktisch ziemlich ausgeschlossen, dass ein solcher Ausgleich, der übrigens auch technische Schwierigkeiten bereiten würde, bei den direkten Steuern jemals durchgeführt werden wird, weil hier einstimmige Beschlüsse des Ministerrats erforderlich sind und eine Einstimmigkeit in diesem Punkte kaum jemals zu erzielen sein wird.

Hiermit hängt nun die schon erwähnte wichtige

Harmonisierungsbestimmung des Art. 99 des EWG-Vertrags

eng zusammen. Danach hat die Kommission zu prüfen, wie die indirekten Steuern — vor allen Dingen also die allgemeine Umsatzsteuer und die Verbrauchsteuern —, einschleisslich der Ausgleichsmassnahmen für den Handelsverkehr zwischen Mitgliedstaaten, im Rahmen der EWG harmonisiert werden können. Der Rat beschliesst solche Harmonisierungsvorschriften einstimmig auf Vorschlag der Kommission. Der Artikel 99 ist vor allem auch auf deutsche Anregung ausdrücklich für die indirekten Steuern in den Vertrag aufgenommen worden, weil die deutsche Delegation von vornherein auf dem Standpunkt stand, dass es nicht angebracht sei, auf die Dauer einen Ausgleich an der Grenze nur für die indirekten Steuern weiterzugewähren und damit die Belastung gerade nur mit diesen Steuern auf das Niveau des Bestimmungslandes zu heben oder zu senken. Ausserdem würde dies ja bedeuten, dass, auch wenn die Zollgrenzen in Fortfall gekommen sind, die Steuergrenzen für diesen Ausgleich in vollem Umfang bestehenbleiben müssten. Das erscheint aber mit dem Sinn eines Gemeinsamen Marktes nicht vereinbar.

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Sicher ist, dass die Durchführung der Harmonisierungsvorschrift sehr schwere Probleme enthält, die nur lösbar sind, wenn man bei der Angleichung nicht nur die nationalen Interessen isoliert sieht, sondern auch die gemeinsamen Ziele in der EWG. Bei der BENELUX, wo ähnliche Fragen schon bisher erörtert wurden und wo man in gewissem Grade eine Angleichung schon seit Jahren angestrebt hat, sind die Erfolge nicht überwältigend. Immerhin hat es hier auch erhebliche Fortschriftte gegeben. Besonders ist hervorzuheben, dass die Holländer einen grossen Schritt zur Harmonisierung im Rahmen der BENELUX getan haben. Sie haben nämlich ihr Umsatzsteuersystem dem belgischen dadurch stark angeglichen, dass sie den Einzelhandel aus der Umsatzsteuer ganz herausgenommen haben. Dieser grosse Schritt Hollands in Richtung einer Harmonisierung ist bemerkenswert, unabhängig von der Frage, ob es richtig ist, den Einzelhandel von der Umsatzsteuer vollkommen zu entlasten.

Das schwierigste Problem, noch schwieriger vielleicht als die Harmonisierung der Steuern in den Ländern der EWG, wird nach Wegfall der Steuergrenzen der EWG das

Verhältnis zu den Staaten ausserhalb der Gemeinschaft

sein, denen gegenüber die Steuer- wie die Zollgrenzen ja aufrechterhalten werden müssen. Man wird hier auf lange Sicht wie zu einem Aussenzolltarif auch zu einem einheitlichen Ausgleich der indirekten Steuern an der Grenze, also zu einheitlichen Ausgleichsteuern und vielleicht auch Ausfuhrvergütungen, kommen müssen. Ein Problem würde aber auch dann noch darin liegen, dass bei der Einfuhr aus dritten Ländern bestimmte Länder des EWG-Raums bevorzugt werden könnten, wenn in ihnen die interne Steuerbelastung geringer ist als in den anderen Ländern. Gerade auch um diese Schwierigkeit zu vermeiden, ist es wünschenswert, eine Harmonisierung herbeizuführen, bei der nur doch geringe Unterschiede in der Steuerbelastung bestehenbleiben. Die technische Lösung des Problems wird man im übrigen in den nächsten Jahren sorgfältig vorbereiten müssen.

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Werden die sechs Länder der Europäischen Wirtschaftsgemeinschaft —

und vielleicht noch andere europäische Länder — den

Weg zu einem einheitlichen Markt

gehen und bis zu welchem Ende? Werden sie sich mit bestimmten Massnahmen, insbesondere mit dem Zollabbau, wie er auch Gegenstand der Freihandelszone ist, begnügen, oder werden sie dazu gelangen, einen dem Inlandsmarkt vergleichbaren Gemeinsamen Markt zu schaffen, wie er durch die Abschaffung der Zölle allein nicht zustande kommen kann? Die Finanzminister der sechs Länder, die kürzlich auf Einladung des Herrn Bundesminister der Finanzen ETZEL auf dem Petersberg zusammenkamen, haben dort, dem Vernehmen nach, den Grundsatz, dass ein Abbau der Steuergrenzen auf lange Sicht erwünscht sei, bejaht. Diese Besprechung der Finanzminister wird demnächst in Belgien weitergeführt werden.

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Auch die Kommission der EWG beschäftigt sich in der letzten Zeit mit diesen Fragen und hat eine Anzahl Vorschläge, gerade auch auf dem Gebiete der Umsatzsteuer, gemacht, die in der nächsten Zeit von verschiedenen Arbeitskreisen in Brüssel besprochen werden sollen. Hier spielt auch die Frage der

Angleichung der Umsatzsteuersysteme

im Gemeinsamen Markt eine Rolle.

Das deutsche System der kumulativen Umsatzsteuer, das in gewissen Abwandlungen auch in den übrigen Staaten des Gemeinsamen Marktes — ausser in Frankreich — besteht, hat viele technische Vorzüge, insbesondere die leichte Kalkulierbarkeit der Steuer auf jeder Stufe und die — trotz einer Anzahl z. T. gerade erst in den letzten Jahren eingeführter Komplizierungen — für die grosse Mehrzahl der Fälle ausserordentlich einfache Verwaltung. Die kumulative Allphasensteuer hat aber den unangenehmen Nachteil, dass sie zu einem Steuervorteil führen kann, wenn in einem Unternehmen mehrere Produktions- oder Handelsstufen in vertikaler Gliederung zusammengefasst sind. Die dann von dem Unternehmer zu zahlende Umsatzsteuer ist regelmässig geringer als die Steuer, die auf der Ware lasten würde, wenn mehrere Unternehmer diese Produktions- oder Handelsstufen getrennt betrieben. Dieser Vorteil kann — wenn auch regelmässig nicht allein — u. U. einen Anreiz zur vertikalen Konzentration bilden.

Es ist Ihnen bekannt, dass — unabhängig von den Problemen der EWG — zur Zeit in der Bundesrepublik geprüft wird, ob das deutsche Umsatzsteuersystem durch ein System ersetzt werden sollte, das eine Tendenz zur Konzentrationsförderung nicht enthält. Für den Fall, dass man jetzt nicht zu einer Systemänderung kommt, beabsichtigt die Bundesregierung jedenfalls, in das bestehende Umsatzsteuersystem Vorschriften einzubauen, die die Konzentrationstendenz verringern sollen. Die Bundesrepublik würde vielleicht schon zu einem neuen Umsatzsteuersystem übergegangen sein, wenn nicht die zur Wahl stehenden anderen Systeme alle einige erhebliche Nachteile hätten und durchweg grosse verwaltungsmässige Schwierigkeiten verursachen würden.

Das theoretisch beste Umsatzsteuersystem, das sowohl die Fragen der Wettbewerbsneutralität und der Vermeidung einer Konzentrationswirkung als auch der Kalkulation und des Ausgleichs an der Grenze am besten und einfachsten lösen würde, wäre sicherlich eine Besteuerung nur auf der Einzelhandelsstufe. Sie wäre ohne weiteres durchführbar, wenn nicht in den meisten europäischen Staaten ein sehr hoher Teil des Finanzbedarfs mit der Umsatzsteuer zu decken wäre. Die Durchführung einer Einzelhandelsteuer mit einem Steuersatz von 10 oder 12 anstelle der in Deutschland jetzt erhobenen 4 v. H. würde aber — von politischen Schwierigkeiten abgesehen — praktisch kaum möglich sien. Denn man könnte mit einer Umsatzsteuer in dieser Höhe und dem erheblichen Risiko der Abwälzung auf den Verbraucher kaum das finanziell schwächste Glied in der Kette der möglichen Steuerträger

belasten. So kommt man zu dem Ergebnis, dass zwar eine Einzelhandelsteuer mit einem Satz von 4 v. H. durchführbar wäre, nicht aber mit erheblich höheren Sätzen. Würde man sich aber in der Bundesrepublik eine erhebliche Herabsetzung des Steueraufkommens des Bundes leisten können, so könnte man auch den Weg wählen, den Steuersatz der kumulativen Allphasensteuer so weit zu senken, dass die Kumulativwirking kaum noch störend in Erscheinung treten würde. Hierin liegt also ein gewisses Dilemma. — Auch bei einer Einphasensteuer auf anderen Stufen, z. B. auf der letzten Produktionsstufe oder auf der Grosshandelsstufe, wachsen die Schwierigkeiten mit der Höhe des Steuersatzes. Es ist daher verständlich, dass die Mehrwertsteuer, wie sie in Frankreich in der Produktions- und teilweise bis zur Grosshandelsstufe durchgeführt wird, in der Diskussion in den Vordergrund getreten ist. Denn hier verteilt sich die Steuerbelastung auf verschiedene Stufen. Dennoch ist — wie bei den Einphasensystemen — die Steuer für die einzelne Ware einigermassen genau festzustellen. Ausserdem wird auch hier ein steuerlicher Vorteil im Falle einer vertikalen Konzentration weitgehend vermieden.

In der Bundesrepublik sind eine ganze Anzahl von Plänen für eine Mehrwertsteuer erörtert worden. Hierzu gehört die Berechnung und Besteuerung des Mehrwerts nach der sogenannten additiven oder nach der subtraktiven Methode, durch die die Wertschöpfung eines Betriebes ermittelt werden soll. Der Mehrwert ist zwar nicht gleich dem Ertrag oder Bruttoertrag, hat aber mit diesen Begriffen vielleicht grössere Ähnlichkeit als mit dem Bruttoumsatz. Man kann die Besteuerung des Mehrwerts auch in der Weise durchführen, dass der Unternehmer von der auf den Bruttoumsatz zu zahlenden Steuer einen Vorsteuerabzug insoweit vornehmen kann, als sein Lieferant für die in die veräusserte Ware eingegangenen Bestandteile und Kostenelemente eine Umsatzsteuer gezahlt und ihm in Rechnung gestellt hat.

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Hiermit habe ich Ihnen einiges über das Problem einer Systemänderung und- angleichung bei der Umsatzsteuer mitgeteilt, mit dem wir uns jetzt in der Bundesrepublik und auch im Rahmen der EWG-Kommission zu beschäftigen haben. Ich erwähnte bereits, dass die Anpassung gerade auch des Umsatzsteuersystems — neben und zugleich mit einer Annäherung der Tarifhöhe — ein wichtiges Harmonisierungsproblem darstellt. Die Lösung dieser Fragen würde den Wegfall der Steuergrenzen sehr erleichtern. Die Bundesrepublik ist bereit, auf diesem Gebiete zu einer Harmonisierung beizutragen. Es ist aber selbstverständlich, dass bei jeder Systemänderung auf dem Gebiet der Umsatzsteuer aus fiskalischen Gründen und wegen der zu erwartenden Einflüsse auf die Preise und die Konjunktur nur mit grosser Vorsicht und wahrscheinlich nur stufenweise vorgegangen werden kann.

Source: *Deutsche Steuerzeitung*, 1 Dezember 1959.

PAKISTAN - BUDGET JUNE 1959

We have received from the Pakistan Ministry of Finance an Explanatory Memorandum on Taxation, relating to the Budget of June 1959. We give the following extract, containing the passages which could be important for companies and persons interested in Pakistan:

DIRECT TAXES.

Government's policy in the field of direct taxation for the year July 1959-June 1960 was announced in March 1959. Its main features were the rationalisation of taxes, relief to the people in the lower and middle income groups, fixation of a ceiling rate of 75 *per cent* for personal taxes, abolition of the Business Profits Tax, reduction in company taxation and a number of incentives for savings, investment and higher production. The Budget now presented in June 1959 is a continuation of the same policy with the following objectives:

(1) To increase the availability of goods in the country through maximum industrial and commercial activity. More production should lead to the lowering of the prices and increased experts after meeting internal demand.
(2) To create a fiscal climate in the country attractive both to the foreign and the local investor. This is being done through a large number of incentives, exemptions and specific reliefs.
(3) Rationalisation of the tax structure.

Inter-corporate taxation or the tax on dividends received by one company from another. The rates of intercorporate taxation in Pakistan have been the subject of criticism, especially in foreign circles. It has been represented that they were so high that they were proving a disincentive to foreign investment as well as to the formation of subsidiaries in Pakistan by foreign companies. Till March, 1959, a company receiving dividends from another company used to pay super-tax as follows at rates ranging from 18.75 *per cent* to 31.25 *per cent* depending on the nature of the company:-

(1) Public companies declaring dividends in Pakistan	18.75%
(2) Private companies declaring dividends in Pakistan	25 %
(3) Public companies not declaring dividends in Pakistan	25 %
(4) Private companies not declaring dividends in Pakistan	31.25%

In March 1959, the tax was reduced to a uniform rate of 20 *per cent* for all companies.

To afford further relief, the rate has now been reduced to 15 per cent, which will apply to all dividends from investments made after June 1959 in Pakistan companies engaged in approved industrial undertakings. This would reduce considerably the incidence of tax on foreign companies operating through industrial subsidiaries in Pakistan. In the avoidance of double taxation agreements with USA, Japan and Sweden, there is a clause giving further relief of $6\frac{1}{4}$ *per cent*, subject to certain conditions, to principal public companies receiving dividends from subsidiaries in Pakistan. If the prescribed conditions are fulfilled, the over-all incidence of tax on a foreign principal public company would be 60.6 *per cent* if the subsidiary company in Pakistan is engaged in an industrial enterprise. The existing incidence in the case of commercial undertakings remains unchanged. The terms of the Agreement

for the Avoidance of Double Taxation with the U.K. are different and both industrial and commercial public companies in the U.K. are entitled to a rebate of $3\,^1/_8$ *per cent* on dividends received by them from Pakistani subsidiaries. The over-all incidence on the U.K. principal public companies would be 62.6 *per cent* for the income derived from Pakistani subsidiaries engaged in an industrial enterprise. There would also be some reduction in the case of U.K. public principal company even when the Pakistan subsidiary company carries on a commercial enterprise. For further details, the statement appended to this Memorandum may be referred to.

Concession to private companies desiring to plough back profits. - Under Section 23-A of the Income-tax Act, private companies are required to declare dividends to the extent of 60 *per cent* of their net income after payment of taxes, unless, due to the smallness of the profits of the company or the losses suffered by it in earlier years, the payment of a dividend at all or of a dividend absorbing as much as 60 *per cent* of the income would be unreasonable. Where, however, the reserves possessed by a company exceed the paid-up capital of the company (including the loan capital) or the actual cost of the fixed assets of the company, whichever of these is greater, 100 *per cent* of the net profits (instead of 60 *per cent*) are liable to be distributed as dividends. This provision was originally enacted to guard against the avoidance of super-tax by share-holders of private limited companies but in certain conditions, it prevents the ploughing back of profits for the development and expansion of private limited companies. In 1958, the Commissioners of Income-tax were given the power to waive the operation of this section in suitable cases. It has now been decided that the operation of section 23-A should be kept in abeyance for a period of two years in all cases.

Concessions to mining concerns.- To encourage the exploration, extraction and processing of mineral deposits in Pakistan, the following liberal concessions were announced in March, 1959:-

(a) All expenditure on prospecting and exploration upto the stage of commercial production would be allowed against future income after the commencement of commercial production.

(b) All capital expenditure on machinery and equipment would be allowed as a revenue expenditure.

(c) If the mineral is refined or concentrated in Pakistan, profits equal to 5 *per cent* of the capital employed in the refining undertaking would be exempt from tax for a period of 5 years.

These concessions were confined to new ventures. To enable the existing mining concerns also to avail themselves of this concession, it has been decided that such concerns may also set off the expenditure on the exploration of new areas against their current income. They can further charge against their current income capital expenditure on machinery and equipment purchased by them for an existing mine in one lumpsum instead of recouping it through the depreciation allowances over a number of years. These are very substantial concessions. It is hoped that the liberal policy followed by Government would encourage the mine-owners to instal new equipment and machinery, improve the working conditions in their mines and take adequate measures for the safety of the workers.

SALES TAX

Lowering of the exemption limit.- At present, all manufacturers and producers whose turnover does not exceed Rs.60,000/- a year, enjoy exemption from sales tax. This limit is fairly high and has been subjected to considerable criticism on the ground that it leads to unfair competition and encourages the splitting up of undertakings into smaller units to avoid levy of sales tax.

The exemption limit has been reduced to Rs.36,000/-. The provision for marginal relief announced in March, 1959 will, however, continue so that the amount of sales tax payable in marginal cases would not exceed 25 *per cent* of the difference between the actual turnover of a manufacturer or producer and Rs.36,000/-.

Exemption of hosiery goods and levy of tax on hosiery yarn. There is a large number of manufacturers of hosiery goods in Pakistan. Some of them are very small units and are consequently not liable to pay any sales tax. Others are liable to pay sales-tax on the finished product but are entitled, under the Sales Tax law, to claim exemption from sales tax paid on the yarn used by them. Representations have been made to Government that it is not always possible for such manufacturers to claim refund of sales tax on yarn. There has also been a tendency among such units to split up into smaller units simply to avoid levy of sales tax. It has also been represented that some small manufacturers who are, in fact, not small but who succeed in evading sales tax are under-selling those manufacturers who pay this tax. To meet the situation, it has been decided to remove sales tax from hosiery goods altogether and to shift the levy of this tax to yarn meant for the manufacture of such goods. Sales tax will consequently now be levied on hosiery yarn at the rate of 15 *per cent* as against the present rate of 10 *per cent* on hosiery goods. Inspite of the increase in the rate, the net incidence of sales tax on the hosiery industry would be substantially lower than at present because the value of the finished products is considerably higher than the cost of the yarn.

Increase in rate of sales tax on better quality yarn.- Cotton yarn is at present being subjected to sales tax at a uniform rate of $6^1/_4$ *per cent* without distinction of counts. Duty on yarn is always inter-linked with the various taxes imposed on coarse mill-made cloth as a considerable part of surplus yarn is used by handloom weavers in providing competitive coarse cloth. As the excise duty on coarse mill made cloth is being increased from ½ anna a yard to 1 anna a yard, the sales tax on cotton yarn is to be raised also. It is accordingly being raised from 6 ¼ per cent to 10 *per cent*. However, to avoid any increase in the tax burden on the poorer sections who generally use the cheaper varieties of handloom cloth, the rate of salestax on cotton yarn of counts upto and including 20s has been left unchanged. This type of yarn will, therefore, continue to be liable to sales tax at the rate of 6 ¼ *per cent*.

EXCISE DUTIES

For the increasing needs of a developing economy new sources of revenue must be constantly tapped. Until lately customs duties were the main source of revenue to the Central Exchequer. With the growing industrialisation of the country on the one hand and the restriction of imports from abroad on the other, the importance of Central Exicise duties in the field of indirect taxation has greatly increased. While revenue from import duties cannot be significantly increased unless there is a considerable increase in the volume of trade, the increasing production in local industries opens up new possibilities of raising additional revenues.

Changes in Central Exise duties introduced in this year's budget fall under six broad categories. These are commented upon below.- (For details of changes please see the summary of Financial Measures).

(i) *Increase of duties on certain existing items*

The items falling under this category are cloth and matches. In regard to cloth it should be stated that the increased rates on the various categories have been so graduated as to make the impact of the tax fall least heavily on the lower income groups. The withdrawal of the exemption from power looms in excess of 4 was justified even if no increase in the rates of mill-made cloth had been introduced. Powerlooms have been successfully competing with mill-made cloth and are, therefore, no longer in need of special fiscal

measures to foster their growth. With the enhancement in the rates of duty on cotton and art silk cloth, modification of the exemption became inevitable. Out of the anticipated additional yield of Rs. 301 lacs from cloth, the contribution of power looms has been estimated at Rs. 22 lacs. Side by side with the increases in the rates further relief has been provided to people in the lower income groups by completely exempting Mazri cloth from duty. For the same reason Sales Tax on yarns of counts of upto and including 20's, which go into the making of handloom cloth, has been left untouched at 6 ¼ %. As a result the poorer sections of the community will not be unduly burdened.

As regards matches, the background in which the reduced rates of excise duty came to be levied was that during the last War the Central Government felt the need to expand the production of matches and to encourage manufacturers to concentrate on standard boxes containing 50 sticks. They, therefore, lowered the rates on matches of 50s, leaving other categories untouched. In 1952 the Government of Pakistan decided to lower the rates of other categories namely 40s and 60s in proportion to the reduction made for 50s. These reduced rates were justified in the initial stages of the match industry in the country. The present position is that this industry has expanded to the extent that it is producing matches in excess of the total internal demand. It is therefore no longer in need of any special fiscal measures for fostering its development. On the other hand government are convinced that the profit margin to the trade on the basis of the reduced rates of duty is so liberal that it should be possible for the present retail price of one anna per box of matches to be retained even after the restoration of the higher (statutory) rates of duty.

(ii) *Rationalisation of the tariff on Cigarettes:-*

The existing slabs of value under which cigarettes of different qualities are assessed to excise duty were so designed that cheaper cigarettes paid lesser duty than more expensive brands. An analysis of the statistics of production and revenue has shown that the incidence of the tax on some of the lower priced varieties—which, incidentally, are large revenue-earners—is relatively small and that they are capable of absorbing a higher tax incidence without the manufacturers having to increase their prices appreciably. It has also been noticed that under the present value and tax structure, marketing of cigarettes at what may be described as natural retail prices e.g. 2 ½ annas and 5 annas per packet of 10's, is not possible. The slabs of value and the rates of duty have accordingly been revised to achieve the twin object of maximising the revenue yield and facilitating the marketing of desirably priced brands. Opportunity has also been taken to round off the rates for certain slabs with the sole objéct of simplifying duty calculations. It should be explained that the anticipated increase in revenue from cigarettes is not due entirely to the introduction of the increased rate of duty in one of the slabs. It is partly due to the anticipated increase in production during the ensuing year and to the introduction of the new brands referred to above.

(iii) *Increase in duties based on the recommendations of the Taxation Enquiry Committee.*

The existing rate of Rs. 5- per cwt on Vegetable Product commonly known as Banaspati has remained unchanged for more than 14 years. The incidence of this excise duty is at present less than one anna per lb. Government have therefore accepted the interim recommendations of the Taxation Enquiry Committee to raise this tax to Rs. 7/- per cwt in order to bring this incidence to one anna per lb.

(iv) *Implementation of the recommendations of the Tariff Commission:-*

The Tariff Commission had recommended that the existing *ad valorem* duty on Paints & Varnishes should be changed to specific rates for conve-

nience of the industry. The purpose of this reform is to ensure that the incidence of duty on all products of like kind will be identical. Thus, ready-mixed paints, lacquers, varnishes, stiff paints etc will, each as a class, be subject to a common rate of duty, regardless of difference in value. This change will also be administratively desirable, as the calculation of duty will be simplified.

(v) *Abolition of duty*:- The imposition of duty on power-produced tanned leather coupled with the exemption to bag-tanned leather has unfortunately resulted in giving a set back to the power-tanning industry in the country. Production and export of good quality tanned leather has thus been hampered. Abolition of the excise duty and sales tax on tanned leather will remove the principal disability of the power tanning industry and provide the necessary incentive for increased production of better quality tanned leather both for the home market as well as for exports. The loss of revenue involved by these measures would be partially met by the increase in the rates of sales tax on footwear (from 4 to 10 *per cent*) and other manufactures of leather (from 10 to 20 *per cent*).

(vi) *Imposition of duty on new items*:- In this category the only item proposed is soap. The soap industry has developed to a stage where it can stand the impact of the proposed tax. The rates proposed are such that the incidence of the duty on toilet soap will be ½ anna per cake and on laundry soap one anna per seer. Relief is being granted to the cottage manufacturers by excluding from the tax soap produced by the cold process.

CUSTOMS DUTIES

Changes in Customs import duties fall into the following categories:

I. *Increase in duties based mainly on the recommendations of the Taxation Enquiry Committee.*

In this category the duties have been raised mainly for revenue reasons. Certain items have been selected where profit margins were known to be high in pre-Martial Law days and which can therefore absorb the higher duties. The following changes have accordingly been made in this category:-

(i) Bidi leaves have been subjected to a duty of 50 per cent. As a corollary, the duty on imported bidis has been raised from 50 per cent to 100 per cent. This latter increase is, however, mainly academic as bidis are not licensed for import.

(ii) For similar reasons the duty on artsilk yarn and thread has been raised from 100 per cent to 150 per cent.

(iii) The duty has also been increased on exposed cinema films from one anna per foot to two annas per foot.

(iv) The opportunity has been taken of rationalising the existing duties on various imported textile fabrics. The duties on artsilk fabrics and mixtures were already 100 per cent whereas other textile fabrics such as woollen fabrics, silk fabrics, fabrics containing gold and silver thread, cotton fabrics, and fents carried odd rates of duty such as 37 ½ per cent for woollen fabries, 75 per cent plus Rs. 3/- per lb for silk fabrics, 75 per cent for fabrics containing gold and silver thread, 60 per cent for cotton fabrics and 42 per cent for fents. These varying rates cause administrative difficulties. The duties on all imported fabrics including fents have therefore been changed to a uniform rate of 100 per cent. As, however, most of these fabrics are at-present not imported this change will have no material effect on the revenue.

II. *Increase in duties on certain items included in the list of articles allowed to be imported under the Export Bonus Scheme.*

Under the Export Bonus Scheme announced early this year some 219 items were included in the list of articles for which bonus import licences are

granted. The list has been kept fairly comprehensive in order to provide sufficient incentive for the export of commodities and manufactured goods out of Pakistan. Some of the items included in this list, however, although required for consumption in the country, are comparatively of a less essential character. In order to discourage import of such items in unduly large quantities and also as a revenue measure the duties on certain selected items in this list were increased in February last by an Ordinance. For the same reasons the duty has now been increased on a few more such items. The items now affected are as follows:-

Saccharine powder and saccharine tablets on which duties have been raised from Rs. 7/8/- per lb and 22 ½ per cent, respectively, to Rs. 15/- per lb and 45 per cent. Asbestos sheets and manufactures; liquid gold; unwrought leather; paste board, mill board, card board and straw board; perfumery concentrates and cork manufactures on which the rate has been raised from 30 to 50 per cent.

III. *Rationalisation of duties on raw materials and on certain corresponding finished products.*

A number of instances came to notice from time to time where the rates of duties on certain raw materials imported from abroad were higher than the rates of duties on the corresponding finished products. To ensure that our industry is not placed at a disadvantage as compared to foreign industry, it was decided that the rates of duty on these raw materials should be rationalised either by reducing the duty on the raw materials or by raising it on the corresponding finished products. The following changes have accordingly been carried out:-

(i) The principal raw materials on which duty has been reduced from the existing rate of 75 per cent to 50 per cent are unwrought plastic sheets, tubes and rods imported as raw materials for industrial use; cellophane, viscose and other plastic packing and wrapping film; staple and other synthetic or man-made fibre, other than yarn; celluloid sheets for the manufacture of spectacle frames; lamp shells for the manufacture of electric bulbs; optical glass for the manufacture of lenses; empty glass bottles and vials; glucose and various other raw materials used in the glue, paint, textile printing and other industries. The duty has also been reduced from 80 per cent to 50 per cent on metal valves for the tyre and tube industry and from 75 per cent to 12 ½ per cent on empty medicinal capsules. Other reductions made are from 30 to 15 per cent on brass and bronze ingots, nickel annodes, German silver and stainless steel and from 36 to 30 per cent on caustic soda.

(ii) On the other hand duties have been increased on some finished products. The existing duty of Rs. $79^{1}/_{5}$ per ton (equal to about 12 per cent ad valorem) on wire nails has been raised to 80 per cent ad valorem; the duty on glass globes and chimneys has been raised from 30 per cent to 75 per cent; on lead and coloured pencils from 30 and 40 per cent, respectively, to 60 per cent; on carbon paper from 40 per cent to 75 per cent ad valorem; on electric fans from 45 per cent to 80 per cent; on dry batteries and cells from 30 per cent to 80 per cent; on mild steel bars from 24 per cent to 30 per cent; on switch-boards from 10 per cent or 30 per cent to 50 per cent and on radios and radiograms from 50 and 60 per cent, respectively, to 80 per cent.

IV. *Revision of duties on motor-vehicles and parts thereof.*

(i) The existing rates of duty on motor-cars (including taxi cabs and station wagons) are 108 per cent on cars of a value not exceeding Rs. 7500/- and 120 per cent on cars above that limit of value. The incidence of these duties is very high in the case of small and medium priced cars with the result that these cars are beyond the means of the middle-income group. The duties on cars have therefore been revised on the basis of the following price slabs in order to provide relief in the case of small and medium priced cars:-

Price slab.	*Revised duty*
(a) Cars of a value not exceeding Rs. 4500/-	50 per cent
(b) Cars of a value exceeding Rs. 4500/- but not exceeding Rs. 6500/-	80 per cent
(c) Cars of a value exceeding Rs. 6500/- but not exceeding Rs. 11000/-	100 per cent
(d) Cars of a value exceeding Rs. 11000/- but not exceeding Rs. 15000/-	150 per cent
(e) Cars of a value exceeding Rs. 15000/-	250 per cent

(ii) As a further measure of relief the existing duty of 57 ½ per cent on motor-cycles and motor-scooters has been reduced to 40 per cent.

(iii) On other motor vehicles the existing duties will continue.

(iv) Parts and accessories of the various motorvehicles are at present liable to varying rates of duty, namely, 108 per cent for parts and accessories of motorcars, 57 ½ per cent for parts of motor-cycles and motorscooters, 37 ½ per cent for parts and accessories of motortrucks or lorries and 30 per cent for parts of other mechanically propelled vehicles. These varying rates of duty cause serious administrative difficulties; delays in clearance of goods from Customs; and also lead to mal-practices in view of the difficulty in determining the appropriate rate of duty applicable to the various parts, because several of the parts are inter-changeable and can be used on more than one type of vehicle. The existing varying rates of duty have therefore been substituted by a uniform rate of 50 per cent for all parts and accessories of motor-vehicles. Parts of agricultural tractors which are exclusively for use in tractors, such as chassis or body parts, will however continue to be exempt under item 72(8) of the Pakistan Customs Tariff. A list of such parts is being notified for the guidance of the Customs authorities and the trade.

V. *Relief.*

As a measure of relief duties on certain spices namely cardamoms, cassia, cinnamon, cloves, nutmeg and pepper which are at present liable to a duty of 30 per cent and on chillies, ginger and mace which are at present liable to a duty of 36 per cent have been reduced to 12 ½ per cent and 15 per cent, respectively.

N.B. The comparative rates shown in the Appendix II do not include the tax rebate of 6.25 *per cent* admissible in 1958-59 to public companies engaged in industrial enterprises in respect of their undistributed profits. The rates, however, include the rebate of super-tax admissible to the US, Japanese, Swedish and UK companies in respect of the dividends received by them from Pakistan companies under the Agreements for the Avoidance of Double Taxation between Pakistan and those countries.

Appendix I *Comparative Table of Taxation on Companies — Total incidence excluding inter-corporate taxation*

S. No.	Description of Company.	Total income-tax and super-tax (including average incidence of business profits tax of 10%) as per 1958-59 rates		Total income-tax and super-tax as per rates fixed in March, 1959		Total income-tax and super-tax as per rates fixed in June, 1959	
		For companies with income up to Rs 25,000	For companies with income exceeding Rs 25,000	For companies with income up to Rs 25,000	For companies with income exceeding Rs 25,000	For companies with income up to Rs 2,00,000	For companies with income exceeding Rs 2,00,000
1.	Public companies declaring dividends in Pakistan						
	(a) Industrial income	43·75	60	50	55	50	55
	(b) Commercial income	43·75	60	55	60	55	60
2.	Private companies declaring dividends in Pakistan						
	(a) Industrial income	50	66.25	50	55	50	55
	(b) Commercial income	50	66.25	55	60	55	60
3.	Public companies declaring dividends outside Pakistan						
	(a) Industrial income	50	66.25	55	60	55	60
	(b) Commercial income	50	66.25	60	65	60	65
4.	Private companies declaring dividends outside Pakistan						
	(a) Industrial income	56.25	72.5	55	60	55	60
	(b) Commercial income	56.25	72.5	60	65	60	65

Appendix II

Comparative Table of Taxation on Companies — Total incidence including inter-corporate taxation

S. No. Description of Company.	Total income-tax & super-tax (including average incidence on business profits tax of 10%) as per 1958-59 rates			Total income-tax & super-tax as per rates fixed in March, 1959		Total income-tax and super-tax as per rates fixed in June, 1959					
						US, Japanese & Swedish Cos.		UK Companies		Other Companies	
	Where income of both the principal & the subsidiary companies do not exceed Rs 25,000	Where income of principal company does not exceed Rs 25,000 but the income of the subsidiary exceeds Rs 25,000	Where incomes of both principal & subsidiary companies exceed Rs 25,000	Where income of subsidiary company does not exceed Rs 25,000	Where income of subsidiary company exceeds Rs 25,000	Where income of the subsidiary company does not exceed Rs 2,00,000	Where income of the subsidiary exceeds Rs 200,000	Where income of the subsidiary company does not exceed Rs 200,000	Where income of the subsidiary company exceeds Rs 200,000	Where income of the subsidiary does not exceed Rs 200,000	Where income of the subsidiary exceeds Rs 200,000
(1) (2)	(3a)	(3b)	(3c)	(4a)	(4b)	(5ai)	(5aii)	(5bi	(5bii)	(5ci)	(5cii)
1. Public principal company abroad receiving dividends from a public subsidiary in Pakistan											
(a) Industrial income	59.09	70.9	74.55	64.28	67.87	56.25	60.62	58.48	62.63	60.71	64.64
(b) Commerc. income	59.09	70.9	74.55	67.86	71.42	67.86	71.42	65.81	69.61	67.86	71.42
2. Public principal company abroad receiving dividends from a private subsidiary in Pakistan											
(a) Industrial income	63.63	75.45	78.52	64.3	67.86	56.25	60.62	58.48	62.63	60.71	64.64
(b) Commerc. income	63.63	75.45	78.52	67.86	71.42	60.71	71.42	65.85	69.64	67.86	71.42
3. Private principal company abroad receiving dividends from a public subsidiary in Pakistan											
(a) Industrial income	64.2	74.5	78.18	64.3	67.86	60.71	64.64	60.71	64.64	60.71	64.64
(b) Commerc. income	64.2	74.5	78.18	67.86	71.42	67.86	71.42	67.86	71.42	67.86	71.42
4. Private principal company abroad receiving dividends from a private subsidiary in Pakistan											
(a) Industrial income	68.18	78.52	81.59	64.3	67.86	60.71	64.64	60.71	64.64	60.71	64.64
(b) Commerc. income	68.18	78.52	81.59	67.86	71.42	67.86	71.42	67.86	71.42	67.86	71.42

PROFESSOR W. J. DE LANGEN †

On December 7, 1959 the death occurred of Mr. W. J. de Langen, Professor in Amsterdam Municipal University.

Since 1950, shortly after his appointment as a professor, Mr. W. J. de Langen had been co-operating with the Bureau for International Fiscal Documentation. His great interest in international fiscal law induced him to try and bring together, as far as possible, the practical work of the Bureau, on the one hand, and the academic activities in this field, on the other hand. Moreover, as a member of the Advisory Board he often gave valuable advice as to the general activities of the Bureau.

Mr. W. J. de Langen has written some articles on the evolution of the Dutch fiscal legislation in this Bulletin.

We deeply regret the sudden ending of this fruitful collaboration.

I

INCOME TAX LEVIED ON GREEK LIMITED COMPANIES AND FOREIGN CORPORATIONS

by

G. A. NEZIS, Athens

I. GENERAL PROVISIONS

A. Subject of Tax.

1. Tax on the total income derived from any source and earned:

a) by Greek Limited Companies.

b) by Foreign Enterprises functioning under any type of association, i.e. Limited Company, Limited Partnership, Partnership with sleeping partner, Joint Stock Company or Partnership.

c) by Foreign Agencies which aim at financial gains.

In Greek Law is considered as foreign corporation a corporation having its seat (siège social) outside Greece. Corporations having their seat in Greece are considered Greek corporations even if they belong entirely to foreigners.

2. The income-tax of Greek Limited Companies and Foreign Corporations is applied throughout the whole territory of the Greek State.

B. Object of Tax.

1. The object of tax is:

a) in the case of Greek Limited Companies, the income obtained or profits made in the country and reduced by the part which is distributed among the shareholders or granted in the form of percentages or fees to the members of the Board of Directors, or given in the form of fees (except salaries) to the Managers or the Administrators of such companies.

b) in the case of foreign corporations and foreign agencies, the net income or profits, derived from any source in Greece, as well as the net profits from a permanent establishment in Greece of a foreign enterprise. In the case of foreign enterprises or agencies managed from within Greece, independent of their seat abroad,

object of tax is the total of income obtained both from abroad and in Greece.

2. A permanent establishment is considered to function in Greece under the following conditions:

a) when the foreign enterprise exploits in Greece one or more shops, agencies, branches, offices, warehouses, workshops or factories, as well as plants aiming at the exploitation of natural resources.

b) when the foreign enterprise manufactures goods using Greek raw materials or agrarian products in its own plants or in plants of third parties in Greece acting on its behalf.

c) when the foreign enterprise does business in Greece or renders services through representatives authorized to place orders and to enter into contract on account of the foreign enterprise.

d) when it keeps a stock of goods from which it executes orders on its own account.

e) when it rents plants and/or equipments, and in general, movable goods to third parties in Greece, and

f) when it grants to third parties the right of exploiting in Greece patents, industrial methods, trade marks, privileges, motion picture films, literary works etc.

The way to ascertain profits earned in Greece from a permanent establishment and the division of general expenses etc. between the seat of the enterprise abroad and the permanent establishment in Greece, the data needed for such division as well as any necessary detail for the application of the present provision, can be fixed by Royal Decrees issued on the proposal of the Minister of Finance.

C. Period during which the income is earned.

1. Taxable income is computed as the total net income earned from all sources during the accounting year ending in the period between September 1st of the previous year and August 31st of the current year.

2. In the case of corporations under liquidation the period between the day of the beginning and the day of the end of the liquidation, considered as the accounting period for the application of the provision, sub. 1.

Note: The fiscal year in Greece starts on January 1st and ends on December 31st of each year.

D. Tax Exemptions.

1. Exempt from the tax under discussion are:

a) profits earned by Greek Limited Companies from exploitation of ships under the Greek flag, which are subject to a special tax.

b) dividends from founder's shares and shares of Greek Limited Companies exploiting ships, the profits of which are subject to the above-mentioned special tax. If the limited company is conducting other kinds of business besides the exploitation of ship, the part of the profits from ships is exempt from the income tax on corporations, whereas the other part is taxed.

c) profits earned in Greece from the exploitation of ships or aeroplanes registered under a foreign flag and belonging to foreign enterprises are exempt from taxation on the basis of Mutual Tax Exemption Agreements with the respective countries.

d) profits earned from the publishing of daily, weekly or fortnightly newspapers or periodicals are also exempt from this tax, being subject to a special tax.

e) interests from deposits with Greek Banks or branches of foreign banks in Greece are exempt from this tax.

f) interests from credits in general and remittances from foreign countries to Banks or Loan Offices are exempt from this tax. However, these tax-free interests may not exceed the official discount rate of the country of origin. This exception does not concern credits falling under Act No. 2687/1953 on the "Protection of Foreign Investments in Greece".

g) interests from National Loans issued in the form of bonds, as long as the tax exemption is provided for by a special act.

h) the interests from loans of the Public Power Corporation.

i) interests from loans issued in the form of mortgages on Greek ships granted by foreigners from imported capital.

j) interests from loans granted up to December 31st 1957 by foreigners to Greek Limited Companies or to other important enterprises.

k) interests from loans issued up to June 30th 1953 in the form of bonds issued by industrial limited companies.

2. The following exemptions already granted are still valid:

a) exemptions granted by special provisions still in force.

b) exemptions granted by concessions ratified by special acts.

3. In order to encourage the investment of foreign capitals in Greece, a special Act No. 2687/1953 on "The Investment and Protection of Foreign Capitals in Greece" has been passed. This Act has an enhanced force based on a special provision of the Constitution, and can therefore not be modified by a subsequent act. The above act ensures the repaying of imported capital over a period of ten years and the export of profits to the amount of 12% of the capital, and 10% of loans, as well as the facility of keeping books and issuing balance sheets in foreign currency. Furthermore, the above act provides for the drafting of Common Acts of the Ministers of Coordination, Finance and Ministers competent for each category of business, by which Acts the following tax facilities and tax exemptions can be granted to enterprises functioning with imported capitals.

a) Consolidation for a period of ten years of the existing Income Tax Legislation with the right of adaptation in case of a general reduction of tax burdens.

b) Computing of the income tax at a fixed rate assessed on net profits or gross receipts. In this case the tax burden cannot be lower than the one existing for other enterprises.

c) Reduction or exemption from customs duties and import duties for machinery, spare parts, instruments and tools for a period of ten years.

d) Reduction or exemption from municipal taxes, post dues or fees in favour of local funds for a period of ten years.

e) Reduction or exemption from duties of any kind and fees for the registration of mortgages or other security measures protecting the imported capitals. Up to the present day a number of such Acts have been passed by which the above-mentioned tax facilities have been granted fully or partially.

The same Act provides also for the facility of depositing moneys in foreign exchange with the Bank of Greece for at least six months, at an interest rate not exceeding 8% p.a. From the tax levied on these interests, one-third is deducted as a tax exemption.

4. By Act No. 3190/1957, the conversion of limited companies into partnersships with limited liability has been freed from taxes and duties in favour of the States or third parties with the provision that:

a) the assets and liabilities of the converted company will not be changed, and

b) the share-holders in the converted company participate in the partnership with limited liability in the same proportion as before the conversion.

5. Finally, Act No. 3746/1957 provides for the facility of issuing bonds or preference shares in order to cover investments in new installations, or extensions to or modernizations of the already existing ones. However, the issue need a special permit from the Public Credit Organization (O.X.O.A.). In exceptional cases newly founded industrial enterprises may use these capitals for trading expenses. Above mentioned bonds and preference shares may have the following exemption advantages:

a) exemption from income-tax and stamp duties of the coupons of the bonds.

b) exemption from income-tax and stamp duties of the first dividends of Preference Shares, and

c) exemption from stamp duties and other taxes on transactions in such titles.

E. Taxation Rate.

1. The taxation rate is 35% on the taxable income of both Greek limited companies and corporations having their seat outside Greece. This tax is not charged with extra percentages in favour of municipalities, communities or other third parties.

2. For incomes earned in the area of the Dodecanesus by enterprises having their seat there, the taxation rate is reduced to the half.

3. Gross revenues, real or presumed, arising from real estate situated in the area of Athens, are charged with a supplementary tax of 3% in favour of the Water Supply Works in that area.

II DETERMINATION OF NET INCOME

A. Income from Real Estate.

1. Income from real estate is that earned in each fiscal year from letting, compensation for requisitioning, or directly from buildings

used for self-occupancy by the landlord, possessor or usufructuary, as well as the right of the owner of the ground, in the case of buildings, as well as from buildings situated on grounds belonging to third persons. In the case of lease of a building, wholly or in part, with furniture or machinery, the rent for these articles is added to the rent of the building.

2. Considered as income from real estate, are:

a) incomes from sites used for warehouses or workshops, open-air theatres, restaurants, sports grounds, etc.

b) the value of the building erected on the ground of the lessor at the expense of the lessee. In case the ownership of this building is transferred to the lessor after expiration of the lease the yearly income is calculated by deducting any expenses for the transfer of the ownership fixed by the contract and by dividing the balance by the number of years of the duration of the lease.

c) in the case of sub-leasing, the income earned by the lessee.

3. Not considered as income from real estate are the incomes earned by utilizing said real estate for one's own purposes:

a) factories with their dependencies, warehouses and grounds used for the storage of raw material or industrial products. As such are considered buildings erected especialy for industries with permanent installations of machinery, as well as buildings used for the treatment and storing of tobacco leaves or other agrarian products destined for export.

b) buildings situated on or outside the ground of farms used by farming enterprises.

4. As gross revenue from the rented building is considered the contracted rent. In the case that there is no written contract, the determination of income is made in comparison with other buildings rented under similar conditions. If the building is used by the owner or possessor himself, or by a third person authorized by the owner without rent or other compensation, the income is determined in relation to other buildings rented in the same area. In any case, the presumed rent can never exceed 6% p.a. of the real value of the building at the time of the taxation.

5. From gross revenue is deducted:

a) a fixed percentage of 25% for any tax or duties in favour of the State, Municipalities or third parties, resting on the building,

with the exception of income-tax. This percentage is intended to cover expenses for insurance, depreciation and for the maintenance of the building. This restriction does not apply to the determination of the income earned from the renting of industrial plants and installations. In the case of wooden houses an extra 10% of the gross revenue is deducted. In the case of rent from sites, and buildings erected on sites belonging to third persons, where the value of the building is considered as income, another 5% is deducted from the gross revenue. On buildings situated on the sites of third-persons where the ownership is not transferred to the owner of the ground, an extra percentage of up to 15% on the gross revenue is deducted from the gross revenue of the person earning the income from the buildings. If the use of the ground is granted for 15 years, the deduction amounts to 10%, if the contract runs from 15 to 30 years, and to 5% if its duration is more than 30 years. In the case of buildings sub-rented, a deduction up to 10% is allowed on the gross rent earned by the lessee.

b) on buildings erected on sites belonging to third persons, the right given to the owner of the ground as well as the part of the value of the building which is considered as income are deducted from gross revenues.

c) in the case of sub-rental, leases of long duration, lease-hold or buildings, the rent or fees paid by the person using the real estate, are also deducted from gross revenues.

d) interests on loans issued by mortgages on the building paid by the owner or possessor of same are also deducted from gross revenues.

The balance remaining after the above deductions is considered as the net income from real estate.

B. Income from Land Lease.

1. Income derived in each financial or agricultural year from the lease of one or more farms, received by the owner, possessor or usufructuary of the land, as well as the right of the owner of the land in the case of lease-hold and buildings, is considered as income from land lease. Under the term land we understand arable land, forests and pastures, as well as mines, quarries, wells and lakes.

2. Especially is considered as income from land:

a) income earned according to contract by which the owner of

a forest earns a percentage of the production calculated by weight or volume.

b) income paid to the owner of the land in any form of percentage on the production, as long as the owner does not participate in the expenses of cultivating the land and harvesting the agrarian products.

c) in the case of sub-letting, the income earned by the lessee.

d) in the case of lease-hold or buildings, the income earned by the person using above rights.

3. Considered as gross revenue from the renting of land is the income provided for in contracts. If the revenue is established in products, the monetary value of the products is determined by the average wholesale prices of the respective products on the place where such goods are produced at the time of the harvesting.

4. Deducted from gross revenue are:

a) taxes, duties or fees charged on the land in favour of the State or third parties with the exception of the income-tax itself.

b) 5% of the gross revenue for expenses of maintaining the land, depreciation and all other similar charges.

c) any appropriate depreciation for the prevention of floods or drainage works, but not expenses for the extension or improving of the land.

d) in the case of sub-renting, lease-hold or buildings, the rent or fee paid to the owner of the land.

e) interests of mortgage loans on the land paid by the owner or possessor. The balance after the above deductions have been made is the net income from land lease.

C. Income from Capital.

1. Income from capital is the income earned in each financial year derived from:

a) dividends and interests from shares of Greek Limited Companies, as well as from bonds of Greek National Loans or loans of Public Corporations as well as loans of all kinds of Greek enterprises. Furthermore, remunerations of the Managers (except their salaries) of limited companies.

b) dividends and interests, as mentioned above sub a), derived from foreign corporations.

c) interests derived from deposits, guarantees, mortgages, bonds or any other title not mentioned sub a) and b) of the present paragraph.

In the case where the beneficiary receives the income mentioned sub a) and b) free of tax, the taxable income is computed as the amount which will be determined by converting the amount free of tax into the amount which would have been paid if this amount had been taxed. This is arrived at by the following calculation: e.g. if the tax rate is 25% and the amount paid to the beneficiary is 1000 drachmae the taxable income will be

$$\frac{1000 \times 100}{75\ (100\text{-}25)} = 1.333 \text{ drachmae.}$$

2. Also considered as income from capital is:

a) income derived from reserve funds of limited companies whether it is distributed or capitalized, whether the distribution is effectuated in cash or real estate or movable goods.

b) in the case of the liquidation of a Greek Limited Company considered as dividends is the debit balance between the dividends actually distributed to the shareholders and the amount paid by the shareholders and not repaid to them. Considered as amount paid by the shareholders is the capital of the Company increased by Reserve Funds formed from issuing shares over and above their nominal value.

The above provision is also applied in the case of the redemption by a Limited Company of its own Founders' shares.

d) profits of a Greek Limited Company concealed through withdrawals of values given to the members of the Board of Directors or other persons representing the Company.

3. Interests from Bills of Exchange and Promissory Notes, as well as interests from sales of goods on credit between traders, as long as the person earning the interest is engaged in commercial enterprise at the time of the payment of interests, are also considered as income from trade or industrial enterprises.

4. The time of earning of the income from capital, is:

a) in the case of dividends or percentages or fees granted to the members of Boards of Directors, the time of approval of the Balance Sheet by the General Meeting of Shareholders, and in the case of coupons on bonds the time of payment of same.

b) in the case of moneys invested in shares abroad, the time of payment of the dividends. In the case of interests, the time when they are due.

5. A loan that has been granted without interest, or at a rate lower than the official Bank rate legal one, is considered as being contracted at the official rate of interest. The taxpayer is allowed to furnish proof to the contrary.

6. From the above-mentioned income from capital is deducted any tax, duty or fees burdening this income in favour of the State or third parties, with the exception of the income tax itself.

The balance remaining after the above deductions is the net income from capital.

7. In the case of merging of two or more limited companies or of a limited company with a partnership, as well as in the case of the conversion of a private enterprise or partnership into a limited company, the greater value of the shares or of the capital at the time of the merging or conversion is not charged with income tax.

The same applies also, i) in the case of a merging up to December 31, 1964 of industrial or trade enterprises, functioning under the form of private enterprises or partnerships, with an industrial or trade limited company, ii) in the case of a contribution effected by before December 31, 1964 on the part of the industrial branch of a functioning mixed enterprise to another existing enterprise or to a limited company to be founded, iii) in the case of a merging up to December 31, 1964, of two or more industrial or trade enterprises functioning under the form of an private enterprise or partnership, aiming at the foundation of an industrial or trade company, in any form.

b) The great value is determined by the inventory of the Assets and the Liabilities of the merged or converted enterprises into limited companies, and has to be booked in a special account of the new limited company until its liquidation.

The tax is assessed at the time of the liquidation.

c) The above provisions are applied under the following conditions: i) that the limited company resulting from the merging or conversion of other enterprises has, at the time of the merging, a capital of more than five million drachmae, or in the case of industrial enterprises two million drachmae.

ii) that the shares issued after the merging or conversion by the new limited company are nominal shares for a period of at least five years from the day of the merging or conversion.

d) Should the limited company newly founded through merging or conversion of other enterprises be liquidated before the expiration of the above five-year period, taxes and fees the exemption or postponement of which have been provided for by the present Act, fall due. In that case the income tax on the greater value is assessed on the basis of the rate charged on non-distributed profits of limited companies at the time of the liquidation of same. Taxes in all other cases are assessed at the rates in force at the time of the merging or conversion of the limited company.

e) Above provisions concerning exemptions on greater value etc. are not applied to enterprises aiming at the construction and exploitation of real estate.

(to be continued)

II

SURVEY OF TAX LEGISLATION
APERÇU DE LEGISLATION FISCALE

BELGIUM *Published in the period from March 1st until April 30th, 1960*

Taxes assimilées au timbre

Arrêté royal du 15.3.1960 modifiant le Règlement général sur les taxes assimilées au timbre. Mon. Belge, 19.3.1960, p. 1914.

Arrêté royal du 28.4.1960 modifiant le Code et le Règlement général sur les taxes assimilées au timbre. Mon. Belge, 30.4.1960, p. 3211.

Arrêté ministériel du 28.4.1960 modifiant l'arrêté ministériel du 4.3.1927 en ce qui concerne la taxe de transmission. Mon. Belge, 30.4.1960, p. 3217.

FRANCE *Published in the period from March 1st until April 30th, 1960*

Conventions

Décret no. 60-333 du 31.3.1960 portant publication des conventions entre la France et le 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 et en matière d'impôts extraordinaires sur le capital, signées le 1.4.1958. J.O. 9.4.1960, p. 3283.

Décret no. 60-340 du 4.4.1960 portant publication de l'échange de lettres du 31.3.1958 entre la France et la Belgique au sujet des taxes sur le chiffre d'affaires en ce qui concerne les redevances perçues au titre des licences d'exploitation de brevets. J.O. 10.4.1960, p. 3328.

Décret no. 60-341 du 4.4.1960 portant publication de l'échange de lettres des 15.9 et 1.10.1959 entre la France et l'Autriche au sujet des taxes sur le chiffre d'affaires en ce qui concerne les redevances perçues au titre des licences d'exploitation de brevets. J.O. 10.4.1960, p. 3330.

Impôts sur le revenu

Décret no. 60-243 du 19.3.1960 fixant, en fonction des variations de prix intervenues jusqu'au 30.6.1959, les coefficients de réévaluation applicables pour la revision des bilans prévue aux art. 39 et 40 de la loi no. 59-1472 du 28.12.1959 portant réforme du contentieux fiscal et divers aménagements fiscaux. J.O. 20.3.1960, p. 2665.

Décret no. 60-381 du 22.4.1960 fixant les modalités d'application du régime des déductions visées aux art. 267 et 273-1 (1°) du Code général des impôts. J.O. 23.4.1960, p. 3790.

Droits de douane

Décret no. 60-206 du 29.2.1960 portant modification des droits de douane d'importation du tarif douanier spécial de l'Algérie applicables aux tabacs. J.O., 5.3.1960, p. 2226.

Arrêté du 15.3.1960 portant fixation, pour l'année 1960, d'une part, du contingent prévu aux nos. 69-02 Ac, 69-02Ad, 69-02 Ba et 69-02 Bb du tarif des droits de douane en ce qui concerne certaines briques et autres pièces de construction, réfractaires, et, d'autre part, des conditions d'importation au bénéfice du droit de douane réduit dont ces rubriques sont affectées. J.O. 20.3.1960, p. 2667.

Arrêté du 18.3.1960 fixant la liste des produits dont l'utilisation à la carburation, la vente ou la mise en vente pour la carburation sont autorisées au regard des dispositions de l'art. 265 ter du code des douanes. J.O. 19.3.1960 p. 2640.

Décret no. 60-268 du 25.3.1960 prorogeant, pour l'année 1960, les dispositions du décret no. 57-609 du 16.5.1957 accordant l'entrée en franchise des droits de douane ou au bénéfice du tarif minimum dans le territoire douanier français des produits originaires du Cambodge. J.O. 30.3.1960, p. 2937.

Décret no. 60-344 du 8.4.1960 portant rétablissement, relèvement, réduction ou suspension de la perception de certains droits de douane d'importation applicables à l'entrée sur le territoire douanier. J.O. 10.4.1960, p. 3341. Rectificatif J.O. 16.4.1960, p. 3547.

Taxes sur le chiffre d'affaires

Décret no. 60-200 du 2.3.1960 relatif aux taux majorés des taxes sur le chiffre d'affaires. J.O., 3.3.1960, p. 2127.

GERMANY *Published in the period from March 1st until April 30th, 1960*

Conventions

Gesetz vom 9.3.1960 zu der Erklärung vom 22.11.1958 über den vorläufigen Beitritt der Schweizerischen Eidgenossenschaft zum Allgemeinen Zoll- und Handelsabkommen und zu dem Abkommen vom 21.11.1958 zwischen der Bundesrepublik Deutschland und der Schweizerischen Eidgenossenschaft über die Regelung allgemeiner Zollfragen. BGBl. Tl. II, 18.3.1960, p. 941.

General

Verordnung vom 26.4.1960 zur Änderung der Gebührenordnung für das Zoll-, Verbrauchsteuer- und Branntweinmonopolverfahren. BGBl. Tl. I, 30.4.1960, p. 289.

Turnover taxes

Verordnung vom 1. März 1960 über die Durchführung von Umsatzsteuerstatistiken für die Kalenderjahre 1959, 1960 und 1961. BGBl. Tl. I, 9.3.1960, p. 153.

13. Verordnung vom 4.4.1960 über Änderung der Ausgleichsteuerordnung. BGBl. Tl. I, 9.4.1960, p. 214.

Customs

22. Verordnung über Zolltarifänderungen zur Durchführung des Gemeinsamen Marktes der Europäischen Gemeinschaft für Kohle und Stahl (Wälzlagerstahl usw.). BGBl. Tl. II, 31.3.1960, p. 1326.

14. Verordnung vom 4. April 1960 zur Änderung des Deutschen Zolltarifs 1959 (Rosshaar, Zwischenpositive usw.) BGBl. Tl. II, 8.4.1960, p. 1329.

Verordnung vom 26.4.1960 zur Änderung der Gebührenordnung für das Zoll-, Verbrauchsteuer- und Branntweinmonopolverfahren (chemische Untersuchungen). BGBl. Tl. I, 30.4.1960, p. 289.

LUXEMBURG *Published in the period from January 1st until April 30th, 1960*

Conventions

Loi du 13.1.1960 portant approbation du 3me protocole à la Convention signée à la Haye, le 18.2.1950, et portant unification des droits d'accise et de la rétribution pour la garantie des ouvrages en métaux précieux entre le Grand-duché de Luxembourg, le Royaume de Belgique et le Royaume des Pays-Bas, signé à la Haye, le 11.12.58. Mémorial, 6.2.1960 p. 127.

Impôts sur le revenu

Arrêté grand-ducal du 4 février 1960 concernant l'application de l'article 13 de la 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. Mémorial, 5.3.1960, p. 404.

Arrêté ministériel du 19.2.1960 portant nouvelle détermination du procédé de retenue d'impôt sur les salaires applicables aux rémunérations extraordinaires ou accessoires qu'un salarié du secteur public touche auprès d'une collectivité publique autre que celle qui alloue les émoluments réguliers. Mémorial, 23.2.1960, p. 300.
Rectificatif: Mémorial, 21.4.1960, p. 533.

Arrêté grand-ducal du 4.2.1960 concernant l'application de l'art. 13 de la loi du 7.8.1959, portant réforme de certaines dispositions de l'impôt sur le revenu des personnes physiques et de l'impôt sur le revenu des collectivités. Mémorial, 5.3.1960, p. 404.

Douanes et accises

Arrêté ministériel du 5.1.1960 modifiant l'arrêté ministériel du 27.10.1952, accordant des délais pour le paiement des droits d'accise. Mémorial, 9.1.1960, p. 9.

Arrêté ministériel du 5.1.1960 relatif au régime d'accise des gaz de pétrole et des autres hydrocarbures gazeux liquéfiés. Mémorial, 9.1.1960 p. 10.

Arrêté ministériel du 31.12.1959 concernant les douanes et les accises. Mémorial, 16.1.1960, p. 35.

Arrêté ministériel du 2.2.1960 relatif au tarif des droits d'entrée. Mémorial, 22.2.1960, p. 263.

Arrêté ministériel du 18.2.1960 relatif au tarif des droits d'entrée. Mémorial, 25.2.1960, p. 311, 4 pp.

Arrêté ministériel du 18.2.1960 relatif à l'importation de marchandise relevant des Traités instituant les Communautés Européennes. Mémorial 25.2.1960, p. 315.

Arrêté ministériel du 18.2.1960 réglant les franchises en matière de droits d'entrée. Mémorial, 25.2.1960, p. 321.

Arrêté ministériel du 18.2.1960 réglant les franchises en matière de droits d'accise à l'importation. Mémorial, 25.2.1960, p. 340.

Arrêté ministériel du 18.2.1960 réglant les restitutions en matière de droits d'entrée et de droits d'accise à l'importation. Mémorial, 25.2.1960, p. 341.

Arrêté ministériel du 20.2.1960 concernant la perception à l'importation de certains droits d'accise. Mémorial, 25.2.1960, p. 346.

Arrêté grand-ducal du 27.2.1960 établissant un droit spécial à l'importation de certaines produits agricoles et alimentaires. Mémorial, 27.2.1960, p. 361.

Arrêté grand-ducal du 27.2.1960 établissant un droit spécial à l'importation de certains produits laitiers. Mémorial, 27.2.1960, p. 364.

Arrêté ministériel du 27.2.1960 fixant un droit spécial à l'importation de certains produits laitiers. Mémorial, 27.2.1960, p. 366.

Arrêté ministériel du 6 avril 1960 modifiant l'arrêté ministériel du 28.3.1950 portant majoration du droit d'accise sur les alcools de provenance étrangère. Mémorial, 25.4.1960, p. 565.

Perception

Arrêté ministériel du 27.1.1960 concernant la perception du supplément de retard en matière d'impôts. Mémorial, 2.2.1960, p. 96.

NETHERLANDS *Published in the period from March 1st until April 30th, 1960*

Income Tax

Ministerial decree of 29.4.1960 concerning modification of initial allowances and investment allowances. Stc. 29.4.1960, p. 12.

Customs

Law of 6.4.1960 approving the Royal Decree of 27.5.1959 (Stbl.174), which suspends the levy of customs duties on certain kinds of methylalcohol. Stbl.150 of 29.4.1960.

UNITED KINGDOM *Published in the period from March 1st until April 30th, 1960*

General

Finance Bill 1960. London, H.M. Stationery Office.

Income tax

Post-War credit (income tax) amendment regulations, 1960. Statutory Instruments 1960, no. 769.

MISCELLANEOUS - FAITS DIVERS

ARGENTINA

Changes in tax

Lower rates and larger exemptions for many kinds of taxes have been introduced by the law no. 15273 of February 15th, 1960, taking effect on the 1st of January. The most important changes are:

Income tax: the primary rebate for individuals has been doubled and now amounts to 24,000 pesos; the extra rebate for income from the fourth category (labour) is raised to 45,000 pesos. The allowances for dependent relatives have all been enlarged. On the other hand the rate of corporation income tax is raised with 10%, and is now 33% for corporations registered in Argentina and 38,36% (withholding tax) on payments to non-Argentine corporations. The tax on outgoing interest is also 38,36%. The (inland) dividend tax has remained unchanged (8%). Assessed losses can now be set off against profits of 10 succeeding years.

Many new exemptions are introduced by the law; others are changed, f.i. the amount of copyright royalties which can be received free of tax is now ten times as high as before (now 400,000 pesos).

Excess profits tax: the primary rebate is now 300,000 pesos of the profit which exceeds 12% of capital plus free reserves.

Capital gains tax: now reduced to 5% (1959: 20%), and a primary rebate of 50,000 pesos (1959: 25,000 pesos).

In par. 17 of the new law the Government undertakes to promote the conclusion of treaties which make the exemptions allowed to individuals and corporations without domicile in the Argentine really beneficial to them; this probably refers to the credit system, which in most cases allows only the tax actually paid being credited, so that possible benefits from exemptions are lost. The Government clearly wants to facilitate the investment of foreign capital in Argentina.

Source: *Derecho Fiscal* no. 105, March 1960.

BRAZIL

Port of Manaus Free Zone

President Kubitschek has signed Decree No. 47757 of 2nd February 1960 regulating Law No. 3173 of 6th June 1957, which established a Free Zone in the port of Manaus.

The decree states that the Free Zone is an autonomous agency and authorizes it to receive merchandise of foreign origin for storage or processing, for internal consumption or export. Incoming and outgoing merchandise, whether processed in the Zone or not, will be exempted from all dues and taxes levied by the Federal Government, States and Municipalities. A similar exemption will apply to materials and equipment imported for the installation of industries that will use in manufacture the raw materials specified in Article 4 of Law No. 3172, and to shops and commercial firms established in the Zone.

Source: *Bank of London and South America*, March 12th, 1960.

COSTA RICA

Real estate taxes

Costa Rica's real estate tax law, providing for increases in tax rates on real property, became effective December 20, 1959.

Property is to be taxed in 1960 according to the following schedule of assessed values, in Costa Rican colones (5.60 colones = US$1 at par value), and rates, in percent:

Up to 250,000	0.50
250,001-500,000	0.75
500,001-1,000,000	1.00
1,000,001-2,000,000	1.50
2,000,001-3,000,000	2.00
Over 3,000,000	2.25

Prior to this law, real property was taxed according to the following schedule of assessed values and rates:

10,001-250,000	0.25
250,001-500,000	0.50
500,001-3,000,000	0.75
Over 3, 000,000	1,00

The more significant exemptions under the new law include property used for free instruction and houses constructed on their own lands by employers and enterprisers if used exclusively to house their workers. Previously all property used for purposes of instruction was exempt. The exemption for housing of workers is new.

A new scale of rates for 1961 will be submitted to the Legislative Assembly by the Ministry of Economy and Finance before October 1, 1960. Under previous legislation, property valued at less than 10,000 colones was not subject to the real estate tax. This exception has been cancelled, and the minimum tax payable by any property owner is stipulated as 24 colones a year.

Source: *Foreign Commerce Weekly,* February 15th, 1960.

CUBA

Tax on dividend payments to U.S. firms clarified

The Cuban Ministry of the Treasury has ruled that dividend payments by Cuban companies to persons or firms established in the United States will be subject to the 6 percent tax under Article 8 of the Tax Reform Law No. 447 of July 14, 1959. In a Ministry Resolution of January 8, 1960, the Cuban Government officially recognized that U.S. income tax rates are higher than those of Cuba.

Subitem (4) of Article 8 of Law 447 specifies that dividend payments made by Cuban firms to persons or firms established in foreign countries are subject to a 40-percent tax if "the taxes or levies on income, profits or the like are lower than those in force in Cuba." The normal tax on dividend payments is 6 percent under subitem (1) of Article 8 of the same law.

Source: *Foreign Commerce Weekly,* February 22nd, 1960.

CURAÇAO

Surcharge to income, profits taxes

The Curaçao Island Council has amended the Island's tax ordinance giving the Island Government authority to levy a 15-percent surcharge on personal

income tax assessments as well as an additional 15-percent surcharge on profits taxes. The new surcharge on personal income became effective January 1, 1960, while the surcharge on profits will be calculated according to profits reflected in company book years ending after June 30, 1959.

Investment and holding companies established in the Netherlands Antilles are exempted under the amendment and will not be subject to the profits surcharge. These companies already enjoy a 90-percent reduction on the actual rate of profits tax, which amounts to 24 percent on net profits up to 100.000 Netherlands Antilles guilders and 30 percent on net profits in excess of that figure (1.885 Netherlands Antilles guilder = US$ 1). Further legislative action in the Island Council reportedly will soon exempt foreign trade companies legally established in the Netherlands Antilles, but operative elsewhere.

The additional revenue to be collected by the Island Government as a result of the surcharge is expected to add up to about 2.2 million guilders or 0.5 million guilders short of the total current budget deficit of 2.7 million guilders. To remedy this, Government plans call for an increase in the registration tax on motor vehicles.

Source: *Foreign Commerce Weekly*, February 15th, 1960.

HAITI

Haiti raises taxes and fees

The Haitian Government has enacted a series of new laws designed primarily to achieve a modest increase in governmental revenues — possibly one or two million dollars a year.

The more important actions of probably interest are summarized as follows:
Internal Tax Law: An internal tax of 4 percent on the ex-customs value of imported articles included in a list A and 6 percent on articles in a List B has been established. Exempted from the tax are merchandise that enter Haiti duty-free and cotton fabrics and manufactures thereof imported by protected industries.
Excise Tax on Luxury Foodstuffs: An excise tax has been enacted of 5 percent of the c.i.f. value on imported luxury foodstuffs of whatever sort, in cans or in jars, including delicacies such as cakes, candies, and jams. The law, dated November 6, 1959, has not yet been applied, as the Haitian Government has not yet determined completely, which foods will be considered luxury items.
Excise Tax on Spirits, Wines, Rum, and Tobacco: Imports of alcoholic beverages are now subject to the following taxes per liter or fraction thereof: anisette, peppermint, and other similar liqueurs, 40 U.S. cents; whisky, gin, and similar beverages, $2; wines and various beverages, 40 cents; and beer, 5 cents. Imported cigarettes are now subject to a tax of 6 cents per package of 20, or if sold in packages of less than 20, 3/10 cent per cigarette.
Vehicles Tax: New or newly imported vehicles require a special license during the first year of registration at fees based on sales price. Each year thereafter, vehicles are subject to special fees.
Gasoline Excise Tax: An excise tax of 2 cents per gallon (of 3.7853 liters) of gasoline has been enacted, payable under separate account at the time duties are collected, on all gasoline imported.
Customs Tax: The customs tax on goods in bond has been raised to 1 percent ad valorem per month for goods declared after December 1, 1959.
Businessmen's Fees: License fees enacted of foreign businessmen and professional men, based on and in addition to the various fees required for work permits (Patente), have been raised from a surtax of 25 to 50 percent.

Source: *Foreign Commerce Weekly*, February 22nd, 1960.

INDONESIA

Corporation Depreciation Tax Modified

Indonesia, because of the present financial condition of the country, has abolished article 9 of the Corporation Depreciation Tax of 1953 which allowed depreciation of capital investments within a period of 3 years. Such depreciation now must be amortized over the normal life of the capital equipment.

The modifying ordinance is effective for all bookkeeping years ending after June 30, 1959.

Source: *Foreign Commerce Weekly*, January 18th, 1960.

MEXICO

Income tax

Certain changes in the Mexican Income Tax Law are provided by a decree of December 28, 1959, effective January 1, 1960.

Profits resulting from civil contracts not expressly included in any other schedule, nor especially taxed, shall be taxed under paragraph XVIII of Article 125 (that is, shall be subject to tax under Schedule VI).

Article 44 is amended to provide that the credit institutions and auxiliary organizations, branches or agencies of foreign institutions authorized to operate in Mexico, national institutions and auxiliary organizations, and insurance and bonding companies referred to in article 52, which effect operations in which interests charged the debtor greater than 15 percent, shall pay the tax in accordance with paragraphs I and II of article 142 (see below) without the privilege of any deductions. By interests are meant the discounts and charges made to the debtor for commissions, irrespective of source.

Article 106 has been amended by changing the table of tax rates for Schedule IV (Income from employment); so is article 141, concerning tax rates under Schedule VI (Income from invested capital). Dividends will be subject to a flat rate of 15 percent, payable by corporations on annual profits available for dividends.

Article 142 has been revised, concerning the rate of tax on income from interests.

Source: *Foreign Commerce Weekly*, April 4th, 1960.

PERU

Income taxes on foreign mining firms

The Government of Peru has decreed that branches, agencies, and affiliates of foreign mining companies operating in Peru shall pay income taxes in the same currency in which their receipts originate. Similarly, tax payments made by these mining companies at the time they export their minerals from Peru also shall be made in the currency in which the export sale is realized, since such payments are not recognized as a export tax by the Peruvian Mining Code but as an advance payment on income taxes.

The new measure was contained in Supreme Decree No. 2, of January 22, 1960.

Source: *Foreign Commerce Weekly*, February 15th, 1960.

THAILAND

Tax changes

Personal and corporate income taxes and business taxes in Thailand have been revised as of January 1, 1960.

As regards personal income tax the old minimum and maximum rates of 10 and 50 percent have been maintained; however, a more detailed separation of income brackets has now been introduced.

Corporate income tax rates have been raised from a minimum of 10 and a maximum of 20 to rates between 15 and 25 percent.

In addition to the regular corporate income tax, remittances abroad by foreign companies (excluding dividends) operating in Thailand are subject to a remitttance (withholding) tax of 15%. This tax went into effect on November 15th 1959. Dividends remain subject to the existing dividend tax.

Business taxes have been increased for most types of trade from 1 to 1 ½%.

Source: *Foreign Commerce Weekly*, January 25th, 1960.

UNITED KINGDOM

Budget speech

The Minister of Finance, presenting the Finance Bill 1960 to the Parliament, announced in his Budget Speech on April 4th many changes in various tax rates, and some new duties. The most important of tax rate changes is the raise of the Profits Tax, which now will amount to 12 ½%. The Tobacco duty has been increased with 3 sh. 4 d. per lb. The entertainment duty will be repealed (this repeal has been enacted meanwhile), and customs duties on wines will be raised. Reliefs for housekeepers, dependent relatives etc. will also be raised. A novelty is the taxation of the so-called golden handshake (payments on retirement or removal from office or employment): excessive amounts will be taxable. Various new provisions as to penalties and recovery of tax in connection with incorrect returns will be enacted, and also provisions against fraudulent practices by means of share transactions. As a rule the Commissioner will have the right to be shown that the transaction was made for bona fide reasons.

Source: *Finance Bill, H.M. Stationery Office*, 12 April 1960.

British shipbuilder's plea to exempt from taxation profit invested in ships

Replacement of old and uneconomic ships with new tonnage has become a serious problem to shipowners all over the world because of the high cost of new ships and shortage of funds with shipping companies. Because of the colossal nature of the problem, even the British shipping industry which is reputed to command considerable resources built up over half a century and more of trading is in the position of requiring state aid in solving this problem. The 40 per cent investment rebate has no doubt considerably helped in this direction but more help is being sought. Recently at the launch of an 18,000-tanker at the yards of the Blythswood Shipbuilding Co., Glasgow, Mr. Sydney Brown, a Director and Secretary of the Company, made a forceful plea to Government to come to the aid of shipping companies in the matter of replacement of old ships. He suggested that Government take the opportunity, to grant some aid which is necessary to eliminate so much out-of-date and outworn tonnage either in the form of a scheme of "scrap and build" or even to the extent of exempting from taxation at least part of the profits used for reinvestment in ships.

It is hardly necessary to add that the Indian shipping industry stands in much greater need of such assistance from the Government of India.

Source: *Indian Shipping*, November 1959.

URUGUAY

Tax reform

A Bill containing measures to finance Budget expenditure is expected to be submitted to Congress soon. According to press reports this Bill proposes the introduction of an annual tax on the income from Uruguayan sources of every physical or legal person, no matter what their nationality, domicile or residence. The tax would be applied in two forms: separate rates would be applied to income from each of six categories (real estate, securities, industry and commerce, agriculture, personal employment, and professional activities), and a global complementary tax would be levied on income from all sources.

Income from real estate would be taxed at the rate of 8 per cent, except in the case of income derived from property occupied by the owner which would be taxed as income from personal activities. All income from securities, other than dividends from limited companies, interest on savings deposits and dividends from consumers' co-operatives, would be taxed at 12 per cent.

In the industrial and commercial category, tax at 10 per cent would be levied on all income received from industrial and commercial activities carried on as a business by individual or corporate persons. A system of allowances for re-invested profits and for the expansion of plants would be applied and there would be special concessions for companies with factories in the interior of the country. An additional progressive tax starting at 8 per cent would be levied on annual incomes of over 250,000 pesos of firms engaging in financial activities.

Agricultural income as such would not be taxed, but there would be a system of taxes on all agricultural enterprises whose monetary productivity per hectare falls below a certain level; the tax would range from 1 per cent for enterprises whose productivity is between 90 and 100 per cent of an established mean to 7 per cent for those whose productivity is less than 50 per cent.

Personal incomes, including pensions and social benefits, in excess of 1,300 pesos monthly and received in cash or in kind, would be taxed at 4 per cent. Professional incomes of more than 1,300 pesos monthly would be taxed at 5 per cent.

The global complementary tax would be levied on individual persons whose total taxable income from all sources exceeded 1,000 pesos monthly (different exemption levels are quoted for married men and families). The tax would be 4 per cent on taxable incomes of between 1,000 and 5,000 pesos monthly, and would increase progressively to 30 per cent on any portion of income in excess of 1m. pesos monthly.

Other proposals in the Bill include a 20 per cent tax on gambling winnings of more than 10,000 pesos annually, a 4 per cent tax on sales of many goods and services, a 25 per cent sales tax on motor vehicles, a 10 per cent additional tax on income from luxury trades, and an inheritance tax ranging from 0.25 per cent on undivided estates of over 10,000 pesos to 15 per cent on undivided estates of more than 2m. pesos.

Source: *Bank of London & South America*, March 12th, 1960

TAX AGREEMENTS

UNITED KINGDOM - UNION OF SOUTH AFRICA

Agreements between the Union of South Africa and Great Britain and Northern Ireland for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income imposed in the Union of South Africa and in Basutoland, Bechuanaland Protectorate and Swaziland respectively have been published under Proclamations of the Governor-General Nos. 260, 261 and 262 in the *Extraordinary Government Gazette* No. 6314 of 13th November, 1959. The three agreements are practically identical, except that

the agreement in respect of Swaziland contains an additional article repealing the agreement for eliminating the double taxation of farmers carrying on business both in the Union and Swaziland entered into on 2nd March, 1932.

The agreements are on the lines of the similar agreements with the Federation of Rhodesia and Nyasaland (1956) and the Territory of South West Africa (1959).

The taxes affected are the normal tax and super tax (article 1). Article 2 contains the usual definitions. Articles 3 and 4 deal with enterprises and permanent establishments. Article 5 relates to profits from operating transport services. Article 6 deals with royalties, rent or similar considerations. Article 7 provides that income of whatever nature derived from real property within the territory of one of the Governments by a resident of the territory of the other Government is exempt from tax in the last-mentioned territory, and further that any royalty or other amount paid in respect of the operation of a mine or quarry or of any other extraction of natural resources within the territory of one of the Governments to a resident of the other territory is exempt from tax in the lastmentioned territory. Article 8 deals with remunerations and pensions paid by the Government of one of the territories. Article 9 relates to students or business apprentices from the territories of one of the Governments. Article 10 deals with profits derived from sources within the territory of the one Government by persons ordinarily resident in the territory of the other Government. Article 11 contains a provision, common to this type of agreements, concerning the exchange of information by the taxation authorities of the two Governments. In terms of article 12 any taxpayer who shows that the action of the taxation authorities of the two Governments has resulted in double taxation with respect to the taxes in question may lodge a claim with the taxation authority of the territory in which he resides. Should the claim be upheld, the taxation authority of that territory may come to an agreement with the taxation authority of the other territory with a view to the avoidance of the double taxation.

The agreements will only come into force on the date to be published on which the last of all such things had been done in both territories as are necessary to give the agreements the force of law in each territory and will then have effect in respect of assessments for the year beginning on 1st July, 1956, and subsequent years. The agreements will continue in effect indefinitely, but either of the contracting parties may, on or before 30th June in any calendar year after the year 1958, give notice of termination to the other contracting Government when the agreements will cease to be effective in respect of any year of assessment beginning on 1st July in the calendar year next following that in which such notice is given.

The agreements are dated 18th June, 1959.

Source: *The Taxpayer*, December 1959

III

CANADA - RESIDENCY AND ORDINARY RESIDENCY

TAX APPEAL BOARD

Extraordinarily Ordinary

The plaguy pair of expressions "resident" and "ordinarily resident", turned up again in the case of *Schujahn v. M.N.R.* (59 DTC 565), which once more illustrated how difficult of definition and determination are the problems they raise. They have been ruled by the English courts, on a number of occasions, to be questions of degree, and therefore of fact and not of law; and, in the words much beloved of some judges, each case must be decided on its own facts.

The facts in this one were very simple. The appellant was a senior executive of a U.S. company, who in 1954 came to Canada as vice-president of the Canadian subsidiary. In 1957 he was moved back to the U.S., leaving Canada in August. His wife and son remained in Canada until their house was sold in the following February; his car was left for his wife's use, and he maintained an account in a Canadian bank. The Minister assessed him as ordinarily resident in Canada for 1957, and therefore not eligible for the apportionment provisions of section 29. He contended that he was not resident in Canada after August and that he should be taxed only on the income pertaining to the period during which he was resident in 1957.

The Board dismissed the appeal, Mr. Fordham pointing out that it was not personal presence alone that made a man a resident of a country. Here the owning of a house, a car and a bank account in Canada were important factors, and there was "ample evidence to fix the appellant with residence in Canada during the whole of 1957".

The subtle distinction between "resident" and "ordinarily resident" is one that has always bothered us, and we are not alone in this, for some eminent English judges have stated that they were unable to make any distinction between them. However, the courts generally appear to have decided that "ordinarily resident" is a narrower term than plain "resident"; so that a man could be a resident without being ordinarily resident. The word "ordinarily" suggests, in its usual meaning, that the residence is part of the normal way of life of the person, and that ordinary residence is opposed to casual or occasional residence. One English judge defined it as being determined "according to the way in which a man's life is usually ordered".

The residence provisions of the Act were presumably designed primarily for people who come and go, and are in and out of Canada perhaps several times during a year. If such a person made periodical "sojourns" in Canada, and had ties here, he could well be considered as "ordinarily resident", since being in Canada would be part of "the way in which his life was usually ordered". But such a case as Mr. Schujahn's seems to be one of those where a good argument could be put up on both sides. On the one hand it could be said that as far as he himself was concerned, life in Canada ended abruptly and completely in August, 1957 and that thereafter residence in Canada formed no part of his usual life. On the other hand it could also be argued that the presence of his wife and son in Canada meant that a part of his wife was still here; but a counter-argument to that would be that their presence was not a normal part of their life after August, but was forced upon the family by the necessity for selling the house.

An argument on the side of the angels (that is, the tax authorities) would be that although income taxation looks only upon the twelve-month period, a man's life must be regarded not only during that period but over the years, where such matters as "ordinarily resident" or (in another context) "whole course of conduct" are concerned. Mr. Schujahn was undoubtedly, up to August 1957, both resident and ordinarily resident in Canada, and had so been for several years. The pattern of his life up to that time, therefore, included ordinary residence in Canada, and this was maintained to the end of the year by the presence of his family. The artificiality of this argument, however, becomes obvious when one considers the first two months of 1958. The family, with its house and its car and its bank account, were still in Canada, but it does not seem to have been argued by the Minister that this made Mr. Schujahn ordinarily resident for 1958. In other words, his "ordinary residence" is terminated, for tax purposes, at the purely arbitrary date of December 31, 1957, though the circumstances remained unchanged until February, 1958. All of which does not lessen our afore-mentioned bewilderment.

Source: *Canadian Tax Journal,* January-February, 1960.

UNION OF SOUTH AFRICA

Income tax—Super tax—Exemption in favour of taxpayer not resident nor carrying on business in the union in respect of dividends received—Whether benefiting from letting undivided estate carrying on business

Section 30(1)(a) of the Income Tax Act, No. 31 of 1941, as amended.

I.T.C. No. 883, per Kuper, J., Pres., judgment given by the Transvaal Income Tax Special Court on 9th April, 1959.

The taxpayer, a retired business man, domiciled and resident outside the Union of South Africa, upon the death of his father, became together with his brother and mother, intestate heir in respect of the father's estate. One of the assets of the South African estate was a stand in Johannesburg, with a building which was transferred in undivided shares to the three heirs. A general power of attorney was given by the taxpayer to his brother to conduct business transactions on his behalf, in regard both to the building and to other assets which devolved upon him. The taxpayer's brother, acting on behalf of the joint owners of the building, from time to time let portions of it to new tenants. He also effected such repairs and renovations as became necessary. In respect of none of these transactions did he seek the prior approval of the taxpayer. The taxpayer's brother also invested a major portion of the taxpayer's moneys either in shares in, or loans to, South African companies. Dividends were derived by the taxpayer from the shares in question, the amount of which was included by the Commissioner for Inland Revenue in the assessments of super tax raised by him upon the taxpayer in respect of a number of tax years, the Commissioner holding that the taxpayer's participation, through his brother, in the several transactions of letting and hiring and in the repairs and supervision of the building referred to amounted to the carrying on of business in the Union. On that basis the Commissioner held the taxpayer not to be entitled to the benefit of the exemption conferred by section 30(1)(*a*) of the Income Tax Act, No. 31 of 1941 as amended, which provided for exemption from super tax in respect of dividends distributed by any company received by an individual not ordinarily resident nor carrying on business in the Union. The taxpayer objected against the Commissioner's assessments of super tax on the ground that he was entitled to the benefit of the exemption in question. The objection having failed, the taxpayer lodged an appeal which was upheld by the Special Court.

After setting out the above facts, the learned President went on to say:

'The question in issue in this case is whether in respect of the dividends received by him the appellant is liable to non-resident shareholders tax in terms of section 42 of the Act or whether he is liable to pay super tax on such dividends in the ordinary way. The determination of this question depends upon whether the appellant is carrying on business in the Union, for if he is not then the exemption stated in section 30(1)(*a*) of the Act will apply, it being common cause that the appellant is not ordinarily resident in the Union.

In coming to the conclusion that the appellant carried on business in the Union throughout the relevant period the Commissioner relied solely upon the facts relating to the letting and supervision of the Johannesburg property and, at the hearing of the appeal, the Commissioner again adopted the same attitude expressly disclaiming any reliance upon any other act performed by

the appellant's brother on his behalf in regard to the investment of any money of the appellant.

Consequently it is relevant only to consider the position of the appellant in relation to that property. For many years prior to the death of the father and up to 1st April, 1951, the building was occupied by two tenants. In the year 1951 one of those tenants vacated the premises and another firm took its place and this firm remained until July, 1955, when the premises were let to a further tenant who remained in the building until the 1958 tax year when another change in the tenancy took place. The other original tenant vacated the premises in April, 1952, when it was replaced by another firm and that firm is still a tenant. During the 1954 tax year certain rooms in the upstairs portion of the premises were let to a separate tenant for a period of six months, otherwise, apparently, the rooms were let in conjunction with and as part of the two shops on the ground floor. These several letting transactions were conducted and concluded by the appellant's brother on behalf of the three heirs and the brother stated in evidence that he never sought the prior approval of the appellant to any of the transactions he concluded. During the years it became necessary on several occasions to effect repairs and renovations to the building, some of a minor nature and occasionally one of some consequence, and again the appellant's brother was solely responsible for the necessary instructions.

The issue between the parties was confined to the question whether, on the facts I have outlined, the appellant was carrying on business in the Union for the purposes of section 30(1)(*a*). The word "trade" is defined in section 7 of the Act as including "every profession, trade, business, employment, calling, occupation or venture including the letting of any property and . . .". There is no definition in the Act of the word "business" or the phrase "carrying on business', and these words must therefore be given their ordinary signification in the commercial sense. These words appeared in the 1917 Income Tax Act and in the case of *S. B. Joel and J. B. Joel* v. *Commissioner for Inland Revenue,* 1922 W.L.D. at 35, Ward J. said that the principle to be deduced from certain cases to which he referred was "that the words 'carrying on business' must be defined in accordance with the intention of the Act gathered from its scope and provisions. That unless there is something in the Act to the contrary the usual commercial meaning must be given to the words."

It is also clear, in my view, that the phrase "carrying on business" as used in the section was a phrase of limitation. It was not intended that the exemption should fall away if the taxpayer derived any income from any source within the Union. The exemption was only to fall away if that income came from the carrying on of business by him.

There have been, of course, many cases in which the courts have had to consider the meaning to be given to the phrase, and such a case was *Smith* v. *Anderson* (1880) 15 Ch.D. 247 which was relied on both by the appellant and the Commissioner. [The latter] referred to a passage from the judgment of Sir George Jessel M.R. at 258 in which he apparently accepted the definition of business as being anything which occupies the time and attention and labour of a man for the purpose of profit. [The former] relied on the following extract from the said judgment (at 260)—

> "There are many things which in common colloquial English would not be called a business, even when carried on by a single person, which would be so called when carried on by a number of persons. That is a distinction not to be forgotten, even if we were trying the question by the ordinary use of the English language. For instance, a man who is the owner of offices, that is, of a house divided into several floors and used for commercial purposes, would not be said to carry on a business because he let the offices as such; but suppose a company was formed for the purpose of buying a building, or leasing a house, to be divided into offices, and to be

let out, should not we say, if that was the object of the company, that the company was carrying on business for the purpose of letting offices, or was an office letting company, trying it by the use of ordinary colloquial language. The same observation may be made as regards a single individual buying or selling land, with this addition, that he may make it a business, and then it is a question of continuity. A man occasionally buys and sells land, as many landowners do, and nobody would say he was a landjobber or dealer in land, but if a man made it his particular business to buy and sell land to obtain profit, he would be designated as a land jobber or dealer in land."

There can be no doubt but that in the view of the Master of the Rolls a man who lets portions of one building in the circumstances of the present case would not be carrying on the business of letting property in the ordinary commercial signification of that term.

The decisions in the Income Tax Special Court are not consistent. Thus in *Income Tax Case No.* 258, 7 S.A.T.C. 67, the President of the Court came to the conclusion that the appellant was carrying on business in the Union (she was resident outside the Union) because she derived income in the Union from the letting of property and the letting of property was included in the definition of trade in the Income Tax Act. This reasoning would appear to be clearly wrong and was based upon an extension of the ordinary meaning of the words "carrying on business" to an extent not justified by the provisions of the Act. In *Income Tax Case No.* 615, 14 S.A.T.C. at 404, the then President doubted the correctness of the decision and he said:

"The letting and hiring of property has none of the usual attributes of 'trade' in the ordinary significance of the term, in which the element of recurrence is present. A lease, on the other hand, is brought into existence by a single contract and may endure for a very long period of years. Nor can the letting of property be appropriately described as a 'business', and it is clear that the Legislature did not regard it as such, for if so, having already included 'business' in the definition there would have been no necessity for the additional inclusion of 'letting of property'."

I should also refer to *Income Tax Case No.* 136, 4 S.A.T.C. 203, and *Income Tax Case No.* 137, 4 S.A.T.C. 209. These cases were apparently decided on the same day by the same Court, and although apparently inconsistent with each other they can be reconciled on the basis that the Court decided that the letting of property was the carrying on of a business if the appellant regarded the property as a business asset to be exploited for the purpose of gain (*Income Tax Case No.* 137), and that it was not the carrying on of a business if the appellant regarded the building in which he had been carrying on business as part and parcel of the liquidation of his business and that until he could obtain a satisfactory price for the building he let it on a temporary basis (*Income Tax Case No.* 136). In both cases the learned President relied on the decision in *Platt* v. *Commissioner for Inland Revenue,* 1922 A.D. 42, but the decision in that case, too, depended upon its own particular facts.

Finally I would refer to the case of *Morrison* v. *Commissioner for Inland Revenue,* 1950 (2) S.A. 499 (A.D.). In that case the facts were that the Income Tax Special Court had found that certain operations of the appellant constituted the carrying on of a business, and in dealing with the question whether such a finding was one of fact or of law Schreiner J.A. said at 455:

"A question that depends for its answer on matters of degree, on what weight is to be given to this and that variable factor, like factors of duration, repetition, scale of operations, seems to me to be ordinarily answerable only for the particular case and to be therefore a question of fact (cf. *Cohen* v. *Commissioner for Inland Revenue,* 1946 A.D. 174 at 179.)"

In the instant case the appellant inherited his one-third share of the premises. Normally, he would not sell his share unless his co-heirs also agreed to

sell their shares at the same time or alternatively to buy his share. The appellant in any event 'did not sell, and, as one of the owners participated, through his brother, in the several transactions of letting and hiring and in the repairs and supervision of the property. The appellant was not, in the view of the Court, carrying on the business of letting property, he was merely receiving the benefit of his inheritance from his father.

The Court has therefore come to the conclusion that the appeal must be allowed and the assesments set aside.'

NOTE

The question whether the taxpayer was carrying on business was, according to the learned President, a question which had to be decided on the particular facts of the case, and as these were that the taxpayer was merely receiving the benefit of his inheritance from his father, he did not appear to the learned President to carry on business.

However, the property, situated in the Union, from which the taxpayer derived rent, did no longer belong to the estate, but had been transferred in undivided shares to the three heirs of the father of which the taxpayer was one. But regard being had to the other parts of the judgement, particularly to his attempt to reconcile the various apparently contradictory precedents, there is little doubt that, apart from the fact that the property from which rent was derived, could be traced back to the estate of the father of the taxpayer, the learned President would have held that the taxpayer, resident and domiciled outside the Union, by receiving his share of the rent, did not carry on business. Indeed it would seem somewhat strained to regard a person outside the Union who has property devolved upon him in the Union, but instead of selling it, lets it, as carrying on business in the Union merely, for that reason.

E.Sp.

Source: *The Taxpayer*, February 1960

IV

REVIEWS - COMPTES RENDUS

FRANCE

RENE CHAUVEAU: *La pratique des successions*. 2e édition. Collection «Ce qu'il vous faut savoir». Editions J. Delmas et Cie. 13, rue de l'Odéon, Paris (VIe), 1960. Vendu avec «*Bon de mises à jour gratuites*» 19 NF 80 ou franco 21 NF 80.

La seconde édition de *La pratique des successions,* tient compte des modifications intervenues tant au point de vue du droit civil que du droit fiscal, en particulier de l'importante Réforme Fiscale du 28 Décembre 1959. Sans emphase, d'un style direct et clair cet ouvrage émaillé de nombreux tableaux synoptiques et d'exemples permettra aux lecteurs de se rémémorer d'apprendre, de comprendre et de retenir tous les points essentiels du droit successoral en vue d'une application pratique. Un aide-mémoire pour les uns, un guide pour les autres, un manuel d'enseignement pour certains, cet ouvrage est le fruit de l'expérience d'un praticien méthodique qui sait se mettre à la place de ses lecteurs. En annexe nous trouvons encarté un planning des actes et opérations relatifs à l'ouverture et au réglement d'une seccession et les Tarifs des droits et frais de toute nature.

FRANCIS LEMEUNIER: *Principes et pratiques du Droit Commercial*. Collection «Ce qu'il vous faut savoir». Editions J. Delmas et Cie., 13, rue de l'Odéon, Paris (VIe), 1960, 216 pp.
Vendu avec «*Bon de mises à jour gratuites*» 19 NF 80 ou franco 21 NF 80

L'auteur, M. Francis LEMEUNIER, qui est le Directeur de «*l'Encyclopédie pratique pour la vie des affaires*» se devait de donner une synthèse du droit commercial, avec la méthode et dans la présentation inédite qui ont fait le succès des quelque trente titres déjà parus à ce jour. L'ouvrage est spécialement destiné aux élèves de l'enseignement technique, des Ecoles de commerce, des cours du soir des employés de commerce, mais également aux étudiants de capacité en droit. Il sera un excellent memento pour les étudiants en licence en droit, de même que pour tous ceux, étudiants ou praticiens, qui recherchent un ouvrage simple et clair pour faire le point de notre droit commercial qui, comme toutes les disciplines du droit, a été l'objet de nombreux bouleversements ces dernières années. L'ouvrage contient en marge les principales sources de jurisprudence et, au bas de chaque page, l'idée maîtresse que doit retenir le lecteur. Comme tous les ouvrages de la Collection, celui-ci contient un bon de mises à jour gratuites jusqu'à réédition.

Pourquoi et comment constituer une Société Civile (2° édition)
Pourquoi et comment constituer une Société en nom collectif (2° édition)
Pourquoi et comment constituer une S.A.R.L. (4° édition)
Pourquoi et comment constituer une Société Anonyme (4° édition)
par Francis Lemeunier. Editions J. Delmas & Cie., 13 Rue de l'Odéon, Paris 16e.

Les Editions DELMAS viennent de publier la «mise à jours» de ces quatre ouvrages pour tenir compte de la Réforme fiscale. Rappelons que les ouvrages de Francis LEMEUNIER constituent de véritabele «Digests» en matière de «Societés»; leur méthode et leur clarté en font des classiques du genre. Ils

s'imposent à tous: Directeurs, administrateurs, gérants, comptables, experts-comptables, commissaires aux comptes, avocats, notaires.

Code de l'Enregistrement. Envoi no. 5, avril 1960. 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 9 pages dated March 1960

Code Annoté des Impôts Directs. Impôts et Sociétés, Seteca, 14, Rue Clapeyron, Paris (8e).

Des comptes rendus de ces tomes excellents sur le système fiscal français ont paru dans le *Bulletin* Tome XI, p. 126 et 332. La mise à jour de février 1960 contient des pages nouvelles pour les tomes IV, V, VI, et VII. Compte tenu de ces 163 feuillets de refonte les tomes indiqués du Code Annoté sont à jour au Octobre 1959.

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, 1960, de ce livre sur le système fiscal belge un compte rendu duquel a été publié dans le «*Bulletin*» *Vol. XII,* p. 32 ont paru.

Jurisprudence Fiscal et Sociale. Publié par Documentation juridique et fiscale A. van der Leest, 343, Avenue des Pagodes, Bruxelles II.

Les *Supplements 1960* nos. 3-4 de cette documentation sur la jurisprudence fiscale belge ont paru.

LES PUBLICATIONS FRANCIS LEFEBRE - 15, Rue Viète, Paris (17e)

1°) *Documentation pratique des impôts directs:* L'envoi de feuillets N° 4 de Décembre 1959 contient notamment: la refonte totale de notre Série concernant les *traitements, salaires, pensions et rentes viagères,* le texte de la *convention* passeé entre la *France et la Finlande.* Elle contient également la mise à jour des séries relatives aux Bénéfices industriels et commerciaux, au Recouvrement et aux Rémunérations des Dirigeants de Sociétés.

Quant à la *Réforme fiscale* applicable depuis le 1er Janvier 1960, elle a été étudiée dans les Feuillets rapides N° 53 à 57 de 1959. Elle fera l'objet de l'*envoi N° 1 de 1960.*

2°) *Documentation pratique des taxes sur le chiffre d'affaires:* L'envoi N° 4 de Décembre 1959 contient notamment la mise à jour des Séries traitant des *obligations* des redevables et du régime des Taxes sur le chiffre d'affaires en *Algérie.*

3°) *Documentation pratique des contributions indirectes:* L'envoi N° 4 de 1959 contient particulièrement la refonte des séries traitant des *taxes sur les transports et des impôts à caractère somptuaire.*

4°) *Documentation pratique de l'enregistrement et du timbre:* L'envoi N° 4 de 1959 met à jour les tableaux des tarifs applicables à compter du 1er Janvier 1960. L'envoi N° 1 de 1960 comprend la refonte totale du *Tarif commencé* des droits d'enregistrement et la *mise à jour générale* de l'ouvrage au 1er Mars 1960.

5°) *Documentation pratique de securité sociale et de législation du travail:* L'envoi N° 4 de 1959 comprend, en particulier, la refonte des séries traitant des *Contrats de Travail* et de l'*Assurance-Décès.*

L'envoi N° 1 de 1960 contient notamment la refonte des feuillets traitant du calcul des *cotisations* de Sécurité Sociale et de la Série concernant le *Contentieux.* Il met à jour les autres Séries au 1er Janvier 1960.

L'Association Nationale des Sociétés par Actions (A.N.S.A.), 15, Place Malesherbes, Paris (XVIIe) a publié les brochures suivantes:

No. 126 *Les aménagements fiscaux de décembre 1959.* Textes et circulaires, 132 pp. 1960,

La fin de l'année 1959 a été marquée par la promulgation de trois lois fiscales: la loi no. 59-1472 du 28 décembre 1959, la loi de finances pour 1960, du 26 décembre 1959 et la loi de finances rectificative pour 1959, du 30 décembre 1959. Dans cette brochure les textes de ces lois sont groupés et ils sont accompagnés des commentaires que la Direction générale des Impôts en a donnés. Les questions qui intéressent plus particulièrement les sociétés feront ultérieurement l'objet de commentaires plus détaillés.

No. 127 *Le nouveau régime d'imposition des revenus de valeurs mobilières.* Instruction administrative, 47 pp. 1960,

Dans la présente brochure est reproduite le texte de l'Instruction no. 8072 que la Direction générale des Impôts a consacrée au nouveau régime fiscal des revenus de capitaux mobiliers et qui a été publiée à la fois au Bulletin Officiel des Contributions Directes et du Cadastre (B.O.C.D. 1960-II-1068) et au Bulletin Officiel de l'Enregistrement et du Domaine (B.A. 1960-I-8072).

Algeria

LOUIS BROËT: *Guide pratique des Impôts en Algérie et au Sahara. Mise à jour* no. 26, novembre 1959. Editions Le Messager, 2, Boulevard Carnot, Alger.

A review of this looseleaf work on taxation in Algeria and the Sahara was published in *"Bulletin"* Vol. XI, p. 220. *Supplement* no. 26, novembre 1959, containing a number of new pages, has recently been published.

GERMANY

Dr. HEINZ COMMER: *EWG-Wörterbuch.* Wörterbuch des Gemeinsamen Marktes. Französisch-deutsch, Deutsch-französisch. Dictionnaire CEE. Dictionnaire pour le Marché Commun. Français-allemand, allemand-français. Erich Schmidt Verlag, Herforder Strasse 10, Bielefeld, 1960, 134 S. Preis DM 8.60.

Schneller als erwartet ist die Beschäftigung mit EWG-Fragen zur Praxis von Unternehmen, Verbänden und Behörden geworden. Dies hat dazu geführt, dass sich heute viele Unternehmen, fast jede Verbandsorganisation und zahlreiche Behörden mit der Übersetzung von EWG-Ausdrücken befassen. Die Herausgabe dieses speziellen Wörterbuches für den EWG-Bereich durch die Bundesstelle für Aussenhandelsinformation, gemeinsam mit dem Centre National du Commerce Extérieur Paris und dem Office Belge du Commerce Extérieur Brüssel, ist daher sehr zu begrüssen. Das von Dr. Heinz Commer bearbeitete Wörterbuch bringt die Spezialausdrücke des EWG-Vertrages und der Nebenverträge und ermöglicht eine einwandfreie Übersetzung aus und in die EWG-Terminologie. Das handliche Wörterbuch enthält auch zahlreiche Spezialausdrücke der wirtschaftlichen und wirtschaftspolitischen Korrespondenz und ist daher als gutes Übersetzungshilfsmittel für Schriftwechsel und Besprechungen jedem Wirtschaftler, Verbandsgeschäftsführer und nicht zuletzt jedem Dolmetscher und Übersetzer zu empfehlen. Es ist erschienen als Band 4 in der Reihe Aussenhandel und Weltwirtschaft.

Die *Verlagsbuchhandlung des Instituts der Wirtschaftsprüfer,* Cecilienale 36, Düsseldorf, hat die folgenden Werke veröffentlicht:

1. *Rechnungslegung und Prüfung der Versicherungsunternehmen.* Bearbeitet von Dr. Günter Bilke u.a. 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. Wir erwähnen insbesondere den Aufsatz von Dr. G. Bilke: Die Besteuerung der Gewinne.

2. *Unternehmen und Unternehmensberater im Gemeinsamen Europäischen Markt.* 1960, 507 S.

Dieses Buch enthält den Bericht über den Dritten Kongress der Union Européenne des Experts Comptables Economiques et Financiers in Nizza, 1958. Von den vielen wichtigen Aufsätzen erwähnen wir: Greiffenhagen, Vom Einfluss der Steuern auf die Unternehmensfinanzierung; Nataf, Die europäische Angleichung der Steuerlasten, Ernst Fritsch, der Steuerkredit; Brunois, Die zivilrechtliche strafrechtliche und steuerrechtliche Verantwortung des Expert Comptable in Frankreich.

3. *Unternehmer und Wirtschaftsprüfer mit dem Blick in die Zukunft.* Bericht über die Fachtagung des Instituts der Wirtschaftsprüfer am 4. und 5. Juni 1959 in Stuttgart. 1960, 191 S.

Die Stuttgarter Fachtagung 1959 des Instituts der Wirtschaftsprüfer in Deutschland stand unter dem Leitgedanken „Unternehmer und Wirtschaftsprüfer mit dem Blick in die Zukunft". Das Buch enthält die folgenden Aufsätze: Aktienrechtsreform und Unternehmensfinanzierung, Die Aufgaben des Wirtschaftsprüfers nach dem Entwurf eines Konzernrechts, Der Einfluss moderner Abrechnungstechnik auf die Prüfungsmethoden, Der Unternehmer im Gemeinsamen Markt, Probleme der betrieblichen Altersversorgung, Grundzüge der Unternehmenssicherung unter Berücksichtigung betriebswirtschaftlicher, gesellschafts-, familien-, erb- und steuerrechtlicher Fragen.

KURT SCHMIDT: *Die Steuerprogression.* Veröffentlichungen der List Gesellschaft E.V. Band 20. Reihe B: Studien zur Ökonomik der Gegenwart, herausgegeben von ERWIN von BECKERATH und EDGAR SALIN. J. C. B. Mohr (Paul Siebeck), Wilhelmstrasse 18, Tübingen, 1960, 172 S.

Im Laufe der finanztheoretischen und finanzpolitischen Diskussion um die Progressivbesteuerung ist eine fast unübersehbare Zahl von Vorschlägen über ihr „richtiges" Mass gemacht worden; die Frage nach der Rechtfertigung der Steuerprogression an sich hat man dagegen in neuerer Zeit nur selten aufgeworfen. Angesichts dieses Standes der Diskussion hat der Verfasser seine Untersuchungen nach der prinzipiellen Seite hin fortgeführt. In der vorliegenden Abhandlung wird die Steuerprogression von ihren Rechtfertigungsversuchen her grundsätzlich überprüft. Um die Vielzahl der Argumente, die zugunsten der Progressivbesteuerung ins Feld geführt worden sind, in den Griff zu bekommen, werden sie — nach gemeinsamen Ausgangspunkten geordnet — zu „Theorien" zusammengefasst: die Äquivalenz- oder Tauschtheorie, die Opfertheorien und die Wohlfahrtstheorien, die Leistungsfähigkeitstheorie, die Sozialpolitische Theorie, die konjunkturpolitische Theorie, die fiskalische Theorie und die politischsoziologischen Theorien. Dabei zeigt sich, dass sowohl das Äquivalenzprinzip als auch die Theorie der sinkenden Nutzkurve des Einkommens und das Leistungsfähigkeitstheorem als Grundlage gedient haben, um die Progressivbesteuerung zu rechtfertigen. Heute stehen bei der Begründung der Steuerprogression sozialpolitische Argumente im Vordergrund und vielleicht werden in Zukunft die konjunkturpolitischen Überlegungen an Bedeutung gewinnen.

In dieser Reihenfolge werden die genannten Theorien und im Anschluss daran zwei Erklärungsversuche der Steuerprogression analysiert. Ferner

wird die Progressivbesteuerung auf einige ihrer (indirekten) Wirkungen hin untersucht und schliesslich die Problematik eines proportionalen Steuersystems erörtert.

Dr. jur. HANZ FLICK: *Steuerermässigung bei ausländischen Einkünften nach § 34 c EStG und § 19a KStG*. Herausgegeben von der Deutschen Vereinigung für Internationales Steuerrecht. Heider-Verlag, Hauptstrasse 208, Bergisch Gladbach, 1960, 207 S.

Die Ende des Jahres 1956 eingeführte und in der Zwischenzeit bereits mehrfach ergänzte Steuerermässigung bei ausländischen Einkünften nach § 34c EStG und § 19a KStG bedeutet einen Vortschritt auf dem Gebiete der internationalen Doppelbesteuerung. Diese gesetzlichen Bestimmungen haben das deutsche Aussensteuerrecht an die allgemeine Entwicklung des internationalen Steuerrechts herangeführt. Der Verfasser zeigt wie sich der Inhalt dieser Regelung praktisch anwenden und ausschöpfen lässt. Er bietet aber auch Anregungen für die Vervollkommnung der Massnahmen. Die Bedeutung der neuen Massnahmen für den Steuerpflichtigen besteht darin, dass jetzt in den meisten Fällen die internationale Doppelbesteuerung auch im Verhältnis zu Staaten, mit denen kein Doppelbesteuerungsabkommen besteht, wesentlich gemildert wird. Bei natürlichen Personen und Unternehmen mit Auslandsbeziehungen verringert sich die Gesamtsteuerbelastung des Steuerpflichtigen oft wesentlich. Der Verfasser hat für die Darstellung die Form des systematischen Kommentars gewählt. Einige mehr theoretische Grundlagen sind in Vorbemerkungen den Erläuterungen vorangestellt worden. Zahlreiche Beispiele verdeutlichen die Kommentierung und erleichtern die praktische Anwendung des Werkes. Prof. Dr. Armin Spitaler schreibt in seinem Vorwort: „Auf einem so schwierigem Gebiet wie dem vorliegenden werden auf lange Zeit hinaus verschiedenen Meinungen vertreten werden. Immer wird man aber die Darlegungen des Autors zu beachten haben; denn seine Arbeit ist wissenschaftlich gründlich, in allem wohlüberlegt und auch für die Praxis sehr aufschlussreich."

Der Bundeshaushalt. Heft 15, Band 9. Institut „Finanzen und Steuern", Markt 14, Bonn am Rhein, 1960, 84 S.

Die Schrift schildert den Vollzug des Bundeshaushalts 1959 und den Bundeshaushaltsplan 1960. In der hiermit verbundenen kritischen Würdigung zeichnet sich der von dem Bundesminister der Finanzen eingeschlagene Weg „am Rande des Defizits" klar ab. Die Verwirklichung dieses Grundsatzes im Bundeshaushalt bedeutet zugleich eine eindringliche Mahnung an alle haushaltsführenden Stellen der öffentlichen Hand in der Bundesrepublik.

Am Rande des Defizits. Heft 57, Band 2. Institut „Finanzen und Steuern", Markt 14, Bonn am Rhein, 1960, 111 S.

In Heft 57 Band 1 (besprochen in *Bulletin* XIII, S. 161) wurde in Aussicht gestellt Einzelfragen des öffentlichen Haushalts von besonderer Bedeutung in einem zweiten Band dieses Heftes zur Diskussion zu stellen. Diese Diskussionsbeiträge werden hier vorgelegt. Als Anhang ist eine Ausarbeitung von Regierungsrat Werner Charlet „Der ausserordentliche Haushalt des Bundes seit 1949 und seine Finanzierung" beigefügt.

Das Institut „*Finanzen und Steuern*", Markt 14, Bonn am Rhein, hat die folgenden „Grüne Briefe" veröffentlicht:

Nr. 24 *Das „Gesetz" des steigenden Staatsbedarfs und seine Auswirkung auf den Bundeshaushalt.*

Nr. 25 *Der „wahre Zeitwert"* von Dr. H.C.M. STURM, Mannheim.

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 12.—, Leinenordner DM 3.50.

Die Lieferungen 31 und 32 enthalten u.a. die Anpassung der Stichworte „Aussergewöhnliche Belastungen", „Ehegattenbesteuerung", „Erstattung von Lohnsteuer", „Familienstand", „Freibetrag", „Lohnsteuer-Jahresausgleich", „Sonstige, insbesondere, einmalige Bezüge" und „Spar-Prämiengesetz" an die neue Rechtslage. Im Anhang sind enthalten das Spar-Prämiengesetz sowie die Verordnung über den Lohnsteuer-Jahresausgleich. Die Fortsetzungslieferungen erscheinen jeweils nach Gesetzesänderungen, neuen Richtlinien oder Durchführungsverordnungen. Bei aller Gründlichkeit sind die Stichworte so klar und knapp gehalten, dass der ABC-Führer Lohnsteuer stets das handliche und übersichtliche Nachschlagewerk bleibt.

HANS-GERD RAU: *Bilanzierung von Pensionsverpflichtungen — unter Berücksichtigung der neuesten Verwaltungsvorschriften der Finanzverwaltung*. 2. Auflage. Buchreihe Spezialfragen im Steuerrecht, Herausgeber Dr. Wilhelm Hartz. Fachverlag für Wirtschafts- und Steuerrecht Schäffer & Co., Hackländerstrasse 33, Stuttgart, 1960, 151 S. DM 10,80

Durch den koordinierten Ländererlass vom 30.6.1959 ist die ertragsteuerliche Behandlung der betreiblichen Pensionsverpflichtungen und Pensionsrückstellungen neu geregelt worden. Anlass dazu waren die neue Rechtsprechung des Bundesarbeitsgerichts über die Bedeutung der Widerrufsvorbehalte, die vom Bundesfinanzhof übernommen wurde, sowie die Rentenreform, die in vielen Fällen eine Änderung und Herabsetzung der bisherigen Pensionsverpflichtungen erforderte. Der Verfasser hat es unternommen, das Thema des Erlasses in einem grösseren Rahmen zu behandeln und den Erlass zu kommentieren und dabei zugleich zahlreiche Zweifelsfragen zu beantworten. Der Praxis wird damit ein Beitrag für die reibungslose Anwendung des Erlasses gegeven, dessen Ziel es ist, durch einen Kompromiss zwischen den Wünschen der Wirtschaft und den fiskalischen Belangen auf dem Gebiet der betrieblichen Pensionsverpflichtungen für die Zukunft Rechtssicherheit zu schaffen.

Dr. FRITZ JOHS. VOGT: *Der Steuerbürger im Verkehr mit dem Finanzamt*. Fachverlag für Wirtschafts- und Steuerrecht Schäffer & Co., Hackländerstrasse 33, Stuttgart, 1958, 213 S. DM 12.80

In dem vorliegenden Band *„Der Steuerbürger"* lässt schon das Thema aufhorchen. Ein neuer Begriff im Steuerrecht, der Steuerbürger! Bewusst spricht der Autor recht eindringlich von ihm, der nicht, auch nicht in seiner Eigenschaft als Steuerpflichtiger dem Staat, der Obrigkeit als Untertan gegenübersteht, sondern der selbst den Staat ausmacht. Daraus ergeben sich zahlreiche Gesichtspunkte besonderer Art, unter denen man das Verhältnis des Bürgers zu seinem Staat und umgekehrt zu betrachten hat. Das Buch beginnt mit der Forderung, der Staat solle wie ein Ehrenmann handeln, es schliesst auch mit dieser Forderung. Das ist in der Tat der grosse Leitgedanke, unter dem jegliches Handeln des Staates auch in Bezug auf seine Rechte und Pflichten, Steuern zu erheben, stehen sollte und stehen muss. Man kann und soll diese deutliche Forderung des Autors anerkennen, die z.B. dazu führt, dass die Steuerverwaltung den Steuerbürger auf Vergünstigungen hinweisen soll, die dieser beanspruchen kann, dass die Steuerverwaltung dem Steuerbürger in offener und fairer Weise gegenübertritt, und nicht etwa mit dem Gedanken, ihm ohne Berücksichtigung von Vergünstigungen mehr an Steuern abzunehmen, als er zu zahlen verpflichtet ist. Dem Buch gebührt weiteste Verbreitung und ist geeignet, den Steuerbürger und die Steuerverwaltung immer näher zusammenzuführen.

Dr HEINRICH ZINTZEN und Dr. KARL HALFT: *Kommentar zu den Gesetzen über die Kapitalerhöhung aus Gesellschaftsmitteln.* Heft 3 der Schriftenreihe Rechtsfragen der Handelsgesellschaften. Herausgegeben in Verbindung mit der Zentrale für Gesellschaften mbH Dr. Otto Schmidt. Verlag Dr. Otto Schmidt, Ulmenallee 96-98, Köln-Marienburg, 1960, 92 S.

In diesem *Kommentar,* einer Gemeinschaftsarbeit eines Wirtschaftsprüfers und eines Rechtsanwalts, werden die beiden Gesetze, die unter der Bezeichnung „Kleine Aktienrechtsreform" bekannt geworden sind, eingehend erläutert. Die Schriftenreihe „*Rechtsfragen der Handelsgesellschaften*" wird damit nach den steuerrechtlichen Arbeiten von Spitaler und Thiel mit einem gesellschaftsrechtlich und steuerrechtlich gleich bedeutsamen Thema fortgeführt.

Da diese Gesetze Entscheidungen von grosser Tragweite ermöglichen, kommt ihnen erhebliche praktische Bedeutung zu. Deshalb ist es besonders zu begrüssen, wenn kurz nach der Verkündung bereits ein ausführlicher Kommentar aus der Feder zweier Sachkenner und Praktiker vorgelegt wird, zumal Rechtsprechung und Schrifttum noch nicht vorhanden sind. Zahlreiche im Text eingearbeitete Beispiele und ein ausführliches Sachregister erleichtern den Zugang zu dieser Materie erheblich. Dieser Kommentar wird für jeden, der mit Fragen der Kapitalerhöhung aus Gesellschaftsmitteln als Anwalt oder Notar, als Wirtschaftsprüfer oder Steuerberater, als Betriebswirt, Kaufmann oder gesetzlicher Vertreter einer Kapitalgesellschaft zu tun hat, ein zuverlässiger und unentbehrlicher Ratgeber sein.

Steuerberater-Jahrbuch 1959/60 zugleich Bericht über den XI. Fachkongress der Steuerberater der Bundesrepublik Deutschland, Köln, 19. bis 21. Oktober 1959. Herausgegeben im Auftrag des Fachinstituts der Steuerberater von Prof. Dr. ARMIN SPITALER. Verlag Dr. Otto Schmidt, Ulmenallee 96-98, Köln-Marienburg, 1960, 616 S.

Das *Steuerberater Jahrbuch 1959/60* weist auch diesmal wieder eine grosse Fülle wertvoller grundsätzlicher Beiträge auf. Die Referate der grossen Steuerberater-Kongresse haben schon immer ein besonderes Gewicht gehabt, da sie weit über die Fragen der Tagesaktualität hinaus allgemeingültige steuerliche Probleme von hoher Warte aus behandeln. Aus dem Inhalt erwähnen wir: THOMA, Rechtssicherheit und Steuerberatung; ETZEL, Die gegenwärtige Lage im Gebiet der Besteuerung; MERSMANN, Die Ausgleichung und Harmonisierung der Steuersysteme; HEUER, Streifzüge durch das geltende Einkommensteuerrecht; HILLERT, Zur steuerlichen Behandlung inländischer Tochtergesellschaften ausländischer Unternehmungen; SPITALER, Die Lehre von der Einheit des Geschäftswerts; OSWALD, Fragen des Steuerprozessrechts.

Schnellkartei des deutschen Rechts. Verlag Dr. Otto Schmidt, Ulmenallee 96-98, Köln-Marienburg.

Die „Schnellkartei des deutschen Rechts" ist die umfangreichste Sammlung von deutschen Gesetzestexten, Richtlinien und Verordnungen. Sie bringt die vollständigen amtlichen Texte einschl. der ergänzenden Bestimmungen und der dazugehörigen Nebengesetze. Fussnoten unterrichten über Fundstellen und den Zeitpunkt des Inkrafttretens. Die Loseblattform hält das Werk durch schnellste Berücksichtigung etwaiger Gesetzesänderungen stets auf dem neuesten Stand. Das Werk erscheint in 3 Reihen, Reihe III enthält Steuerrecht mit Lastenausgleich. Erschienen ist die *Lieferung 97,* Inhalt: Erlass betr. Behandlung der Organschaften, Kapitalerhöhung aus Gesellschaftsmitteln, Besteuerung der Personen mit Wohnsitz im Saarland JAV 1959, Änderungen versch. Ges., Verordnungen und Erlasse.

GERMANY

Dr. EDGAR LENSKI und Dr. WILHELM STEINBERG: *Kommentar zum Gewerbesteuergesetz. Lieferung* 8. Februar 1960. Verlag Dr. Otto Schmidt, Ulmenallee 96-98, Köln-Marienburg.

Durch das umfangreiche Stoffgebiet ist die Gewerbesteuer eine schwierige Steuerform die mannigfachen Änderungen unterworfen ist. Der vorliegende grosse Kommentar ist dank seiner Loseblattform ständig auf dem neuesten Stand von Gesetzgebung und Rechtsprechung.

Die 8. *Lieferung* enthält ua. die Fortsetzung der Erläuterungen zu § 2 von MinRat Dr. STEINBERG und eine Kommentierung der §§ 3, 6 und 7 von MinDirig. Dr. LENSKI. Der Text der GewStR ist durch Einarbeitung der Neufassung v. 22.9.59 auf den neuesten Stand gebracht worden.

Dr. WILLY MUSER: *Steuerwegweiser 1959/60.* Tabellarische Übersichten für vorteilhafte Steuererklärungen und Jahresabschlüsse. Verlag Dr. O. Schmidt, Ulmenallee 96-98, Köln-Marienburg, 1960, 318 S.

Erstmals wird hier umfassend und klar die Möglichkeit geboten, mit Hilfe einer tabellarischen Übersicht die jeweils sich bietenden Steuervorteile blitzschnell zu ermitteln bzw. zu überprüfen, ob auch von den ausnutzbaren Steuervorteilen in vollem Umfang Gebrauch gemacht wurde. Diese zusammenfassende, auf die Steuerpraxis ausgerichtete, durch typische Beispiele erläuterte Darstellung aller für den Jahresabschluss wichtigen Gesichtspunkte beschränkt sich aber nicht nur auf steuertaktische Informationen und Ratschläge, sondern enthält eine Aufstellung aller Bewertungs- und Abschreibungsmöglichkeiten mit Angabe der einschlägigen Rechtsprechung sowie Hinweise auf die Verjährungsvorschriften. Die völlig neuartige Systematik dieses Buches wird durch die besondere drucktechnische Gestaltung hervorgehoben.

Steuerrechtsprechung in Karteiform. Verlag Dr. Otto Schmidt, Ulmenallee 96-98, Köln. — Marienburg.

Das Werk ist die Fortführung der von Senatspräsident Mrozek begonnenen Sammlung höchstgerichtlicher Entscheidungen in Steuersachen, der „Mrozek-Kartei", die bis 1944 erschienen ist. Die StRK enthält als vollständige Sammlung: 1. die Entscheidungen des Bundesfinanzhofes, 2. Urteile des RFH von 1944 bis zu dessen Auflösung im Jahre 1945 und 3. die Entscheidungen des OFH in München. Die StRK wird besonders wertvoll durch den gleichzeitigen Abdruck der vollständigen Urteilsbegründungen mit dem Gesetzestext in einer kommentarähnlichen Form der Anordnung, besonders auch wegen der ausführlichen Register. Erschienen sind die *Lieferungen 98, 99 und 100,* Februar, März und April 1960. Mit *Lieferung 98* erhalten die Bezieher zwei neue Sammeleinbände.

HÜBSCHMANN - GRABOWER - BECK - VON WALLIS - SCHWARZ: *Kommentar zum Umsatzsteuergesetz. Lieferung 15,* Februar 1960. Verlag Dr. Otto Schmidt, Ulmenallee 96-98, Köln-Marienburg.

Diese Lieferung enthält vor allem die Erläuterungen zu § 4 Ziff. 3 von BR Prof. Dr. v. WALLIS und zu § 10 von OFinPräs. a.D. Prof. Dr. Dr. GRABOWER.

SCHOLZ-BOYENS-WELL-HERRMANN-STEINBRING-STENGER-FELIX: *Bewertung und Besteuerung des Grundbesitzes. Lieferung 12,* Februar 1960. Verlag Dr. Otto Schmidt, Köln.

Neben umfassender und systematischer Behandlung der Bewertung des Grundbesitzes, der Grundsteuer und des Grunderwerbsteuerrechts, sowie der Brücksichtigung des Grundbesitzes bei der Gewerbesteuer, Umsatzsteuer und Erbschaftsteuer, enthält dieses grosse Loseblattwerk auch die

Darstellung der Vorschriften des Körperschafsteuer- und des Vermögensteuerrechts, soweit es den Besitz von Grundvermögen oder den Grundstücksverkehr betrifft. Dem Lastenausgleichsrecht ist ein besonders umfangreicher Abschnitt gewidmet. Dieses Buch ist ein wertvolles Hilfsmittel für alle diejenigen, die sich mit irgend welchen Fragen der Steuerbelastung von Grundstücken zu befassen haben.
Die *Lieferung 12,* Februar 1960 enthält neben einem neuen differenzierten Inhaltsverzeichnis für den Teil „Lastenausgleich" eine völlige Überarbeitung des Anhangs „Steuerbegünstigter Wohnungsbau" aus der Feder von Wirtschaftsprüfer und Steuerberater W. Steinbring.

HANS MUSGER und FRIEDRICH SCHULZ: *Das neue Einkommensteuerrecht.* — Druck und Verlag Hermann Schmerzeck & Co., Bruck a.d. Mur, 1955, Loseblatt-Ausgabe.

Das vorliegende Werk beinhaltet eine übersichtliche Darstellung des Einkommensteuergesetzes 1953 mit den Durchführungserlässen, sowie kurz Auszüge einschlägiger Erkenntnisse des Verwaltungsgerichtshofes. Das Grundwerk enthält den nach Paragraphen geordneten Rechtsstoff des Einkommensteuergesetzes. Zweifel in der Anwendung der Rechtssätze wird verhindert durch die eingearbeiteten Auszüge aus der laufenden Rechtsprechung des Verwaltungsgerichtshofes. Die ergänzbare Loseblattform gewährleistet den Benützern dieses Buches jederzeit einen vollständigen Überblick. Durch die laufenden Ergänzungslieferungen sind die Leser stets über die neuesten Gesetze, Erlässe und Verwaltungsgerichtshofentscheidungen unterrichtet. Die *XI. Ergänzungslieferung* ist erschienen.

In der Reihe *Ausländische Aktiengesetze* herausgegeben von der Gesellschaft für Rechtsvergleichung im Alfred Metzner Verlag, Hebelstrasse 17, Frankfurt am Main sind die folgenden Bände erschienen:

Band 1. *Das schwedische Gesetz über die Aktiengesellschaften* vom 14. September 1944. Übersetzt und eingeleitet von FRIEDRICH KORKISCH. 1955, 277 S.
Band 2. *Das spanische Gesetz über die Aktiengesellschaften.* Übersetzt von GOTTFRIED VON WALDHEIM under Mitarbeit von WALTER HÄUSSERMANN. 1955, 152 S.
Band 3. *Die Aktiengesellschaft im brasilianischen Recht.* Übersetzt und eingeleitet von CARL W. AMBERGER. 1956, 160 S.
Band 4. *Das Recht der französischen Aktiengesellschaften.* Eingeleitet von PIERRE BAUDOUIN-BUGNET. Übersetzt von VIKY GRAVENSTEIN. 1959, 261 S.
Band 5. *Das Türkische Aktienrecht.* Eingeleitet übersetzt und erläutert von Dr. jur. ERNST E. HIRSCH. 1958, 184 S.

Das Interesse an der Kenntnis des ausländischen Aktienrechts war in Deutschland stets sehr gross. Schon früh ist auf dem Gebiet des Aktienrechts rechtsvergleichend gearbeitet worden. Die Fachgruppe für vergleichendes Handels- und Wirtschaftsrecht der *Gesellschaft für Rechtsvergleichung* fasste im Jahre 1953 den Beschluss, eine Reihe „Ausländische Aktiengesetze" herauszugeben in der in zwangloser Folge die gegenwärtig geltenden aktienrechtlichen Gesetze verschiedener Länder im Originaltext und in deutscher Übersetzung dargeboten werden sollen. Diese Veröffentlichungen sollen in gleicher Weise der Praxis des internationalen Wirtschaftsverkehrs, der rechtsvergleichenden Wissenschaft und den Bemühungen um eine Weiterbildung und Reform des Aktienrechts dienen.
Als erster Band in dieser Reihe erschien „*Schweden*". Das schwedische Aktiengesetz von 1944 ist der vorläufige Endpunkt einer Gesetzgebung, die

vor fast genau hundert Jahren einsetzte und damit zu den ältesten Bemühungen um eine gesetzliche Regelung dieses Fragenberieches gehört. Die schwedische Gesetzgebung gelangte zu durchaus eingenständigen Lösungen, die nicht nur dem heimischen Rechts- und Wirtschaftssystem angemessene Ergebnisse brachten, sondern ihrerseits auch wieder den ausländischen Aktienrechten zum Vorbild dienen können.

Die Entwicklung des *spanischen Aktienrechtes* ist während des 19. Jahrhunderts in ähnlichen Bahnen verlaufen wie in anderen Ländern. Erst im Jahre 1948 wurde die Reform des Aktienrechtes, die im Grunde auf eine völlige Kodifizierung der bisher kaum geregelten Materie hinausläuft, erneut vorangetrieben. Das Gesetz trat lt. Dekret mit Gesetzeskraft vom 18.8.1951 am 1. Januar 1952 in Kraft. Auch nach Inkrafttreten des neuen Gesetzes sind weitere Ergänzungen und Erläuterungen in Form von Dekreten etc. ergangen, die noch in den Text der Übersetzung eingearbeitet werden konnten. Mit dem Kommentar des *brasilianischen Aktienrechtes* in deutscher Sprache sowie der als Anhang beigegebenen deutschen Übersetzung des Originalgesetzestextes aus dem Portugiesischen ist einem Bedürfnis nachgekommen. Die Aktiengesellschaft ist sowohl in Brasilien als auch in Deutschland durch Sondergesetz geregelt; sie ist also in beiden Ländern kein Bestandteil der jeweiligen Handelsgesetzbücher.

In *Frankreich* sind die Gesetzesvorschriften die allein die Aktiengesellschaften betreffen, nicht in einem einheitlichen Text verarbeitet.

Es wird dem Leser in diesem Buch einen panoramaartigen Überblick ermöglicht, der ihm das Verständnis der Gesetzestexte erleichtert und ihm Anhaltspunkte zur Rechtsvergleichung gibt.

Im Gegensatz zu den anderen Bänden dieser Reihe wird der *türkische* Originaltext nicht mitabgedrückt. Den hierdurch gewonnenen Platz ist für eine Einführung in die besonderen Probleme des türkischen Aktienwesens und Aktienrechts verwendet worden. Dem Leser ist das Eindringen in das türkische Aktiengesetz dadurch erleichtert, dass jeder Artikel mit Verweisungen und kurzen Erläuterungen versehen wurde.

ISRAEL

G. ALON: *Israel Income Tax Commentary*. Up-to-date to 1.2.1960. 48 pp. IL.5.—

On restricted space, the booklet not only contains a lucid, to the point survey of Israel's written and oral income tax law and practice, it also presents the Israeli tax on the broader historic, economic and social backgrounds of international and English tax law, devotes much space to the problems of illegal tax evasion and legal possibilities to save tax by taking proper advantage of the loopholes of the Israeli law. An English translation of the more important subsidiary legislation (accounts instruction, depreciation rules, Israel U.K. tax convention, tax deduction rules, etc.) is added. The booklet is part of a regular service composed of self contained brochures.

ITALY

VICTOR UCKMAR: *La tassazione degli stranieri in Italia*. (The taxation of foreigners in Italy). Volume XVIII — Serie I — della coolana „Il diritto tributario," *Appendice di aggiornamento* con le disposizioni legislative emanate dopo la publicazione del volume 1955. Casa Editrice Dott. Antonio Milani, Via Jappelli 5, Padova, 1959, 67 pp.

This volume is a supplement to the book on the taxation of foreigners in Italy, a review of which was published in *Bulletin* Vol. XII p. 362. The supplement contains the legal measures which have been issued since the publication of the main volume in 1955. Explanatory notes and examples have been added.

EMANUELE MORSELLI: *Archivio Finanziario. Volume VIII* Indice Decennale 1948-1957, and *Volume IX*. Casa Editrice Dott. Antonio Milani, Padova, 1960, 257 and 737 pp.

Volume VIII of the Series „*Archivio Finanziario*" consists of a systematic index to the Volumes I to VII and covers the period 1948-1957.

Volume IX of the same series contains a number of interesting articles, a survey of new financial literature, Italian financial case law, and Italian financial legislation. The following articles a.o. have been included: Bühler, L'imposte sulla cifra degli affari in Germania; Desmyttere, L'imposta sul valore aggiunto in Francia; de Ulhôa Canto, L'imposta sulle vendite e consegne nel Brasile; Higy, Il sistema tributario Svizzero; Masoin, Le imposte sulle transazioni, sugli scambi e sulla cifra degli affari; Morselli, Il punto di vista teorico della parafiscalità.

VITTORIO GIORGIS: *Imposta generale sull'entrata*. Diciottesima edizione. Nuova Rivista Tributaria Editrice, Via Capodistria 22, Roma, 1959, 757S.

This handbook on the sales tax in Italy contains the text of the Act, regulations, ministerial instructions and case law. It gives therefore a most useful documentation for everyone who has to do with Italian sales tax.

Prof. Avv. EMANUELE MORSELLI *Le imposte in Italia*. Seste edizione accresciuta e aggiornata. Cedam, Padova, 1959, 499 pp.

In this work the author gives a survey of the Italian taxes. The following taxes are treated successively: imposta sui terreni, imposta sui fabbricati, imposte sui redditi mobiliari, l'imposizioni generale del reddito, l'imposizione del patrimonie, imposte sui consumi e dazi doganali, imposte sugli affari, tributi locali, tributi regionali. Further there are chapters on collection and tax administration. An analytical index completes this volume which gives the reader a quick orientation in the Italian tax system.

NETHERLANDS

P. KARMELK: *Inkomstenbelasting*. (Income Tax). 8th edition. *Supplement 12*, March 10th, 1960. De Belastingwetgeving Serie D.B. No 2. J. Noorduijn en Zoon N.V. — Gorinchem — Netherlands.

Mr. C. P. TUK: *Weigeving op de omzetbelasting* (Umsatzsteuerrecht) Fiscale hand- en studieboeken onder redactie van Prof. Mr. H. Schuttevaer, No. 5. AE. E. Kluwer, Deventer; J. Noorduyn & Zoon, Gorinchem, 1960, 526 S.

Neben den Loseblattausgaben die auf dem Gebiete des Steuerrechts im Verlag AE. E. Kluwer, Deventer, erschienen sind, wird jetzt eine Reihe von steuerrechtlichen Handbüchern herausgegeven. Die Bände dieser Reihe werden Kommentare auf die verschiedenen Steuergesetze enthalten. Da die Loseblattausgaben in erster Linie gründliche und systematische Dokumentation enthalten, wird die neue Serie den Gebrauchern einer Einblick in die Hintergründe der gesetzlichen Regelungen mittels einer methodischen Behandlung des Materials gewähren. Als erster Band ist jetzt der Kommentar zum Umsatzsteuerrecht verfasst von dem bekannten niederländischen Sachverständigen C. P. Tuk erschienen. Der Verfasser hat sich bemüht seine 25-jährige Erfahrung auf diesem Gebiet möglichst einfach zu gestalten. Die Jurisprudenz, die bei der Umsatzsteuer eine so wichtige Rolle spielt, ist eingehend besprochen worden. Mittels Fussnoten wird es dem Leser ermöglicht sich weiter über die Literatur zu orientieren.

J. L. VAN HEDEL: *Wat doe ik met mijn geld?* (Was tue ich mit meinem Gelde?) Nederlandsche Uitgeversmaatschappij, Breestraat 117, Leiden, 1960, 91 S.

In diesem Büchlein werden die verschiedenen Möglichkeiten zur Anlegung von Spargeld behandelt. Die Vorteile und Nachteile von den gewählten Methoden werden ins Licht gestellt.

H. G. HAGELEN: *Uw toekomstvoorzieningen en de fiscus* (Ihre Zukunftversorgungen und der Fiskus) Ned. Uitg. Mij., Breestraat 117, Leiden, 1960, 176 S.

Die vierte Auflage dieses Werkes über die steuerrechtlichen Aspekte einer Anzahl von Versicherungen ist jetzt erschienen. Das Büchlein enthält wertvolle Winke für jeden der sich mit diesem Gegenstand zu beschaffen hat.

Handboek voor in- en uitvoer onder redactie van PROF. DR. B. SCHENDSTOK en J. DE WILLIGEN. (Handbuch für Ein- und Ausfuhr). AE. E. Kluwer, Deventer; N. Samson, Alphen aan den Rijn. Loseblattausgabe.

In diesem Handbuch sind die Vorschriften die sich auf die Erhebung der Einfuhrzölle und die Liberalisierung beziehen zusammengetragen worden.

Die drei Teile der Serie geben eine vollständige und übersichtliche Dokumentation.

Band A bringt die Bearbeitung des Tarifbeschlusses 1960. Die Befreiung von und die Zurückgabe von Einfuhrzöllen sind besonders berücksichtigt worden. Weiter enthält dieser Teil die Vorschriften anlässlich der Erhebung der Umsatzsteuer und der Verbrauchsteuern bei Einfuhr und der besonderen Einfuhrzölle. Auch der Güterverkehr zwischen den verschiedenen Gemeinschaften (Benelux, E.W.G., Montanunion und Euratom) wird behandelt. Das Buch schliesst mit den Vorschriften anlässlich der Liberalisierung des Güterverkehrs.

Die Bände B1 und B2 beziehen sich auf dem Zolltariff.

Band B1 ist ein Tariffbuch. Es enthält die Data welche unmittelbar bei der Freimachung der Güter notwendig sind, d.h. die Liste der Güternamen, die Prozentsätze, die Statistiknummer und die Liberalisierungsdata.

Band B2 enthält auch die Liste der Güternamen aber ohne Prozentsätze und die schon in Band B1 aufgenommen Data. Bei den Tariffposten ist die sehr wichtige offizielle Erläuterung angegeben. Weiter sind auch die Entscheidungen des Ministers und der Tariffkommission über die Anwendung des Tariffs aufgenommen.

Ein ausführliches alphabetisches Register kompletiert diese beiden Bände.

In wenigen Monaten sind schon zwei Lieferungen zu Band A, sechs Supplemente zu Band B1 und drei Lieferungen und ein Supplement zu Band B2 erschienen.

H. N. J. KUYER: *Belastingaftrek voor kinderen* (Steuerabzug für Kinder). Uitgeverij FED, Roemer Visscherstraat 29, Amsterdam, 1960, 59 S.

Dieses Büchlein ist für den Laien, den Studierenden und den Sachverständigen in Steuersachen bestimmt. Es gibt eine deutliche Erklärung des Steuerabzugs für Kinder den das niederländische Einkommensteuergesetz zulässt. Eine Tabelle bietet dem Leser die Möglichkeit genau festzustellen welche Rechte er in einer grossen Zahl von Fällen hat.

B. SCHIPPERS und J. L. VAN HEDEL: *Aftrekposten inkomsten- en vermogensbelasting*. (Abzüge für Einkommen- und Vermögensteuer). 11. Auflage. Nederlandsche Uitgeversmaatschappij, Breestraat Leiden, 1960, 126 S. Preis f. 3.25.

In diesem Büchlein werden die Möglichkeiten der Abzüge für die niederländische Einkommen- und Vermögensteuer vollständig und klar behandelt. Es wurde darin auch eine Steuererklärung und eine praktische Einkommensteuertabelle aufgenommen.

J. P. SCHELTENS: *De verhoging bij navordering van belasting*. (Die Erhöhung bei Nachforderung von Steuern). Fiscale Monografieën no. 15. AE. E. Kluwer, Deventer, 1960, 144 S.

In dieser Monographie behandelt der Verfasser die mit der Nachforderung oft verbundenen Erhöhung der niederländischen Steuer. Das allgemeine administrative Recht ist in die Betrachtungen einbezogen worden und der Autor hat auch untersucht wie die Grundsätze des Zivilstrafrechts angesichts der Erhöhung angewandt werden können.

NEW ZEALAND

Taxation Tables 1960. 16th edition. Financial Publications Ltd., 33 Jessie St., Wellington, 1960, 132 pp.

This useful publication contains the averaging tables 1960, PAYE weekly tax deduction tables, ordinary income tax tables for individuals and companies, basic effective rates for personal incomes, tables for dividing by 52 and multiplying by 26, scale rates estate and gift duties and a comprehensive section on estate and gift duties.

NORWAY

JACOB JAROY: *Skattelovsamling. Supplement Nr. 11*. Baugeidsgt. 16, Skien, Norway.

Supplement Nr. 11 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 a number of new pages and tabcards. Special sections have been devoted to the taxation of Norwegian sailors and to the taxation on the island Svalbard (Jan Mayen).

TORE THONSTAD: *Produksjonsstruktur, Import og Sysselsetting*. (Structure of production, imports and employment. An input-output study). Sammfunnsøkonomiske Studier Nr. 8. Statistisk Sentralbyrå, Oslo, 1959, 129 pp.

This volume presents a study of the relationships between Norway's need for imports, the structure of production, and the distribution of employment among the different sectors of the economy, by the use of three different types of input-output techniques. The book is in the Norwegian language but contains a summary in English. Reviews of Nr. 6 and 7 of this series issued by the Central Bureau of Statistics of Norway were published in *Bulletin* Vol. XIII, p. 166/7.

PORTUGAL

Código da sisa e do imposto sobre as sucessôes e doaçôes. Boletim da Direcçâo-Geral das Contribuiçôes e Impostos, Ministerio das Finanças, Lisboa, 1959, 177 pp.

This is a special edition of the recently renewed Portuguese tax journal "Boletim da Direcçao-Geral das Contribuiçôes e Impostos". It contains the complete text of the new Successions, duties and donations tax Act of 1958. The "Boletim" has been considerably expanded and enlarged compared to its predecessor and is an indispensible source of information on Portuguese taxation.

PUERTO RICO

What you should know about taxes in Puerto Rico. 1960 edition. Department of the Treasury, Office of economic and financial research, San Juan, 80 pp.

This booklet presents the basic facts about the major aspects of the tax system of the Commonwealth of Puerto Rico — its internal taxes, its indu-

strial tax exemption program and its tax relations with the United States Government — as well as a calendar of important tax events. It has been especially prepared to answer, briefly and clearly, the questions on Puerto Rican taxes most frequently asked by visitors to the Island and persons who come to reside or do business in Puerto Rico.

SPAIN

Manual de la Administración. T.A.L.E., Hortaleza 20, Apartado 14118, Madrid - 4.

Eine Besprechung dieses sehr nützlichen und systematischen Handbuches zum spanischen Steuerrecht wurde im *Bulletin* XIV S. 43 veröffentlicht. Die monatlich erscheinenden Lieferungen enthalten neue gesetzliche Bestimmungen des Finanzministeriums und Ersatz- und Ergänzungsblätter zu den Teilen Handelsrecht, Steuerrecht, Sozialversicherung und Kommentare. *Lieferung 16,* Februar 1960, bringt neben den neuen Gesetzestexten die Fortsetzung des Studiums über die Kontabilität als gesetzliche Verpflichtung der spanischen Unternehmungen. *Lieferung 17,* März 1960, enthält ein Blatt über die Teilnahme ausländischen Kapitals in spanischen Unternehmungen und neue Blätter zum handelsrechtlichen Teil. *Lieferung 18,* April 1960, bringt ausser den neuen Blättern zum Gesetzesteil Blätter zum Auswechseln für die Teile: Situaciones especiales, Impuesto sobre los rendimientos del trabajo personal, contribucion general sobre la renta, impuesto sobre sociedades, impuesto de timbre del estado. Schliesslich bringt diese Lieferung die letzten Blätter über das Studium betreffs der gesetzlichen Buchhaltungsvorschriften.

SWEDEN

ÅKE HELLNER: *Periodiskt understöd och underskott enligt 46 § KL.* (Das Abzugsrecht für laufende Unterstützungen und für Verluste gemäss § 46 des Gemeindesteuergesetzes) C.W.K. Gleerup, Lund, 1959, 352 pp.

Nach schwedischem Recht sind sowohl bei der kommunalen als auch bei der staatlichen Einkommensbesteuerung bei der Berechnung des Einkommens Abzüge für laufende Unterstützungen und für Verluste zulässig. Die entsprechenden Vorschriften finden sich in § 46 des Gemeindesteuergesetzes. Diese Abhandlung untersucht das Abzugsrecht für laufende Unterstützungen und für Verluste unter Berücksichtigung der Vorschrift des § 20 des Gemeindesteuergesetzes über das Abzugsverbot bezüglich der Lebenshaltungskosten des Steuerpflichtigen und das daselbst ausgesprochene Verbot des Abzuges von Kapitalabzahlungen.

World Tax Series (WILLIAM SPRAGUE BARNES, Director): *Taxation in Sweden* by MARTIN NORR, FRANK J. DUFFY and HARRY STERNER. Harvard Law School International Program in Taxation. Published by Little, Brown and Company, 34 Beacon Street, Boston 6, Massachusetts, U.S.A. 1959, 723 pp.

In the World Tax Series, planned by the staff of Harvard Law School's International Program in Taxation in consultation with the United Nations secretariat, the volume concerning *Taxation in Sweden* has recently appeared. The volume is of special interest as it is the first book in the English language to give a complete and authoritative survey of the Swedish tax legislation — characterized as one of the world's most advanced tax systems.

The volume is primarily the successful work of Martin Norr, research associate at the Harvard Law School, in collaboration with Frank J. Duffy of the New York Bar, and Harry Sterner, Swedish tax official, author, and editor. Many other prominent experts in different legal, economic and fiscal

fields have contributed with information and comments regarding special sections. The great confidence which the names of the authors and of the experts inspires has by no means been deceived in this publication.

The book contains a detailed and profound analysis of the Swedish tax system, including the national and local income taxes, the national wealth tax, the inheritance and gift taxes, the excise taxes etc. The international aspects of the Swedish income taxation are also dealt with. Accordingly the book is highly to be recommended to all those who need information about the Swedish tax laws on account of their economic interests in Sweden or of their planning to establish Swedish subsidiaries, branches or agencies. Thanks to its wealth of details *Taxation in Sweden* will be very useful also to tax lawyers, accountants and other persons who are interested in getting information in some respect or other about the Swedish tax laws. Furthermore, by studying this book legislators in other countries will have the opportunity to find new ideas, which may serve as examples for their own legislative work.

Such an interesting idea is the National Tax Board. One of its functions is to provide a forum in which taxpayers may obtain advance rulings on the tax consequences of proposed actions. Thus a taxpayer who plans to put through a major business transaction has the means of finding out in advance what will be the fiscal consequences of the said transaction. A taxpayer who has thus received an advance decision on a question of taxation can demand that the judgment of the board should be regarded as binding on the tax authorities to the extent the taxpayer requests. So far as the taxpayer himself is concerned, the advance ruling is only advisory. The National Tax Board has proved to be a very useful institution to the taxpayers. A full account of the rules concerning the advance decisions as well as other activities of the National Tax Board is given in one of the chapters.

The volume also offers a very interesting study on how taxation has been used as a tool in the Swedish economic policy. As the authors have put it themselves "no country has sought more vigorously to use taxation, together with other fiscal, monetary, and regulatory measures, as a tool to affect the business cycle". The authors mention that Sweden has employed pioneering income tax devices designed at least in part to make the economy more resistant to depression and to influence the propensity of business to invest; in this way it has sought to enlist private capital in the task of leveling the business cycle. According to the authors these tax devices include what are among the most liberal provisions in the world with regard to depreciation, inventory valuation and taxfree investment reserves for economic stabilization. Here it should, however, be observed that the last development shows a tendency to restrict the generosity of these provisions in certain respects, and it must not be forgotten that the Swedish tax rates are rather high.

In spite of the praiseworthy completeness of the account of the Swedish tax system given in the book it must be remembered that such a tax comment cannot possibly bring the right solution to every problem which may arise. Local experts naturally have to be consulted in such cases.

It is not possible to make here an exhaustive commentary on the description and interpretation in the book of the Swedish tax rules. It goes without saying that in some cases the correctness of the interpretation can be called in question. One point, incidentally, is the statement (pages 373, 465 and 467) that for purposes of capital gains taxation, real property located abroad is treated as movable rather than real property, which from the theoretical point of view would be of a certain interest. Evidently this statement is inspired by a similar statement in one of the Swedish surveys of Swedish income taxation referred to in the book. The statement is, according to the authors of Taxation in Sweden, said to arise out of the fact that Sweden classifies income from real property located aboard as income from capital

rather than income from real property, and the result is to reduce the holding period necessary to obtain exclusion of gain from taxable income from the ten years applicable to real property to the five years applicable to movable property. There is in fact an explicit rule saying that—in computing the taxable income—income from real property located abroad is to be considered as income from capital. But this rule only alludes to income from the management of the real property, whereas capital gains realized on the sale of real (or movable) property is regarded as income in another category. Considering this, it is by no means manifest that the said rule justifies the above-mentioned statement and the conclusion thereof. However, the question touched upon is of minor practical importance. The general impression remains that the reader is offered a highly reliable account of the Swedish tax system.

In this connection it should be recalled that it cannot be avoided that even rather shortly after the publication of books of this kind changes are made in existing tax laws and new laws are adopted or prepared.

Thus a legislation on permitting losses to be carried forward in certain circumstances for six years has been adopted in this year. This legislation, the planning of which is mentioned in the book, is applicable from the 1961 assessment. The possibility of carrying over losses from one year to another may up to some extent be regarded as a counter-balance to the more restrictive provisions for inventory valuation, which are aimed to enter into force at the 1961 assessment (see page 212 in the book) and for deductions for allocations to pension trusts which will follow as a result of the law concerning the new supplementary pensions (see page 44 in the book).

As such a counter-balance also may be regarded a proposal made in a government bill recently delivered, in which is suggested an annual deduction during six subsequent years for dividends emanating from new share-issues, paid in during 1-7-1961 until 31-12-1966. The right of deduction is intended to be valid at the 1963-1973 assessments. On the other hand the inter-corporate exemption for dividends received is proposed to be restricted to some extent during the same period.

An example of the frequent changes of existing tax laws, actually discussed, is a bill concerning the investment reserves under the 1955 law (see pages 218-227 in the book). According to this bill, which has been brought before parliament this spring, Swedish corporations and economic associations are entitled to an extra deduction provided that the sum allocated to an investment reserve has been deposited in the National Bank after June 30 but before November 1, 1960. This extra deduction—in excess of a deduction for the sum allocated and deposited—amounts to 12 per cent of the deposit if the deposit has been made before August 1, 1960, and 8 per cent of deposits made before November 1, 1960. The deduction also presupposes that the deposit remains untouched by the company in the bank until the end of 1961. On the other hand the regular deduction for allocations to the investment reserves up to 40 per cent of net income from business, before taxes, and 10 per cent of gross receipts from forestry will, according to the bill, be allowed only if 50 per cent (under the existing law 40 per cent) of the allocated sum is deposited in the non-interest-bearing blocked account in the National Bank. The purpose of the extra deduction and of the increased deposit is to moderate the investments during the present high level market and to reduce the company liquidity.

These remarks about adopted or planned changes in the tax legislation, however, are here made only as a memento for the readers of the book and by no means diminish its great value. The changes in the legislation certainly will, in due time, appear in the future periodic supplements which are planned to keep the information in this basic volume up to date.

The authors and the publishers are to be congratulated on this volume in

World Tax Series. It is to be hoped that *Taxation in Sweden* will widely increase knowledge of the extremely developed Swedish tax system, which as yet has been too unobserved in the international fiscal field.

C. O. SANDSTRÖM, Stockholm

SWITZERLAND

Rechtsbuch der schweizerischen Bundessteuern. Begründet von Dres. J. und E. HENGGELER, fortgeführt von Dr. ANTON PESTALOZZI. *Nachtrag 32, Februar 1960*. Verlag für Recht und Gesellschaft, Bundesstrasse 15, Basel.

Diese nützliche Sammlung der eidgenössischen Steuergesetzgebung enthält die Steuergesetzgebung des Bundes einschliesslich internationaler Steuerabkommen und verfahrensrechtlicher Vorschriften anderer Bundesgesetze, sowie die hauptsächlichsten Ausführungsbestimmungen, nebst einem Sachregister, jedoch ohne Zollgesetzgebung und Tabak- und Bierbesteuerung.

Nachtrag 32, Februar 1960 bringt den Beziehern das Bundesgesetz über den Finanzausgleich unter den Kantonen vom 19.6.1959; die Bundesratsbeschlüsse über den Finanzausgleich mit den Kantonsanteilen an der Wehrsteuer für die Jahre 1959 und 1960 und über die Abstufung von Bundesbeiträgen nach der Finanzkraft der Kantone für die Jahre 1959 und 1960; ein Übersicht über Rückerstattung ausländischer Quellensteuern; die Liechtensteinisch-st.gallischer Vereinbarung zur Vermeidung von Doppelbesteuerung vom 20.6.1959; eine Liste steuerrechtlicher Sonderregelungen mit Italien; Notenwechsel zwischen der Schweiz und Kanada über die Besteuerung von Unternehmungen der Schiff- und Luftfahrt; einige Verfügungen des Eidgenössischen Finanz- und Zolldepartements über die Warenumsatzsteuer.

V

SOCIETE AMERICAINE AYANT UN ETABLISSEMENT STABLE EN FRANCE - RETENUE A LA SOURCE

(*v. aussi France-Conventions internationales, ce numéro p. 179*)

La législation fiscale française contient une disposition peu connue et qui est d'un intérêt spécial pour des sociétés anonymes exerçant, en France, une activité sans y avoir leur siège social. Il s'agit de l'article 109, paragraphe 2, du Code Général des Impôts qui est rédigé comme suit:

«Art. 109 — 1. Sont considérés comme revenus distribués:

2. En ce qui concerne les sociétés exerçant une activité en France sans y avoir leur siège social, les sommes imposables sont limitées à une quotité des répartitions effectuées par lesdites sociétés, determinée suivant des modalités fixées par décret en conseil d'État (1)».

Parmi les conventions fiscales conclues par la France, il y en a plusieurs qui ont maintenu en vigueur, en principe, la disposition précitée. Seules les modalités d'application peuvent être différentes.

Ce qui importe, c'est qu'en principe une société anonyme étrangère ayant un établissement stable en France (2), peut être assujettie à l'impôt français de distribution. (Voir pour un traitement détaillé de la question: Koch & Rothstein, «La Convention franco-britannique du 14 décembre 1950», p. 124-127, Nos 188-193, Publication No. 6 du Bureau Internatonal, de Documentation Fiscale, 1950).

L'application pratique de ce principe donnant lieu à des difficultés, nous reproduisons ici la réponse de M. le Ministre des Finances et des Affaires Economiques à la question écrite No. 850 relative à l'imposition, au titre de la retenue à la source sur les revenus de capitaux mobiliers (ou de l'ancienne taxe proportionnelle) d'une société anonyme américaine ayant un établissement stable en France (Journal Officiel, Débats à l'Assemblée Nationale, 30 janvier 1960, p. 75). Cette réponse est de nature à pouvoir intéresser des sociétés anonymes d'autres pays avec lesquels la France a conclu une convention fiscale.

Question:

M. Ferri expose à M. le ministre des Finances et des Affaires économiques qu'une société anonyme, ayant son siège aux Etats-Unis d'Amérique, possède en France un établissement stable, dont elle a retiré des bénéfices pour l'exercice écoulé du 1er janvier au 31 décembre 1958. Il sait que cette société doit, sur les trois quarts de ces bénéfices, la taxe proportionnelle de distribution, mais désire être renseigné, avec référence aux textes légaux ou contractuels, sur les modalités de paiement de cette taxe. Il demande notamment, à cet égard: 1° si la société en cause a une initiative à prendre envers l'administration de l'enregistrement, en ce qui concerne, tant la déclaration et la justification desdits bénéfices, que le versement de l'impôt; 2° quels sont, dans l'affirmative, les délais dans lesquels doivent intervenir, respectivement, cette

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1) Décret no. 55-1603 du 7 décembre 1955, art. 2-3.

2) Nous rappelons que, pour être assujettie à l'impôt de distribution, il n'est pas nécessaire que la société ait un établissement stable en France. Dès qu'elle y exerce une activité commerciale, la disposition de l'article 109 C.G.I. est applicable. Seulement lorsqu'il y a une convention fiscale, l'imposabilité dépend de la condition qu'il existe en France un établissement stable.

déclaration et ce versement; 3° quelles sont, toujours dans l'affirmative, les peines édictées pour le cas où ces délais ne sont pas respectés; 4° si, au cours de l'exercice 1959, la société est tenue de verser, par avance, des acomptes à valoir sur l'impôt susceptible de frapper les bénéfices éventuels de cet exercice; 5° quel est le tarif — 19,80% ou 22% — de l'impôt afférent aux bénéfices de l'exercice 1958, et les raisons qui déterminent ce tarif. (*Question du 30 avril 1959.*)

Réponse. — De l'article 109, paragraphe 2, du Code général des Impôts, il résulte qu'en ce qui concerne les sociétés exerçant une activité en France sans y avoir leur siège social, les sommes imposables comme revenus de capitaux mobiliers distribués sont limitées à une quotité des répartitions effectuées par lesdites sociétés, déterminée suivant les modalités fixées par le décret n° 55-1603 du 7 décembre 1955 (*J.C.P.* 55, *n°* 57063). Dérogeant à cette disposition, l'article 15 de la *convention franco-americaine du 25 juillet 1939* tendant à éviter les doubles impositions, modifié par l'article 1-h de celle du 22 juin 1956, prévoit que les sociétés américaines possédant en France des établissements stables y acquittent la taxe proportionnelle sur le revenu des valeurs mobilières, non point sur une quote-part des répartitions auxquelles elles procèdent, mais sur les trois quarts des bénéfices qu'elles retirent de ces établissements, déterminés comme en matière de bénéfices industriels et commerciaux et sous déduction de l'impôt sur les sociétés. Cet article institue, de la sorte, une présomption légale et irréfragable de distribution sur une base forfaitaire, indépendante des répartitions de dividendes effectivement opérées par les sociétés. Le fait générateur de la taxe proportionnelle de distribution, qui réside normalement dans la mise en paiement des revenus, ne saurait donc découler d'une telle circonstance en ce qui concerne l'application de cette taxe aux établissements stables français de sociétés américaines. Ce fait générateur coïncide, en l'occurrence, avec la clôture de l'exercice dont les résultats bénéficiaires motivent, du seul fait de leur existence, la perception de ladite taxe. Sous le bénéfice de ces observations, les questions posées comportent les réponses suivantes: 1° et 2° Les sociétés américaines doivent déposer au bureau de l'enregistrement compétent, après la clôture de leur exercice social, une déclaration indiquant la base de liquidation de la taxe proportionnelle pour l'exercice, c'est-à-dire la somme correspondant aux trois quarts des bénéfices qu'elles ont effectivement retirés de l'établissement stable qu'elles possèdent en France. A cette déclaration sont jointes une copie du bilan spécial dressé par ledit établissement et une copie du compte de profits et pertes. Conformément à l'article 9 du décret n° 57-661 du 29 mai 1957 (*J.C.P.* 57, *n°* 60551), ces documents doivent être fournis dans les trois mois de la clôture de l'exercice ou, si aucun exercice n'est clos au cours d'une année, avant le 1er avril de l'année suivante. La taxe proportionnelle liquidée au vu des documents produits, sous déduction des versements provisionnels effectués dans les conditions fixées par les articles 2 et 3 dudit décret, est immédiatement acquittée *(même décret, art. 6)*; 3° Le défaut de production des documents visés aux 1° et 2° ci-dessus ainsi que le défaut ou les insuffisances de déclaration des sommes passibles de la taxe proportionnelle donnent lieu à l'application des sanctions prévues à l'article 16 du décret n° 57-661 du 29 mai 1957. Les acomptes provisionnels et le solde de liquidation qui n'ont pas été intégralement versés le 15 du mois suivant celui au cours duquel ils sont devenus exigibles, entraînent la majoration de 10% visée à l'article 1733 du Code général des Impôts *(décret du 29 mai 1957, art. 5 et 7)*; 4° Réponse affirmative *(Cf. art. 2 et 3 précités du décret du 29 mai 1957)*; 5° 19,80%, taux en vigueur au 31 décembre 1958, date à laquelle se place le fait générateur de la taxe comme il a été dit plus haut.

Source: *Juris Classeur Périodique*, 25 février, 1960

UNITED STATES

No tax revision in sight

Prospects for general tax revision in 1960 were apparently killed in a statement by House Ways and Means Committee Chairman Wilbur D. Mills (D., Ark.) at the close of extended hearings on the subject.

The hearings lasted from November 16 to December 18, with about 175 invited experts testifying on a variety of subjects from individual deductions to flexibility of revenue yield.

Chairman Mills explained in his concluding statement that the committee staff would be unable to complete analysis of the 188 papers prepared by the experts, and of the hundreds of pages of verbal testimony, before the present Congress adjourns. "Thus it will not be possible", he said, "for the Committee on Ways and Means, itself, to give specific consideration in 1960 to any broad proposals of tax revision based on these discussions."

Reduction of income tax rates, recommended by fourteen witnesses, got more attention than anything else in the prepared papers. Ten witnesses favored elimination or reduction of capital gains taxes, while one favored the present rates.

Eight witnesses recommended liberalization of depreciation provisions, and five of these favored depreciation based on replacement cost. Eight would broaden the income tax base by permitting fewer deductions. Four would reduce percentage depletion allowances, but seven would keep them about as they are. Five favored some form of tax deduction for money invested in retirement plans and five favored some form of averaging income for tax purposes over a period of years. Five favored doing away with tax exempt interest. These were the subjects which drew the largest number of specific recommendations. As indicated, only a relatively small number of individuals dealt with each of the many topics covered.

Other highlights of the hearings:

Business expense: At one day's session devoted to business expense deductions, four of five witnesses felt that the problem could be handled administratively with no change in the law, but a fifth felt that the Cohan rule should be changed by legislative action to require substantiation of deductions by records, except where an employee accounts for them to his employer.

Accounting methods: During an extended discussion of accounting methods for tax purposes, Chairman Mills asked if the chief difference between tax accounting and business accounting was not timing. However, he indicated some fear that conforming tax accounting to business accounting might result in a permanent loss of tax revenue, and he also asked, "If the impact depends upon generally accepted accounting principles that are not uniform, then have we uniformity of impact?"

Capital gains: Several panelists felt that the definition of capital gains should be tightened to exclude non-investment income, such as gains on stock options, to which the special rate now applies. Another suggestion was that tax on capital gain should be deferred if the proceeds were immediately reinvested. Others felt that the best solution would be to lower top bracket income tax rates so capital gains treatment would be less important.

Non-reported income: Former IRS Commissioner Russell C. Harrington told the committee that about $24 billion of income was unreported for tax

purposes in 1957, of which $12 billion was business income of non-corporate taxpayers, $3.5 billion interest, and $1 billion dividends. Most of the rest was wages and salaries not subject to withholding.

Tax rates: While most of the panelists who discussed this subject favored reduction of individual income tax rates, four who discussed corporate taxes were evenly divided as to the need for a rate deduction. Throughout all of the discussions, most of the panelists appeared to take for granted that any lowering of rates would have to be compensated for either by a broader income tax base or tax increases in some other areas.

Source: *The Journal of Accountancy,* February, 1960.

Tax Revisions Recommended

Seven "tax reform revisions" to yield additional revenues of $4-$5 billion a year have been recommended to Congress by the Joint Economic Committee. The Committee said in its report that as more emphasis is placed on fiscal policy and budget surpluses, reform of the Federal tax structure becomes more urgent. Estate and gift taxes were singled out as particularly in need of reform.

The recommendations called for action in the following areas:
1. Repeal the dividends-received credit. 2. Provide withholding tax on interest and dividends. 3. Rigorously limit employee expense accounts. 4. Limit the types of income to which capital gains treatment is given to true capital gains. 5. Progressively reduce the percentage depletion rates on oil and gas. 6. Improve enforcement of the income tax laws. 7. Eliminate the numerous preferential provisions in the estate and gift taxes.

The Committee held that the present tax structure is riddled with examples of preferential treatment, expense account abuses, and loopholes. Resources have tended to flow into areas where tax treatment is most advantageous, rather than where they may be most efficient, with the result that national growth had suffered, in the committee's view.

The Joint Economic Committee is composed of members of both House and Senate. The chairman is Senator Paul H. Douglas (D., Ill.)

Source: *The Journal of Accountancy,* March, 1960

FRANCE - CONVENTIONS INTERNATIONALES

Suprématie des traités internationaux sur la loi interne. — Application aux conventions fiscales attribuant à la France des pouvoirs d'imposition non prévus par la législation interne.

Nous avons le plaisir de reproduire ci-après un article paru dans le numéro spécial que la revue «Droit Fiscal» a consacré à la réforme fiscale française du 28 décembre 1959. Nous remercions la direction de ladite revue de nous avoir autorisé à reproduire l'article en question.

La loi n° 59-1472 du 28 décembre 1959 portant réforme du contentieux fiscal et divers aménagements fiscaux renferme, dans son article 3 (§ III), une disposition de droit fiscal international dont la portée doctrinale est considérable, mais dont les conséquences pratiques ne pourront être exactement mesurées qu'au prix d'un examen approfondi des diverses conventions internationales liant la France en matière d'impôts sur les revenus.

Le paragraphe en question est ainsi conçu:

«Nonobstant toute disposition contraire du Code général des Impôts, sont passibles en France de l'impôt sur le revenu des personnes physiques ou de l'impôt sur les sociétés tous revenus dont l'imposition est attribuée à la France par une convention internationale relative aux doubles impositions.»

En droit constitutionnel, cette disposition apparaîtra comme une tautologie; elle constitue au contraire une innovation certaine, pour peu qu'on la confronte avec les solutions coutumières du droit fiscal international.

I. — Aux termes de l'article 55 de la constitution du 4 octobre 1958 — qui reprend, avec une précision supplémentaire relative à la notion de réciprocité, une règle déjà inscrite à l'article 26 de la constitution de 1946 et implicitement admise sous l'empire de celle de 1875 —, les traités ou accords internationaux régulièrement ratifiés ou approuvés ont en France, dès leur publication, une autorité supérieure à celle des lois internes.

Pour qui cherche à définir le contenu *instantané* du droit positif, cette suprématie sur le droit interne, reconnue aux stipulations internationales lors de leur publication, constitue un principe nécessaire et évident, en l'absence duquel les traités seraient dépourvus de toute efficacité et perdraient jusqu'à leur raison d'être: la conclusion d'un traité international n'est concevable et justifiée que dans la mesure où les clauses qui y sont insérées diffèrent des législations propres aux parties contractantes, soit en statuant sur des points qu'elles ne règlent pas, soit en modifiant certaines de leurs dispositions ou en faisant obstacle à leur application.

Pourtant, d'un point de vue *évolutif*, on peut concevoir à la limite qu'un traité ait pour objet, non de modifier, compléter ou restreindre les dispositions actuelles des législations internes, mais seulement de faire obstacle à l'application entre les parties contractantes, des lois ultérieures qui, éventuellement, en changeraient la teneur. Un tel traité se réduirait alors à l'engagement pris par chaque Etat envers l'autre de cristalliser dans leur teneur actuelle les solutions de son droit positif énoncées dans l'acte contractuel: là encore, la suprématie du traité international sur la loi interne est une condition nécessaire, faute de laquelle le traité serait privé de son objet même.

II. — L'application de ce principe fondamental aux conventions internationales ayant pour objet d'éviter ou de limiter les doubles impositions devrait normalement conduire aux solutions suivantes:

Lors de la publication d'une convention de ce type, régulièrement ratifiée (car les traités qui engagent les finances de l'Etat sont sujets à ratification sur autorisation législative), les règles d'imposition qu'elle édicte devraient se substituer, dans les rapports entre les administrations fiscales intéressées et les contribuables visés par la convention aux règles qu'énonce, dans les mêmes matières, la législation fiscale interne de chaque Etat contractant.

De même, les modifications législatives survenant dans chaque Etat contractant postérieurement à l'entrée en vigueur de la convention ne devraient être appliquées que dans la mesure où elles ne sont pas contraires aux clauses contractuelles.

En d'autres termes, chaque convention déroge, pendant toute la durée de son application, à la législation interne qui constitue le droit commun.

S'agissant en particulier, des *règles de rattachement,* dont l'objet est d'attribuer à l'un des deux Etats contractants le droit d'assujettir à ses impôts des biens, revenus ou opérations d'une nature et d'une catégorie déterminées, il faudrait logiquement décider que, dans le domaine d'application assigné à la convention relativement aux personnes, aux territoires et aux matières imposables qu'elle régit, ces règles sont applicables *à l'exclusion* de celles édictées par les lois internes. En matière d'impôts sur les revenus, il conviendrait notamment d'admettre, en ce qui concerne la France:

— qu'un revenu dont l'imposition est refusée à la France par la convention doit échapper aux impôts français, alors même qu'il y serait soumis si l'on s'en tenait aux dispositions de la loi fiscale interne;

— inversement, qu'un revenu dont l'imposition est attribuée à la France par la convention doit être soumis aux impôts français, alors même qu'il y échapperait si l'on s'en tenait aux dispositions de la loi fiscale interne.

Des solutions analogues vaudraient à l'égard des impôts autres que ceux frappant les revenus (impôts successoraux par exemple).

III. — En réalité, une coutume s'est instaurée, tant en France que dans la plupart des pays étrangers, en vertu de laquelle les conventions internationales relatives aux doubles impositions sont considérées comme ne pouvant déroger aux dispositions des lois fiscales internes que dans le sens de la limitation ou de la suppression d'obligations incombant aux contribuables, mais non dans le sens de leur aggravation. En d'autres termes, il a été admis que, dans chaque Etat, les conventions de cette nature peuvent bien faire échec, totalement ou partiellement, à l'application des impôts exigibles suivant la législation interne, mais ne peuvent rendre ces impôts exigibles dans des cas où ladite législation interne n'autorise pas leur perception.

Par conséquent, des deux solutions dégagées ci-avant, seule la première est effectivement mise en oeuvre: en France, l'impôt n'est pas dû lorsqu'il est exigible d'après la législation interne, mais qu'une clause conventionnelle s'oppose à sa perception. En revanche, la seconde solution est entièrement méconnue: les clauses des conventions qui autorisent la perception des impôts français dans des cas non prévus par la législation interne, ou sur des bases plus etendues que celles établies par ladite législation, restent lettre morte, même s'il résulte de cette interprétation un défaut de réciprocité détruisant l'équilibre des conventions en cause.

En définitive, pour définir en France la situation fiscale d'un bien, d'un revenu ou d'une opération dans l'hypothèse où une convention internationale est applicable, il est posé en règle que l'exigibilité de l'impôt français est subordonnée à la double condition, d'une part que sa perception soit prévue par la législation interne, d'autre part que la convention ne s'oppose pas à cette perception. Si l'une de ces deux conditions fait défaut, l'impôt n'est pas dû.

IV. — Pourtant, cette méthode d'interprétation n'est pas toujours exactement suivie, et il est possible de déceler des cas dans lesquels l'Administration s'en tient, sans le dire expressément, à la règle constitutionnelle de suprématie des conventions internationales sur les lois internes.

Par exemple, l'article 15 de la convention franco-américaine du 25 juillet 1939, modifié par les articles 7 *a* de la convention du 18 octobre 1946 et 1 *h* de celle du 22 juin 1956, dispose que «par dérogation à l'article 109-2 du Code général des Impôts, les sociétés américaines qui possèdent en France des établissements stables acquitteront l'impôt sur le revenu des valeurs mobilières sur les trois quarts des bénéfices effectivement retirés de ces établissements, les bénéfices industriels et commerciaux étant déterminés, en conformité des (*sic*) dispositions des articles 3 et 4 de la présente convention».

Suivant la méthode coutumière d'interprétation des conventions internationales relatives aux doubles impositions, ce texte signifierait que l'impôt français frappant les revenus de valeurs mobilières doit, lorsque des sociétés américaines possédant des établissements stables en France en sont redevables en vertu de la législation interne française, être calculé sur une base n'excédant pas les trois quarts des bénéfices retirés desdits établissements, mais que, si la législation française prescrit de retenir une base inférieure, ou encore si elle n'autorise pas la perception de l'impôt, la convention reste sans effet et la loi interne s'applique.

Or, la Direction générale des Impôts a toujours soutenu, au contraire, que l'article 15 de la convention a pour effet de substituer, pour les sociétés américaines, les règles d'exigibilité et d'assiette de l'impôt qui y sont énoncées à celles qu'édicte la législation française, et par conséquent:

— d'assujettir à l'impôt français toutes les sociétés américaines qui possèdent en France des établissements stables bénéficiaires, même si ces sociétés ne procèdent à aucune distribution de revenus de valeurs mobilières;

— d'assigner pour base de calcul à cet impôt une masse égale aux trois quarts des bénéfices nets des établissements stables français, alors même que l'application de l'article 109-2 du Code général des Impôts et des textes réglementaires pris pour son application, conduirait à retenir une base inférieure.

Ces solutions sont sans nul doute conformes aux règles constitutionnelles françaises; elles n'en sont pas moins en contradiction manifeste avec la doctrine constamment professée en France pour l'interprétation des accords de doubles impositions, puisqu'elles permettent à l'Administration de réclamer l'impôt, tantôt dans des cas où la législation interne n'en autorise pas la perception, tantôt sur des bases excédant celles définies par cette même législation interne.

V. — A l'inverse, il est des hypothèses dans lesquelles la doctrine restrictive, exactement appliquée, trouve sa justification dans le texte même des conventions qu'il s'agit d'interpréter, et ne peut plus, par suite, être qualifiée d'anticonstitutionnelle.

Tel est le cas lorsqu'une convention attribue à l'un des Etats contractants le droit d'appliquer son impôt *dans la mesure seulement où sa «législation générale» , sa «législation interne»*, le lui permet.

Voici des exemples de clauses conventionnelles de cette nature:

— *Convention franco-belge* du 16 mai 1931, art. 6, § 1: « . . . les revenus des valeurs mobilières . . . pourront être frappés d'un impôt réel par l'Etat du domicile fiscal des bénéficiaires, *suivant les modes prévus par sa législation générale* » . . .

— *Convention franco-canadienne* du 16 mars 1951, art. 8-1: «Les revenus des capitaux mobiliers . . ., les produits des trusts et les redevances (royalties)

. . . dues pour l'exploitation des nappes de pétrole ou de gaz naturel sont imposables par l'Etat sur le territoire duquel le débiteur a son domicile, *lorsque la législation générale de cet Etat autorise la perception d'un impôt sur ces revenus par voie de retenue à la source.* »

— *Convention franco-luxembourgeoise* du 1er avril 1958, art. 8-2: « . . . chaque Etat *conserve* le droit de percevoir l'impôt (sur les revenus de valeurs mobilières) par voie de retenue à la source, *conformément à sa législation générale . . .* »

Même convention, *art.* 19-2: « . . . chacun des deux Etats contractants *conserve* le droit d'imposer *suivant les règles propres à sa législation* les produits des participations . . . »

VI. — Compte tenu des errements antérieurs, la disposition insérée sous l'article 3-III de la loi du 28 décembre 1959 doit être considérée comme enjoignant à l'Administration fiscale française de respecter, en matière d'impôt sur le revenu des personnes physiques et d'impôt sur les sociétés, la règle constitutionnelle de suprématie des traités sur la loi interne.

Il s'ensuit que, dorénavant, les impôts en question devront être perçus sur les revenus dont l'imposition est attribuée à la France par les conventions relatives aux doubles impositions, alors même que, d'après les dispositions du Code général des Impôts, ils ne seraient pas exigibles, ou ne devraient être liquidés que sur des bases plus étroites. *Mais il faut, pour que cette solution soit valable et se substitue aux pratiques restrictives antérieures, que l'attribution à la France du droit d'imposition soit,* d'apres les termes de la convention, *inconditionnelle* et non pas subordonnée à l'existence de règles concordantes dans la législation interne. Par conséquent, *aucun changement n'est à prévoir dans l'application des clauses conditionnelles* du genre de celles citées comme exemples dans le paragraphe V de la présente étude.

VII. — Les quelques exemples suivants, pris au hasard des conventions en vigueur, permettront d'apprécier les incidences du nouveau texte:

NOTION D' «ETABLISSEMENT STABLE». — Toutes les conventions conclues en vue d'éviter les doubles impositions en matière d'impôts sur les revenus définissent la notion d' «établissement stable» pour le rattachement des bénéfices industriels et commerciaux, et attribuent le droit d'imposer ces bénéfices à l'Etat contractant sur le territoire duquel est situé l'établissement stable dont ils proviennent.

Cependant, la loi interne française et la jurisprudence du Conseil d'Etat énoncent, en matière de bénéfices industriels et commerciaux, des règles de territorialité sensiblement différentes: sont imposables en France, non seulement les bénéfices retirés de l'activité d'établissements stables situés en France, mais aussi ceux provenant d'opérations que des entreprises étrangères accomplissent en France sans y posséder d'établissements, pourvu que ces opérations soient constitutives d'un cycle commercial complet. Inversement, échappent à l'impôt français les bénéfices qu'une entreprise française réalise à l'étranger, soit par l'entremise d'un établissement stable situé hors de France, soit en conséquence d'opérations formant un cycle commercial complet, effectuées à l'étranger en l'absence d'établissement stable (*J.-Cl. Fiscal, Fasc.* 14-1).

Suivant la méthode d'interprétation restrictive admise dans le passé, les clauses conventionnelles de rattachement des bénéfices industriels et commerciaux pouvaient recevoir application en France dans la mesure où elles prescrivaient d'exonérer de l'impôt français, en l'absence d'établissement stable sis en France, les profits réalisés en territoire français par des entreprises étrangères dans le cadre d'un cycle commercial complet. Elles restaient au contraire lettre morte dans la mesure où elles tendaient à attribuer à la France le droit d'imposer les bénéfices que des entreprises françaises réalisent

dans l'Etat étranger co-contractant en y accomplissant un cycle commercial complet sans y posséder d'établissement stable. Tel était le cas, notamment pour les bénéfices retirés par des entreprises françaises de chantiers temporaires de construction, d'installation ou de montage ouverts dans le pays co-contractant, lorsque ces chantiers, eu égard à leur durée, étaient réputés ne pas constituer des établissements stables au regard des clauses conventionnelles: bien qu'exonérés à l'étranger, les bénéfices en question échappaient à l'impôt français, la Direction générale des Impôts estimant que cet impôt, non exigible d'après les règles de territorialité internes, ne pouvait être exigé sur le seul fondement des conventions internationales. Il en résultait, en fait, une double exemption.

Désormais, cette double exemption n'aura plus lieu: les bénéfices provenant de chantiers ouverts par des entreprises françaises dans les pays étrangers liés à la France par des conventions relatives aux doubles impositions seront imposables en France lorsque les chantiers en question seront réputés ne pas constituer des établissements stables au sens de ces conventions.

REVENUS DE CREANCES HYPOTHECAIRES. — L'article 8, § 3, de la convention franco-allemande du 9 novembre 1934 attribue le droit d'imposer les intérêts de créances hypothécaires à l'Etat sur le territoire duquel est situé l'immeuble grevé d'hypothèque. Cependant, la législation interne française n'autorise la perception de l'impôt, sur les revenus de créances non négociables tant hypothécaires que chirographaires, que si le créancier, bénéficiaire de ces revenus, a son domicile ou sa résidence habituelle (ou son siège, s'il s'agit d'une entreprise) en territoire français. Il s'ensuivait, d'après l'interprétation restrictive des conventions, qu'échappaient à l'impôt français les intérêts de créances garanties par hypothèques sur immeubles français, lorsque le créancier avait son domicile ou sa résidence habituelle en Allemagne, cependant que ces mêmes intérêts étaient exonérés en Allemagne du fait de la situation des immeubles grevés.

Désormais, la France imposera les revenus des créances de cette catégorie, en se fondant sur la disposition de l'article 8, § 3, de la convention, et nonobstant le fait que l'impôt n'est pas exigible d'après la législation interne.

REVENUS DE CREANCES NON NEGOCIABLES QUELCONQUES. — Des conséquences analogues sont à prévoir pour l'imposition des revenus de créances non négociables quelconques dans les rapports entre la France et la Belgique, l'article 3 de la convention franco-belge du 16 mai 1931 attribuant le droit d'imposer ces revenus à l'Etat du débiteur, alors que la loi interne française n'autorise la perception de l'impôt que si le créancier a son domicile ou sa résidence habituelle en France.

VIII. — *Modalités de l'imposition appliquée en France.* — Lorsqu'ils sont encaissés par des sociétés de capitaux, les revenus que l'article 3-III de la loi du 28 décembre 1959 déclare imposables en France en vertu des conventions internationales et nonobstant les dispositions contraires du Code général des Impôts doivent être compris dans les bases de calcul de l'impôt sur les sociétés; l'application de cet impôt, dont le tarif est proportionnel, ne semble devoir soulever aucune difficulté particulière.

Si les revenus en cause bénéficient à des personnes physiques, ou à des sociétés non passibles de l'impôt sur les sociétés, c'est l'impôt unique sur le revenu des personnes physiques qui doit s'appliquer. Toutefois, comme les redevables ne peuvent être, en pareil cas que des personnes n'ayant pas de résidence habituelle en France, et que les revenus qu'il s'agit d'imposer appartiennent nécessairement à des catégories fiscales autres que celle des revenus de valeurs mobilières soumis à la «retenue à la source» instituée par l'article 19 de la loi, l'impôt sur le revenu des personnes physiques devra être établi suivant les modalités prévues au paragraphe III de l'article 13. En d'autres termes, il sera fait application du barème progressif par tranches,

mais en considérant fictivement le contribuable comme marié sans enfant à charge, l'impôt ainsi calculé ne pouvant, en toute hypothèse, être inférieur à 24 % du revenu net imposable.

En outre, pendant la période transitoire que définit l'article 22 de la loi, et qui doit expirer au plus tard le 1er janvier 1962, la «taxe complémentaire» de 8% (9% en 1960) sera exigible, d'après le paragraphe III dudit article, sur les revenus imposables en vertu de conventions internationales, à moins que ces revenus n'entrent dans les catégories que le paragraphe I du même article 22 exclut du champ d'application de la taxe en question.

IX. *Impôts autres que ceux frappant les revenus.* —

L'article 3-III de la loi du 28 décembre 1959 ne dispose qu'en matière d'impôt sur le revenu des personnes physiques et d'impôt sur les sociétés, auxquels il convient d'ajouter la taxe complémentaire de l'article 22.

A l'égard des impôts autres que ceux désignés ci-dessus, et que visent les conventions internationales relatives aux doubles impositions, la méthode coutumière d'interprétation restrictive continuera de s'appliquer, et de faire obstacle à l'exercice du droit d'imposition attribué à la France par les conventions, lorsque ce droit n'est pas également reconnu par la législation interne française ou par l'interprétation qu'en donnent les tribunaux.

Il est même permis de penser que cette coutume restrictive se trouvera indirectement renforcée et consacrée, la règle nouvelle énoncée par la loi du 28 décembre 1959 pouvant à bon droit être considérée comme dérogeant à cette coutume dans les seules matières expressément visées, ce qui signifie, *a contrario,* que l'interprétation restrictive est confirmée pour le surplus. Tel sera le cas, notamment, en matière d'impôts sur les successions.

Source: *Droit Fiscal,* 26 février 1960.

ASSOCIATION EUROPEENNE DE LIBRE-ECHANGE

Nous avons reçu le texte de la Convention, conclue par les sept pays qui formeront l'Association européenne de libre-échange (EFTA) et signée le 4 janvier 1960 à Stockholm. Vu l'importance de cette Convention pour les matières fiscales, nous reproduisons ici les articles relevants. La Convention entrera en vigueur dès le dépôt des instruments de ratification par tous les Etats signataires auprès du Gouvernement de la Suède, probablement au premier juillet 1960. La Convention s'appliquera à la Principauté de Liechtenstein aussi longtemps qu'elle formera une union douanière avec la Suisse et que la Suisse sera membre de l'Association.

CONVENTION INSTITUANT L'ASSOCIATION EUROPEENNE DE LIBRE-ECHANGE

La République d'Autriche, le Royaume de Danemark, le Royaume de Norvège, la République Portugaise, le Royaume de Suède, la Confédération Suisse et le Royaume-Uni de Grande-Bretagne et d'Irlande du Nord.

Vu la Convention de Coopération Economique Européenne du 16 avril 1948 instituant l'Organisation Européenne de Coopération Economique,

Résolus à maintenir et à développer la coopération au sein de cette Organisation.

Déterminés à faciliter l'établissement dans un proche avenir d'une association multilatérale ayant pour objet d'éliminer les obstacles aux échanges et de développer une coopération économique plus étroite entre les members de l'Organisation Européenne de Coopération Economique, y compris les membres de la Communauté Economique Européenne,

Vu l'Accord général sur les Tarifs douaniers et le Commerce,

Résolus à contribuer à la réalisation des objectifs de l'Accord général,

Sont convenus de ce qui suit:

Article 1

L'Association

1. Par la présente Convention, il est établi une organisation internationale qui sera connue sous le nom d'Association européenne de libre-échange et dénommée ci-après «l'Association».

2. Sont membres de l'Association et dénommés ci-après «Etats membres» les Etats qui ratifient la présente Convention et tout autre Etat qui y adhère.

3. La Zone est constituée par les territoires de l'Association auxquels la présente Convention s'applique.

4. Les institutions de l'Association sont le Conseil et les autres organes qu'il peut créer.

Article 2

Objectifs

Les objectifs de l'Association sont

(a) de favoriser dans la Zone et dans chaque Etat membre l'expansion soutenue de l'activité économique, le plein emploi, l'accroissement de la productivité ainsi que l'exploitation rationnelle des ressources, la stabilité financière et l'amélioration continue du niveau de vie,

(b) d'assurer aux échanges entre Etats membres des conditions de concurrence équitable,

(c) d'éviter entre Etats membres des disparités sensibles des conditions d'approvisionnement en matières premières produites dans la Zone, et

(d) de contribuer au développement harmonieux et à l'expansion du commerce mondial ainsi qu'à l'élimination progressive des obstacles qui l'entravent.

Article 3

Droits de douane à l'importation

1. Les Etats membres réduisent et finalement éliminent, conformément au présent article, les droits de douane et toute autre imposition d'effet équivalent, à l'exception des droits notifiés conformément à l'article 6 et des autres impositions relevant de cet article, perçus à l'importation ou à l'occasion de l'importation de marchandises admises au bénéfice du régime tarifaire de la Zone conformément à l'article 4. Ces droits ou autres impositions sont dénommés ci-après «droits de douane à l'importation».

2. (a) A partir des dates suivantes, les Etats membres n'appliquent à aucune marchandise des droits de douane à l'importation supérieurs au pourcentage du droit de base indiqué en regard de chacune d'elles:

1er juillet 1960	80 pour-cent,
1er janvier 1962	70 pour-cent,
1er juillet 1963	60 pour-cent,
1er janvier 1965	50 pour-cent,
1er janvier 1966	40 pour-cent,
1er janvier 1967	30 pour-cent,
1er janvier 1968	20 pour-cent,
1er janvier 1969	10 pour-cent.

b() Dès le 1er janvier 1970, les Etats membres n'appliquent aucun droit de douane à l'importation.

3. Sous réserve de l'annexe A, le droit de base mentionné au paragraphe 2 du présent article est, pour tout Etat membre et pour toute marchandise, le droit de douane appliqué par cet Etat membre, le 1er janvier 1960, aux importations de cette marchandise en provenance des autres Etats membres.

4. Chaque Etat membre se déclare disposé à appliquer des droits de douane à l'importation inférieurs au niveau indiqué au paragraphe 2 du présent article, s'il considère que sa situation économique et financière et la situation du secteur en cause le lui permettent.

5. Le Conseil peut décider en tout temps que les droits de douane à l'importation doivent être réduits plus rapidement ou éliminés avant la date prévue au paragraphe 2 du présent article. Le Conseil examine entre le 1er juillet 1960 et le 31 décembre 1961 s'il est possible d'en décider ainsi pour les droits de douane à l'importation perçus par une partie ou par la totalité des Etats membres sur une partie ou sur la totalité des marchandises.

Article 4

Régime tarifaire de la Zone

1. Aux fins des articles 3 à 7 et sous réserve de l'annexe B, sont admises au bénéfice du régime tarifaire de la Zone les marchandises qui sont expédiées du territoire d'un Etat membre vers le territoire de l'Etat membre importateur et qui sont originaires de la Zone du fait qu'elles satisfont à l'une des conditions suivantes:

(a) elles ont été produites entièrement dans la Zone,

(b) elles correspondent à la description des marchandises énumérées dans les listes de procédés de fabrication, qui constituent les appendices I et II

à l'annexe B et elles ont été produites dans la Zone par le procédé de fabrication approprié décrit dans ces listes,

(c) lorsqu'il s'agit de marchandises autres que celles qui sont énumérées dans l'appendice II à l'annexe B, elles ont été produites dans la Zone et la valeur de toute matière importée de l'extérieur de la Zone ou d'origine indéterminée et utilisée à un stade quelconque de la production n'excède pas 50 pour-cent du prix à l'exportation desdites marchandises.

2. Aux fins des alinéas (a), (b) et (c) du paragraphe 1 du présent article, les matières énumérées dans la liste des matières de base constituant l'appendice III à l'annexe B et utilisées dans un processus de production dans la Zone, dans l'état décrit dans cette liste, sont considérées comme ne comportant aucun élément importé de l'extérieur de la Zone.

3. Aucune disposition de la présente Convention n'empêche un Etat membre d'admettre au bénéfice du régime tarifaire de la Zone toute marchandise importée du territoire d'un autre Etat membre, à condition que les marchandises similaires importées du territoire de tout autre Etat membre reçoivent le même traitement.

4. Les dispositions nécessaires à l'administration et à l'application effective du présent article figurent à l'annexe B.

5. Le Conseil peut décider d'amender les dispositions du présent article et de l'annexe B.

6. Le Conseil examine périodiquement les amendements à apporter à la présente Convention en vue d'assurer le bon fonctionnement des règles d'origine et, en particulier, de les rendre plus simples et plus libérales.

Article 5

Détournement de trafic

1. Aux fins de cet article, il y a détournement de trafic quand

(a) les importations dans le territoire d'un Etat membre d'une marchandise donnée en provenance du territoire d'un autre Etat membre sont en augmentation

(i) par suite de la réduction ou de l'élimination dans l'Etat membre importateur des droits et impositions sur cette marchandise, conformément aux articles 3 ou 6, et

(ii) parce que les droits et impositions perçus par l'Etat membre exportateur sur les importations de matières premières ou de produits intermédiaires utilisés dans la production de la marchandise en question sont sensiblement inférieurs aux droits et impositions correspondants perçus par l'Etat membre importateur, et

(b) cette augmentation des importations provoque ou pourrait provoquer un préjudice grave à une activité productrice exercée dans le territoire de l'Etat membre importateur.

2. Le Conseil examine la question des détournements de trafic et de leurs causes. Il prend les décisions nécessaires en vue d'agir sur les causes de détournements de trafic, en amendant les règles d'origine conformément au paragraphe 5 de l'article 4 ou par tout autre moyen qu'il estime approprié.

3. Tout Etat membre peut référer au Conseil les cas particulièrement urgents de détournement de trafic. Le Conseil prend une décision aussi rapidement que possible, en général dans le délai d'un mois. Il peut décider, à la majorité, d'autoriser des mesures intérimaires en vue de sauvegarder la situation de l'Etat membre en question. Ces mesures ne doivent pas être maintenues plus longtemps qu'il est nécessaire au déroulement de la procédure prévue au paragraphe 2 du présent article; leur durée n'excède pas deux mois, à moins que le Conseil, dans des cas exceptionnels, ne décide, à la majorité, d'autoriser une prolongation de cette période pour une durée ne dépassant pas deux mois.

4. L'Etat membre qui envisage de réduire le niveau effectif de ses droits ou impositions sur des marchandises qui ne peuvent bénéficier du régime tarifaire de la Zone notifie, pour autant que cela soit possible, cette réduction au Conseil trente jours au moins avant son entrée en vigueur et tient compte de toute observation des autres Etats membres quant au détournement de trafic qui pourrait en résulter. Les renseignements reçus en vertu de ce paragraphe ne sont révélés à aucune personne étrangère au service de l'Association ou des gouvernements des Etats membres.

5. Les Etats membres qui envisagent de modifier leurs droits ou impositions sur des marchandises qui ne peuvent bénéficier du régime tarifaire de la Zone tiennent dûment compte du fait qu'il est désirable d'éviter les détournements de trafic qui pourraient en résulter. En pareil cas, tout Etat membre estimant qu'il y a détournement de trafic peut en référer au Conseil conformément à l'article 31.

6. Si, lors de l'examen d'une plainte déposée conformément à l'article 31, il est fait référence à une différence du niveau des droits ou impositions frappant des marchandises qui ne peuvent bénéficier du régime tarifaire de la Zone, il ne sera tenu compte de cette différence que si le Conseil constate à la majorité qu'il y a détournement de trafic.

7. Le Conseil réexamine périodiquement les dispositions du présent article et peut décider de les amender.

Article 6

Droits fiscaux et imposition intérieure

1. Les Etats membres s'abstiennent

(a) d'appliquer directement ou indirectement aux marchandises importées des charges fiscales supérieures à celles qui frappent directement ou indirectement des marchandises nationales similaires ou de les appliquer de façon à assurer d'une autre manière une protection effective aux marchandises nationales similaires, ou

(b) d'appliquer des charges fiscales aux marchandises importées qu'ils ne produisent pas ou ne produisent pas en quantités appréciables, de façon à accorder une protection effective à la production nationale de marchandises qui, bien que différentes des marchandises importées, peuvent se substituer à elles, leur font une concurrence directe et ne sont pas frappées dans le pays d'importation, directement ou indirectement, de charges fiscales d'une incidence équivalente,

et donnent effet à ces obligations conformément aux dispositions des paragraphes 2 et 3 du présent article.

2. Les Etats membres s'abstiennent d'introduire de nouvelles charges fiscales incompatibles avec le paragraphe 1 du présent article et de modifier une charge fiscale existante de façon à accroître au delà du niveau en vigueur à la date de référence prévue au paragraphe 3 de l'article 3 pour la détermination du droit de base, tout élément de protection effective contenu dans cette charge, c'est-à-dire la mesure dans laquelle cette charge est incompatible avec le paragraphe 1 du présent article.

3. (a) Les Etats membres éliminent, le 1er janvier 1962 au plus tard, l'élément de protection effective de toute taxe intérieure ou de toute autre imposition intérieure.

(b) Pour les droits fiscaux, les Etats membres procèdent

(i) soit à l'élimination progressive de tout élément de protection effective contenu dans le droit par des réductions successives correspondant à celles qui sont prescrites à l'article 3 pour les droits de douane à l'importation,

(ii) soit à l'élimination, le 1er janvier 1965 au plus tard, de tout élément de protection effective contenu dans le droit.

(c) Chaque Etat membre notifie au Conseil, le 1er juillet 1960 au plus tard, les droits auxquels il entend appliquer les dispositions de l'alinéa (b) (ii) du présent paragraphe.

4. Chaque Etat membre notifie au Conseil toutes les charges fiscales qu'il applique lorsque les taux ou les conditions d'imposition ou de perception de ces charges ne sont pas les mêmes pour les marchandises importées et pour les marchandises nationales similaires, dès l'instant où ledit Etat membre estime que les charges en question sont ou ont été rendues compatibles avec l'alinéa (a) du paragraphe 1 du présent article. Chaque Etat membre donne, à la requête de tout autre Etat membre, des renseignements sur l'application des paragraphes 1, 2 et 3 du présent article.

5. Chaque Etat membre notifie au Conseil les droits fiscaux auxquels il entend appliquer les dispositions du présent article.

6. Aux fins du présent article:

(a) l'expression «charges fiscales» signifie droits fiscaux, taxes intérieures et autres impositions intérieures sur les marchandises;

(b) l'expression «droits fiscaux» signifie droits de douane et autres impositions similaires perçus principalement dans un but fiscal;

(c) l'expression «marchandises importées» signifie marchandises admises au bénéfice du régime tarifaire de la Zone conformément aux dispositions de l'article 4.

Article 7

Ristourne des droits de douane (drawback)

1. Tout Etat membre peut, dès le 1er janvier 1970, refuser d'admettre au bénéfice du régime tarifaire de la Zone les marchandises bénéficiant de ristournes de droits de douane accordées par des Etats membres dans le territoire desquels les marchandises ont été soumises aux processus de production sur lesquels est fondée la demande de considérer lesdites marchandises comme originaires de la Zone. En appliquant le présent paragraphe, chaque Etat membre accorde le même traitement aux importations des territoires de tous les Etats membres.

2. Des dispositions similaires s'appliquent aux ristournes de droits de douane relatives aux matières importées énumérées dans les annexes D et E à la présente Convention.

3. Le Conseil décide, avant le 31 décembre 1960, des dispositions applicables aux ristournes de droits de douane au cours de la période s'étendant du 31 décembre 1961 au 1er janvier 1970.

4. Le Conseil peut, en tout temps après la décision qu'il a prise conformément au paragraphe 3 du présent article, examiner si des dispositions additionnelles ou différentes sont nécessaires pour régler la question des ristournes de droits de douane après le 31 décembre 1961; il peut décider de l'application de telles dispositions.

5. Aux fins de cet article:

(a) l'expression «ristourne de droits de douane (drawback)» signifie toute disposition pour le remboursement ou l'exonération du total ou d'une partie des droits applicables à des matières importées, à condition que cette disposition concède, formellement ou en fait, le remboursement ou l'exonération lorsque certaines marchandises ou matières sont exportées mais non lorsqu' elles sont destinées à la consommation nationale;

(b) le terme «exonération» inclut l'exemption accordée en ce qui concerne les matières déposées dans des portsfrancs ou autres lieux dotés de privilèges douaniers similaires;

(c) l'expression «droits de douane» signifie

(i) toute imposition à l'importation ou à l'occasion de l'importation, à l'exception des charges fiscales auxquelles s'applique l'article 6, et

(ii) tout élément de protection contenu dans ces charges fiscales;

(d) les expressions «matières» et «processus de production» ont le sens qui leur est attribué dans la règle 1 de l'annexe B.

Article 8

Prohibition des droits de douane à l'exportation

1. Les Etats membres s'abstiennent d'introduire des droits de douane à l'exportation ou de les augmenter; ils cessent de les appliquer dès le 1er janvier 1962.

2. Les dispositions du présent article n'empêchent pas les Etats membres d'adopter les mesures nécessaires en vue d'éviter que les droits frappant leurs exportations vers des territoires situés en dehors de la Zone ne soient éludés par le biais de la réexportation.

3. Aux fins du présent article, l'expression «droit de douane à l'exportation» signifie tout droit de douane ou imposition d'effet équivalent perçu à l'exportation ou à l'occasion de l'exportation de marchandises du territoire d'un Etat membre vers le territoire de tout autre Etat membre.

Article 9

Coopération en matière d'administration douanière

Les Etats membres prennent toutes mesures utiles, y compris des arrangements portant sur la coopération administrative, en vue d'assurer l'application effective et harmonieuse des dispositions des articles 3 à 7 et des annexes A et B, compte tenu de la nécessité de réduire autant que possible les formalités affectant les échanges et de trouver à toute difficulté surgissant de l'application de ces dispositions des solutions satisfaisantes pour chaque Etat membre.

Source: *Bulletin de la Société de Banque Suisse*, février 1960

I

INCOME TAX LEVIED ON GREEK LIMITED COMPANIES AND FOREIGN CORPORATIONS (II)

by

G. A. NEZIS, Athens

D. Income from Commercial and Industrial Enterprises.

1. Income from industrial and commercial enterprises consists of the profits earned from the exploitation of one or more commercial, industrial or business enterprises, or from prosecuting any other profession yielding profits. Also considered as income from commercial enterprises are the profits from the purchase and sale of real estate.

2. Also considered as income from commercial enterprises is any profit or gain derived from:

a) the cession of any right connected with the prosecution of the enterprise or the profession, as rights to lease or sublease, privileges, etc.

b) the cession of firms or rights to goodwill.

Profits or gains earned in the cases mentioned under above-mentioned items a) and b) are considered as an income of three consecutive years, and are respectively taxed in the year when it was earned and the two subsequent years.

c) from any activities of the enterprise undertaken besides its main aims.

d) from interest on Bills of Exchange and Promissory Notes, as long as they have been issued for commercial transactions, as well as from interests of commercial sales on credit.

3. Also considered as income from commercial enterprises is the automatic increase in value of its assets as well as non-realised increase in value, as long as it has been booked in the Balance Sheet, (with the exception of increases in value derived from real estate or ships.)

However, the increase in value derived from the sale of machinery or industrial installations is not charged with income tax as long

as it is used by the enterprise for an extra depreciation on other machinery or industrial installations of said enterprise. This exemption is also applied when any surplus of increase in value is used in the two years following its realisation, for an extra depreciation on new machinery or new installations in general.[1])

If the enterprise has not purchased new machinery or installations during the two years following the realisation of the increase in value, the non-used part of it is considered as profit to be booked in the third year after the above realisation.

4. Not charged with income tax is the difference between the price of a car sold as merchandise, without the respective circulation licence, and its value after the granting of the circulation licence and permit for active transport of persons or goods against payment, because this difference is charged with a special levy amounting to 25% according to Act No. 2119/1952.

5. The tax year comprises in general 12 months, the income taxed is earned during a certain period which comprises in general twelve months. The accounts are usually closed in December of each year. However, certain categories of enterprises can change the date of closing of the year, if this is approved by the Minister of Finance.

6. Considered as gross income from commercial enterprises is the sum of gross receipts from the exploitation of the enterprise or the prosecution of a profession as they appear in the account books of the tax-payer, as long as these books are kept according to the statutory provisions (Code of Taxation Data).

The income is also determined on the basis of the bookkeeping in the following cases:

a) when in the books and data kept by the enterprise there are mistakes, irregularities or omissions evidently not due to the intention of the taxpayer to conceal his income, but to an error or mere oversight by which the above determination is not adversely influenced.

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[1]) In order to prove that the machines purchased are new, the enterprise has to submit the following data:
a) certificate of the Greek of foreign firm from whom they have been ordered,
b) certificate of the Technical Division of the Ministry of Industry, and,
c) copy of the invoice of the goods certified by the Bank of Greece for the granting of the necessary exchange for their importation.

b) when the books and data kept comprise all elements to make the determination of income possible without, however, mentioning the income itself.

7. From the gross income are deducted:

a) general expenses of the administration, including salaries and wages of personnel. Also, real or presumed rents for the buildings owned by the Head of the enterprise, and used for the enterprise, as long as they have not been booked as income from real estate. As general expenses are also considered gifts to the State, municipalities or communities, as well as to legally functioning Greek national, religious, social, welfare and educational agencies, and to recognized sport organizations.

b) expenses for the maintenance and repair of machinery and professional installations in general.

c) the value of raw material or other marketable goods used, including the special expenses for their manufacture, storage, transport, insurance, etc.

d) interests on loans or credits.

e) taxes, duties and fees of any kind chargeable to the enterprise, with the exception of the income-tax itself.

f) doubtful debts definitely booked.

g) depreciation rates for the expenses for the first installation as well as for wear and tear connected with installations of all kinds, machinery and depreciable material, and in general all movable or immovable assets of the enterprise (see their detailed list in Chapter III).

h) reserve funds for the recovering of assets which in a period of time will pass, according to contract, to the State or to third parties.

i) loss caused by deterioration, loss or devaluation of capital as well as provisions for any existing and non-realised devaluation of business assets or increase in value of liabilities, with the exception of such on real estate and ships.

j) small expenses for social obligations of the enterprise, small tips, etc. as long as these amounts are in proportion to the nature of the enterprise and its turnover. No written evidence is required for expenses mentioned in this item.

k) an insurance company can effect the following deductions:

i. mathematical reserves for life insurance calculated on the basis of proportional accounts.
ii. reserve funds for covering existing dangers calculated in the net premiums at a rate of 45% for the fire insurance branch, 40% for the transport insurance branch, 40% for the automobile accidents branch, and 40% for the hail branch. Considered as net premium is the amount paid for premium after deduction of any payment for reinsurance.
iii. retentions for indemnities for damage proved by experts and booked in the respective books of loss according to the Code of Taxation Data, after deduction of any participation of the re-insurance. Above, sub items a) to k) mentioned, deductions can be effected only if there are respective entries in the account books.

l) Greek enterprises for export of home farm-products, as well as industrial or handicraft products, can deduct amounts up to 1% on the gross income derived from exports. The above rate — which varies according to the kind of products — is fixed by Common Acts of the Ministers of Coordination, Finance, Commerce and Industry issued at the beginning of each calendar year or each export season. Mining and engineering enterprises can also effect the above-mentioned deduction. The same applies to shipyards, but only for that part of their gross incomes derived from the repairs of ships sailing under a foreign flag.

The balance remaining after the above deductions have been made, is the net income from commercial and industrial enterprises.

8. From the net income of industrial and commercial enterprises are deducted also as exemptions the reserves of provincial enterprises mentioned below in Chapter IV.

9. Should the bookkeeping prove to be inadequate for the determination of profits then the net income of the enterprise is fixed by the tax authorities by multiplying the gross income by indices fixed in an official list. This list comprises a minimum and a maximum rate and Tax Authorities can fix within these limits the adequate rate for each enterprise. They can, however, exceed both the maximum and the minimum rates if they have full proof to justify this action.

The above-mentioned (in para. 7) deductions are effected by a special Decree permitting the determination of mixed profits —

instead of net profits at special rates. For the determination of mixed profits there are also special lists of rates varying according to the kind of enterprise.

10. In the case of foreign enterprises aiming at the production or at the purchase and packing only of raw materials in Greece, profits earned from sales realised abroad are determined — as long as they do not figure in the balance sheet — by dividing the gross income into parts according to business contracted at home and abroad and by using special profit rates for each branch.

The Minister of Finance can by special Act fix the gross income of such sales on the basis of the F.O.B. wholesale price of the exported goods at the place of loading. In the case that the F.O.B. wholesale price cannot be determined, profits are calculated at a percentage of the cost of the exported goods.

Such an Act is valid for a period of five years.

11. Foreign tobacco trade companies are taxed for their profits out of the sale of tobacco leaves to an amount of one drachma on each kilogram of exported tobacco (Act No. 2561/1953). Should there exist between a foreign enterprise and a Greek Limited Company, functioning under the control of the former (because of its participation in the capital or administration of the latter) agreements on sales or services at prices evidently lower or higher than the common prices in the local market, then the difference derived from such over- or under-estimation is considered as profit of the Greek Limited Company.

12. Above provisions are also applied for the determination of profits earned in Greece by a foreign corporation through its permanent establishment in Greece, in the cases when the branch agency or office in Greece is forced to accept conditions of economic collaboration evidently more onerous than they would be if the business were contracted with third persons and resulting in the transfer of profits abroad. In this case the above amount of profits is considered to be earned in Greece.

13. The provisions concerning additional depreciation rates and tax free reserve funds for the covering of future losses or tax free retentions for new investments shall not be applied from the fiscal year 1960 and to foreign industrial enterprises having a permanent establishment in Greece, as long as the laws of the Country

of the seat of the company do not contain provisions acknowledging the exemptions effected in Greece.

The present provision does not apply a) in cases where the Greek State has undertaken by Concession special responsibilities and b) in cases when a Double Taxation Convention between Greece and the Country of the seat of the company provides the additional depreciation rates and tax free reserve funds and retentions.

E. Income from Farming Enterprises.

1. Considered as income from farming enterprises is the income earned in each calendar or farming year from one or more agricultural enterprises of any kind such as cattle farms, chicken farms, sericulture, forestry, fishing, etc.

2. For the determination of the income from farming enterprises the provisions mentioned above concerning commercial and industrial enterprises are applied in proportion.

3. If the net income cannot be fixed from the account books kept by the enterprise, it is fixed on the basis of special rates on the gross income.

Considered as gross income is the value of products fixed in drachmae on the basis of wholesale prices of similar products at the time and at the place of production.

The rate on gross incomes which is considered to be the net income from farming enterprises, has been fixed between the limits of 10% and 20%. For absentee landowners the above rate can be fixed up to 30%.

4. An amount of Drachmae 50,000 a year is deducted from the net income free of tax.

F. Income from Other Sources.

All income which cannot be classified in any of the above (A to E) mentioned sources is considered to be income from the exercise of a free profession.

III DEPRECIATION RATES

The net income of commercial, industrial or farming enterprises undertaken by persons or corporations of any kind is determined

after deducting the depreciation rates for their depreciable assets from their gross incomes.

Maximum limits of depreciation rates are fixed every year by a special Decree.

The enterprise can use, at its own discretion, the appropriate depreciation rate for every year, but cannot exceed the maximum rate fixed by the State. There is no lower limit to the depreciation rates.

There are four kinds of depreciation rates a) ordinary, b) supplementary, c) provincial, and d) special rates fixed by Act No. 3765. All four kinds of depreciation rates are fixed in drachmae on the total value of the assets at the time of their purchase, or on the adjusted value according to the Decree on "Adjustment of Balance Sheets".

Depreciation rates are intended for one year. Depreciation rates for *new* machinery, plants and other fixed assets, start from the month such assets first function. They are divided into as many twelfths as are months left up to the end of the year. Depreciation rates of all kinds can never exceed the value of purchase or the adjusted value of the respective assets.

A. Ordinary depreciation Rates.

1. The maximum limits of ordinary annual depreciation rates for machinery and plants in general are the following:

a) For machinery generating power by steam or electricity, 6%.

b) For machinery generating power by diesel motors, 12,5%.

c) For metal tanks for the storage of liquid fuel, 3,5%; for the pipe lines and respective spare parts, 5%.

d) For refrigerators and air-conditioning installations, 8%.

e) For office equipment, typewriters, etc., 8%.

f) For installations of hotels, sanatoria, private clinics and private schools, 20%.

Water supply and bathroom installation of the above enterprises are considered to be installations of the enterprise and not of the building. Their depreciation rate amounts, therefore, as mentioned above, to 20%.

g) Machinery and installations of all other kinds of enterprises, 8%.

h) For transport means (horses, wagons, cars, etc.) of private

schools 8%, of other enterprises 12%, for trucks and tourist motor-buses, 20%.

i) For barrels and other receptacles of liquid materials 30%.

j) For rails and other materials of railway enterprises 5%, for locomotive engines and other rolling material, 10%.

k) For new aeroplanes 20%, for used aeroplanes 20% plus 5% for each year of use, starting from the next year of its functioning up to the year of its purchase.

l) For ships and other means of floating transport of less than 500 tons capacity: 20% for the first year of their exploitation under the Greek flag, 10% for the second, third, fourth, and fifth years, and 5% yearly from the sixth year onwards.

m) The value of spare parts and tools can be written off in full during the first year of their use.

2. The maximum limits of ordinary annual depreciation rates for farming machinery and tools used by farming enterprises and not included in the fixed assets of such enterprises, are the following:

a) for machinery and tools with animal traction (plough etc.), 20%.

b) for the different manual tools (pick-axes, scythes, etc.) and tools for vineyards and orchards 20%.

c) for machines with mechanical traction the depreciation rates vary from 6 to 20%.

3. For furniture and equipment:

a) of hotels, sanatoria, private clinics and private schools, 30%,

b) for all other kinds of enterprises, 20%.

4. The maximum depreciation rates for factory buildings with their dependencies and warehouses for the storage of raw materials and the preliminary storage of industrial products is 5% on the value of the buildings. The same rate is applied to buildings used for the packing of tobacco leaves and for drying the Virginia type tobacco, as well as to storehouses for other farming products destined for export.

5. For all other buildings of the enterprise the rate for ordinary annual depreciation bookings is 3% on their value, with the exception of buildings or parts of buildings utilized by the owner for self-use, of hotels, sanatoria, private clinics and private schools for which the rate is 6%.

An amount of 12% of the gross income from rent of the building is deducted from the depreciation rate in order to avoid the double computation of the same depreciation in the sources of Categories A (income from real estate) and D (income derived from commercial etc. enterprises) of the income tax.

6. Certain kinds of enterprises have special depreciations rates. They are the following:

a) The Company of the Corinth Canal, 16%.

b) Dangerous enterprises not accepted by insurance companies, 16%.

c) Munition factories using explosive materials, 33%.

Above enterprises cannot make entries in their books of ordinary depreciation rates mentioned in para. 1 and 5 of this chapter.

7. Quarries and mines can book, in addition to the ordinary depreciation rates, a supplementary yearly amortisation to the amount of 8% on the value of the mines or quarries. A yearly rate to the amount of 30% is allowed to the mining enterprises for research work in Greece and 15% for research work abroad. For private roads of mining enterprises etc. the yearly rate of ordinary depreciation is 2%.

8. Banks have the alternative either to make entries for each of their doubtful debts or to deduct from their yearly receipts a certain percentage for the covering of their loss from insolvent clients. This deduction is reckoned on the average of yearly deposits and amounts to 2% for Mortgage Banks and 1% for all other Banks.

B. Additional Depreciation Rates

By Acts No. 942/1949 and 2901/1954, the right was granted to industrial, trading and mining enterprises to make entries for *additional* depreciation rates up to 2.5% yearly for buildings and 6% for all other fixed assets for the amortisation of buildings erected and installations purchased after October 22, 1947. Thus the depreciation rates for buildings amount to 7.5% (5% ordinary and 2.5% additional rates) and for machinery etc. to 14% (8% plus 6%).

C. Depreciation Rates for Installations in Provinces.

By Act No. 2176/1956 industrial, trading,. mining and hotel

enterprises, have the right to make entries for an extra yearly depreciation rate for their installations in the provinces amounting to the double of all ordinary and additional rates.

As provinces are considered, a) all parts of Greece with the exception of the District of Attica, b) the islands of Aegina, Cythera, Poros, Hydra, Spetses and the town of Lavrion, although these belong to the Attica District.

Thus for new industrial plants erected in provinces the depreciation rates amount to 15% (7.5% plus 7.5%) and for new machinery destined for these installations, the rates amount to 28% (14% plus 14%).

The privilege of doubling the reserve funds for buildings or installations in the provinces of the above enterprises expires at the end of the calender year 1964.

D. New Additional Depreciation Rates According to Act No. 3765.

1. In order to assist the industrialisation of the country Act No. 3765/1957 provides a new increase of 50% on all depreciation rates (ordinary, additional and provisional) for those branches of industry, trade, mining or farming and engineering which will be fixed especially by Royal Decree. This new amortisation rate concerns only enterprises founded during the period from January 1, 1958 to December 31, 1962 and only for *new* installations and machinery.

2. The same increase of maximum rates on all depreciations is granted under the same above-mentioned conditions to already existing enterprises which would proceed during the period 1958 to 1962 to the purchase of new machinery etc. in order to extend, improve and modernize their old installations.

Up to now the Royal Decree of March 17, 1959 has granted the new additional depreciation rates to the following branches of trade and industry:

1. Metal Industries (ores).
2. Steel Industries.
3. Shipyards and ship repairing enterprises.
4. Metal Works.
5. Steel sheet-plate industries.
6. Industries for the manufacture of articles made of aluminum and enamel.

7. Manufacturing stoves and refrigerators.
8. Manufacturing farming tools.
9. Manufacturing electrical apparatus and motors.
10. Manufacturing diesel motors.
11. Manufacturing air-conditioning motors.
12. Manufacturing steam ovens for the baking of bread.
13. Manufacturing boilers for central-heating installations.
14. Manufacturing metal furniture, medical instruments and apparatus.
15. Manufacturing emery products.
16. Manufacturing bricks.
17. Manufacturing china articles.
18. Manufacturing porcelain insulators.
19. Cotton industry.
20. Ribbon industry.
21. Wool industry.
22. Silk industry.
23. Artificial silk and staple fibre industry.
24. Industry of vegetable fibres.
25. Manufacturing knitted articles.
26. Wine industry.
27. Food preserving industry.
28. Manufacturing dairy produce.
29. Chemical industry.
30. Industry for chemical fertilizers.
31. Glass industry.
32. Industry for plastic ware.
33. Manufacturing plate-glass.
34. Manufacturing paints and varnishes.
35. Oil refineries in general.
36. Manufacturing rubber products.
37. Turpentine and colophony industry.
38. Industry of pharmaceutical products.
39. Leather dressing industries.
40. Paper industries.
41. Paper pulp industries.
42. Industries of graphical arts.
43. Industries for metal printing.

44. Hardboard, plywood and veneer industry.
45. Manufacturing car-bodies.
46. Manufacturing pencils.
47. Manufacturing electric cables.
48. Workshops for the sorting and packing of tobacco leaves.
49. Motion-picture industry.
50. Leather industries in general.
51. Manufacturing furniture.

Above provisions are also applied to *trade* enterprises of the same branches.

For proving that the installations to be written off are new, the following data have to be shown:

i) in the case of buildings, the respective licence of the Town Planning Office or the District Engineer.

ii) in the case of machinery, a certificate of the Greek or foreign firm which has delivered it, with the respective licence of the Ministry of Industry and the invoice for the purchase of the goods certified by the Bank of Greece for the granting of the necessary exchange for their importation.

(to be concluded)

II

SURVEY OF TAX LEGISLATION
APERÇU DE LEGISLATION FISCALE

BELGIUM

Period from May 1st until June 30th, 1960

Conventions

Loi du 20.4.60 portant approbation de la Convention entre la Belgique et la France tendant à éviter les doubles impositions et à régler certaines autres questions en matières d'impôts sur les successions et de droits d'enregistrement, signée à Bruxelles, le 20.1.1959. Mon. Belge, 10.6.1960.

Taxes assimilées au timbre

Arrêté royal du 22.6.60 modifiant le Règlement général sur les taxes assimilées au timbre. Mon. Belge, 29.6.1960.

Douanes et accises

Arrêté royal du 29.4.1960 établissant un droit spécial à l'importation de certains produits agricoles et alimentaires. Mon. Belge, 9.5. 1960.

Arrêté royal du 24.6.60 relatif au tarif des droits d'entrée. Mon. Belge, 27.6.1960 (modification dans le cadre du Bénélux).

Arrêté ministériel du 25.6.60 réglant des franchises en matière de droits d'entrée. Mon. Belge, 27.6.1960.

FRANCE

Period from April 18th until June 30th, 1960

Conventions

Décret no. 60-373 du 12.4.60 portant publication de l'échange de lettres du 28.11.1958 entre la France et la Grande-Bretagne au sujet des taxes sur le chiffre d'affaires en ce qui concerne les redevances perçues au titre des lincences d'exploitation de brevets. J.O. 18, 19 et 20.4.1960.

Décret no. 60-374 du 12.4.60 portant publication de l'échange de lettres des 3.8-17.9.1959 entre la France et le Danemark au sujet des taxes sur le chiffre d'affaires en ce qui concerne les redevances perçues au titre des licences d'exploitation des brevets. J.O. 18, 19 et 20.4.1960.

Décret no. 60-375 du 12.4.60 portant publication de l'échange de lettres du 21.10.1959 entre la France et l'Italie au sujet des taxes sur le chiffre d'affaires en ce qui concerne les redevances perçues au titre des licences d'exploitation de brevets. J.O. 21.4.1960.

Impôts sur le revenu

Décret no. 60-441 du 9.5.1960 fixant, en application de l'art. 37 de la loi no. 59-1472 du 28.12.1959, les modalités et les plafonds de l'amortissement dégressif des biens d'équipement. J.O. 10.5.1960.

Douanes et accises

Décret no. 60-436 du 7.5.1960 portant modification du tarif des droits de douane d'importation applicable à l'entrée dans le territoire douanier en ce qui concerne certains films. J.O. 8.5.1960. Rectificatif J.O. 15.5.1960.

Décret no. 60-437 du 7.5.1960 portant réduction provisoire quant à la perception des droits de douane d'importation applicables en régime de droit commun en tarif minimum à certaines pâtes à papier et arrêté du 7.5.1960 portant fixation, au titre de l'année 1960, du montant et des conditions d'importation du contingent de pâtes à papier, de bois de conifères, pâtes chimiques, à la soude, écrues, du no. 47-01 Ab et du no. ex 47-01 B du tarif des droits de douane d'importation, admissible en suspension du droit de douane. J.O. 8.5.1960.

Loi no. 60-461 du 17.5.60 portant ratification du décret no. 59-1185 du 20.10.1959 suspendant provisoirement la perception des droits de douane d'importation applicables au lait complet ou écremé. J.O. 18.5.1960.

Taxes sur le chiffre d'affaires

Décret no. 60-429 du 2.5.1960 portant modification de la liste des produits agricoles originaires des départements de l'Algérie et du Sahara, des départements d'outre-mer, des Etats membres de la Communauté et des territoires d'outre-mer de la République exonérés, à l'importation, du paiement de la taxe sur la valeur ajoutée et arrêté du 2.5.1960 portant modification de la liste des produits agricoles légèrement transformés passibles de la taxe sur la valeur ajoutée aux taux réduit de 10 p. 100. J.O. 7.5.1960.

Décret no. 60-450 du 12.5.1960 relatif aux taux majorés des taxes sur le chiffre d'affaires. J.O., 13.5.1960.

Matières diverses

Décret no. 60-490 du 23.5.60 fixant, en ce qui concerne les entreprises concessionaires, les conditions d'application de la revision des bilans prévue aux articles 39 et 40 de la loi no. 59-1472 du 28.12.59 portant réforme du contentieux fiscal et divers aménagements fiscaux. J.O. 29.5.1960.

GERMANY *Period from April 29th until June 30th, 1960*

Conventions

Bekanntmachung über das Inkrafttreten des Abkommens zwischen der Bundesrepublik Deutschland und dem Königreich Norwegen zur Vermeidung der Doppelbesteuerung und über gegenseitige Amts- und Rechtshilfe auf dem Gebiete der Steuern vom Einkommen und von Vermögen sowie der Gewerbesteuer. BGBL. II, 7.5.1960.

Bekanntmachung vom 7.3.1960 über das Inkrafttreten des Abkommens über die Zollerleichterungen im Touristenverkehr, des Zusatzprotokolls hierzu betreffend die Einfuhr von Werbeschriften und Werbematerial für den Fremdenverkehr und des Zoll-abkommens über die vorübergehende Einfuhr privater Strassenfahrzeuge. BGBl. II, 12.5.1960.

Gesetz vom 10.6.60 zum Abkommen vom 16.6.1959 zwischen der Bundesrepublik Deutschland und dem Königreich der Niederlande zur Vermeidung der Doppelbesteuerung auf dem Gebiete der Steuern vom Einkommen und vom Vermögen sowie verschiedener sonstiger Steuern und zur Regelung anderer Fragen auf steuerlichem Gebiete. BGBl. II, 23.6.1960.

Gesetz vom 10.6.60 zum Abkommen vom 7.8.1958 zwischen der Bundesrepublik Deutschland und der Islamischen Republik Pakistan zur Vermeidung der Doppelbesteuerung und zur Verhinderung der Steuerverkürzung bei den Steuern vom Einkommen. BGBl. II, 23.6.1960.

Gesetz vom 10.6.60 zum Abkommen vom 17.4.1959 zwischen der Bundesrepublik Deutschland und dem Königreich Schweden zur Vermeidung der

Doppelbesteuerung auf dem Gebiete der Steuern vom Einkommen und vom Vermögen sowie verschiedener anderer Steuern. BGBl. II, 23.6.1960.

Gesetz vom 15.6.60 zum Abkommen vom 18.3.1959 zwischen der Regierung der Bundesrepublik Deutschland und der Regierung von Indien zur Vermeidung der Doppelbesteuerung des Einkommens. BGBl. II, 23.6.1960.

Customs and Excise Duties

23. Verordnung vom 9.5.1960 über Zoll-tarifänderungen zur Durchführung des Gemeinsamen Marktes der Europäischen Gemeinschaft für Kohle und Stahl. (Spezialwalzdraht). BGBl. II, 12.5.1960.

Zolltarif-Verordnung vom 23.5.60 über das Inkrafttreten des Zolltarifs 1959 vom 23.12.58. BGBl. II, 28.5.1960. (Text des Zolltarifs in Anlagenband zum BGBl. II).

Miscellaneous

Neufassung vom 20.4.60 der Versicherungsteuer-Durchführungsverordnung. BGBl. I, 29.4.1960.

Neufassung vom 20.4.60 der Kapitalverkehrsteuer-Durchführungsverordnung BGBl. I, 29.4.1960.

Neufassung vom 20.4.60 der Wechselsteuer-Durchführungsverordnung. BGBl. I, 29.4.1960.

Gesetz vom 26.4.60 zur Aenderung des Mineralölsteuergesetzes. BGBl. I, 29.4.1960.

Bundesbaugesetz vom 23.6.60. Zehnter Teil: Aenderung grundsteuerlicher Vorschriften. BGBl. I. 29.6.1960.

LUXEMBURG *Period from May 1st until June 30th, 1960*

Douanes et accises

Arrêté ministériel du 25.6.60 relatif au tarif des droits d'entrée. (exécution au Grand-Duché à partir du 1.1.60 de l'arrêté royal belge du 24.6.60). Mémorial, 25.6.1960.

NETHERLANDS *Period from May 1st until June 30th, 1960*

Turnover Tax

Royal Decree of 20.6.60 modifying the Royal Decree of 12. 2.60 concerning increase of turnover tax on some imported goods. Stb. 240 of 28.6.1960.

Ministerial Decree of 27.6.60 modifying the Decree Refunds Turnover Tax 1960. Stc. 28.6.1960.

Customs and Excise Duties

Law of 10.3.60, containing approval of a modification of import duties. Stb. 131 of 12.4.1960.

Royal Decree of 16.6.60 modifying the Decree concerning transitory provisions of the Tariff Decree 1960. Stb. 234 of 24.6.1960.

Royal Decree of 20.6.60 containing the provisional putting into effect of a modification of the Tariff of import duties and some measures regarding import duties in accordance with Treaties concerning European Communities. Stb. 237 of 24.6.1960.

Ministerial Decree of 28.6.60 containing modifications of the Decree concerning exemptions of the Customs and Excise Duties. Stc. 29.6.1960.

MISCELLANEOUS - FAITS DIVERS

ARGENTINA

New tax legislation

A new law, modifying the *Stamp duty* law, has been promulgated on December 21st, 1959, effective as from November 1st, 1959. In this law new rates are set for the various stamp duties, levied in case of judicial proceedings before the different law courts. Another law, promulgated on January 14th, 1960, creates a *Tribunal Fiscal* to hear disputes relating to taxation matters.

The *turnover tax* on fruit export (fixed at 8%) has been suspended by Decree no. 15.899 of November 27th, 1959, with effect from that date on, for shippings until December 31st, 1960 inclusive.

Source: *Boletin de la Dirección General Impositiva*, no. 73, January 12th, 1960.

Revaluation

By the law no. 15,272, promulgated on February 15th, 1960, a new revaluation on assets of trade is allowed. The general modification law no. 15.273 (see *Bulletin* vol. XIV nr. 3) has stated some principles as to the revaluation and continuation of the extraordinary amortization granted by the law no. 11.682 of September 7th, 1959 (which law did not contain this option), and those extraordinary amortization percentages can now be applied also to immovables (till then expressly excluded).

The particular revaluation law (15.272) further leaves the entrepreneur free to apply the revaluation either to all assets or to one category only, or even to some items of one kind of assets, and makes it clear that the extraordinary amortization will remain valid for those assets to which the entrepreneur did not wish to apply the revaluation. Certain allowances in case of sale of assets will even hold good for revaluated assets (for the first time in the year following the sale).

Another freedom is allowed to the taxpayer, viz. the revaluation coefficient to be applied: the law only gives the maximum coefficients, the entrepreneur may decide to apply lower ones, and is also free to apply different coefficients to two similar assets. One can also extend the working-life of the assets, which are to be revaluated, with maximum 50% — e.g. an asset, other than an immovable, which could be written down normally in, let us say, 10 years, can be revaluated on a basis of a working-life of 12, 14 or 15 years. The (maximum) revaluation coefficient ranges from 30 in case of an asset, purchased or constructed in or before 1944, to 1 in case of an asset dating from 1959.

Source: *Derecho Fiscal*, April 1960.

EIRE

Budget speech

The Irish Minister for Finance, presenting his Budget to the Doil on April 27th, announced one increase in taxation and a number of small reliefs.

The increase regards the tobacco duty: one penny on a packet of twenty

cigarettes, or ounce of pipe tobacco. As to the reliefs, there will be an increase from £ 100 to £ 120 of the income tax and surtax allowance for each child. Losses will be available for indefinite carry-forward, and the estate duty exemption limit goes up from £ 2,000 to £ 5,000, with a corresponding change for legacy and succession duties, the rate of duty remaining as before for estates above the limit. The penny a gallon duty on heavy oils is removed and there are reductions in entertainment duties on cinemas and dance halls. A number of special import levies are removed with a view to lowering the cost of living. A shilling a week is added to social assistance payments over a wide field.

Source: *The Accountant*, May 7th, 1960.

EGYPT

Refonte du tarif douanier

Le tarif douanier égyptien sera examiné de nouveau. Tel est le but de la formation des comités auprès du ministère du Trésor.

Ces comités ont reçu mission de mettre à exécution le projet de la simplification et la révision du tarif douanier.

Le projet regarde la réduction des droits douaniers sur certains articles comme, entre autres, les accessoires du matériel industriel, et le groupement de noms différents, tels que «droit d'entrée», «droits ad valorem» et «droits spécifiques» sous un seul titre et à un taux unifié.

Source: *L'Informateur*, 27 mai 1960.

FRANCE

Revision des bilans - Nouveaux coefficients de réévaluation

Un décret no. 60-243 du 19 mars 1960 (J.O. du 20, p. 2665) vient de fixer les coefficients applicables pour les revisions des bilans prévues par les articles 39 (revision obligatoire) et 40 (revision facultative) de la loi du 28 décembre 1959.

Le délai fixé pour procéder à ces revisions ayant commencé à courir à compter du 29 décembre 1959, ces coefficients pourront être utilisés pour la première fois à la clôture des exercices arrêtés le 31 décembre 1959; mais il ne s'agit pas là d'une obligation, et les entreprises peuvent attendre le 31 décembre 1960 ou même le 31 décembre 1961 pour procédér à la réévaluation.

Contrairement aux décrets antérieurs qui comportaient une échelle unique d'indices, le nouveau décret prévoit deux séries de coefficients:
les premiers sont applicables pour la réévaluation des immobilisations de toute nature (bâtiments, terrains,fonds de commerce, matériel, outillage etc.), et des amortissements correspondants;
les seconds sont réservés spécialement au portefeuille-titres.

Les nouveaux indices sont en augmentation assez sensible par rapport aux dernières échelles fixées l'an dernier par le décret du 14 février 1959 et précédemment par le décret du 18 février 1952.

Les coefficients visés aux articles 15, 16 et 20 de l'annexe III du C.G.I. sont fixés à nouveau aux chiffres (en ce qui concerne les immobilisations et amortissements y afférents) qui s'échelonnent de 243 (années 1914 et antérieures) à 1,05 (année 1958).

Source: *Feuillets de Documentation Rapide*, 21 mars 1960

Cessions et concessions de licences d'exploitation de brevets
Cédants et concédants italiens

C.G.I. Art. 259; Instruction no. 70 du 16 mai 1960.

Un accord passé le 21 octobre 1959 avec le Gouvernement italien — applicable à compter de la même date — règle la situation au regard des taxes sur le chiffre d'affaires, des ressortissants italiens ayant cédé ou concédé des licences pour l'exploitation de brevets en France. (J.O. du 21 avril 1960, p. 3681).

Les stipulations de cet accord reprennent celles des accords conclus antérieurement avec les autorités d'autres Etats.

En ce qui concerne ses modalités d'application, il y a lieu de se reporter à l'instruction générale no. 69 du 10 avril 1959.

1. *Mode de preuve de la qualité d'inventeur*

La déclaration à fournir par les donneurs italiens de licences doit être conforme à l'un des modèles publiés en annexe.

A cette déclaration, certifiée par le Bureau Central Italien des Brevets doivent être annexées les copies de tous documents justificatifs (brevets, contrats . . .) dont il est fait état dans la déclaration.

Le Service peut demander les justifications complémentaires qu'il estime nécessaires. En cas de litige il conviendra de saisir l'Administration.

2. *Règlement du passé*

Les dispositions prévues par l'instruction no. 69 précitée sont applicables aux donneurs de licences italiens.

L'article 11 de l'accord passé avec l'Etat italien prévoyant que ses ressortissants sont admis au bénéfice de tout avantage plus étendu accordé par la France aux donneurs de licence d'un pays déterminé, la prescription triennale ne sera pas opposée aux demandes de remboursement présentées par les inventeurs italiens dans les cas où, en acquittant l'impôt, les intéressés auront formulé des réserves sur le principe de son exigibilité. (Cf. Instruction no. 15 du 2 février 1959, Accord franco-britannique).

Source: *Bulletin d'Information,* 23 mai 1960.

GUATEMALA

Investment facilities

A new Industrial Development Law has been introduced. The legislation provides broader coverage and more liberal concessions than were available under an earlier statute. The benefits are extended to domestic as well as to foreign investors.

Under the scheme a distinction is made between "new" and "existing" enterprises, with the former entitled to more preferential treatment. A "new" enterprise is defined as one which will manufacture goods which are not now produced in Guatemala or which will provide a new service. If the enterprise produces only substitutes for, or variations of, existing products it will only be regarded as a new enterprise if such production will provide a net advantage to the economy. New enterprises will receive a ten year exemption in respect of customs duties on machinery, raw materials, etc. Profits tax will be waived for 5 years and a 50% reduction will be granted for the next 5 years. Provision is also made to carry the profits tax relief through to the shareholders of the enterprise. In the case of existing enterprises the tax relief is designed so that additional profits from new investment will be taxed at preferential rates. If the new investment increases the enterprise's fixed assets by at least 50%, the profits tax rate will be reduced by 50% for a five year period.

Source: *Canadian Tax Journal,* January-February 1960

MADAGASCAR

La loi de finances no. 60-002 du 4 février 1960 (J.O. Madagascar du 13 février 1960, p. 261) reconduit dans son ensemble, la réglementation applicable en 1959 aux impôts, contributions et taxes, directs et indirects.

Les modifications intervenues sont les suivantes :

I. *Taxe de développement économique*

Le taux de la taxe de développement économique applicable aux opérations locales à caractère commercial, industriel, artisanal ou minier est fixé à 8% (sous réserve de l'application des taux réduits à 3%, 6% et 7% pour les opérations portant sur certaines catégories de produits).

II. *Impôt général sur le revenu*

Le contribuable désirant bénéficier de l'exonération de l'impôt général sur le revenu pour les sommes qu'il a investies à Madagascar devra en faire la demande sur sa déclaration annuelle, et annexer à celle-ci un état détaillé de ces investissements.

D'autre part, le revenu net des propriétés foncières bâties servant de base au calcul de la contribution est obtenu après déduction des frais, évalués forfaitairement pour l'ensemble des immeubles à 30% du revenu brut, sauf si le contribuable demande expressément sur sa déclaration annuelle la déduction des frais réels. Dans ce dernier cas, l'option est obligatoirement prise pour une durée de cinq ans.

III. *Droits d'Enregistrement et de Timbre*

L'exonération de la taxe complémentaire de premiére mutation (au taux de 4,50%) et de la taxe sur les formalités hypothécaires est désormais applicable aux actes de fusion des sociétés qui apportent l'intégralité de leur actif à deux ou plusieurs sociétés constituées à cette fin, à condition que:

1° les sociétés bénéficiaires des apports aient leur siège social à Madagascar et ne soient pas de nationalité étrangère;

2° les apports résultant de conventions prennent effet à la même date pour les sociétés qui en sont bénéficiaires et entraînent, dès leur réalisation, la dissolution immédiate de la société apporteuse.

IV. *Licences*

Le tarif des licences de vente est divisé en 6 catégories, les taux varient, dans chaque catégorie, suivant le nombre d'habitants par localité, entre un minimum de 7.500 fr. CFA et un maximum de 170.000 francs CFA.

Des centimes additionnels à cette taxe sont établis au profit des communes urbaines et rurales. Le taux en est fixé à 50% pour les communes urbaines.

Pour les communes rurales, il sera fixé par le Conseil des communes intéressées et ne pourra être supérieur à 50% de la taxe en vigueur dans la commune considérée.

Source: *Problèmes d'outre-Mer*, 15 mars 1960.

NEW ZEALAND

Income tax changes

Sections 4 to 11 of the Land and Income Tax Amendment Act (No. 2), 1959, make changes in the special exemptions. The new exemptions for the year ending 31st March, 1961, have been designed to make the weekly values round sums.

The personal exemption is increased from £ 300 up to £ 468.

The exemption for dependent wife or husband and for a housekeeper is brought down from £ 200 to £ 156.

The exemption for dependent children and relatives is increased from £ 75 to £ 78. The additional exemption for persons over 65 years has been deleted.

Section 12 of the said Act provides the following new basic rates of tax for the year ending 31st March, 1961.

The rate is 3 sh. in the £ for the first £ 500 of taxable income and increases by 6 d. in the £ for each additional £ 100; from £ 900 on, when 5 sh. in the £ will be payable, the rate increases by 3 d. for each succeeding £ 100 of taxable income until the maximum rate of 12 sh. in the £ is reached at £ 3.600 of taxable income, as at present.

Source: *The New Zealand Economist and Taxpayer,* March, 1960.

PARAGUAY

Tax changes

The Paraguayan Government has made a number of changes as regards profits tax, sales tax, the tax on revaluation of asset and several internal taxes. The profits tax on individuals or organizations with a net profit of more than 35.000 guaranis per annum (120 guaranis = U.S. $ 1) is increased from 19 to 22 per cent.

Insurance companies will from now on be subject to a 3 percent tax on gross receipts instead of a tax on their net earnings.

Sales taxes are increased or introduced on imported automobiles, busses, trucks etc., and on medicines and pharmaceutical products.

Revaluation profits of assets comprising specified production goods will be taxed at a rate of 4 per cent instead of 2 per cent under the previous law. The tax on sales of exchanges to banks is increased from 2 per mil to 3 per mil, and on purchases from 4 to 5 per mil.

Source: *Foreign Commerce Weekly,* March 21, 1960.

SWEDEN

Carry forward of losses

The Swedish Parliament has passed a Bill providing for a 6-years' carry forward of losses, coming into force as from the tax year 1961. (vide *Bulletin* vol. XIV p. 185). This means that losses incurred in the year of income 1960 and subsequent years may be set off against profits made in the 6 years following the year of loss.

The carry forward is given in respect of both the state and the local income tax. It is estimated that state and local taxes will decrease by 13 million Crowns per annum as a result of the new regulations.

Source: *Svenska Handelsbanken - Index,* 1960, nr. 2.

TCHAD

Budget 1960; accroissement de la fiscalité

L'Assemblée législative du Tchad a adopté le budget de cet Etat pour 1960. Nous en reproduisons ci-dessous les provisions fiscales principales.

Les mesures vont entraîner un alourdissement de la fiscalité. Ces mesures sont les suivantes:

1° La création d'un Fonds Routier, alimenté par une *taxe sur les carburants* de 6,50 fr. CFA sur le gas-oil et de 4 fr. CFA sur l'essence, mesure qui doit

avoir une répercussion directe sur le prix des transports. Celle-ci a été évaluée à 3%. (Loi no. 33 du 8 janvier 1960).

En outre, l'accroissement des taxes de consommation sur les carburants: pour l'essence, la taxe passe de 5 à 10 francs CFA par litre, pour le gas-oil, elle passe de 2 à 3,5 francs CFA.

2° Augmentation de *l'impôt cédulaire sur les bénéfices industriels et commerciaux:*

Particuliers et assimilés:	Taux 1959	Taux 1960
1 - Commerçants	19 %	21 %
2 - Autres redevables (industriels, transporteurs)	15,5 %	18 %
Sociétés de capitaux:		
1 - Commerçants	24 %	27 %
2 - Autres redevables	19,5 %	22 %

(Loi no. 28 du 31 déc. 1959).

3° Augmentation générale des tarifs des *patentes et licences.*
Les majorations retenues sont de 20 à 100% pour les patentes du tableau A et de 20 à 50% pour celles du tableau B. La patente des entrepreneurs de travaux se trouve majorée de 138 à 205% (de 21.100 à 50.000 fr. CFA pour la première catégorie et de 101.500 à 308.000 fr. CFA pour la quatrième catégorie).

L'augmentation des licences est de 25 à 80%. (Loi no. 28 du 31 déc. 1959).

4° L'exonération fiscale, dont bénéficiaient les propriétaires d'immeubles ou de parties d'immeubles donnés en location, est supprimée à compter du 1er janvier 1960 lorsque le montant du loyer est supérieur à 12% de la valeur réelle de l'immeuble.
(Loi no. 27 du 22 déc. 1959) — J.O. Tchad du 1er janvier 1960.

D'autres part, les dispositions suivantes ont été prises par l'Assemblée:
la suppression de l'impôt personnel pour les femmes:
l'aggravation de la taxe des oisifs.

Source: *Problèmes d'Outre-Mer,* 15 mars 1960.

UNITED STATES

New bill would affect tax on income from foreign subsidiaries

At Treasury request, Ways and Means Chairman Mills has introduced H.R. 10859, a bill that could have a big tax impact on domestic corporations deriving income from foreign subsidiaries. The bill would apply the "gross-up" principle to dividends which a domestic corporation receives from a more-than-10%-owned foreign corporation. In other words, the amount of dividends a U.S. corporation receives from a foreign subsidiary would be increased ("grossed-up") for a proportionate part of the foreign taxes the subsidiary pays on profits from which the dividends derive.

This bill is designed to equalize the tax treatment for U.S. corporations operating through foreign subsidiaries and for U.S. corporations operating through foreign branches. The bill's "gross-up" tends towards this result, by ending the tax advantage wich the present law grants corporations operating through foreign subsidiaries. The advantage lets them exclude the amount of income paid as foreign taxes by subsidiaries, and lets them claim a tax credit based on such foreign taxes. Result: Unlike firms operating through foreign branches, these corporations often pay a total tax (U.S. and foreign) of less than the U.S. rate.

Source: *Prentice-Hall Federal Tax Treaties,* 25.3.1960.

United Kingdom Treaty applies to all British colonies

We have had some inquiries with regard to Sec. 507.501 of the United Kingdom withholding regulations. The regulation section lists all of the territories to which the treaty is extended pursuant to the tax treaty extension agreement with the United Kingdom. The list includes the territories of Cyprus, Montserrat, Federation of Nigeria and St. Vincent. But no official release was ever sent out stating that those four territories had completed the measures necessary to have the treaty extended to their lands. We have learned that those territories notified Britain that they had completed the necessary steps. Apparently, the British Government did not notify us until the regulations were ready to be released. Therefore, no separate release was ever issued by our State Department.

Source: *Prentice-Hall Federal Tax Treaties*, 25.3.1960.

Ways and Means approves bill on foreign tax credit

On March 8, House Ways and Means reported an amended version of H.R. 10087 which provides an alternative limitation to the foreign tax credit. The chief provision of the bill — first accepted by Ways and Means on Feb. 9 — is not substantially changed by the Committee's March 8 action. The latest version of the bill continues to grant taxpayers an election to lump together all tax credits on foreign income, instead of figuring each credit on a "per-country" basis as now. Provisions extending the time Treasury can assess prior years' deficiencies that result from a change from the "per-country" to the "overall" limitation on tax credit, or from the "overall" tax credit limitation to a deduction for foreign taxes. These provisions permit Treasury to assess such deficiencies so long as the year of change is open, and for one year thereafter.

They would apply for 1958 and later years. The amended version also requires that the choice between "per-country" and "overall" limitations or between tax credit and deduction, must be made (or changed) within the 3-year statute of limitations for filing refund claims. And it provides rules for carryover of foreign taxes where the overall limitation is elected.

Source: *Prentice-Hall Federal Tax Treaties*, 25.3.1960.

TAX AGREEMENTS

Australia-New Zealand

An agreement was recently signed in Canberra between Australia and New Zealand to provide relief from double taxation of income arising in the respective countries. The agreement, which will come into force when it has been enacted both in Australia and New Zealand, will apply for the income tax year 1959-1960 in each country.

Source: *The Accountant*, June 11th, 1960.

Germany-Pakistan, Sweden, the Netherlands, India

In the *Bundesgesetzblatt* of June 23rd, 1960, the complete texts have been published of the double taxation agreements concluded by the German Federal Republic with Pakistan (7.8.1959), Sweden (17.4.1959) and the Netherlands (16.6.1959), which agreements all have been approved by the Bundestag on June 10th, 1960, and with India (18.3.1959), approved on June 15th, 1960. All the agreements will come into force after the expiration of one month following the date of exchange of the instruments of ratification.

France-Danemark

Cessions et concessions de licences d'exploitations de brevets. - Cédants et concédants danois.

Un accord passé le 17 septembre 1959 avec le gouvernement danois,

applicable à compter de la même date, règle la situation au regard des taxes sur le chiffre d'affaires, des ressortissants danois ayant cédé ou concédé des licences pour l'exploitation de brevets en France.

Une instruction no. 9 du 18 janvier 1960 précise que les stipulations de cet accord, reprennent celles des accords conclus antérieurement avec les autorités d'autres Etats. En ce qui concerne ses modalités d'application, il y a lieu de se reporter à l'instruction générale no. 69 du 10 avril 1959.

Mode de preuve de qualité d'inventeur:

La déclaration à fournir par les donneurs danois de licences doit être conforme au modèle fixé par l'Administration.

A cette déclaration, certifiée exacte par la Fédération des industries danoises, 18 H.C. Andersens Boulevard, Copenhague, doivent être annexées les copies de tous documents justificatifs (brevets, contrats, etc.) dont il est fait état dans la déclaration.

L'Administration peut demander les justifications complémentaires qu'il estime nécessaires. En cas de litige, il conviendra de la saisir.

Règlement du passé:

Les dispositions prévues par l'instruction 69 précitée sont applicables aux donneurs de licences danois.

L'article 10 de l'accord passé avec l'Etat danois prévoyant que ses ressortissants sont admis au bénéfice de tout avantage plus étendu accordé par la France aux donneurs de licence d'un pays détermimé, la prescription triennale ne sera pas opposée aux demandes de remboursement présentées par les inventeurs danois dans les cas où, en acquittant l'impôt, les intéressés auront formulé des réserves sur le principe de son exigibilité.

Source: *Bulletin d'information,* 25 janvier 1960.

Personnes en service sur des moyens de transport

L'article 14 de la Convention franco-danoise du 8 février 1957 prévoit qu'en règle générale, les traitements et salaires d'origine privée sont imposables dans l'Etat sur le territoire duquel s'exerce l'activité personnelle, source de ces revenus.

L'application de cette règle présentant des difficultés en ce qui concerne l'imposition des personnes en service sur les moyens de transport, il a été décidé, conformément à l'accord résultant d'un échange de lettres intervenu les 13 novembre et 29 décembre 1959 entre les Administrations fiscales française et danoise, que les rémunérations afférentes à une activité exercée à bord d'un navire ou d'un aéronef en trafic international sont imposables dans l'Etat contractant où le siège de la direction effective de l'entreprise est situé.

Source: *Droit Fiscal,* 8 avril 1960.

United States-Belgium

In the issue of February 1st, 1960, of the *Internal Revenue Bulletin* have been published withholding regulations under the Income Tax Convention between the United States and Belgium of October 28, 1948, as amended, together with the pertinent provisions of the Convention, to reflect its extension to the Territory of the Belgian Congo and the Trust Territory of Ruanda-Urundi, effective with respect to taxable years beginning on or after January 1, 1959. These regulations cover about the same matters as the regulation concerning the Convention between the United States and the United Kingdom.

United States-Japan

Advice has been requested whether remuneration paid to visiting professors from Japan for engaging in research or pursuing further study at a university in the United States for a period not exceeding two years is exempt

form Federal income tax under Article XI of the United States-Japan Income Tax Convention, C.B. 1955-1, 658.

Advice has also been requested whether, for this purpose, the tax treatment of remuneration paid to visiting professors from Japan differs from that of remuneration paid to visiting professors from France or England.

Article XI of the Japanese Income Tax Convention provides that a resident of one of the contracting States, who, in accordance with agreements between the Governments of the contracting States or between educational establishments in the contracting States for the exchange of professors and teachers, or at the invitation of the Government of the other contracting State or of an educational establishment in such other State, temporarily visits such other State for the purpose of teaching for a period not exceeding two years at a university, college, school or other educational institution in such other State, shall be exempt from the tax of such other State on his remuneration for such teaching for such period.

In Revenue Ruling 55-211, C.B. 1955-1, 676, which deals with a similar provision in the United States-United Kingdom Income Tax Convention, Treasury Decision 5569, C.B. 1947-2, 100, it is stated that if the primary purpose of a professor or teacher from the United Kingdom of Great Britain and Northern Ireland in visiting the United States on an exchange visitor's visa is to teach, lecture or instruct at a university for a period of not more than two years from the date of arrival, his entire remuneration is exempt from Federal income tax by reason of the provisions of Article XVIII of the United Kingdom Income Tax Convention.

Revenue Ruling 55-508, C.B. 1955-2, 775, holds that compensation received by a French citizen, who is in the United States on an exchange visitor's visa to perform professional services as a research assistant at a university in the United States, is exempt from Federal income tax under the provisions of article 10 of the income tax convention between the United States and France, Treasury Decision 5499, C.B. 1946-1, 134.

However, article 10 of the French Income Tax Convention relates to income from the exercise of a liberal profession. There is no specific provision in the United Kingdom and Japanese tax conventions whereby compensation derived by a resident of either country for professional services in the field of research is exempt from United States income tax. Therefore, the provision of Revenue Ruling 55-508 is not applicable in the case of those countries.

In view of the above, it is held that compensation paid by a university or other educational institution to visiting professors or teachers from Japan for engaging in research or further study at such university or other educational institution in the United States is exempt from Federal income tax under the United States-Japan Income Tax Convention if the primary purpose of visiting the United States is to teach, lecture or instruct at an educational institution situated therein and his remuneration is chiefly for the time devoted to such teaching duties.

Source: *Internal Revenue Bulletin,* February 1, 1960.

United States-United Kingdom

The Commissioner of Internal Revenue of the United States has issued withholding regulations under the Income Tax Convention between the United States and the United Kingdom of April 16, 1945, as amended, to reflect the extension of the Convention to all United Kingdom Colonies; effective on or after January 1, 1959. These regulations have been published in full, together with the pertinent provisions of the said Convention, in the *Internal Revenue Bulletin,* February 1st, 1960. They cover such matters as dividends, interests, patent and copyright royalties, film rentals, real property rentals and natural resource royalties, pension and life annuities etc. (The said issue of the Bulletin mentions only certain United Kingdom

Colonies, to which the Convention has been extended; meanwhile all the Colonies are covered by the extension). See also page 214.

Sweden-Austria

The agreement between these two countries (concluded May 14th, 1959) has been ratified by the Austrian Parliament, and has accordingly become effective as from December 29th, 1959. The text (published in the *Bundesgesetzblatt* of February 16th, 1960) is more or less in conformity with the usual pattern of modern tax treaties. This one has regard to the taxes on income and property, both state and communal taxes. We give some details:
- income from real estate will be taxed in the situs country
- income from business will be taxed in the country where the permament establishment is situated
- royalties are taxable in the receiver's country of residence, with one exception: royalties paid by a corporation to a resident in the other country having taken part in the corporation's capital for more than 50%. In this case the country of origin of the royalties is allowed to impose a tax with a maximum of 10%, which tax will be credited against the tax to be paid in the country of residence.

Sweden-Israel

Sweden and Israel have concluded a double taxation agreement (22.12.1959), which, after having been ratified by the contracting Governments in accordance with their respective constitutional and legal requirements, shall have effect in Sweden on income assessed in or after January 1st, 1961 (in respect of coupon tax on dividends payable on or after January 1st, 1960), and in Israel for the tax years beginning on or after April 1st, 1960. The existing agreement between the two countries, dating from 1956 (regarding income derived from shipping activities and aircraft services) will be abolished when the new agreement will enter into force. The main features of this agreement can be summarized as follows:
- industrial and commercial profits made by an enterprise of one of the territories shall not be subject to tax in the other territory, unless these profits can be attributed to a permanent establishment in this other territory; this permanent establishment includes also a building site or a construction or assembly project which exists for more than 12 months.
- the rate of Swedish coupon tax on dividends, paid to a resident of Israel, shall not exceed 15%, which rate is reduced to 5% in cases where the Israeli resident is a company which controls not less than 50% of the entire voting power of the dividend-paying company. Dividends paid by an Israeli company to a resident of Sweden out of income which has been subject to Israeli corporation income tax shall be exempt from further taxation in Israel.
- the rate of tax imposed on interest payments on bonds, securities, debentures etc. shall not exceed 25%, unless the recipient has a permanent establishment in the other territory.
- royalties shall be exempt in the country of origin, unless the recipient has a permanent establishment in that country. Royalties, however, paid in respect of the operation of a mine or quarry and the like, will be taxable in the situs country.
- an important proviso is further that, when the Israeli income tax appropriate to the income derived by a Swedish resident in Israel has been wholly exempted or reduced for a limited period, the credit against Swedish tax shall be allowed as if no such relief had been given.

The rélative Bill has been presented for approval to the Parliament of Sweden on December 30th, 1959.

Source: *Bihang till Riksdagens protokoll* 1960, 1 Saml. nr. 23

Sweden-Ireland

The main features of this double taxation agreement (concluded November 6th, 1959) do not deviate very much from the agreement between Sweden and Israel. Upon exchange of ratifications the agreement shall have effect in Sweden in respect of income assessed on or after January 1st, 1960 (coupon tax: on dividends payable on or after January 1st, 1959), and in Ireland in respect of income tax and corporation income tax for the period beginning on or after the 6th and the 1st day of April 1960 respectively (surtax: the year beginning on or after April 6th, 1959). The agreement from October 18th, 1954, in respect of income derived from sea and air transport shall cease to have effect when the new agreement will enter into force.

The few differences between this treaty and the one concluded with Israel have regard to dividend and interest. Dividends paid to a resident of Ireland will be wholly exempt from Swedish tax, unless they are derived from a permanent establishment in Sweden. Dividends paid in Ireland to Swedish residents will be exempt from (Irish) surtax. If dividend is paid to a Swedish company, it can be received free of Swedish tax as well, at least in those cases, in which this Swedish company would have received the dividend free of tax when paid by another Swedish company.

- interest received from one partner-country by a resident of the other one will be exempt from tax in the first country.
- the 'credit against tax' allowed by Ireland on income which has been subject to Swedish tax, will have regard only to the Swedish state tax.
- most of the income which has been subject to Irish tax, will be wholly exempt from Swedish tax, but for dividends there is a credit against tax (also if reduction or exemption from Irish tax has been allowed).

The relative Bill has been presented for approval to the Swedish Parliament on December 18th, 1959.

Source: *Bihang till Riksdagens protokoll* 1960, 1 Saml. nr. 11.

III

UNION OF SOUTH AFRICA

Income Tax—Income—Source of—Services rendered partly within and partly outside union—Whether remuneration for services rendered outside the union here deemed to be from Union Source

Sections 7 and 9(1)(*b*) of the Income Tax Act, No. 31 of 1941, as amended.

I.T.C. No. 878, per Kuper J., Pres., judgment given by the Transvaal Income Tax Special Court on 14th November, 1958.

The taxpayer, an engineer in the employ of a company carrying on the business of industrial efficiency consultants, spent during the year of assessment a period of ninety-one days outside the Union on the premises of clients, who had engaged the services of the company, for the purpose of investigating the problems of such clients and initiating programmes designed to overcome them. The remuneration received by the taxpayer in respect of the period in question amounted to £995. The taxpayer's contract of employment with the company was entered into in the Union and contained no special provision obliging him to attend on clients outside the Union. In fact it was, however, the regular practice for all members of the staff of the company to perform services outside the Union. In his determination of the taxpayer's taxable income the Commissioner for Inland Revenue included the sum of £995 in question. The taxpayer objected against the Commissioner's assessment on the ground that that amount was not derived from a source within, or deemed to be within, the Union. The objection having failed, the taxpayer lodged an appeal to the Special Court which was successful.

After setting out the above facts, the learned President went on to say:

'The only question debated in the course of argument was the meaning to be given to section 9(1) (*b*) of the [Income Tax] Act [No. 31 of 1941, as amended], for it was common cause that the specified income, having been earned outside the Union, could only be brought within the scope of section 7 if it was a receipt from a source deemed to be within the Union. [Counsel for] . . . the Commissioner contended that what had to be determined in any given case was whether the taxpayer was carrying on a trade (defined in section 7 as including employment) in the Union. If the answer was in the affirmative, then the purpose of section 9 was to include in a taxpayer's income money which would, but for the section, have been regarded as source outside the Union. [Counsel for te Commissioner] referred to the fact that no provision was made in the section for the apportionment of a taxpayer's income between Union and non-Union sources, and he contended that, in consequence, where a taxpayer carried out his duties as employee both within and outside the Union, the test to be applied was where the main employment was carried out. If that anwer was "within the Union", then the whole salary was subject to Union tax; if that answer was "outside the Union", then only that portion of the salary actually earned within the Union would be so subject.

The Court has, however, come to the conclusion that this contention does not correctly reflect the meaning of section 9(1)(*b*) and is inconsistent with previous decisions of the Special Court. In I.T.C. No. 837, 21 S.A.T.C. at 418,

Herbstein J. cited with approval the following passage in the judgement of Dowling J., in I.T.C. No. 319:[1])

> "There must be (to justify the application of [section] 9(1)(*b*)) some close link between the work done outside the Union and the carrying on of a trade in the Union, a link closer than the mere fact that the taxpayer is carrying on a trade in the Union and that the work done outside the Union is in the way of such trade or of the same nature as the work done by the taxpayer in the Union."

It was on that ground that the learned Judge decided that a portion of the appellant's salary which could be attributed (on a proportionate basis) to work the appellant performed in Rhodesia and Portuguese East Africa was received by him from a source outside the Union, even though the following circumstances were present; the appellant derived his income from employment under a contract entered into with a company registered and carrying on business in the Union. He was required to render services in Rhodesia and Portuguese East Africa as well as in the Union. The work performed by him outside the Union as adviser on organizational problems was for the benefit of subsidiary companies of his employer trading in those countries. His salary was paid entirely by the Union company.

[Counsel for the Commissioner] suggested that this case as well as the one upon which it was based were distinguishable on the facts and that in any event they were wrongly decided. The main ground for the latter contention was that in fact no meaning was given to section 9(1)(*b*). It is of course clear that section 9 was introduced in order to bring within the net of taxation receipts which would but for that section have been regarded as being from a source without the Union. But that reason does not have the result of bringing within that net all work done by an employee outside the Union merely because he is employed by a person within the Union. When the Legislature did intend that principle to apply it said so in clear terms. Section 9(1)(*c*) includes amounts in respect of "any services rendered by such person to or work or labour done by such person for and on behalf of the Government of the Union . . . notwithstanding that such services are rendered or that such work or labour is done outside the Union". If the Legislature had intended the same meaning to be given to the provisions in 9(1)(*b*) it would have used the same language—but in the latter section the amount is in respect of any service rendered or work or labour done by such person *in* the carrying on in the Union of any trade. This provision means that the trade must be in the Union and that the work must be done by the person as part of his trading in the Union. In the instant case it is common cause that the source was outside the Union, and the services rendered by the appellant were not so rendered as part of the work he was doing in the Union. It follows that the source could not be deemed to be a Union source in terms of section 9(1)(*b*).

The appeal must, therefore, be allowed, the assessments set aside and the matter remitted to the Commissioner for fresh assesment in terms of this judgment.'

NOTE

The learned President comes, by means of an *argumentum e contrario*, based on section 9(1)(*c*) of the Income Tax Act. No. 31 of 1941 as amended, to the conclusion that the source deeming provision of section 9(1)(*b*) of the Act only applies if both the trade of the taxpayer is in the Union and the work is done by the taxpayer as part of his trading in the Union. Conversely, if the work done outside the Union is not done as part of the work done in the Union, as it appeared to the learned President in the instant case to be

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[1]) The quotation is wrong. The correct quotation is: I.T.C. No. 749 (1952), 18 S.A.T.C. 319

common cause, the deeming provision of section 9(1)(*b*) does not apply. However, with respect, not only is the conclusiveness of the *argumentum e contrario* doubtful if regard is had to the fact that section 9(1)(*c*), which dates back to the 1925 Income Tax Act whereas the provision of section 9(1)(*b*) existed already in the 1917 Income Tax Act, does not contain the words 'in the carrying on in the Union of any trade', it can also not be seen why in all the circumstances of the case the work was not in fact done as part of the taxpayer's trading in the Union. If the decision were correct the Commissioner would have an absolute discretion whether or not to allow the deduction of the salary paid by the South African employer (section 11(2)(*b*) of the Act).

E. Sp.

Source: *The Taxpayer*, December 1959

Death Duties—Shares in and debt due by one-man foreign company formed by deceased —Whether part of Union Estate

Section 3(3)(a), 3(2)(f), 3(2)(i) of Act 29 of 1922

Commissioner for Inland Revenue v. Isaacs, N.O. (Judgment delivered by Appellate Division on 16th November, 1959)

In anticipation of his death, which occurred on 29th May, 1954, and in order to avoid the payment of estate and succession duties, the deceased, who was domiciled and resident in Johannesburg, formed a private company, the Ginoc Investment Holding Company (Private) Limited, which was duly registered in Southern Rhodesia on 14th May, 1954. He was to hold 98 of the 100 shares in the company. The two remaining shares were allotted to his two nominees. Two members of the firm of attorneys acting for him in Southern Rhodesia were his co-directors, holding office at his instance until his death. They had no other interest in the company. To this company he sold shares held by him in Union companies for £51.480 5*s*. 6*d*., the sale being effected on the day after the registration of the company. The purchase price was to be satisfied, as to £98, by the issue to him of 98 fully paid up shares in the company, and as to the balance, by the purchaser acknowledging its indebtedness to the vendor for that amount and promising to pay it to the vendor in Bulawayo, free of exchange, on demand. Clause 5 of the agreement of purchase and sale reads as follows:

> 'This agreement shall be governed in all respects by the laws of the Colony of Southern Rhodesia, and the vendor, his executors, his estate and his assigns shall be entitled to enforce his/their/its rights under this agreement against the purchaser exclusively in the High Court of Southern Rhodesia to the jurisdiction whereof the vendor and the purchaser hereby irrevocably submit, and the vendor, his executors, his estate and his assigns shall not be entitled to enforce his/their/its rights hereunder against the purchaser in any court of the Union of South Africa.'

Shares to the value of £41,725 were in fact transferred to the company before the vendor's death, leaving shares to the value of £9,755 5*s*. 6*d*. still his property. At his death the purchase price of the shares so transferred had not been paid, neither had the 98 shares in the Ginoc company been allotted to him. They were subsequently allotted to the executors in his estate.

For liability in respect of estate duty, the Commissioner relied upon section 3(3)(*a*) of the Death Duties Act, 1922, in the alternative upon section 3(2)(*f*), and as a further alternative upon section 3(2)(*i*) of the Act. Section 3(3)(*a*) read as follows:

> 'Any such property shall be deemed to be property passing on the death of any person if such person, notwithstanding that at the date of his death such property may have been held by or registered in the name of

some other person (whether in the name of an individual or a body corporate or unincorporate) directly or indirectly and for his own benefit had the control order or disposition of the property, or of the profits derivable therefrom.'

It was the Commissioner's contention that the shares sold and transferred to the company formed part of deceased's estate under the above provision.

Section 3(2)(*f*) included as property

'any debt recoverable or right of action enforceable in the courts of the Union'.

The Commissioner's contention in the alternative was that the purchase price owing by the company to the deceased in respect of the sale of the shares fell within this provision.

Section 3(2)(*i*) included as property

'any amount withdrawable on demand or at notice or on a fixed date which was standing to the credit of the deceased person at the date of his death with any bank, building society or other institution in the Union and provided the deceased person was ordinarily resident in the Union, any such amount standing to his credit at the date of his death with any bank, building society or other institution outside the Union.'

The Commissioner's further alternative contention was that the purchase price owing by the company to the deceased was an amount standing to his credit with an institution and therefore property under this provision.

The Commissioner having failed in these contentions in the lower court, appealed to the Appellate Division which dismissed the appeal with costs. Two judgments were delivered, the one by Steyn C.J. in which de Beer J.A., Botha A.J.A. and Holmes A.J.A. concurred, the other by Schreiner J.A. in which de Beer J.A. also concurred.

After reciting the facts Steyn C.J. proceeded:

'The Ginoc company is a one-man company. The deceased had complete control of it. It may be said, therefore, with some reason, that he had the control and disposition of its property as well as the income derived from its property, for his own benefit, within the meaning of this provision. That was the proposition advanced in relation to another one-man company in *Commissioner for Inland Revenue* v. *Estate Kohler,* 1940 T.P.D. 134. In rejecting it Millin J. remarked:

> "The meaning is quite plain. It is simply that substance is to be looked to rather than form, and that, for the purpose of estate duty property is to be deemed to reside not in nominees or agents for the holding of the property but in those for whose benefit they hold and whose orders they have to take in dealing with the property and its profits."

It is not quite clear that Millin J., in this passage, read with the rest of his judgment, held in effect that this provision applied only in the case of property held by a nominee or agent. If that is what he meant to convey, I would have some difficulty in describing that as the plain meaning of this provision. It is, to mention one consideration, at least arguable that the disjunctive reference to the property or the profits derivable therefrom, presupposes a kind of case in which the deceased does not have the control or disposition of the property as such, and in which there would therefore be no holding of the property by a nominee or agent, but in which he does have the control and disposition for his own benefit, of the profits derivable from the property. It may be that closer investigation will show that no such case within the terms of section 3(3)(*a*) can arise, but as presently informed I am not prepared to express that view: nor is it necessary for the purposes of this appeal to come to any conclusion in that regard.

In *Estate Phillips* v. *Commissioner for Inland Revenue,* 1942 A.D. 35 at 55, the construction placed upon section 3(3)(*a*) in *Kohler's* case was accepted as "substantially correct". Although only the passage referred to above was

quoted (in a fuller context), I understand this decision to mean that it was substantially correct to hold that the sub-section deals with property held by a nominee or agent and therefore not with property held by a one-man company for itself and not as the nominee or agent of the controlling shareholder. There is no indication at all of any reservation as to the correctness of the view which Millin J. had taken in regard to a one-man company. Tindall J.A. went on to say:

"So far as immovable property is concerned, sub-section (3) presupposes a case where the registered owner of such property holds not for himself but for the deceased. . . ."

As to the nature of the holding of the property, it is difficult to find a basis in the language of the sub-section for any distinction in this regard between immovable and movable property. (Cf. *Estate Watkins-Pitchford & others* v. *C.I.R.*, 1955 (2) S.A. 437 (A.D.) at 461.)

In support of the view that the sub-section does not bring the property of a one-man company into the deceased estate of its controlling shareholder, counsel for the respondents pointed to the somewhat remarkable results which would otherwise follow. Even when the liabilities of the company exceed its assets, the assets would form part of the estate of the shareholder, without any deduction in respect of its liabilities. Section 4 of the Act provides for the deduction from the total value of property in an estate, of debts due by the deceased. There is no provision for the deduction of the debts due by any other person. The inclusion of such assets, also, would not take the shareholding of the deceased in the company, out of his estate. Tax would accordingly be leviable both on the assets of the company and on the value of the shares held in the company. These results seem to point to the correctness of the conclusion that the holding of property by a one-man company is not the kind of holding contemplated by the sub-section.

There is the further consideration that the Legislature, when it amended the sub-section in 1944, i.e. after the decisions in the cases of *Kohler* and *Phillips*, by the addition of a new para. (*b*), sought to cover the kind of situation arising on the facts of *Kohler's* case, without any attempt to make it clear that a holding by a one-man company falls within the terms of section 3(3)(*a*).

In these circumstances I am unable to hold that the conclusion arrived at in *Kohler's* case and approved by this Court to the extent indicated above in *Phillips's* case, was wrong. It follows that the appeal does not succeed on the first contention.

The next question to consider is whether the debt due by the company to the deceased was, in terms of section 3(2)(*f*), a "debt recoverable or right of action enforceable in the courts of the Union", so as to constitute property which passed on his death. The company is a *peregrinus* but admittedly had property in the Union which could be attached *ad fundandam jurisdictionem*, with the result, so counsel for the appellant argued, that the debt was recoverable in a Union court. He submitted that the *dictum* to the contrary in *Estate Brownstein* v. *C.I.R.* 1957 (3) S.A. 512 (A.D.) at 524, was *obiter* and incorrect. On the view I take of the matter, it is unnecessary to enter upon that issue. By clause 5 of the agreement of sale referred to above, the deceased submitted to the exclusive jurisdiction of the High Court of Southern Rhodesia and surrendered whatever right he may have had to proceed against the company under the agreement in any court of the Union. If this clause is valid, this debt is in any case not recoverable in the courts of the Union.

In regard to its validity, it is of some importance to bear in mind that the company, which would be the defendant in any action for the recovery of the purchase price, is a Southern Rhodesia company. In so far as it may be said to be domiciled or to reside anywhere, it is domiciled and resides in Southern

Rhodesia and nowhere else. The action could, therefore, properly be brought before a Southern Rhodesian court on a well-recognized basis of jurisdiction. The agreement would not, in fact, extend that jurisdiction. Also without this clause, it would have existed to the full extent required for such an action. What the clause does purport to effect, is an abandonment by the deceased, who would be the plaintiff, of his right to sue the company, a *peregrinus*, in a Union court after an attachment *ad fundandam*.

The learned Chief Justice went on to discuss the authorities dealing with the validity of the surrender of such a right, and continued:

'This does not, of course, mean that effect will always or even generally be given to agreements of submission to the jurisdiction of a court of another country or that contracts of abandonment of the right to institute proceedings in a court of this country will always be enforced. The authorities recognize that in criminal cases, for instance, and in cases in which the representative of another State is concerned, there are other considerations to be taken into account. There may be other cases. But where, as here, an action against a *peregrinus* may quite apart from the submission to jurisdiction, properly be brought in the court of his country, and the right to sue him in the Union by way of attachment of property, is surrendered, I can find no reason in principle why the party who would be the plaintiff in the Union, should not be held to his contract. There is nothing in the surrounding circumstances which could serve as an adequate ground for denying the *peregrinus* the right stipulated in his favour. In coming to this conclusion I have not lost sight of the fact that the *peregrinus* was a one-man company controlled by the deceased and the contract an integral part of an arrangement by which the deceased sought to avoid the payment of estate duty. If the contract is otherwise valid, it is not rendered unenforceable by the mere fact that it was entered into with the object of reducing or avoiding altogether a tax which would otherwise become payable.

The last contention advanced by the Commissioner is that the debt due by the company to the deceased falls within the definition of "property" by reason of section 3(2)(*i*), which refers to

> "any amount withdrawable on demand or at notice or on a fixed date which was standing to the credit of the deceased person at the date of his death with any bank, building society or other institution . . . ".

In regard to this contention, it is sufficient to point out that the word "withdrawable" is rendered as "terugbetaalbaar" in the Dutch text, which serves to emphasize that, in this context, it relates to an amount received from a deceased person or at least made available to him in some way amounting to a deposit, and standing to his credit with a bank, building society or other institution. The debt here in question is in no way connected with any amount so received.

The appeal is dismissed with costs.'

The judgment of Schreiner J.A. is as follows:

'I agree that this appeal should be dismissed and have nothing to add to what the Chief Justice has said in relation to section 3(3)(*a*).

On the question whether what was owed by the company to the deceased at his death was "a debt recoverable . . . in the courts of the Union" within the meaning of section 3(2)(*f*), I prefer to base the decision on the reasoning adopted in *Estate Brownstein* v. *Commissioner for Inland Revenue*, 1957 (3) S.A. 512 (A.D.) at 523 and 524. It was contended on behalf of the respondents that that reasoning was an essential part of the *ratio decidendi* or one of the *rationes decidendi*, but I do not think that this is so. It is clear from the judgment that the result would have been the same even if the conclusion on this point had been the opposite of what it was, so that the reasoning was not necessary for the decision (*Pretoria City Council* v. *Levinson*, 1949 (3) S.A. 305 (A.D.) at 317). Nevertheless I think that what was said in *Brownstein's*

case was right and should be applied in this case. It proceeded on the view that by section 3(2)(*f*) Parliament brought within the tax net any debt (the same applies to rights of action, not being debts) which has a certain characteristic, namely, that it is recoverable in the courts of the Union. Parliament selected recoverability in the Union courts as a test of which debts were to be property in relation to an estate and which were not. It was thought by this Court in *Brownstein's* case that "recoverable" was related to the ordinary principles of jurisdiction which are based on the residence or domicile of the debtor within the Union, the fact that the transaction was entered into there and the fact that it was to be carried out there. By contrast jurisdiction which rests on attachment *ad fundandam jurisdictionem* is not related to the normal features of the debt but to the chances of the situation at a particular time, in this case at the time of the death. At that time it will in fact be possible to recover in the Union courts a debt which has no connection itself with the Union if then the creditor is an *incola* and the debtor a *peregrinus* and either the debtor himself or any part of his property is within the land boundaries or teritorial waters of the Union. It is difficult to suppose that Parliament intended the attachment kind of jurisdiction to be included in the provision. Supposing that two *peregrini* A and B enter into a transaction in Europe which is to be carried out in Europe and as a result A owes B money. It would be surprising thereafter if B, having thereafter become an *incola* of the Union and having died, the debt should be part of B's estate if, but only if, it could be shown that at the date of the death there was some property of A's, possibly in transit, within the boundaries limiting the jurisdiction of the Union's courts.

If Parliament had intended by "recoverable" to include not only any debt having features which would ordinarily make it recoverable within the Union, but also any debt which, however unrelated to the Union in its normal features, could by the merest chance be sued upon the date of death of the creditor—and possibly never before and never after that date—it is fair to suppose that clear language would have been used to bring about this result. In this connection reference may be made to the precise language of section 3(2)(*b*) where "property" is made to include

> "any movable property physically situated in the Union at the date of the death of the deceased . . .".

In regard to the third point, para. (*i*) of section 3(2) was introduced by section 1 of Act 60 of 1951 which, like the principal Act, was signed in English. If there is a difference in meaning between "with-drawable" and "terug-betaalbaar", although use might be made of the latter for the purposes of suggesting interpretations of the former, it would, in my view, be the word "withdrawable" to which effect must at least primarily be given. If, for instance, "withdrawable" covers the case of money paid into a bank by A to the credit of B, while "terugbetaalbaar" does not, it would be the meaning of the word "withdrawable" which, I apprehend, must govern. It would be the wider word, but would certainly be more appropriate, since there is no apparent reason why the amounts referred to in section 3(2)(*i*) should be limited to those withdrawable by the party who paid them in. This case would then illustrate the difficulty, referred to in *R. v. Vilbro & another*, 1957 (3) S.A. 223 (A.D.), and *R. v. Silinga*, 1957 (3) S.A. 354 (A.D.), of employing the highest common factor of the two texts as a guide. For the purposes of the present case, however, I do not find any significant difference between the meanings of the words. Neither is appropriate to the case of a debt arising out of a transaction of sale, without any provision that the purchase price should be held by the buyer on the basis of its being a loan to the seller. The inference to be drawn from the use of the word "withdrawable" is strengthened by the phrase "standing to the credit of the deceased person" and by the application, here apparently proper, of the *ejusdem generis* rule

to the expression "any bank, building society or other institution". The word "institution" in this context seems to be limited to a loan institution like a bank or building society. That conclusion would not be affected by the fact that in the Second Schedule to Act 29 of 1922 there has always been a rate of succession duty for cases where the successor is.

"otherwise related to the predecessor or is a stranger in blood or is an institution".

Here apparently "institution" covers any corporation or association, the word perhaps being used because it is the ordinary word to use in connection with those corporations and associations which receive testamentary benefits and are, subject to certain conditions, exempt from succession duty (cf section 15(*b*) of the Act). It seems to be clear that section 3(2)(*i*) does not apply to the debt in question in this case.'

NOTE

The judgments in this case upheld the validity of a death duties avoidance scheme where assets were transferred to a non-Union company and the purchase price remained owing to the deceased, and by agreement between the company and the deceased, could only be recovered in a non-Union court.

Three issues fell to be decided:

(*a*) The application of section 3(3)(*a*) of the Death Duties Act of 1922 to the so-called 'one-man company';

(*b*) whether the purchase price was recoverable in a Union court and therefore constituted property;

(*c*) whether the purchase price owing by the company constituted an amount standing to deceased's credit with an institution within the meaning of section 3(2)(*i*).

On the first issue all the judges were unanimous that section 3(3)(*a*) had no application to the property held by a company for itself, even though it was a 'one-man' company, and accepted the conclusions in *C.I.R.* v. *Kohler*, 1940 T.P.D. 134, and *Estate Phillips* v. *C.I.R.*, 1942 A.D. 35 at 55.

The corresponding provision to section 3(3)(*a*) in the Estate Duty Act of 1955 is section 3(3)(*d*) which includes as property deemed to be property, of the deceased

'any property held by or registered in the name of an individual or a body corporate or unincorporate and of which or of the profits derivable from which the deceased directly or indirectly and for his own benefit had the control or right of disposition'.

Although this provision is not exactly the same in wording as the old provision, materially it is the same, and it can be accepted, it is submitted, that the reasoning in the above decision is applicable to section 3(3)(*d*) of the Estate Duty Act.

On the second issue Steyn C.J. (with whom three other judges concurred) held that where a *peregrinus* (such as the company was) is a debtor and it is agreed between the parties that the debtor may only be sued in the courts of his own domicile, the agreement is valid and the Union courts will not exercise jurisdiction (save perhaps in exceptional circumstances): consequently section 3(2)(*f*) had no application. The Chief Justice refrained from dealing with the issue whether apart from the agreement as to jurisdiction between the parties, section 3(2)(*f*) had no application where the only ground on which a Union court could exercise jurisdiction would be one *ad fundandam jurisdictionem* (i.e. arrest of the person or goods of a *peregrinus* in the Union to found jurisdiction). This view was taken in *Estate Brownstein* v. *C.I.R.*, 1957 (3) S.A. 512 (A.D.); (1957) 6 *The Taxpayer* 175. Schreiner J.A. (with whom one other judge concurred), while stating that the view expressed in *Brownstein's* case was *obiter*, held that what was said in that case was right and should be applied to this case. According to Schreiner J.A., therefore,

section 3(2)(*f*) was of no application, apart from the agreement as to jurisdiction.

Section 3(2)(*f*) of the Death Duties Act is reproduced in negative form in the Estate Duty Act of 1955 which excludes from the definition of property in section 3(2)

'(*e*) any debt not recoverable or right of action not enforceable in the courts of the Union . . .'

and consequently the reasoning in the above decision is again applicable under the Estate Duty Act. As the law stands at present, however, the question whether this provision is inapplicable where the only ground of jurisdiction is one *ad fundandam jurisdictionem* remains open.

On the third issue as to whether there was an amount standing to the credit of the deceased with an institution, Steyn C.J. did not decide on the meaning of the word 'institution'. He contented himself by deciding that in the context of the section the word 'withdrawable' related to an amount received from a deceased person or at least made available to him in some way amounting to a deposit and that the debt here (the purchase price of the shares) was in no way connected with any amount so received.

Schreiner J.A. held that the word 'withdrawable' was not appropriate to the case of a debt arising out of a transaction of sale, without any provision that the purchase price should be held by the buyer on the basis of its being a loan to a seller. He went on, however, to express the view that the *ejusdem generis* rule could be properly applied and that the word 'institution' in the context seemed to be limited to a loan institution like a bank or building society.

The views expressed by the court are of importance in relation to the Estate Duty Act of 1955 which also, in section 3(2)(*e*), deals with amounts standing to the credit of a deceased at the date of his death with any bank, building society or other institution outside the Union. However, in this provision the words in the repealed Act, namely 'withdrawable on demand or at notice or on a fixed date' are omitted, and in so far as the decision in *Isaac's* case was based on these words, it is not decisive under the new Act. It would appear that under the new Act on a similar set of facts the question whether the company can be said to be an 'institution' would have to be decided. D.M.

Source: *The Taxpayer*, December, 1959

IV
REVIEWS - COMPTES RENDUS

AUSTRALIA

The Sales Tax Law 1957. A. J. Arthur, Commonwealth Government Printer, Canberra, 1958, 437 pp.

This book contains a statement of the general part of the Sales Tax Law. It includes an introduction describing, in general terms, the scheme of the Australian sales tax, after a few preliminary remarks on the nature and history of sales taxation. The book also contains reprints of all the associated acts and regulations. The goods exempt from sales tax are listed under appropriate headings in the First Schedule to the Sales Tax (Exemptions and Classifications) Act, a reprint of which is included in the book. The text is arranged, for easy reference, in alphabetical order of subjects, but a complete index has also been provided. Decisions on particular goods submitted for classification under the various exemption items, and decisions as to the various rates of tax applying to particular goods, have been separately published in *Sales Tax Exemptions and Classifications*.

Fortieth annual taxation summary. Issued by the Taxpayers Association of Victoria, Collins House, 360 Collins Street, Melbourne, 1959, 146 pp.

This publication contains in a handy form a very useful summary of Australian taxation. After a chapter on Australian taxation of individuals follow ready reckoners, charts, nomograms & schedules. There are practical examples of returns for the salary earner, the investor, the shopkeeper, the primary producer and hints for professional men. Further there are chapters on overseas taxation of individuals, Australian company taxation, overseas company taxation, sales tax, payroll tax, entertainments tax, land tax, gift duty & stamp duty on gifts, death duties (also New Zealand), stamp duties (also New Zealand).

AUSTRIA

DR JOSEF ZAPLETAL: *Die neue Lohnsteuer*, einschliesslich der einkommensteuerrechtlichen Vorschriften über die Veranlagung von Arbeitnehmern. *XI. 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 *XI. Ergänzungslieferung* enthält die Ergänzung der bisherigen Ausgabe durch inzwischen ergangene VwGH-Erkenntnisse, die Ergänzung des Stichwortverzeichnisses, das Bundesgesetz vom 18. Dezember 1959, mit dem das Einkommensteuergesetz 1953 ergänzt wird und einige Erlässe des Bundesministeriums für Finanzen.

DR. ERNST STRACK: *Das Umsatzsteuerrecht in Theorie und Praxis*. 3. Auflage. *2. Nachtrag*. Wirtschaftsverlag Dr. Anton Orac, Graben 17, Wien I. Loseblatt-Ausgabe.

Eine Besprechung der 3. Auflage dieses Loseblattwerkes über das Umsatzsteuerrecht in Österreich wurde im *Bulletin* XIII, S.295 veröffentlicht. Der *2. Nachtrag* bringt jetzt einige Hinweismarken zum Aufkleben, einige hand-

schriftlich vorzunehmenden Berichtigungen und Blätter zum Auswechseln.

DR. ERNST FRITSCH: *Das Recht der Einkommensteuer* (ohne Lohnsteuer). Gesetze, Verordnungen und Erlässe (insbesondere Einkommensteuergesetz 1953 und Novellen dazu, mit gelegentlich Nachträgen zur Körperschaftsteuer). *26. Ergänzungslieferung*, März 1960. Verlag Peter Linde, Dominikanerbastei 10, Wien 1.

Eine Würdigung dieser nützlichen Loseblattsammlung des Österreichischen Einkommensteuerrechts ist im „*Bulletin*" XI, S.121 erschienen.

Der *26. Nachtrag* bringt das Werk auf den Stand vom Anfang des Jahres 1960. Aus dem Inhalt dieser Lieferung sind besonders die Erlässe über den Progressionsvorbehalt und die Durchführung verschiedener Doppelbesteuerungsverträge, der neue Doppelbesteuerungsvertrag mit Schweden und die Rechtsprechung des Verwaltungsgerichthofes vom Herbst 1958 bis zum Ende des Sommers 1959 hervorzuheben, aber auch eine grosse Zahl von Erlässen, die zur täglichen Einzelarbeit unerlässlich sind. Das Schlagwortverzeichnis wurde erneuert und erweitert.

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 pas 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. Les mises à jour janvier février, mars-avril, mai 1960, no. 211, 212, 213, 214 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. Publiés sous la direction juridique de JOSEPH GUISSART et JULES CLOSON avec le collaboration de CHARLES GOOSSENS et PAUL SCHETTER. *Tome IV, Droit Fiscal. Complément 1959*. Maison Ferdinand Larcier, 39 rue des Minimes, Bruxelles I, 1960, 57 pp.

Dans le présent *Complément* se trouvent groupées toutes les dispositions législatives destinées à la mise à jour de l'édition 1959 d'après les textes publiés au «Moniteur» jusqu'au 1er janvier 1960. Il suffit au lecteur, qui consulte n'importe quel texte de l'édition, de s'en référer en même temps au dernier Complément paru pour avoir aussitôt connaissance du dernier état de la législation. La table alphabétique contient toutes les dispositions relatives à des matières nouvelles, ainsi que celles à l'égard desquelles une législation entièrement neuve a été substituée à l'ancienne. La table chronologique contient toutes les dispositions nouvelles dont il est fait état dans les Compléments.

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 1960, nr. 2 et 3 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 Lois et arrêtés divers relatifs aux impôts sur les revenus; Code des taxes assimilées au timbre.

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

Les *Suppléments 1960 no. 5* de cette documentation sur la jurisprudence fiscale belge ont paru.

CANADA

JOHN G. MCDONALD and DAVID A. WARD: *Canadian Income Tax. Fifteenth (cumulative) Supplement.* Butterworth & Co. (Canada) Ltd., 1367 Danforth Avenue, Toronto, 1960, 182 pp.

This Supplement incorporates all current amendments to the statute law and brings the case law up to March 27th, 1960. 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.

DENMARK

MOGENS EGGERT MØLLER: *Afskrivninger nedskrivninger og selskabsbeskatning* Saertryk af „Erhvervsøkonomisk Tidsskrift" 1959 nr. 1-2, 33 pp.

Diese Broschüre ist ein Abzug von zwei Artikeln die der Verfasser in „Erhvervsøkonomisk Tidsskrift" veröffentlicht hat über „Abschreibung und Besteuerung der Gesellschaften". Der Verfasser ist wissenschaftlicher Assistent, cand. jur., am Erhvervsretligt Institut, Handelshochschule Kopenhagen.

EUROPE

W. GARCIN et F. HEPP: *Recueils pratiques du droit des affaires dans les pays du Marché Commun.* Collection Jupiter. Editions Jupiter, 23 Rue du Mont-Thabor, Paris 1er.

In *Bulletin* Bd. XIII S. 105 haben wir unser würdigendes Urteil über den ersten Band der „*Recueils pratiques du droit des affaires dans les pays du Marché Commun*" ausgesprochen. Jetzt ist, unter der Leitung von J. VAN HOORN JR, Direktor der Int. Steuerdokumentationsbüros, Band V erschienen, in dem die Steuersysteme der E.W.G.-Länder behandelt werden. Die erste Lieferung enthält den allgemeinen Teil der Steuersysteme von Deutschland von Professor Ottmar Bühler, Belgien von Raymond van Rolleghem, Frankreich von Jean H. Rothstein, Italien von Professor Victor Uckmar und Niederlande von Professor P. J. A. Adriani. Der internationale Teil bringt den Abonnenten die Doppelbesteuerungsabkommen Deutschland - Italien, Belgien - Luxemburg, Frankreich - Belgien, Belgien - Italien, Belgien - Niederlande, Frankreich - Niederlande, Frankreich - Luxemburg und Belgien - Frankreich. Ausserdem ist dem Werk eine Anzahl tabellarische Übersichten hinzugefügt worden, in den in übersichtlicher Weise die sechs Steuersysteme verglichen werden. Diese Übersichten sind der Studie „Company taxation in Western Europe" entnommen worden, die im *Bulletin* XIII S. 351 besprochen wurde.

De Euromarkt in de praktijk. (The European market in practice). EDITED BY DRS. TH. HIJZEN a.o. N. Samsom N.V., Alphen aan den Rijn. *Supplements 22-26a.*

A review of this loose-leaf book on the European market was published in *Bulletin* XII, p. 271. The *Supplements 22-26a* have appeared.

Verdrag tot oprichting van de Europese Economische Gemeenschap (Euromarkt). *Aflevering V.* AE. E. Kluwer, Deventer.

A review of this loose-leaf service on the European Common Market was published in *Bulletin* XII, p. 269. The present fifth Delivery contains a part of the list of the common customs tariff.

Europese Economische Gemeenschap, Europese Gemeenschap voor Atoomenergie en Europese Gemeenschap voor Kolen en Staal (Europäische Wirtschaftsgemeinschaft, Euratom und Montanunion). Herausgegeben von AE. E. Kluwer, Deventer. Loseblattausgabe.

Für eine Besprechung dieses Loseblattwerkes über die E.W.G., Euratom und Montanunion in holländischer Sprache, siehe *Bulletin* XII, S. 269. Die *4. Lieferung* enthält neue Blätter zum Kommentarteil des E.W.G.-Vertrags, Kommentar und Ausführung des Euratomvertrags und den Text des Vertrags der Montanunion. Die *5. Lieferung* enthält einen Teil der Liste des gemeinsamen Zolltarifs.

Economic Survey of Europe in 1959. Prepared by the Secretariat of the Economic Commission for Europe. United Nations, Geneva, 1960.

The first part of this Survey continues the traditional annual analysis of recent developments in the European economy. Following past practice the opportunity has been taken to focus attention on some more general questions which are both of long-term importance and relevant to the current formulation of economic policies in European countries. These studies are: The economic significance of the public sector in some western European economies and Development problems in southern Europe and Ireland.

Die Vermeidung der Doppelbesteuerung. Bericht des Steuerausschusses der OEEC. Deutschsprachige Fassung. Verlag Neue Wirtschaftsbriefe, Herne, 1959, 60 S.

Die Auslegung von Vorschriften in Doppelbesteuerungsabkommen bereitet selbst dem gewiegten Steuerpraktiker wegen der Verschiedenartigkeit der Steuersysteme in den Abkommensländern Schwierigkeiten. Es ist daher zu begrüssen, dass sich der Steuerausschuss der OEEC seit Mitte 1956 mit Fragen einer Vereinheitlichung der Begriffe und ihrer Auslegung in den Doppelbesteuerungsabkommen der Mitgliedsländer der OEEC befasst. Im September 1958 legte der Steuerausschuss in englischer und französischer Sprache seinen ersten Bericht vor, der vier Artikel mit Vorschriften behandelt, die in allen Doppelbesteuerungsabkommen enthalten sind. Die Aufnahme dieser vier Artikel, die die Begriffe Betriebstätte, steuerlicher Wohnsitz und steuerliche Diskriminierung auf Grund der Staatsangehörigkeit usw. betreffen, in die jüngsten, von OEEC-Staaten abgeschlossenen Abkommen, ist ein erster Schritt in Richtung auf die Vereinheitlichung der Abkommen. Dabei sollen die ausführlichen, vom Steuerausschuss erarbeiteten Kommentare zu den vier Artikeln eine gleichmässige Auslegung gewährleisten. Die vorliegende Broschüre ist die deutschsprachige Fassung dieses ersten Berichts des Steuerausschusses der OEEC, die vom deutschen Bundesministerium der Finanzen im Benehmen mit dem österreichischen Finanzministerium und der Eidgenössischen Steuerverwaltung hergestellt ist. Die

Veröffentlichung ist für alle Finanzbehörden der Bundesrepublik, Österreichs und der Schweiz wie auch für alle steuerberatenden Berufe ein wertvolles Hilfsmittel bei der Auslegung. Die Broschüre ist als Sonderveröffentlichung der Loseblattzeitschrift „Internationale Wirtschafts-Briefe" erschienen. Die Randlochung ermöglicht es, die Schrift im Rahmen des Sammelwerkes dieser Zeitschrift, die ausführliche Kommentare zu sämtlichen deutschen Doppelbesteuerungsabkommen und Abhandlungen über das Steuerrecht in den Abkommensländern enthält, abzulegen.

FRANCE

JEAN GEORGES SAUVEPLANNE: *Etude des questons relatives à l'interprétation des lois uniformes*. Les procédures de conciliation et le recours juridictionnel dans l'interprétation des lois uniformes. Mesures de conciliation et de solution par la voie juridictionnelle suggérées par le Conseil de Direction. Unidroit. Institut International pour l'Unification du Droit Privé, Via Panisperna 28, Roma, 1959, 1960, 35 pp.

Dans ces deux brochures M. Sauveplanne a voulu indiquer la nécessité de l'institution d'organes de conciliation et d'organes juridictionnels, comme exprimée par le Conseil de Direction de l'Institut à cause de l'interprétation des lois uniformes. A ce sujet l'auteur se réfère entre autres aux mesures déjà prises ou projetées par des institutions internationales, comme par exemple l'Office Central des transports internationaux par chemins de fer, le Comité international technique d'experts juridiques aériens, le Benelux et l'International Law Association. Les efforts de l'Unidroit à atteindre l'uniformité d'interprétation des lois uniformes dans les divers Etats intéressés ne peuvent pas se borner seulement au droit privé. Les problèmes indiqués dans l'étude de M. Sauveplanne se posent autant dans le domaine du droit fiscal quant à l'interprétation des conventions internationales et la coopération législative dans la Communauté Economique Européenne.

GERMANY

CARL HERRMANN, DR. GERHARD HEUER, DR. ARNOLD HEINING und OTTO VON SCHILLING: *Kommentar zur Einkommensteuer einschl. Lohnsteuer und Körperschaftsteuer. Lieferung 43,* Mai 1960. Verlag Dr. Otto Schmidt, Ulmenallee 96-98, Köln-Marienburg.

Neben der gründlichen Behandlung des Stoffes liegt der besondere Vorteil dieses führende Praktiker-Kommentars darin, dass seine Verfasser als Berater in der täglichen Praxis stehen und die Nöte der Wirtschaft kennen. Auch bei Änderungen im Einkommen- und Körperschaftsteuerrecht ist das Werk mit seiner bewährten Loseblattform stets auf dem neuesten Stand von Gesetzgebung und Rechtsprechung. Die Lieferung 43, Mai 1960 enthält die Erläuterungen zu den §§ 26 und 32 ff. EinkStG nach neuester Fassung. Auf diese Weise können die Verwaltungsrichtlinien, die neueste Rechtsprechung und Literatur sorgfältig ausgewertet werden.

Nur ist zu bedauern, dass andere, nicht steuerliche Gesetze, die jedoch das Steuerrecht öfters beträchtlich berühren, in vielen Fällen ausser Betracht gelassen werden.

DR. DR. EDGAR LENSKI und DR. WILHELM STEINBERG: *Kommentar zum Gewerbesteuergesetz. Lieferung 9,* April 1960. Verlag Dr. O. Schmidt, Ulmenallee 96-98, Köln-Marienburg.

Diese Lieferung enthält die Fortsetzung der Erläuterungen zu § 2 von MinRat Dr. Steinberg, ausserdem einige Berichtigungen und Ergänzungen des von MinDirig. Dr. Dr. Lenski bearbeiteten Teils. Zugleich mit dieser Lieferung wird eine zweite Einbanddecke ausgeliefert.

Das *Institut „Finanzen und Steuern"* Markt 14, Bonn am Rhein hat die folgenden „Grüne Briefe" veröffentlicht:

Nr. 26 *Zur Frage der steuerlichen Abschreibung,* 14 S.

Steuerliche Abschreibungsregelungen im Ausland, in der Bundesrepublik Deutschland. Die steuerliche Abschreibung als Mittel der Konjunkturbeeinflüssung.

Nr. 27 *Steuer und Wechselkurs in der EWG,* 20 S.

Die Lehre von der Ausgleichswirkung der Wechselkurse; Problematischer Ausgleich über die Wechselkurse; Folgerungen für die Angleichung der Steuern.

Dr. jurg. G. FIEGLE: *Die steuerliche Prüfung von Verträgen.* Verlagsgesellschaft „Recht und Wirtschft", Hauptstrasse 45, Heidelberg, 1958, 128 S.

In diesem Buch werden die Vertragspartner auf die steuerlichen Gesichtspunkte hingewiesen, die bei der zivilrechtlichen Ausarbeitung und Beurteilung, beim Abschluss, bei der Durchführung und Änderung von Verträgen zu beachten sind. Wird die ergänzende steuerliche Prüfung von Verträgen versäumt, so können sich daraus schwerwiegende wirtschaftliche Nachteile ergeben. Wie sie vermieden werden können, dafür gibt die vorliegende Darstellung einen Überblick und praktische Hinweise grundsätzlicher Art. Zahlreiche Beispiele erläutern die Ziele und Methoden der steuerlichen Vertragsprüfung. Die gebotenen Vertragsmuster schaffen eine wesentliche Erleichterung beim Abschluss von Verträgen.

Korn-Dietz, Doppelbesteuerung. Loseblattsammlung mit Einführung und Erläuterungen. *6. Ergänzungslieferung April 1960.* 74 Seiten. In Schlaufe DM 5.40. Gesamtwerk, ergänzt bis 1. April 1960. 808 Seiten. In Leinenordner DM 38.— Verlag C. H. Beck, Wilhelmstrasse 9, München.

Die 6. Ergänzungslieferung umfasst folgende neuen Abkommen:

Abkommen zwischen der Regierung der *Bundesrepublik Deutschland* und der Regierung von *Indien* zur Vermeidung der Doppelbesteuerung des Einkommens vom 18. März 1959.

Abkommen zwischen der *Bundesrepublik Deutschland* und dem Königreich der *Niederlande* zur Vermeidung der Doppelbesteuerung vom Einkommen und vom Vermögen sowie verschiedener sonstiger Steuern und zur Regelung anderer Fragen auf steuerlichem Gebiete vom 16. Juni 1959.

Abkommen zwischen der *Bundesrepublik Deutschland* und der Islamischen Republik *Pakistan* zur Vermeidung der Doppelbesteuerung und zur Verhinderung der Steuerverkürzung bei den Steuern vom Einkommen vom 7. August 1958.

Abkommen zwischen der *Bundesrepublik Deutschland* und dem Königreich *Schweden* zur Vermeidung der Doppelbesteuerung auf dem Gebiete der Steuern vom Einkommen und vom Vermögen sowie verschiedener anderer Steuern vom 17. April 1959.

Sämtliche vier Abkommen sind von den Regierungsbevollmächtigten der Vertragstaaten unterzeichnet, aber noch nicht von den Parlamenten ratifiziert und daher noch nicht in Kraft getreten. Da bis zur Ratifizierung und Verkündung noch einige Zeit vergehen kann, hat sich der Verlag entschlossen, die Abkommenstexte ohne Erläuterungen vorweg der Sammlung beizufügen, damit die nach dem Inkrafttreten z. Teil auf frühere Veranlagungszeiträume zurückwirkenden Vorschriften im Bedarfsfall schon heute bekannt sind. Nach ihrem Inkrafttreten werden auch zu diesem Abkommen die entsprechenden Erläuterungen geliefert werden.

Die Verlagsbuchhandlung des INSTITUTS DER WIRTSCHAFTSPRUFER, Cecilienallee 36, Düsseldorf hat die volgenden Werke veröffentlicht:

Die Veranlagung zur Einkommensteuer für 1959, 728 S.
Die Veranlagung zur Gewerbesteuer für 1959, 180 S.
Die Veranlagung zur Körperschaftsteuer für 1959, 256 S.
Die Veranlagung zur Umsatzsteuer für 1959, 280 S.

IRELAND

H. A. R. J. WILSON and F. N. KELLY: *Irish income tax and corporation profits tax. First (1958) and second (1959) supplement.* H.F.L. (Publishers), 10 Earlham Street, London WC2.

A review of this excellent book on Irish income tax and corporation profits tax was published in *Bulletin* XII, p. 267. The *first and second supplements of 1958 and 1959* deal with the changes brought by the Finance Acts of 1958 and 1959: allowing personal reliefs as a deduction from total income for surtax purposes; further capital allowances; taxation of capital sums received on the sale of patents, and allowances for patents purchased or devised; anti-avoidance provisions in respect of "bond washing"; exempting the capital element in purchased life annuities. This book can be recommended as a very useful and reliable guide to Irish income tax and Corporation profits tax.

IRAK

Das Einkommensteuergesetz der Irakischen Republik. Aus dem Arabischen übersetzt von Dr. jur. Norbert F. Küppers. Verlag Kommentator, Schumannstrasse 29, Frankfurt am Main, 1959, 41 S. Preis DM 59.50.

Der Verlag Kommentator hat mit dieser Übersetzung des *Einkommensteuergesetzes der Irakischen Republik* ein wertvolles Hilfsmittel geschaffen für alle Banken, Unternehmer usw. und deren Berater, die mit dem Irak in Geschäftsverbindung stehen. Für die interessierten Kreise der Wirtschaft ist die genaue Kenntnis des Einkommensteuerrechts von grundlegender Bedeutung. Da die arabische Sprache weithin nicht beherrscht wird, bietet diese deutsche Textausgabe nicht nur der deutschen Wirtschaft, sondern auch der englischen und französischen Geschäftswelt den Zugang zu diesem wichtigen Gesetz.

MOROCCO

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

Un compte rendu de ce livre sur le système fiscal au Maroc a été publié dans le *Bulletin* XI, p. 37. Le *Supplément de novembre 1959* contient des nouveaux Décrets portant fixation pour l'année 1959 des tarifs du tertib, du nombre de décimes additionnels au principal de la taxe urbaine et de l'impôt des patentes à percevoir au profit du budget général de l'Etat, et un Arrêté portant institution de commissions locales de taxation pour l'assiette de l'impôt sur les bénéfices professionnels. En outre ce supplément contient des nouveaux pages pour les parties Caisse d'aide sociale, Importation-exportation, Régimes douaniers spéciaux, Douanes - répression des fraudes et un Décret portant règlement sur la comptabilité municipale.

NETHERLANDS

R. M. SMITS: *Woordenboek van Omzetbelastingtarieven.* 2nd edition. N. Samsom N.V. — Publisher — Alphen aan den Rijn, Netherlands.

Supplement 18, May 2nd, 1960, of this dictionary of Sales Tax Tariffs in the Netherlands has appeared.

W. E. C. DE GROOT: *Nederlandse Belastingwetten.*
N. Samsom N.V. — Publisher — Alphen aan den Rijn, Netherlands.

The seven volumes of this loose-leaf system on Dutch taxation contain the texts of the Dutch tax acts. The *nos 157-164 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 54-61 to these loose-leaf volumes have been published.

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 38-40* 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 31-33* have appeared.

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

Nos 726-735 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. 6-12 have been received.

F. H. M. GRAPPERHAUS: *Fusie en fiscus.* (Fusion und Fiskus.) FED, Amsterdam, 1960, 103 S.

Infolge des E.W.G.-Vertrages sieht man heutzutage oft Fusionen von Betrieben. Diese Konzentration von Betrieben veranlässt viele Steuerprobleme. Der Verfasser hat seine Studie diesem Gegenstand gewidmet und er hat die komplizierte Materie übersichtlich behandelt. Es ist auch eine graphische Darstellung aufgenommen worden in der die verschiedenen Fusionsformen abgebildet sind. Das Büchlein wird sowohl dem Praktiker als dem Studierenden von Nutzen sein.

M. V. M. VAN LEEUWE: *Fiscale problemen bij fusies van naamloze vennootschappen* in Nederland en in enkele andere landen, deelnemende aan de Euromarkt. (Steuerprobleme bei Fusionen von Aktiengesellschaften.) Fisale Monografieën No. 16. AE. E. Kluwer, Deventer, 1960, 192 S. Preis Hfl. 9,60.

Im ersten Teil dieser Dissertation gibt der Verfasser zuerst eine Übersicht der steuerrechtlichen Massnahmen bezüglich Fusionen in den Niederlanden. Zunächst behandelt er die vollständigen und teilweisen Fusionen und vergleicht die verschiedenen Methoden in denen Aktiengesellschaften zu Fusionen gelangen und ihre steuerrechtlichen Folgen. Im zweiten Teil werden die Fusionsmassnahmen und die damit zusammenhängenden steuerrechtlichen Probleme in der Deutschen Bundesrepublik, in Frankreich und in Belgien behandelt. Das Buch enthält ein Personenregister und ein Register zur Rechtsprechung.

C. P. Tuk: *Omzetbelasting.* (Sales Tax) 6th edition. Supplement 9, June 3rd, 1960. De Belastingwetgeving Serie I. & A. No. 11. J. Noorduijn en Zoon N.V. — Publishers — Gorinchem.

Belastingtarieven 1960 (Steuertarif 1960) 5. Auflage. L. J. Veen's Uitgeversmij., Leidsegracht 78, Amsterdam, 1960, 243 S. Hfl. 3,50.

In diesem nützlichen Buche sind die Sätze der holländischen Steuern in übersichtlicher und bequemer Weise dargestellt. Jeder Tarifgruppe ist eine kurze, deutliche Erklärung vorangestellt. An Hand von Beispielen wird das Verständnis der Anwendung der Tarife und der gesetzlichen Bestimmungen erleichtert. Das Buch kann für den Gebrauch durchaus empfohlen werden.

SPAIN

Manual de la Administración. T-A-L-E-, Hortaleza 20, Madrid.

In *Bulletin* XIV p. 43 and 108 reviews were published of this useful looseleaf book which contains a systematic survey of Spanish taxation. *Supplements 19* of May 1960 and *20* of June 1960 contain new pages for the parts on legislation and case law, studies and commentaries, and a number of pages to be exchanged for the parts on stamp duties, derechos reales and social insurance.

SWEDEN

Leif Mutén: *Företagsbeskattningsproblem* (Das Problem der Besteuerung der Unternehmungen) Särtryck ur Industriproblem 1960.

Der Verfasser gibt in dieser Broschüre eine Auseinandersetzung über die Grundsätze der Besteuerung der Unternehmungen. Die Steuerinzidenzlehre, die Steuerüberwälzung und das Doppelbesteuerungsproblem werden besprochen.

SWITZERLAND

Dr. Rudolf Borkowsky: *Kleine Steuerkunde.* Ein Überblick über die Steuern, mit denen der Kaufmann laufend zu tun hat. 3. neubearbeitete Auflage. Zürich: Verlag des Schweiz. Kaufmännischen Vereins, 1960, 92 Seiten. Bro. Fr. 7.50.

Diese bewährte kleine Schrift ist in dritter Auflage erschienen und auf den jetzigen Stand von Gesetzgebung und Rechtsprechung gebracht worden. Wie die früheren Auflagen gibt sie einen zusammenfassenden, knappen Überblick über diejenigen schweizerischen Steuern, mit denen der Kaufmann ständig zu tun hat. Sie beschränkt sich nicht darauf, die rechtlichen Bestimmungen und die sich daran anschliessende Veranlagungspraxis und Rechtsprechung darzustellen, sondern verfolgt auch deren wirtschaftliche Auswerkungen und vermittelt so dem Leser die Grundlagen für eine zweckmässige steuerliche Unternehmungspolitik. Der Kaufmann wird dies besonders schätzen, denn die Steuern sind zu einem der wichtigsten Unkostenfaktoren geworden, wo sich jede Einsparung sehr stark auswirkt. Wer sich mit den Steuerfragen des Kaufmanns als Selbständigerwerbender, Buchhalter, Revisor oder Steuerbeamter zu beschäftigen hat, wird das Büchlein mit Nutzen zu Rate ziehen. Ein ausführliches Inhaltsverzeichnis und Sachregister erleichtern die Benutzung.

Le Bureau Fédéral de Statitique a publié les ouvrages suivantes qui sont élaborées par l'*Administration Fédérale des Contributions:*

1. *Impôt Fédérale pour la défense nationale, VIIIe période.*

2. *Finances et Impôts de la Confédération, des Cantons et ces Communes 1958/59.*
3. *Charge fiscale en Suisse 1959.*

UNITED KINGDOM

Current Law Income Tax Acts Service. Sweet & Maxwell, 11, New Fetter 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 57, April 6, 1960 contains a full report of the Budget Resolutions. Each Budget Resolution is set out in full. The commentary presents in clear, concise language what is the effect of the Resolution. Cross-references are given to the various sections of the Income Tax Acts affected.

Release 58, May 6, 1960. The Finance Bill. This release brings subscribers the Income Tax, Surtax and Profits Tax provisions of the Bill, annotated with cross-references to the Income Tax Acts and to Konstam.

Release 59' June 3, 1960. This Release includes further digests of cases, additions to the Extra-Statutory Concessions, departmental circulars and double taxation agreements. The tables of cases and statutes to the income tax, surtax and profits tax sections are brought up-to-date to the beginning of 1960..

UNITED STATES

American Federal Tax Reports. Second Series. Volume 4. Prentice-Hall, Inc., Englewood Cliffs, N.J., 1960.

This volume contains unabridged Federal and State Court decisions arising under the Federal Tax Laws and previously reported in Prentice-Hall Federal Taxes. 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 calender year.

Prentice-Hall, Inc. Englewood Cliffs, New Jersey has published in its series Federal Tax Report Bulletin, Section 2, the brochure:

Fortune-building real estate opportunities in the 1960's. 64 pp.

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* XII, p. 173. *Supplement 26-29* have been published.

Federal Taxes. Published by Prentice-Hall, Inc., Englewood Cliffs, New Jersey.

Report Bulletins Vol. XLI, no. 1-26 which keep these 9 volumes up to date have been published.

LATIN AMERICA

FREE TRADE AREA

The following is an extract of the Montevideo Treaty establishing a Free Trade Area between Argentina, Brazil, Chile, Mexico, Peru, Paraguay and Uruguay signed on 18th February, 1960.

The English text of the agreement, of which we only reproduce the provisions relating to taxes and duties, was published by the Bank of London and South America Limited as an annex to its Fortnightly Review, Volume 25, Nr. 611 of 12th March, 1960.

Chapter II. Trade Liberalization Programme

Article 2. The free trade area established by the terms of this Treaty will be fully achieved within a period of not more than twelve years from the date on which the Treaty becomes effective.

Article 3. During the period indicated in Article 2 the Contracting Parties will gradually eliminate from the essential part of their reciprocal trade all types of duties and restrictions that affect the importation of goods originating in the territory of any Contracting Party.

For the purpose of this Treaty duties are understood to include Customs duties and any charges that have the same effect—whether of a fiscal, monetary or exchange nature—bearing on imports. The provisions of this Article do not apply to similar levies and charges, when these are in respect of the cost of services rendered.

Article 4. The aim defined in Article 3 will be achieved by means of periodical negotiations among the Contracting Parties, which should have the following outcome:

a. National Lists of the annual reductions in duties and other restrictions which each Contracting Party will concede to the other Contracting Parties, in accordance with the provisions of Article 5; and
b. A Common List of the products on which the Contracting Parties commit themselves by common agreement wholly to eliminate duties and other restrictions on trade within the Area in the period referred to in Article 2, in accordance with the minimum percentage fixed in Article 7 and the process of gradual reduction established in Article 5.

Article 5. When drawing up the National Lists mentioned in inset a. of Article 4, each Contracting Party should concede annually to the other Contracting Parties reductions in duties equivalent to at least eight per cent of the weighted average of the duties ruling for other countries, until they are eliminated for the essential part of imports from within the Area, in accordance with the definitions, methods of calculation, practices and procedures contained in the Protocol to this Treaty. The duties for other countries ruling on 31st December preceding each negotiation will be those used for this purpose.

When the import system of a Contracting Party contains restrictions of such a nature as to prevent the establishment of the proper equivalent to the reductions in duties granted by other Contracting Parties, the countervailing concession to such reductions will be supplemented by the elimination or relaxation of those restrictions.

Article 6. The National Lists will become effective on 1st January each

year, with the exception of those established by first registrations; these Lists will become effective on the date decided by the Contracting Parties.

Article 7. The Common List should be made up of goods that enter into total trade among the Contracting Parties in at least the following proportions, calculated in accordance with the provisions of the Protocol: twenty-five per cent in the course of the first three-year period; fifty per cent in the course of the second three-year period; seventy-five per cent in the course of the third three-year period; and the essential part of this trade in the course of the fourth three-year period.

Article 8. The inclusion of goods in the Common List is definitive and the concessions granted on such products are irrevocable. The withdrawal of concessions on goods that appear only in the National Lists may be negotiated among the Contracting Parties, subject to adequate compensation.

Article 9. The basis for the calculation of the percentages referred to in Articles 5 and 7 will be the average annual value of trade in the three-year period before the year in which each negotiation takes place.

Article 10. The aim of the negotiations referred to in Article 4—on the basis of reciprocal concessions—will be the expansion and diversification of trade, and the promotion of the progressive integration of the economies of the countries of the Area. In these negotiations the position of Contracting Parties whose levels of duties and restrictions are markedly different from those of the other Contracting Parties will be given fair consideration.

Article 11. If, as a result of the concessions granted, marked and persistent deteriorations develop in the exchange of goods incorporated in the liberalization programme between one Contracting Party and the others as a group, the correction of these deteriorations will be examined by the Contracting Parties at the request of the Contracting Party concerned, with the idea of adopting measures of a non-restrictive nature to stimulate trade to the highest possible levels.

Article 12. If, as a result of circumstances other than those described in Article 11, marked and persistent deteriorations develop in the exchange of goods incorporated in the liberalization programme, the Contracting Parties, at the request of the Contracting Party concerned, will endeavour as far as they are able to correct these adverse trends.

Article 13. The reciprocal treatment described in Article 10 refers to the expected growth of trade between each Contracting Party and the others as a group, as regards the products that appear in the liberalization programme and those that are incorporated later.

Chapter IV. Most-Favoured-Nation Treatment

Article 18. Any advantage, favour, concession, immunity or privilege applied by one Contracting Part to a product originating in, or consigned to, any other country, will be immediately and unconditionally extended to similar products originating in, or consigned to, the territory of other Contracting Parties.

Article 19. The advantages, favours, concessions, immunities and privileges already granted or to be granted by virtue of agreements among Contracting Parties or between Contracting Parties and other countries with the aim of promoting frontier traffic will be excluded from the most-favoured-nation treatment stipulated in Article 18.

Article 20. Capital originating in the Area will enjoy in the territory of each Contracting Party treatment no less favourable than that granted to capital from any other country.

Chapter V. Arrangements concerning Internal Taxation

Article 21. With regard to internal imposts, duties and taxes, products originating in the territory of one Contracting Party will, in the territory

of another Contracting Party, enjoy treatment no less favourable than that applied to similar national products.

Article 22. With regard to products included in the liberalization programme but which are not or will not be produced in substantial quantities in its territory, each Contracting Party will try to prevent internal taxes or other measures that may be applied from causing the nullification or diminution of any concession or advantage obtained by any Contracting Party as a result of the negotiations.

If a Contracting Party should consider itself harmed by the measures mentioned in the foregoing paragraph, it may have recourse to the competent authorities of the Association so that the situation may be examined and suitable recommendations made.

Chapter XI. Sundry Rulings

Article 48. No Contracting Party may introduce into the system of duties on imports any modification that will result in a less favourable level of duties, for each of the products that are the subject of concessions to the other Contracting Parties, than that in effect before the modification.

Modifications to bring up to date the assessed value, or *aforo* ("standard of minimum value"), for the application of Customs duties are exempt from fulfilling the requirement laid down in the foregoing paragraph, provided that these modifications reflect only the real value of the goods. In this case the value does not include the Customs duties applied to the goods.

Article 49. For the better fulfilment of the rulings of this Treaty, the Contracting Parties will endeavour, as soon as possible:

a. To fix the criteria to be used in establishing the origin of goods, as well as their nature as raw materials, semi-manufactured goods or manufactured goods;
b. To simplify and unify the procedure and formalities relating to reciprocal trade;
c. To establish a tariff nomenclature to serve as a common basis for the presentation of statistics and the conduct of the negotiations envisaged in this Treaty;
d. To determine what is to be regarded as frontier trade for the purposes of Article 19;
e. To establish criteria for the definition of "dumping" and other unfair trade practices and the procedure to be followed in such cases.

Article 50. Products imported from the Area by a Contracting Party may not be re-exported, except when there is an agreement thereto between the Contracting Parties concerned.

If the roduct is submitted in the importing country to industrial processing or manufacture, to an extent to be determined by the Committee, it will not be regarded as a re-export.

Article 51. Products imported or exported by a Contracting Party will enjoy freedom of movement within the Area and will be subject only to the payment of the rates normally charged for services.

Article 52. No Contracting Party may favour its exports by means of subsidies or other measures that could disturb normal competitive conditions within the Area.

It will not be regarded as a subsidy if an export product is exempted from the duties or taxes levied on the product or its components when intended for domestic consumption, or if such duties or taxes are refunded ("draw back").

Chapter XII. Final Clauses

Article 55. This Treaty may not be signed with reservations, nor may they be received on the occasion of ratifying or participating in it.

Article 56. This Treaty will be ratified by the signatory States as soon as possible.

The instruments of Ratification will be lodged with the Government of the Republic of Uruguay, which will notify the dates on which they are lodged to the Governments of the States that have signed this Treaty and to any that join it.

Article 57. This Treaty will become effective for the first three countries that ratify it thirty days after the third Instrument of Ratification is lodged; and, for the other signatories, on the thirtieth day after their respective Instruments of Ratification are lodged, and in the order in which the ratifications are lodged.

The Government of the Republic of Uruguay will notify to the Government of each of the signatory States the date on which this Treaty becomes effective.

Article 58. After it becomes effective, this Treaty will be open to the participation of the other Latin American States, which for this purpose must lodge with the Government of the Republic of Uruguay the relevant Instrument of Participation. The treaty will become effective for the participating State thirty days after the relevant Instrument is lodged.

The participating States will carry out the negotiations referred to in Article 4 at the next meeting of the Conference immediately after the date on which the Instrument of Participation is lodged.

Article 59. Each Contracting Party will begin to benefit from the concessions already granted among themselves by the other Contracting Parties from the effective date of the reductions in the duties and other restrictions, negotiated by them on the basis of reciprocal treatment, and when the minimum commitments referred to in Article 5, accumulated during the period that may have elapsed since this Treaty, became effective.

CANADA

Proposed Income Tax Amendments

A number of technical amendments in connection with the Income Tax Act were recommended by the Minister of Finance in his budget address on March 31. Five of these deal with recommendations which were made in the joint brief submitted by the Canadian Institute of Chartered Accountants and the Canadian Bar Association and include:

Medical Expenses

The committee recommended that the present restrictions on maximum amounts of medical expenses allowable be rescinded.

Budget resolution No. 3 provides for an increase in the maximum amounts allowable.

Designated Surplus and Related Provisions

The committee recommended that a Royal Commission or a special committee be appoinred to study the problems arising generally from the scheme of double taxation of corporations and corporate distributions and in particular from the designation of surplus under section 28 (2) of the Act, with the object of suggesting a new approach. It recommended also, among other things, that the par or stated value of shares other than common shares be treated as liabilities for the purposes of section 105C of the Act.

The Minister stated in his budget speech that "we would be undertaking a comprehensive study" of such matters as the designation of surplus under section 28 (2) of the Act and the taxation of earnings that are distributed or are available for distribution in various forms by corporations.

Resolution No. 5 provides that any share other than a common share of a new corporation resulting from an amalgamation shall be deemed to be a liability of the new corporation for the purposes of section 105C of the Act.

Time Limit on Reassessments

The committee recommended that section 46 (4) be revised to include a statement that the date of mailing of the notice of assessment or reassessment is the date of the assessment or reassessment, and to provide that an assessment whereby it is determined by the Minister that no tax is payable is an original assessment for the purposes of this section.

Resolution No. 10 provides for both the points recommended.

Foreign Tax Credit

In previous years the committee has recommended that the full amount of tax paid to a foreign country be considered to be foreign tax paid for purposes of computing the foreign tax credit.

Resolution No. 7 provides for this treatment except with respect to foreign tax paid on dividends which the recipient may exclude when computing his taxable income.

Pension and Similar Benefits

In previous years the committee recommended that only the net amount received under a pension plan or annuity, after deducting succession duty

payable with respect thereto, should be treated as income of the recipient.

Resolution 14 provides for such a deduction from a superannuation, pension or death benefit under a registered retirement savings plan, determined by reference to provincial succession duty or Canada estate tax applicable to the benefit.

Source: *The Canadian Chartered Accountant,* May 1960

INDIA

BUDGET SPEECH 1960

In the course of his budget speech, Shri Morarji Desai, the Finance Minister, stated as under:

". . . I now turn to the proposals for dealing with the revenue deficit for the coming year.

Honourable Members may recall that while presenting the budget proposals for the current year, I placed before the House certain broad considerations which Government took into account in deciding the extent to which the revenue deficit of a year should be covered by additional taxation. I suggested that the long era of revenue surpluses was perhaps coming to a close; for the first time the actuals for 1958-59 have disclosed a small revenue deficit of Rs. 5 crores. I also suggested that exceptional circumstances affecting the deficit of a year should be taken into account in deciding upon the extent to which the deficit should be covered and that due regard should be given to the amount of additional taxation raised in recent years. I also ventured to underline the need for the continuous mobilisation of resources for financing the increasing needs of planned development. The considerations I placed before the House last year apply with equal force to the budget of the coming year and although the large revenue deficit next year is due, in the main, to larger outlay on development in the last year of the present Plan and the increased requirements of Defence in the interests of national security, I am convinced that a part of the deficit should be covered by additional taxation. As in the current year, I propose that about a fourth of the deficit in sight, may be covered by new taxation.

In framing the taxation proposals for the coming year, I have had in mind something more than the immediate needs of that year. I mentioned earlier the continuous need to raise additional resources for development. In the context of planned development, it is essential, in dealing with the budgetary needs of each year, to think in terms of broadening and adjusting the bases of taxation so that the revenue raised continues to expand with the years. The proposals for the coming year, particularly those widening the base of taxation, have been formulated with the needs of the Third Plan in view. While direct taxation will be kept under constant and continuous review so as to make it yield the maximum resources, the bulk of the expansion in taxation will have to come from indirect taxation.

Indirect Taxation

In the field of indirect taxation, my proposals cover both the adjustment of rates of existing taxes and the levy of taxes on certain new commodities. The proposals are explained in detail in the memorandum circulated with the budget papers and I propose to mention them only briefly.

My first proposal is to levy a duty of Rs. 200 per metric tonne on tin plates and tinned sheets. Suitable adjustments would be made where duty paid steel is used in their manufacture. The yield in a full year is estimated at Rs. 208 lakhs.

My second proposal is to impose a small duty of Rs. 10 per metric tonne on pig iron. Pig iron used in the manufacture of steel will be exempted from the duty, which is expected to yield Rs. 60 lakhs a year.

My third proposal is to levy a duty of Rs. 500 per metric tonne on aluminium sheets and circles and Rs. 300 per metric tonne on aluminium ingots. Necessary adjustments will be made in the duty on circles, sheets, etc., when duty paid ingots are used in their manufacture. The estimated yield is Rs. 86 lakhs.

My next proposal is to levy a duty of 10 per cent. *ad valorem* on all types of internal combustion engines used as prime movers for transport vehicles. A lower rate of 5 per cent. *ad valorem* will be charged on stationary types of these engines which are generally used in industry and for agricultural purposes. The yield is estimated at Rs. 107 lakhs a year.

I also propose to levy a small tax on certain essential cycle parts. A duty of Rs. 2 on each free wheel and Rs. 4 on each rim will be levied. This will ensure the realisation of Rs. 10 of each completed cycle without bringing into the excise net a large number of small assemblers of cycles and manufacturers of cycle parts. The annual yield is estimated at Rs. 100 lakhs.

Electric motors and parts thereof are not now subject to tax. It is proposed to levy a duty ranging from 5 per cent. to 15 per cent. *ad valorem* on various types of motors used for different purposes. The revenue from this is estimated at Rs. 46 lakhs a year.

A duty on exposed cinematograph films is also being levied. It will vary from 10 naye paise per metre to 50 naye paise per metre depending on the type of the films. News reels and shorts would be subject to the lower rate of duty. The yield from this is estimated at Rs. 75 lakhs.

My last proposal for new excises relates to silk fabrics on which a duty of 30 naye paise per square yard will be levied. The handloom sector will not be affected by this measure which is expected to yield Rs. 30 lakhs.

I shall now turn to the readjustments in the existing rates of duty on certain commodities.

The House will remember that in 1956 an excise duty was levied on the larger passenger motor-cars while all commercial vehicles and small and medium cars, motor cycles and scooters were not taxed. I now propose to levy a duty ranging up to 15 per cent. *ad valorem* on all types of motor vehicles. The total revenue is estimated at Rs. 625 lakhs.

Refined diesel oil was made subject to duty in 1956 when a tax at 25 naye paise per imperial gallon was levied. Although the tax has since been raised to 80 naye paise per imperial gallon, the consumption of this commodity has been increasing rather rapidly. The growing imbalance between the internal production and consumption of this commodity is causing a considerable drain on the foreign exchange resources of the country. I, therefore, propose to raise the basic rate of duty by a further 25 naye paise per imperial gallon. This will bring in a revenue of Rs. 504 lakhs a year.

Complete footwear manufactured in power operated factories was subjected to an excise duty in 1955 but a large number of small scale units were kept out of the scope of the taxation. Some of the larger units are reportedly adopting a deliberate policy of decentralisation to evade taxation. Mainly to protect the revenue, I propose to levy an excise duty on machine made soles and heels made of materials other than leather or wood. The rate of duty will be 15 per cent. *ad valorem* and will yield a revenue of Rs. 20 lakhs a year.

In the field of textiles, I propose to make two changes with some revenue significance. I propose to remove the existing total exemption on fabrics produced from staple fibre yarn and cut pieces of cotton textiles, the so-called fents. The former will now be treated on par with artificial silk fabrics. In the case of cut pieces, the present definition is being revised and small specific

duties, at levels substantially below the fabric rates, will be levied. These changes are estimated to yield Rs. 195 lakhs a year of which Rs. 65 lakhs will accrue to the States.

Electric fans, bulbs and batteries were first made subject to excise in 1955 and no change has since been made in the rates of duty on these commodities. The production trends indicate that these lines are expanding and they can bear an increase in taxation. I propose to raise the existing duties by 50 per cent. with a suitable increase in the duty on components. These changes will yield a revenue of Rs. 90 lakhs a year.

The tea industry has been complaining of the difficulties caused to it by the imposition of a number of taxes at various stages by different agencies. We propose to explore the possibility of removing this hardship by a suitable readjustment of the excise duty,bearing in mind the financial interests of the State Governments concerned, and the need to secure that their resources are not adversely affected. To enable this to be done, we are raising the permissible maximum limit of the excise duty from 19 naye paise to 30 naye paise per lb. This is merely an enabling measure and does not involve any change in the effective rates of the duty now imposed ranging, as the House is aware, from 2 naye paise to 12 naye paise per lb.

A few other minor readjustments are also being made about which I need not weary the House. The total financial effect of these changes is to bring in an additional revenue of Rs. 27 lakhs a year of which Rs. 5 lakhs will accrue to the States.

The net effect of the various measures which I have mentioned is to increase the revenue by Rs. 21.73 crores, of which Rs. 70 lakhs will accrue to the States.

With regard to customs duties, I propose to make no change except for an increase in the duty on wines and spirits and other alcoholic liquors. Following the changes in excise duties, provision is being made, wherever necessary, for the levy of a countervailing import duty, so that the indigenous producer is not placed at a disadvantage. The changes in the customs levy are estimated to yield a revenue of Rs. 2.5 crores in the coming year.

Direct Taxation

"I do not propose to make any change in the rate structure of *personal income-tax*. With regard to company taxation, steps are being taken to implement in its entirety the new scheme of company taxation, introduced in the current year's budget. Formal action is being taken to abolish the Wealth Tax on companies and the tax relating to excess dividends with effect from the financial year commencing on the 1st April 1960.

The House will remember that last year, for purposes of advance payment for the assessment year ending the 31st March, 1961, I had provisionally adopted a rate of 45 per cent for company taxation. We have not had sufficient experience of the effect of this rate. I do not, therefore, propose to make any change in this rate but to adopt it as the final figure. Smaller companies with a total income not exceeding Rs. 25,000 will continue to be assessed at a figure 5 per cent less. Last year I had promised to consider certain matters connected with the new system of company taxation, and I am making two provisions in the Finance Bill, one relating to the assessment of dividends paid out of profits taxed in the past and the other relating to taxes on companies holding less than 50 per cent share in the capital of another company, and have taken them into account in my estimates of revenue.

I propose to make two changes in regard to the deduction of tax at source.

The House will remember that it was decided last year that tax should be deducted at source at a rate of 30 per cent on dividends paid to resident individuals and at 45 per cent on dividends paid to Indian companies. It has been represented that this difference in the rate of deduction at source has given rise to some difficulties. I, therefore, propose to apply a uniform rate of 30 per cent for deduction of tax from both the individuals and companies. In order that this change may not affect the revenue receipts, I propose to amend Section 18A so as to enable Government to collect from Indian companies the remaining 15 per cent as advance tax on the dividends received by them.

The existing provision with regard to the deduction at source from dividends paid to preference shareholders also appears to be causing some difficulty. The amount of the dividends which companies are required to pay to the shareholders is governed by the terms of their contract with them and Government would not like, as the current Finance Act implies, to make any assumptions regarding such amounts. I accordingly propose in the Finance Bill to provide for the deduction at source from the payments to these shareholders as in the case of any other dividends, leaving the actual amounts of these dividends for the companies themselves to decide.

I would now briefly refer to a few other proposals to amend the Income-tax Act. The period for which exemption is available under section 15C to new industrial undertakings is proposed to be extended by a further five years. The limit up to which donations for charitable purposes qualify for exemption from tax is proposed to be increased from 5 per cent of total income or Rs. 1.00.000, whichever is less, to 7 ½ per cent of total income or Rs. 1,50,000, whichever is less. At present, the amounts paid to scientific research associations and educational institutions to be sued for scientific research are allowed as deductions in computing the business income of the donor if the scientific research is related to the class of business carried on by him. It is proposed to allow this deduction even if the scientific research is not related to such business. In respect of properties constructed before 1st April, 1950, the full amount of taxes levied by a local authority and borne by the owner, is proposed to be allowed to be deducted in computing the taxable income from the property, as against half the amount of such taxes allowed at present. My next proposal is with regard to the taxation of co-operative societies. At present, the business income of such societies is exempt from tax. This exemption is justified having in view the objective of the co-operative societies Act of 1912, namely, to facilitate the formation of co-operative societies for the promotion of thrift and self-help among agriculturists, artisans and persons of limited means. However, as the House is aware, of late, co-operative societies have widened their fields of activity and are carrying on substantial business involving transactions of a large scale with non-members. There is no justification for a complete tax exemption of business profits in their case. It is, therefore, proposed that while the business incomes of co-operative societies connected with agriculture, rural credit and cottage industries should continue to be wholly exempt from Tax the business incomes of other societies should be exempt only up to a sum of Rs. 10,000. These proposals will not materially affect the revenue.

A few amendments of a comparatively minor character are proposed to Expenditure Tax and Gift Tax Acts. The amendments to the Expenditure Tax Act provide for allowances for expenditure incurred on leave travel in India as well as education of children in India. It is also proposed to allow in full the taxes paid by an assessee to a foreign government instead of only a portion as at present. The amendment to the Gift Tax Act provides that the advance tax payable will be at the same rate as the tax payable on regular assessment. These changes are not expected to have any significant effect on revenue."

The proposed changes may be summarised as under (extract):

1. For assessees other than companies, the same rates as prescribed by the Finance Act, 1959 continue.

2. In the case of Companies,

(i) the rate of income-tax has been fixed at 20 per cent as against the existing rate of 31.5 per cent (30 per cent income-tax and 1.5 per cent surcharge on income tax).

(ii) the effective rate of super-tax on an Indian company with a total income exceeding Rs. 25,000 has been fixed at 25 per cent so that the aggregate rate of income-tax and super-tax applicable to such a company will be 45 per cent as against 51.5 per cent as at present.

(iii) the effective rate of income-tax and super-tax on Indian branches of foreign companies has been fixed at 63 per cent as against 61.5 per cent as at present.

(iv) the effective rate of super-tax on dividends received by parent companies (Indian or foreign) from their subsidiary Indian companies continues at 10 per cent.

(v) on dividends receivable by any company from an Indian company (not being a subsidiary company) formed and registered on or after 1st April, 1959, the effective rate of super-tax otherwise payable has been reduced by 5 per cent in the case of an Indian company and 10 per cent in the case of a foreign company.

(vi) bonus issues out of premiums received in cash will be taken into account for the purposes of super-tax like other bonus issues.

(vii) super-tax payable with reference to excess distribution of dividends has been withdrawn.

(viii) the general rate for deduction of super-tax at source on interest on securities, dividends, etc., payable to Indian companies has been reduced from 25 per cent to 10 per cent, the total effective rate of deduction on account of income-tax and super-tax thus being reduced from 45 per cent to 30 per cent.

(ix) the rate for deduction of super-tax on dividends payable by an Indian company (other than a subsidiary company) formed and registered on or after 1st April, 1959, to ar foreign company has been reduced from 43 per cent to 33 per cent.

(x) the rate of super-tax for the Life Insurance Corporation of India has been fixed at 22.5 per cent so that the aggregate rate of income-tax and super-tax remains at 42.5 per cent as at present, and

(xi) the rates of super-tax applicable to the Life Insurance Corporation of India for the financial years 1958-59, 1959-60 and 1960-61 have been made applicable also to such other companies as carry on life insurance business in respect of their profits from such business.

In other words, the rate of Income-tax for all companies is proposed to be fixed at 20 %. For super-tax, a basic rate of 55 % is adopted and rebates allowed therefrom, the amount of rebate depending on certain circumstances relating to the company.

The effective rates applicable to companies which do not make bonus issues are summarised in the following statements:—

Class of Companies	Existing rates (1) I.T.	S.C.	S.T.	Total	Proposed rates I.T.	S.C.	S.T.	Total
(1) *Companies which have made the prescribed arrangements for the declaration and payment of dividends within India:*								
(a) companies in which the public are substantially interested with total income not exceeding Rs. 25,000.								
(i) On dividend income derived from a subsidiary Indian company	30	1.50	10	41.5	20	—	10	30
(ii) On dividend income derived from an Indian company (not being a subsidiary company) formed and registered on or after 1-4-1959	30	1.50	15	46.5	20	—	15	35
(iii) On the balance of income	30	1.5	15	46.5	20	—	20	40
(b) Other companies—								
(i) On dividend income derived from a subsidiary Indian company	30	1.5	10	41.5	20	—	10	30
(ii) On dividend income derived from an Indian company (not being a subsidiary company) formed and registered on or after 1-4-1959	30	1.5	20	51.5	20	—	20	40
(iii) On the balance of income	30	1.5	20	51.5	20	—	25	45
(2) *Companies which have not made the prescribed arrangements referred to in (1).*								
(i) On dividend income derived from a subsidiary Indian company	30	1.5	10	41.5	20	—	10	30
(ii) On dividend income derived from an Indian company (not being a subsidiary company) formed and registered on or after 1-4-1959	30	1.5	30	61.5	20	—	33	53
(iii) On the balance of income .	30	1.5	30	61.5	20	—	43	63

(1) I.T.=Income Tax; S.C.=Surcharge; S.T.=Supertax.

Provisions relating to the implementation of the new scheme of company taxation.

1. *Credit to companies in respect of dividends distributed out of past taxed profits:*

On dividends paid in respect of the previous year relevant to the assesment year 1960-61 or a later year, a company will now deduct tax at source under section 18 and the benefit of 'grossing' will not be available to the shareholders. Where, however, the available income of the previous year in respect of which the dividend has been paid is not sufficient to pay such dividend and the whole or a part of the dividend is paid out of profits charged to income-tax in the assesment year 1959-60 or earlier years, the Finance Bill proposes to provide some relief to the company. The company will be given a credit equal to 10 per cent of the dividends distributed out of past taxed profits. This credit will be given against the tax liability of the company on the profits of the previous year during which the dividend is paid. For this purpose, the dividends in respect of any previous year shall be deemed first to have come out of the available profits of the previous year and the balance, out of the available profits of one or more immediately preceding previous years.

Deduction of tax at source from dividends on preference shares: Section 18(3E) of the Income-tax Act requires that in the case of dividends paid to preference shareholders who are entitled to a fixed rate of dividend free of tax, the tax to be deducted at source should be computed on such an amount as would, after deduction of a sum equal to 30 per cent thereof, be equal to the fixed rate of dividend. When this provision was introduced last year, it was expected that the companies concerned would declare correspondingly higher dividends on such preference shares. It appears that all companies have not adopted a uniform policy in this regard. To deduct tax at source at 30 per cent on a preference dividend notionally increased in the manner described above would result in a hardship if the company does not pay a higher dividend equal to the increased amount. It is, therefore, proposed to delete section 18(3E). The companies will be free to decide as to what amount they should declare as dividends to the preference shareholders. Out of the amounts of dividend declared by the companies, deduction at source will have to be made as in the case of any other dividends at the prescribed rates. This is made clear by a small clarificatory amendment in Section 18(3D).

Wealth-Tax on Companies: Wealth tax on companies and super-tax payable with reference to excess distribution of dividends are proposed to be withdrawn. Bonus issues out of premiums received in cash are proposed to be taken into acccount for the purposes of computing super-tax.

Advance payment of tax: Consequent to the proposed reduction from 45 per cent to 30 per cent in the rate at which tax is to be deducted at source on the dividends, etc., received by Indian companies, some changes in section 18A relating to the advance payment of tax are necessary. As the section stands now, it is not applicable to incomes from salaries, interest on securities and dividends. It is proposed to amend the section so as to bring under its purview all incomes other than income chargeable under the head 'salaries'. As a result of the amendment, dividends, etc., will be included in the income on which advance tax is collected. The net demand will be calculated after taking into consideration the tax which will be deductible at source. Thus, in the case of an Indian company, advance tax on its dividend income will be recovered at 15 per cent (45 per cent minus 30 per cent).

Other amendments in Income-tax Law

1. Clause 3 makes the following amendments to Section 19 of the Finance Act, 1959:

Sub-clause (i) inserts a new sub-section (3A) with a view to clarifying that

interim dividends declared or payable by a company even before 1-4-59 but in respect of a previous year relevant to the assessment year 1960-61 will not be grossed up in the assessments of the shareholders.

Sub-clause (ii) Sub-clause (4) of section 19 provided that the benefit of grossing would be available for dividends declared in respect of a previous year relevant to the assessment for 1959-60 or an earlier year. In order to clarify that this benefit will be available only where the dividends are declared in relation to the accounts of a previous year not later than the previous year relevant to the assessment year 1959-60, the following amendment has been proposed in sub-clause (ii).

In sub-section (4) after the words "declared or payable by a company" the words and figures "on or before the 30th day of June, 1960" shall be inserted and shall be deemed always to have been inserted."

Sub-section (4) of section 19 will now run as under :—

"Notwithstanding anything contained in sub-section (2) or sub-section (3) in relation to dividends declared or payable by a company *on or before the 30th day of June, 1960* in respect of any previous year relevant to any assessment year *prior to the assessment year* 1960-61, the Income-tax Act shall have effect as if the amendments contained in section 5, Section 7, Section 9, Section 10, Section 14, Section 15, Section 16 and Section 18 had not been made."

Municipal taxes to be allowed in full :

Clause 4 of the Finance Bill, 1960 amends section 9 of the Income-tax Act to provide that the whole of the taxes levied by a local authority and borne by the owner in respect of a property constructed before 1-4-50 shall be treated as the tenants burden which would be taken into account in determining the annual letting value on the basis of the full rent payable by the tenant.

Proposed clause (a) of the third proviso to Section 9 stands as :—

In the case of a property the construction of which was completed before the 1st day of April, 1950, the total amount of such taxes and in the case of any other property one half of the total amount of such taxes shall notwithstanding in such law be deemed to be the tenants liability for such taxes and

Existing clause (a) of third Proviso to Section 9 stood as under :—

Provided further that where the property is in the occupation of a tenant and the taxes levied by any local authority in respect of the property are, under the law authorising such levy, payable wholly by the owner or partly by the owner and partly by the tenant:—

(*a*) one-half of the total amount of such taxes * * *shall notwithstanding anything contained in such law, be deemed to be the tenant's liability for such taxes, and

(*b*) in determining the annual value of the property with reference to the rent payable by the tenant, a deduction shall be made equal to that part, if any, of the tenant's liability which is borne by the owner.

Sums paid to scientific research association

Clause 3 amends clause (xiii) of subsection (2) of section 10 of the Income-tax Act so as to extend the benefit of that clause to any sums paid to a scientific research association or to a university, college or other institution to be used for scientific research, whether or not such scientific research is related to the class of business carried on by the assessee.

Profits and gains from business by co-operative societies

Clause 6 amends sub-section (3) of section 14 of the Income-tax Act so as to provide that profits and gains from business carried on by co-operative societies (other than these carrying on insurance business) shall be wholly exempt only in the case of co-operative societies which are connected with agricultural credit and cottage industries.

It may be added here that the Direct Taxes Enquiry Committee in its report made the following observations:—

"Co-operative Societies are now running transport services, controlling large industrial and commercial undertakings such as sugar, textiles etc., and their dealings are mostly with non-members.

Co-operative societies have been given exemption from tax in recognition of the fact that they are interested to 'encourage thrift, self help and co-operation among agriculturists, artisans and persons of small means'. "Mutuality of interest is thus the fundamental principle of co-operation." This principle is conspicuously absent from the type of societies referred to in the preceding paragraph."

"Taking all the aspects of the matter into consideration, we recommend that it should be specifically provided for in the section itself that the exemption would not be available to these co-operative societies whose total income exceeded Rs. 20,000."

The Finance Bill 1960 proposes a step further. The proposed sub-section 3 of Section 14 stands as under:—

"(3) The tax shall not be payable by a co-operative society, including a co-operative society carrying on the business of banking—

(i) in respect of the entire amount of its profits and gains of business carried on by it, if it is—

(a) an agricultural or a rural credit society; or

(b) a society engaged in a cottage industry; or

(c) a society engaged in the marketing of the agricultural produce of its members;

(d) a society engaged in the purchase of agricultural implements, seeds, livestock or other articles intended for agriculture for the purpose of supplying them to its members; or

(e) a society engaged in the processing of the agricultural produce of its members, to the extent to which such process is ordinarily employed by a cultivator to render the agricultural produce raised by him fit to be taken to the market, and is not a society engaged in the performance or any manufacturing operations with the aid of power;

(ii) in respect of so much of its profits and gains of business carried on by it as does not exceed ten thousand rupees, if it is a co-operative society other than a co-operative society referred to in clause (1);

(iii) in respect of interest and dividends derived from its investments with any other co-operative society:

(iv) in respect of any income derived from the letting of godowns or warehouses for storage, processing or facilitating the marketing of commodities;

(v) in respect of any interest on securities chargeable under section 8 or any income from property chargeable under section 9, where the total income of the co-operative society does not exceed twenty thousand rupees and the society is not a housing society or an urban consumer's society or a society carrying on transport business or a society engaged in the performance of any manufacturing operations with the aid of power:

Provided that nothing contained in this sub-section shall apply to—

(i) the Sanikatta Salt Owner's Society.

(ii) a co-operative society carrying on insurance business in respect of the

profits and gains of that business computed in accordance with rule 9 in the Schedule.

Explanation.—For the purposes of this sub-section, an 'urban consumer's co-operative society' means a society for the benefit of the consumers within the limits of a municipal corporation, municipality, municipal committee, notified area committee, town area or cantonment."

The result is that in case a co-operative society has an income of Rs. 20,000 in the previous year from business, it shall have to pay income-tax on Rs. 10,000 at the rate applicable to an income of Rs. 20,000 of an association of persons. There will be no super-tax liability as paragraph C of the second Schedule exempts the first Rs. 25,000 of total income of a co-operative society from super-tax. In case the total income exceeds Rs. 25,000, only the excess will be liable to super-tax at a flat rate of 16% plus a surcharge at the rate of 12 ½ of the amount of super-tax.

Amendment to Section 15C

Clause 8 amends section 15C of the Income-tax Act so as to extend the period within which a new industrial undertaking may begin to manufacture or produce articles to be eligible for the exemption provided by that section for another five years.

The proposed amended section 15C (2) (ii) shall stand as under:—

"This section applies to any industrial undertaking which has begun or begins to manufacture articles in any part of the taxable territories at any time within a period of 18 years from the 1st day of April, 1948, or such other period as the Central Government may by notification in the official Gazette specify with regard to any particular industrial undertaking."

The word 18 years has been subsituted for 13 years.

Commenting on this change, the "Times of India" in its editorial points out as under:—

"After making provision for depreciation and development rebate, the scope of benefits accruing to new undertakings under the exemption given in section 15C of the Income-tax Act has been rather limited. In most cases it had no practical utility at all. The extension of this benefit by another five years should however be considered as expression of the Government's desire to promote capital".

Rates of Income-tax for small companies

The Finance Bill, 1960 has made 5% reduction in company taxation where the income of the company (of course public) does not exceed Rs. 25,000. The concession has been made at such a low level of income that it is hardly of any significance to the private sector as a whole. Moreover all companies whose total income does not exceed Rs. 25,000 are not entitled to the concession in rate.

Before a company can claim reduction of 5% in corporation tax it must satisfy the following conditions:—

(1) The company should have made in respect of its profits liable to tax under the Income-tax Act for the year ending 31-3-61 prescribed arrangements for the declarations and payment within India of the dividends payable out of such profits in accordance with the provisions of Sub-section 3D of Section 18 of that Act, and

(2) It is such a company as is referred to in sub-section (9) of section 23A of the Income-tax Act with a total income not exceeding Rs. 25,000.

Sub-section 9 of section 23A runs as under:—

"Nothing contained in this section shall apply to any company in which the public are substantially interested or to a subsidiary company of such company if the whole of the share capital of such subsidiary company has

been held by the present company or by its nominees throughout the previous year."

Explanation 1 of section 23A (9) prescribes conditions under which a company shall be deemed to be a company in which the public are substantially interested.

The result is that a private company shall have to pay tax at the rate of 45 % on its total income even if the total income falls below Rs. 25,000/-,

Abolishment of wealth-tax on companies

Wealth-tax on companies is proposed to be abolished with effect from the financial year 1960-61.

Though wealth-tax on companies has been abolished, it is proposed to retain the existing exemption from wealth-tax for the prescribed number of years in respect of shares held in a company established with the object of carrying on a new industrial undertaking in India.

Amendments in Expenditure-tax

Change No. 1

Modification of the exemption on account of passage concessions:

Clause (d) of section 5 of the Expenditure-tax Act exempts expenditure incurred on assessees' behalf by way of passage concessions referred to in clause (via) of subsection (3) of section 4 of the Income-tax Act. This provision in the Income-tax Act relates to—

(a) passages received by a foreigner from his employer in connection with his proceeding on leave.

(b) travel concessions received by a foreigner from his employer in connection with proceeding on leave in India.

Clause 15 of the Finance Bill 1960 proposes to amend section 5(d) to make it clear that the exemption provided for in clause (d) of section 5 relates only to (a) above.

It is proposed to provide for a similar concession to exempt expenditure of the type mentioned at (b) above by adding a clause (i) to sub-section (1) of section 6.

Change No. 2

Modification of provision relating to relief on account of expenses on education

Clause (g) of sub-section (1) of section 6 of the Expenditure Tax Act provides for relief in respect of expenses on education abroad to the extent of Rs. 8,000 per year. Clause 16(1)(a) of the Finance Bill 1960 proposes that for expenses on education in India also, a deduction of Rs. 3,000 per year should be allowed.

Modification of provisions relating to payment of taxes to a foreign Government

Section 6(1) of the Expenditure-tax Act, 1957, provides for a deduction in full of taxes paid to the Indian Government, while section 6(4) provides for the deduction of that portion of taxes only on income, wealth or expenditure paid to a foreign Government as is attributable to the amount of chargeable expenditure incurred out of the sum which has suffered such foreign taxes. This results in hardship as in certain cases, assessees have to pay expenditure-tax on a portion of the income-tax paid to a foreign Government. The amendment is intended to provide for the allowance in full of any income-tax, wealth-tax, expenditure-tax, gift-tax or estate duty paid by the assessee to a foreign Government, with retrospective effect. (see clause 16(ii))

Amendment in Gift-tax law

Under section 18 of the Gift-tax Act as it stands at present, the rebate of 10% as advance payment of gift-tax is admissible only in cases where the value of each taxable gift is Rs. 10,000 or more. Moreover, the rates prescribed for advance payment are also different from the rates prescribed in the Schedule for regular assessment. As this results in certain persons having to pay by way of advance tax more than what they would have to pay ultimately and other less, clause 17 of the Finance Bill 1960 proposes to prescribe the same rates for advance payment of tax as for regular assessments. The amended section will also enable assessees making similar gifts to avail themselves of the benefit of rebate by paying advance tax.

Source: *Income Tax Reports,* 14th March, 1960

I

INCOME TAX LEVIED ON GREEK LIMITED COMPANIES AND FOREIGN CORPORATIONS (*conclusion*)

by

G. A. NEZIS, Athens

IV. TAX FREE RETENTIONS OF PROVINCIAL INDUSTRIES

In order to develop the Greek Provinces and to encourage the establishment of new industries and other enterprises in provincial districts, the following incentive measures have been taken as far as income tax is concerned:

Considered as provinces are — a) all parts of Greece with the exception of the District of Attica: b) the islands of Aegina, Cythera, Poros, Hydra, Spetses and the town of Lavrion, although belonging to the Attica District.

A. Tax free retention for future losses

Industrial, commercial, hotel and mining enterprises have the right to deduct from their profits earned in the provinces a tax free retention to the amount of 25% of their yearly profits, up to the year 1964. For the islands, with the exception of the island of Euboea, the tax free retention amounts to 40% of the yearly income earned in the islands by the above enterprises.

This tax free retention is acknowledged only in cases where the bookkeeping of the enterprise has been judged to be in accordance with the facts. It aims at covering any losses after the year 1962.

B. Tax free retentions for new installations

1. Industrial, trade, hotel and mining enterprises, and export firms for farming products have the right to proceed to a tax free retention amounting to 40% of their yearly profits earned in the Provinces under the condition that this amount will serve for new installations or for the extension and modernization of the existing

ones. For industrial enterprises functioning in the islands this retention can reach 80% of the yearly profits.

2. The retention is acknowledged only in the following cases:
a) when the account books of the enterprise have been judged to be in accordance with the facts, and net profits have been taxed on the basis of these books;
b) when the enterprise has filed a true return for its income during the previous year. In the case that the account books of the taxpayer, whose tax free retentions have been acknowledged, should be judged as not being in accordance with the facts, during the next year or the year following the next year, the amount of the retention is added to the taxable profits of the year in question.

3. If the value of the new installations purchased in the respective year is higher than the tax free retention booked in the same year, the uncovered balance is carried over to the next year and is deducted up to full cover from the tax free retentions of the next years.

4. The above tax free retention has no connection whatever with the depreciation rates, (ordinary, additional, provisional and by Act No. 3765) for new installations which the enterprise has the right to book in full.

5. By way of exception for new productive investments (see V paragr. 2 and 3) the sum to be deducted each year for tax free retentions can amount to:
a) 60% of non-distributed profits of industrial or trade enterprises;
b) 90% for enterprises functioning in the islands including the island of Euboea and
c) 50% in the case of quarries the products of which are wholly or for more than the half exported abroad, and in the case of mining enterprises of any kind.
These percentages are granted only in case of investments made until December 31st, 1964. On investments made after that date the percentages mentioned under 1. (40% and 80% resp.) are applied. Purchase of land is also considered as new investment.

V. TAX FREE RETENTIONS FOR INDUSTRIES IN THE DISTRICT OF ATTICA

1. Industrial or trade enterprises functioning in the district of Attica (with the exception of the islands of Aegina, Cythera, Poros, Hydra, Spetses and the town of Lavrion) making productive in-

vestments by special license of the Ministry of Industry aiming at the extension or modernisation of their installation have the right to book tax free retentions equal to the value of said installations.

2. The purchase and installation of new machinery, the erection of industrial buildings, storehouses or refrigeration rooms and installations in general, as well as the purchase of other new assets serving directly the production process, are to be considered as new productive investments.

3. Tax free retentions are granted under condition: a) that the bookkeeping of the enterprise should be judged as being in accordance with the facts; b) that the tax free retention shall not be distributed to shareholders or partners, but shall be entered in the books of the enterprise by the opening of a special account; c) that the above new productive investments shall not be transferred to other persons within five years from the year of their purchase, and that they are made until December 31st, 1964, at the latest.

4. The retention is effected from the profits of the year during which the new investments have been made. Should there not be any profits or not sufficient profits to cover the expenses, then the retentions are effected from the profits of the next year or the year thereafter up to full covering of the value of the investments.

In any case the retentions cannot exceed a sum corresponding to 50% of non distributed profits of the enterprise.

5. The above provisions apply also in the cases of the following enterprises a) quarries exporting at least half of their products abroad and b) all kinds of mining enterprises.

VI. FILING OF RETURNS

A. Deductions from the tax

1. Deducted from the tax itself are the taxes paid either directly by the taxpayer himself, or retained at the source of income as payments in advance of income tax. If the amounts, paid in advance directly or by withholding, are higher than the corresponding tax of the same fiscal year, the difference is refunded.

B. Time of filing of the returns and of payment of the tax

1. The filing of returns for income are made:

a) by functioning Greek Limited Companies and foreign enterprises and corporations, within four months after the closing of the administrative period for incomes earned during this period;
b) by Greek Limited Companies under liquidation, within a month after the closing of the enterprise for incomes earned during the liquidation period. In case the liquidation is extended for more than six months, a provisional filing of returns for the incomes of each half-year is handed in within 30 days from the termination of that period and the definite filing follows when the liquidation is effected.

2. The Tax Authority competent for receiving the filing of returns and proceeding to their examination, and for the determination of the income of those who did not file a return of their income, is the State Taxation Office in the district of the seat of the Greek Limited Company or, in case of foreign enterprises or corporations, their main permanent establishment in Greece.

3. The tax to be collected in accordance with the tax declaration is paid in monthly instalments over a period of six months, the first of which falls due at the time of the filing of the return. Companies under liquidation must pay a lump sum.

C. Payments in advance and time of their realization

Each fiscal year an amount of 50% of the income tax paid during the previous calendar or administrative year is fixed as payment in advance of the tax to be collected during the current year.

In order to fix the payment in advance of income taxes of Greek Limited Companies, Tax Authorities have to consider the amounts of — a) income taxes of Greek Limited Companies or Foreign Corporations; b) taxes retained by the above at the payment of dividends to the shareholders or percentages and fees to the members of the Board of Directors and to managers (with the exception of salaries).

2. From the amount fixed as payment in advance is deducted any tax retained at the source of income. In case the profits of the Greek Limited Companies or Foreign Corporations have decreased by more than 25% during the current year, the taxpayer can apply for a reduction of the payments in advance.

3. Retained taxes are paid in eight monthly instalments the first falling due at the time of filing the return of the income.

D. Assessment of the tax

1. Tax Authorities proceed to the assessment of the income tax and any additional taxes and send to the State Cash Office the assessment lists drawn up:
a) on the basis of the filing of returns;
b) on the basis of checking sheets, in case there are differences, or as long as the delay for exercising legal means has expired without any action being taken;
c) on the basis of decisions of the Committee of Appeals after such decisions have been served on the taxpayer.

2. In case a controversy should be taken to the Committee of Second Instance, the Director of the Taxation Office proceeds to a new assessment of the tax. This is also applicable in case the Committee of First Instance should modify, revise or revoke its own decision.

3. A tax assessed on the basis of the administrative settlement of the existing controversy is paid in three two-monthly instalments beginning from the day of the acceptance of the above settlement.

A tax assessed on the basis of checking sheets against which no legal objections have been brought forward, is paid at once. In all cases sub VI the tax of a fiscal year assessed during the following fiscal year is paid in twelve monthly instalments, the first of which is payable within the first ten days of the month following the assessment. This facility is granted only to taxpayers who pay their taxes regularly during the current year.

VII. WITHHOLDING OF TAXES FROM THE INCOME FROM CAPITAL

A. Rate of withholding

1. If the taxpayer, entitled to income from capital, is a Greek Limited Company, a foreign corporation or an agency serving non-profitable aims, the rate of withholding is fixed at 25% on dividends from shares (to bearer or registered).

2. A foreign corporation (parent company) earning dividends from shares of its subsidiary, is charged in Greece with a supplementary income tax of 10%, which is charged on the total amount of the earned sums, without deduction of withheld taxes.

The same applies in the following cases — a) when the foreign

corporation earns dividends from companies which are not its subsidiaries; b) when a foreign corporation functioning in the form of a partnership (collective, limited or with sleeping partner) receives dividends from shares of Greek Limited Companies.

The 10% extra tax is imposed on all income from shares, either registered or to bearer, whether the taxed foreign corporation has a permanent establishment in Greece or not, because these profits are considered to be derived from sources in Greece.

3. If the person entitled to the income from capital is a physical person, the tax is withheld from his income in the form of payment in advance to the amount of —

a) 25% on dividends of Limited Companies, and on coupons of Bonds to bearer

b) as regards the tax on interests of loans, dividends on registered shares, coupons on registered Bonds, fees of members of Boards of Directors and Managers (except salaries) of Limited Companies is calculated according to the following rates (see table):

Brackets	Percentage	Tax on the Bracket of Income	Total Income	Total Tax
2.000	4	80	2.000	80
2.000	5	100	4.000	180
2.000	6	120	6.000	300
2.000	7	140	8.000	440
4.000	8	320	12.000	760
4.000	9	360	16.000	1.120
4.000	10	400	20.000	1.520
4.000	11	440	24.000	1.960
6.000	12	720	30.000	2.680
6.000	13	780	36.000	3.460
6.000	14	840	42.000	4.300
6.000	15	900	48.000	5.200
8.000	16	1.280	56.000	6.480
8.000	17	1.360	64.000	7.840
8.000	18	1.440	72.000	9.280
8.000	19	1.520	80.000	10.800

Brackets	Percentage	Tax on the Bracket of Income	Total Income	Total Tax
10.000	20	2.000	90.000	12.800
10.000	21	2.100	100.000	14.900
20.000	23	4.600	120.000	19.500
20.000	25	5.000	140.000	24.500
30.000	28	8.400	170.000	32.900
30.000	31	9.300	200.000	42.200
40.000	35	14.000	240.000	56.200
40.000	39	15.600	280.000	71.800
60.000	43	25.800	340.000	97.600
60.000	47	28.200	400.000	125.800
100.000	52	52.000	500.000	177.800
100.000	57	57.000	600.000	234.800
200.000	58	116.000	800.000	350.800
200.000	59	118.000	1.000.000	468.800
and over	60	—	—	—

An additional 3% is charged on the total of incomes from capital.

The instalments for payment in advance are computed on the basis of the total net income from capital of each physical person *before* any deduction of exemptions, such as the tax free minimum for living.

4. Physical persons or withholding agents have the right to deduct such withholdings from their incomes when filing their returns.

The present provision aims at avoiding double taxation of income, which is generally excluded by the Greek Law on income tax.

B. Time of withholding and refund of taxes

1. The withholding of taxes is effected as follows:

a) in the case of income from dividends and interests on preference titles and shares of Greek Limited Companies as well as on fees and percentages paid to members of Boards of Directors and Managers — at the moment of payment or at the moment of crediting the accounts of persons entitled to it, but in any case not later than a month after the approval of the balance sheet by the general meeting of Shareholders;

b) in the case of income from Bonds issued by the Greek State or Greek Corporations of Public or Private Law, as well as from personal property in general earned abroad, the withholding is effected at the moment of payment to the person entitled to it;
c) in the case of all other interests the withholding of tax is effected at the moment of payment or at the moment of entering the respective amount in the credit account of the creditor.

2. Persons entitled to effect above withholdings, are:
a) in the case of income mentioned above under item "a)" the Greek Limited Company distributing the dividends, etc;
b) in the case of income mentioned above under item "b)" the person or agent acting for the foreign corporation in Greece;
c) in the case of interest, the debtor.

3. The withheld taxes are credited to the State Cash Office within the month following that of their withholding.

C. Compensation or refund of taxes paid by a limited company

1. As mentioned already, above, Greek Limited Companies are charged for non-distributed profits (reserves etc.) with an income tax at a rate of 35%.

Should the Limited Company during the following years distribute those profits in the form of dividends to shareholders, or fees to Directors, totally or in part, then from the tax withholdings of distributed profits is deducted the amount paid already by the Limited Company itself (35%) for non-distributed profits. In order to compute the actual amount of profits the distributed profits are multiplied by the fraction 100/65 (100=profits, 35=taxes paid). If the amount of taxes paid in previous years is higher than the tax now being withheld and credited to the State, the surplus is refunded to the Limited Company.

2. All details concerning the methods of auditing the keeping of account books of Limited Campanies for the taxes that can be compensated in the following years with withholdings of other taxes are fixed by a decree of the Minister of Finance.

D. Obligations of owners of titles

In general owners of shares and bonds have to collect interest or dividends personally or to have this done by representatives provided with a power of attorney. Offices effecting the payments

can refuse to pay any person who does not present his credentials.

E. Obligations of withholding agents

1. Banks, agencies and in general all persons entrusted with the payment of interest or dividends must ask to see the credentials of the owners of same, (home and business address, etc.) and to keep a note of the numbers of coupons handed in for payment as well as of the number and kind of the respective bonds and shares.

2. Persons entrusted with the withholding of taxes are obliged to issue certificates to the taxpayers stating the amount of the taxable income and the amount of taxes withheld.

3. Persons entrusted with the withholding of taxes who have to file a tax return instead of the taxpayers, are subject to the same obligations concerning the accuracy and delays in submitting such returns and in the case penalties are inflicted on them, they cannot have recourse to the actual taxpayer.

VIII. ADDITIONAL TAXES, FINES AND PENALTIES

1. Persons who file their return of income *after* the fixed term, are charged, because of this delay, with additional taxes to the amount of 5% of the original tax for each month of delay. This amount, however, cannot exceed 25% of the original tax due according to the return.

2. Additional taxes for inaccuracy of returns amount to from 1/6 to 1/3 of the tax evaded by said inaccuracy.

3. Additional taxes for failing to file a return amount to from 1/4 to 1/2 of the tax.

4. In the cases of withholding of taxes at source the above penalties are doubled when charging the persons entrusted with such withholdings.

5. Additional taxes mentioned above are imposed without examination as to whether the taxpayer acts in negligence or in fraud.

B. Fines

1. A corporation which a) has not filed a tax return, b) has not checked the credentials of the bearers of coupons, or c) has not announced to the Tax Authorities the amount of interest paid to its creditors — is subjected to a penalty up to Drachmae 20,000.

2. Persons entrusted with the withholding of taxes and refusing to conform to the provisions of the law, are subjected to penalties

amounting from the double up to ten times the taxes of which the State would be deprived by such non-conformance.

3. Persons called upon by the provisions of the Law to give information or offer services for the determination of income or to collaborate as members of Committees, and refusing without an acceptable reason to conform to the Law, are charged with a fine up to Drachmae 20,000.

4. Above-mentioned fines and penalties are imposed by the Director of the Taxation Office, by decision which is submitted through the legal means provided by the Law.

C. Penalties

1. Members of Boards of Directors, Managers, and in general any person entrusted with the management of a corporation, furnishing inaccurate data or making false entries in the books, or cooperating in such acts, or neglecting to make the necessary entries in the books of the corporation, cooperating in the drawing up of false balance sheets or possessing knowledge of such acts or omissions, as long as these acts or omissions aim at or result in avoiding totally or in part the payment of taxes, are sentenced to the penalty of imprisonment of at least three months, *and* an additional penalty of from 5,000 to 500,000 Drachmae, and any heavier penalty for violation of the penal law.

2. The same penalties are imposed on the Chief Accountants of the corporation executing in any way above acts or omissions.

3. The same penalties are also imposed on any employee of the Corporation, as well as on any third person who acts or cooperates in any way knowing that he is furnishing false data, or gives inaccurate information in support of such acts.

4. The condemnation to one of the above penalties is followed by the deprivation of civil rights.

Also in the case of one of the above violations, the suspension or conversion of the penalty is not allowed.

D. Moral sanctions

At the end of each fiscal year the Director of the Taxation Office draws up a list of tax payers in his area who a) have not filed a return of their income, b) have given inaccurate data showing an income 50% lower than the real one as it has been definitely fixed by the Control and the decisions of the Committee of Appeal.

This tax roll is approved by a Committee of three (the Judge, the Director of the Prefecture and the Director of the Taxation Office), and is shown on the notice-board in the Offices of Taxation on the 1st of February for three months, and is published in the daily newspapers of the district.

IX. TAX PROCEDURE

A. Control Authority of the Director of the Taxation Office

Tax Authorities control the accuracy of declarations and proceed to the determination of incomes of such tax payers who did not file a return. They are entitled to — a) request taxpayers to submit the necessary explanations and to produce any accounts or other data proving the amount of income or expenses; b) request from State, Municipal or Communal Authorities from Public Corporations, Banks, private enterprises or private persons any information they might need for this work. Banks can refuse information only as far as the accounts of their customers are concerned; c) perform by themselves or through other taxation offices or public services any auditing on the spot of the bookkeeping and tax data of the taxpayer.

B. Settlement of differences by the administration

1. After checking the tax declaration the Director of the Taxation Office has to summon the taxpayer to settle any differences by agreement.

2. The Director of the Taxation Office, taking into consideration the data of the return and oral or written assertions of the taxpayer, can, as long as the case permits it, accept the restriction of the income and diminution of additional taxes up to a percentage of 1/18 of the difference of the main tax.

3. If the taxpayer and the Director come to an agreement they sign a deed and the difference is considered as settled by the filing of an additional tax return on the part of the taxpayer.

C. Issue of control sheets

1. In case the arrangement is not possible the Director of the Taxation Office issues a control sheet determining the taxable income and the tax, which is served to both taxpayers who have filed a return, as well as to such as have neglected to do so.

2. It is permitted to issue and submit a new control sheet in the case that additional data should prove the income fixed in the first one to be lower than the actual one.

3. A control sheet can never be served later than five years after the delay for the filing of the respective return, i.e. the right of the State to impose taxes on income is restricted to five years. However, the serving of a control sheet can be effected after the five-year period in the following cases:

a) if the control sheet has been nullified because the taxpayer has not taken notice of it;

b) because it has been served on a person who has no tax obligations as a whole or in part, and

c) because it has been issued by an incompetent Taxation Office or for a different year than the one in which the income was earned.

4. A control sheet which has become final if the taxpayer fails to hand in an appeal, can be nullified or changed if the taxpayer hands in the respective application within three years from the final control, but only for the following reasons:

a) on account of the lack of tax liability;

b) if the taxpayer proves that he had no knowledge of being liable to tax;

c) if the Taxation Office is incompetent;

d) because of mistakes in the accounts, and

e) because of miscalculations of the income and the respective tax.

D. Committee of Appeals

1. Taxpayers can appeal against the control sheet within 15 days from its serving, or 30 days for taxpayers residing abroad.

The appeal is handed in to the Taxation Office which has issued the control sheet. If submitted in due time it postpones the verification of all taxes mentioned in the control sheet.

2. The procedure of appeals takes place before an Appeal Committee of three, in public hearing. Decisions are taken by a majority. The State is represented by the Director of the Taxation Office, the taxpayer appears either in person or is represented by a lawyer. The decisions of the Committee are announced in a public session and are served on the taxpayer.

On application of either the taxpayer or the Director of the Taxa-

tion Office handed in within a year from its publication, the decision of the Committee can be submitted to a revision but only for the reasons mentioned above in C 3.
Note: Special Taxation Courts composed of ordinary taxation judges, will begin functioning within this year.

E. Taxation Courts of Second Instance

The decision of the Committee of Appeals is submitted for reconsideration as long as the tax imposed exceeds the amount of 1,000 drachmae.

The Appeal is deposited at the competent Taxation Office within 30 days (for residents abroad within 60 days) from the day of serving the Decision in the First Instance. The Director of the Taxation Office has the right to appeal, within the same period of time, while notifying the taxpayer.

The Appeal against a Decision does not automatically cancel it. It is not accepted if the taxpayer has not paid in advance 5% of the contested amount of taxes up to 100,000 Drachmae as a maximum. This amount is transferred to the State in case the Appeal is rejected.

The procedure for the Appeal takes place a) before the Control Committee as long as the tax imposed by the decision of the Committee of Objections exceeds the amount of 250,000 Drachmae, and b) before the Committees of Appeals in all other cases.

Taxation Courts of Second Instance will start functioning within this year.

F. State Council (High Court of Administration)

Decisions of the Control Committee and of the Committee of Appeals can be challenged by bringing them before the State Council within a period of 60 days from the serving of the respective decision. Only disputed points of law can be taken to this third instance.

X. OTHER PROVISIONS

A. Secrecy of taxation data

Income tax returns are used only for taxation purposes. Their use for persecution for violation of the law by the taxpayer or the person from which he earns his income is not allowed.

B. Exemption from stamp duties

1. Tax returns, objections and other documents necessary for the procedure before the Court of First Instance are free from stamp duties as well as from any other fees in favour of the State or Public Agencies.

2. Also free of stamp duties are certificates of the Taxation Offices and other Public Authorities necessary for the application of the present law.

C. Responsibility of Managers of Limited Companies

1. Managers or members of Boards of Directors of Greek Limited Companies, at the time of liquidation of such companies, are personally and jointly liable for the payment of all taxes owed by the Company itself and of taxes retained from incomes of third persons.

In the case of merging of two or more limited companies the newly formed company is also liable for the payment of assessed taxes charged on the liquidated companies.

2. Above mentioned persons can claim the amounts paid by them for fiscal years previous to the liquidation from the Directors, Managers or shareholders at the time of the liquidation of such companies.

D. Duties of debtors of interests, etc.

1. Debtors of interests charged with taxes, have to file a return for their income to the Taxation Authorities competent for the creditor, within a month from the closing of the financial year declaring the amount of interests paid at the time they were due.

2. Public Notaries must delay the drawing up of instruments of quittance of interests or principal or claims in general as long as the debtor does not bring a copy of the respective declaration to the Taxation Office certified by its Director.

Notaries have to send to the Taxation Office competent for the creditors, copies of instruments concerning the quittance of interests of loans.

3. The same applies to the redemption of mortgages where the depositor before proceeding to the redemption has to ask for a certificate of the Taxation Office that taxes on interests have been paid.

II

SURVEY OF TAX LEGISLATION
APERÇU DE LEGISLATION FISCALE

AUSTRIA *Period from July 1st until August 31st, 1960*

Conventions

Vereinbarung zwischen dem Bundesministerium für Finanzen der Republik Österreich und dem Königlich Schwedischen Finanzministerium über die Durchführung der Entlastung von den im Abzugsweg an der Quelle erhobenen Steuern von Einkünften aus beweglichen Kapitalvermögen. BGBl. für die Rep. Österreich, 25.7.1960, p. 1862.

Customs and excises

Verordnung des Bundesministeriums für Finanzen vom 14. Juli 1960, mit der die Freiliste 1 neuerlich abgeändert wird. BGBl. für die Rep. Österreich, 27.7.1960, p. 1889.

Miscellaneous

Bundesgesetz vom 14. Juli 1960 über eine Abgabe von land- und forstwirtschaftlichen Betrieben. BGBl. für die Rep. Österreich, 3.8.1960, p. 1951.

BELGIUM *Period from July 1st until August 31st, 1960*

Conventions

Loi du 27.6.60 portant approbation de protocoles à des conventions conclues entre les pays de Benelux, et confirmation de l'arrêté royal du 17.12.58 concernant les douanes et les accises. Mon. Belge, 22 et 23.7.1960, p. 5576.

Taxes assimilées au timbre

Arrêté royal du 5.7.60 modifiant le Règlement général sur les taxes assimilées au timbre. Mon. Belge, 21.7.60, p. 5539.

Arrêté royal du 28.7.1960 modifiant le Code des taxes assimilées au timbre. Mon. Belge, 5.8.1960 p. 5923.

Impôt sur le revenu

Loi du 11 juillet 1960 modifiant les lois relatives aux impôts sur les revenus, coordonnées le 15 janvier 1948, en vue de favoriser la prospection pétrolière en Belgique, p. 5780. Mon. Belge, 30.7.1960.

Arrêté royal du 11 juillet 1960 modifiant l'arrêté royal du 22 septembre 1937 d'exécution des lois coordonnées relatives aux impôts sur les revenus, p. 6089. Mon. Belge, 11.8.1960.

Douanes et accises

Arrêté ministériel du 13 juillet 1960 modifiant les arrêtés ministériels des 30 avril et 6 mai 1960 établissant un droit spécial à l'importation de certains produits agricoles et alimentaires, p. 5614. Mon. Belge, 25.7.1960.

Arrêté ministériel du 26 juillet 1960 modifiant l'arrêté ministériel du 24

février 1960 établissant un droit spécial à l'importation de certains produits agricoles et alimentaires, p. 6234. Mon. Belge, 18.8.1960.

Arrêté royal du 23 août 1960 modifiant l'arrêté royal du 11 mars 1953 majorant le taux de la taxe de transmission à l'importation, p. 6349. Mon. Belge, 25.8.1960.

Impôts sur les revenus

Régime fiscal applicable à certains revenus d'origine congolaise; mesures transitoires. Mon. Belge, 8.7.60, p. 5263.

Droits d'enregistrement etc.

Loi du 11.7.60 modifiant le Code des droits d'enregistrement, d'hypothèque et de greffe, le Code des droits de succession, le Code des droits de timbre et le Code des taxes assimilées au timbre. Mon. Belge, 20.7.60, p. 5510.

Loi du 22.6.60 modifiant le Code des droits d'enregistrement, d'hypothèque et de greffe et le Code des taxes assimilées au timbre. Mon. Belge, 21.7.1960, p. 5537.

FRANCE *Period from July 1st until August 31st, 1960*

Généralités

Loi de finances rectificative pour 1960 (no. 60-706 du 21.7.60). J. O., 22,7.1960, p. 6718.

Taxes sur le chriffre d'affaires

Décret no. 60—655 du 7.7.60 relatif aux taux majorés des taxes sur le chiffre d'affaires., J.O., 8.7.1960, p. 6269.

Douanes et accises

Décret no. 60-635 du 2.7.60 relatif à la perception en régime de droit commun d'un droit de douane d'importation sur le styrolène (styrène) monomère du no. 29-01 De du tarif des droits de douane d'importation. J.O., 3.7.60, p. 6032.

Taxes de consommation

Arrêté du 19.7.1960 relatif aux alcools et produits à base d'alcool susceptibles de bénéficier du tarif réduit du droit de consommation prévu à l'art. 403 (1°) du code général des impôts. J. O., 23.7.60, p. 6760.

Décret no. 60-624 du 29.6.60 portant réduction, en régime de Communauté économique européenne, des droits de douane d'importation applicables dans le territoire douanier. J. O., 1.7.1960, p. 5935.

Décret no. 60-625 du 29.6.60 portant, pour certains produits, modification du tarif des droits de douane applicable à l'entrée dans le territoire douanier et, pour d'autres produits, réduction de la perception des droits. J.O., 1.7.60, p. 5936.

Décret no. 60-702 du 15.7.60 portant publication de l'accord pour l'importation temporaire en franchise de douane, à titre de prêt gratuit et à des fins diagnostiques ou thérapeutiques, de matériel médico-chirurgical et de laboratoire destiné aux établissements sanitaires, signé le 28.4.1960. J. O., 21.7.60, p. 6674.

GERMANY *Period from July 1st until August 31st, 1960*

Conventions

Bekanntmachung über das Inkrafttreten des Abkommens zwischen der Bundesrepublik Deutschland und dem Königreich Schweden zur Vermeidung der Doppelbesteuerung auf dem Gebiete der Steuern vom Einkommen und

vom Vermögen sowie verschiedener anderer Steuern, vom 20. August 1960. BGBl. II, 30.8.1960.

Income taxes

Gesetz vom 30. Juli 1960 zur Änderung des Einkommensteuergesetzes, des Körperschaftsteuergesetzes, des Gewerbesteuergesetzes und des Wohungsbau-Prämiengesetzes (Steueränderungsgesetz 1960). BGBl. Tl. I, 5.8.1960, p. 616

Property Tax

Verwaltungsanordnung vom 27.5.1960 über die Vermögensteuer-Richtlinien für die Vermögensteuer-Hauptveranlagung 1960 (VStR 1960). Bundessteuerblatt, Tl. I, 8.6.60, p. 289.

Customs and Excise Duties

Verordnung vom 30.6.1960 über Erläuterungen zum Deutschen Zolltarif 1960. BGBl. Tl. II, 5.7.1960, p. 1849.

1. Verordnung vom 1.7.1960 zur Änderung des Deutschen Zolltarifs 1960 (Rohaluminium usw.); 2. Verordnung vom 1.7.1960 zur Änderung des Deutschen Zolltarifs 1960 (gelbvieh); 24. Verordnung vom 5. Juli 1960 über Zolltarifänderungen zur Durchführung des Gemeinsamen Marktes der Europäischen Gemeinschaft für Kohle und Stahl (Wälzlagerstahl usw.). BGBl. Tl. II, 12.7.1960, p. 1857.

Miscellaneous

12. Gesetz vom 29. Juli 1960 zur Änderung des Lastenausgleichsgesetzes BGBl. Tl. I, 5.8.1960, p. 613.

Gesetz vom 9. August 1960 zur Änderung des Gesetzes über Kapitalanlagegesellschaften und des Kapitalverkehrsteuergesetzes. BGBl. I, 13.8.1960.

LUXEMBURG *Period from July 1st until August 31st, 1960*

Douanes et accises.

Arrêté grand-ducal du 22 juillet 1960 modifiant le régime de la taxe d'importation et de l'impôt sur le chiffre d'affaires des véhicules à moteur. Mémorial, 5.8.1960.

Matiéres diverses

Arrêté grand-ducal du 30 juillet 1960 portant définition des investissements à caractère social bénéficiant de l'aide fiscal aux investissements nouveaux. Mémorial, 6.8.1960.

NETHERLANDS *Period from July 1st until August 31st, 1960*

Conventions

Protocol between the Kingdom of the Netherlands, the Kingdom of Belgium and the Grandduchy of Luxemburg fixing a new tariff of import duties, with annex; Brussels, 25.7.1960. Tractatenblad, 1960, nr. 55.

Second, third and fourth supplementary protocol amending the protocol between the Kingdom of the Netherlands, the Kingdom of Belgium and the Grandduchy of Luxemburg, fixing a new tariff of import duties, signed in Brussels on 25.7.1958. Brussels, February 19th and June 15th, 1960. Tractatenblad, nrs. 52, 53 and 54.

Income Tax.

Decree of July 5th, 1960 nr. BO/10392 modifying the Income and Wage Tax regulations, 1953. Ned. Stcrt, 7.7.1960.

Customs and Excise Duties

Act of July 28th, 1960, to approve the Royal Decree containing indication of the import wares of which turnover tax on import will be increased. Ned. Stbl. nrs. 323 and 324 of 16.8.1960.

Miscellaneous

Law of 21.7.1960 amending the Land Tax Law. Stbl. 1960, no. 286 of 26.7.1960.

Law of 21.7.1960 amending the "Personal Tax" Law. Stbl. 1960, no. 287 of 26.7.1960.

ARGENTINA

Revaluation and amortization

By Presidential Decree no. 5438 of May 17th, 1960, the provisions of the Revaluation Law no. 15.272 (see *Bulletin* XIV p. 208) have been elaborated and worked out in detail. Of the 15 articles of the said law, 9 received a "reglamentación", concerning such details as the maximum time during which buildings, which are to be revaluated, may have been in the taxpayer's possession, the parts of undivided estates, the computation of the residual value, the valuation of live stock etc.

The General Modification Law no. 15.273 (see *Bulletin* XIV p. 145), containing i.a. provisions as to extraordinary amortization, has also been provided with a "reglamentación" (Presidential Decree no. 6281 of June 3rd, 1960), indicating several coefficients and percentages to be applied in various cases of amortization.

Source: *Boletín de la Dirección General Impositiva,* June 1960

FINLAND

Law on customs tariff

On May 20, a new customs tariff law was issued. The new tariff is based on the Brussels nomenclature, the sub-classification being national. In comparison with the previous tariff, the main differences in grouping of the commodities are concerned with the products of the chemical and textile industries. In principle, the previous specific duties have as closely as possible been transformed into ad valorem duties. Of the items listed in the new tariff, 61 per cent are based on ad valorem duty, whereas their corresponding proportion in the previous one was 32 per cent. Only the agricultural duties, certain industrial duties, and the most important financial duties have remained as specific duties.

GATT duties have been maintained as earlier as far as this has been technically possible. The new tariff aims at a maintenance of the customs revenue at its previous level.

The law came into force on June 1.

Source: *Bank of Finland,* June 1960

MEXICO

New financial measures

The Minister of Finance in April announced to the Mexican Bankers Association a number of important economic policies; according to the *Foreign Commerce Weekly* of June 27th, 1960, fiscal measures amount to a revision of the Government's policy on tax incentives to encourage better regional distribution of new industry, and a continuation of the reduction of the ad valorem tax on cotton exports. Moreover the Ministry of Finance is studying a plan to exempt from import taxes raw materials used in products manufactured in Mexico for export which contain a high proportion of national products.

PHILIPPINES

A ruling about non-resident foreign corporations was released on April 7th,

1960, by the Bureau of Internal Revenue, which is summarized as follows:

Before the amendment of the income tax law by R.A. No. 2343, the rate of withholding tax on the fixed or determinable income of non-resident foreign corporations was 24 % while the income tax rates due on the same income were 20 % of the first 100,000 pesos and 28 % on the excess. It was then necessary for the nonresident foreign corporation to file its own income tax return in order that it may be entitled to a refund if the tax withheld was more than the income tax due, or to enable the government to collect the difference if the reverse is true.

However, after the amendment of the law by R.A. No. 2343, the rates of withholding tax and income tax on the fixed and determinable income of non-resident foreign corporations are now the same at the rate of 30 %. Assuming that the withholding agent has withheld the tax and paid the same to the government, would it still be necessary for the nonresident foreign corporation to file its own income tax return considering that there would be no more overpayment or underpayment to adjust?

Every foreign corporation having income from sources within the Philippines must make a return of income on the prescribed form for corporations. If such corporation has no office or place of business in this country, but has a resident agent therein, the latter shall make and file the return. Although the foreign corporation is not engaged in business in this country and has no office, branch, or agency in the Philippines, it is required to make a return if it has received income from sources within the Philippines (Section 186, Rev. Reg. No. 2). In other words, a foreign corporation is subject to income tax for income derived from sources within the Philippines. Under the Tax Code, every corporation subject to tax, irrespective of whether it realized gain, incurred losses or is not operating at all must file the required corporate income tax return. It is significant to note that R.A. No. 2343 in amending the income tax rates of corporations, domestic or foreign, has not in any way amended this particular provision of the Tax Code.

Therefore, as long as the nonresident foreign corporation referred to in the above-quoted query derives income from sources within the Philippines, said corporation should file its income tax return in the manner provided for by law, even if the withholding agent has already withheld the tax and paid the same to the Philippine Government. Nonresident foreign corporations filing income tax returns on the calendar year basis should file their returns on or before April 15 following the close of the preceding calendar year or on or before the 15th day of the 4th month following the close of the fiscal year designated, in case of nonresident foreign corporations filing returns on the basis of a fiscal year.

Source: *Tax Bulletin* of Sycip, Gorres, Velayo & Co., June 20, 1960.

UNION OF SOUTH AFRICA

Budget speech

Some fundamental changes are proposed by the Budget. The method of calculating tax will be different, even if no substantial difference is made in the amount of tax payable by the individual.

The loan levy will be dropped. Normal Tax and Super Tax will be merged into one tax, the Normal Tax. A block-rate (progressive) will be introduced, ranging from 7 ½ % (single) or 6 % (married) up to 50 % (on £ 9,000.-). Surcharges on income taxes will be abolished. Dividends are part of the taxable income, there being only one income tax; but part of the dividend will still be exempt, because — depending on the amount of total income — a certain percentage of it can be deducted, ranging from 100 % if total income does not exceed £ 1,300 down to 33 1/3 % for income over £ 2,300. The rate of Non-resident Shareholders' Tax remains the same, but its system is changed: appor-

tionment to foreign private companies is only made if these companies own more than 50% of the Union Company's share capital.

A new thing will be an investment allowance: 10% for factory buildings and 15% for plant and machinery. Hotels are allowed 10% on their buildings.

Source: *The Taxpayer,* March 1960.

UNITED STATES OF AMERICA

Income tax returns of non-residents

Advice has been requested concerning the type of income tax return which should be filed by a nonresident alien whose husband is a United States citizen domiciled in a community-property state where (1) the income is derived from the husband's services performed within the United States and where (2) the income is derived from the husband's services performed in a foreign country.

Section 871 of the Internal Revenue Code of 1954 imposes a tax on the income from sources within the United States received by a nonresident alien individual. Subsection (a) of section 871 provides that such an individual, who is not engaged in a trade or business within the United States and whose gross income from sources within the United States is not more than $ 15,400, shall be taxed at the rate of 30 per cent on such income, with certain exceptions and limitations, instead of the usual rate of tax imposed on individuals by section 1 of the Code. Subsection (b) of section 871 provides that a nonresident alien, who is not engaged in a trade or business within the United States but who has gross income from sources within the United States of more than $ 15,400, shall be taxable without regard to subsection (a). Subsection (c) provides for the taxation, with certain limitations, of a nonresident alien engaged in a trade or business within the United States, without regard to subsection (a).

Now *Rev. Rul.* 60-57 has been issued, stating that a nonresident alien wife not employed in the United States during the taxable year must file an income tax return on Form 1040B if her husband is a United States citizen who is domiciled in a community-property state and derived income for the performance of services in the United States. If he did not work in the United States during the taxable year and his compensation for services rendered in a foreign country was subject to the withholding of Federal income taxes, she should file an income tax return on Form 1040B of Form 1040NB-a to obtain credit for such tax withheld from her share of such income and as a claim for refund if tax has been overpaid.

Source: *Internal Revenue Bulletin,* February 8, 1960.

Allowance of credit for Brazilian taxes

In the case of a citizen of the United States or of a United States domestic corporation, the tax imposed by the U.S. shall be credited against any income, war profits and excess profits taxes paid or accrued during the taxable year to any foreign country or to any possession of the United States. This credit, however, is limited so that the amount of the credit shall not exceed the same proportion of the tax against which such credit is taken, which the taxpayer's taxable income from sources within such country (but not in excess of the taxpayer's entire taxable income) bears to his entire taxable income for the same taxable year.

A domestic corporation which owns at least 10 per cent of the voting stock of a foreign corporation from which it receives dividends in any taxable year shall be deemed to have paid the same proportion of any income, war profits, or excess profits taxes paid or deemed to be paid by such foreign corporation to any foreign country or to any possession of the United States, on or with respect to the accumulated profits of such foreign corporation from which such

dividends were paid, which the amount of such dividends bears to the amount of such accumulated profits.

In answer to the question whether certain Brazilian taxes are allowable as a credit against United States income taxes the Internal Revenue Service has issued a *Revenue Ruling* (60-56). Apart from the normal Brazilian income taxes against which, of course, a credit is allowed, there are the following taxes:
1. The excess profits tax, to be paid by industrial and commercial enterprises on the profits in relation to their applied capital, in the years 1957 up to and including 1960 (law no. 2,862 of September 4, 1956).
2. The withholding tax of 28.75% of the income (27. 31 to 28.46% of royalties) received by individuals or entities, resident or domiciled abroad (law no. 40,702 of December 31, 1956). Both taxes can be credited against United States income taxes as they constitute income and excess profits taxes within the meaning of Section 901 of the Internal Revenue Code.

In the form of an addition to the income tax an extra charge is made on the income, as specified below, during the years 1951 to 1966 as a compulsory loan to the National Bank of Economic Development. Although this addition to the income tax is imposed as part of the income tax, it is in the nature of a compulsory refundable loan and therefore no credit against U.S. taxes is allowed.

The compulsatory loans are (from 1956, law no. 2,973 of November 26, 1956) composed of amounts as high as
1e: 15%-25% of the income tax on individuals;
2e: 15% of the income tax on entities and 15% of the income taxes withheld at source;
3e: 4% on undistributed reserves and profits earned or credited by taxable entities. (A Brazilian branch of a foreign entity, which as an integral part of the foreign organization has strictly speaking no reserves or undistributed profits of its own, is therefore not subject to the compulsory loan).

The contribution to this loan will be refunded five years after collection, together with a premium of 25%, in the form of Obligations of Economic Rehabilitation. These obligations will bear an interest of 5% p.a. and will mature in 20 equal yearly installments of 5% each, beginning with the year following the one in which they are issued.

Source: *Internal Revenue Bulletin* no. 1960-6, February 8, 1960.

TAX AGREEMENTS

Australia — New Zealand

The Bill concerning this agreement (see *Bulletin* XIV p. 214) has been introduced in the Australian parliament on May 17th. In New Zealand the agreement has been approved by the Executive Council, and by Order in Council it has come into force as from May 27th, 1960. In a *press statement* of the Inland Revenue Department the principle terms are explained, such as:

Dividends will be taxable in the country of origin (maximum 3/- in the £), but are included in the receiver's total income, with a credit for the foreign tax paid. This provision does not apply when there is a permanent establishment; in this case the country of origin will levy the full tax on the dividends.

For business profits the agreement follows the pattern set by agreements already operating with other countries (New Zealand, for instance, has concluded double taxation agreements with the United Kingdom, Canada, the United States and Sweden). Industrial commercial profits earned through a permanent establishment in country A will be taxable there, and the profits so taxed will be exempt in country B, and vice versa. There is a special article dealing with shipping and air transport profits: these are to be taxed by the country in which the ship or aircraft is registered.

Royalties will be taxable in the receiver's country of domicile and exempt

in the other country, except for industrial royalties, royalties from natural sources and royalties on films, for which the reverse holds true. Pensions are to be taxed in the place where the pensioner resides; the other country will grant exemption.

Belgium — France

The agreement between Belgium and France for the avoidance of double estate and registration duties has been approved by law (see *Bulletin* XIV p. 205), and is effective as from June 12th, 1960. The agreement will be enforceable in Belgium, and in France with her overseas departments (Guadeloupe, Guyana, Martinique and Réunion).

The general rule is: taxation in the country of domicile. Some exceptions: real estate (situs country), ships and aircraft (country of registration), corporeal things, including banknotes and other legal currency (country where they are at the moment of decease).

Denmark — India

This treaty has come into force after the exchange of the instruments of ratification. The agreement, concluded on September 16th, 1959, will be effective as from the taxable years, beginning on or after April 1st, 1959. The provisions are practically the same as the agreement between India and Norway (see below).

Source: *Taxation,* April, 1960.

India — Norway

The instruments of ratification of this double taxation agreement, concluded on 20th of July, 1959, have been exchanged, and accordingly the agreement has come into force and has been published in the Gazette of India on March 25th, 1960. Its provisions are effective for India as from the 1st of April, 1959, and for Norway as from the 1st of January, 1958.

The agreement has regard to the Indian Income Tax, Supertax and Surcharge, and to the Norwegian state and local income tax, old age tax, war pensions tax and seamen tax. The taxes on property are not taken into consideration. Dividends, royalties and interest will only be taxable in the country of origin. There is a special provision for shipping profits: if made by an entrepreneur in one country from activities in the partner country, these profits will be taxable in both countries; the country of origin, however, will reduce its tax with 50%, which reduced tax will constitute a credit against the tax payable in the other country. (This provision is similar to the ones in the agreements concluded by India with Germany — see *Bulletin* XIV p. 214 — and with Denmark).

Source: *Taxation,* May, 1960.

Italy — United Kingdom

A Draft Order in Council concerning the convention for the avoidance of double taxation on income concluded between Italy and the United Kingdom on July 4th, 1960, will shortly be laid before the House of Commons.

The explanatory note, indicating its general purport, states as follows:

Under the Convention with Italy which is scheduled to this Draft Order certain classes of income derived from one country by a resident of the other country are (subject to certain conditions) to be exempt from tax in the former country. These classes are shipping and air transport profits, certain trading profits not arising through a permanent establishment, royalties, pensions other than Government pensions, purchased annuities, and earnings of temporary business visitors. The Convention also includes provisions as to the exemption of interest derived from one country by a resident of the other country from United Kingdom surtax and Italian complementary tax respectively. Government salaries and pensions are normally to be taxed by the paying Government only. Remuneration of visiting professors and teachers

and payments made for the maintenance of visiting students are to be exempt in the country visited.

Residents of Italy are to be entitled to the same personal allowances as British subjects resident abroad, and residents of the United Kingdom are to be entitled to the same personal allowances as Italian subjects resident abroad.

Where income continues to be taxable in both countries, credit is to be given by the country of the taxpayer's residence for the tax payable in the country of origin of the income. Where the income consists of dividends received by residents of Italy from United Kingdom sources credit is, however, to be allowed only in the case of dividends received by individuals and is not to exceed 8 per cent of the amount of the dividends.

The Convention is to take effect for the fiscal year 1956-57.

Source: *Draft Statutory Instruments,* (undated).

Pakistan — Switzerland

On December 30th, 1959, Switzerland signed its first double taxation agreement with an Asiatic country: Pakistan. This is its twelfth agreement of this kind; conventions already exist with ten European countries and with the United States of America. The agreement with Pakistan has been laid before the Swiss parliament on March 18th, 1960.

The agreement has only regard to the Swiss taxes (federal, cantonal and local) on income, and to the Pakistani Income Tax, Supertax and Business Profits Tax. Some peculiarities of this agreement are: remunerations paid for the management and control of an enterprise in one country by an enterprise in the other country are taxable in the first country, unless these activities are wholly carried on outside this country, or if there is a parent-subsidiary relation between these enterprises and the parent company does not have a permanent establishment in the subsidiary's country solely for management and control purposes. Considering the Swiss principle of the preponderance of the taxation by the creditor's country of domicile, which clashes with the policy of the so-called development countries levying tax at source on capital invested in their territory, the treaty partners have entered into a compromise: Switzerland recognized the right of Pakistan to tax shipping companies and some private pensions, and taxation on dividends are only partially settled. Pakistan levies Supertax and Switzerland maintains also its taxation at source. Only in the case of a corporation in one country, having at least one third of the voting stock in a corporation in the other country, the respective taxes are reduced: the Pakistani Supertax from 20% to 13,75%, and the Swiss Verrechnungssteuer from 27% to 15%. Interest is not provided for. Royalties are only taxed in the receiver's country of domicile.

Source: *Botschaft an die Bunderversammlung,* den 18. März 1960.

United Arab Republic

During the last few years this State has negotiated with several countries in order to conclude agreements to avoid double taxation and, in general, to foster economic development. Though the negotiations with the United Kingdom and with the Lebanon have not met with success yet, agreements with the German Federal Republic and with Sweden have been concluded, which two are rather similar though adapted to the characteristics of each country's fiscal system.

Recently the United States opened negotiations to arrive at a similar treaty with the United Arab Republic; this has eventually led to a final draft prepared in Washington, regarding such matters as inciting the influx of foreign capital by creating new corporations or facilitating the activities of the already existing ones, creating a favourable fiscal atmosphere for patent's and trade marks licensees, setting up provisions against fiscal evasion etc.

Source: *Boletín de la Dirección General Impositiva,* June 1960.

III

COUR DE JUSTICE DES COMMUNAUTÉS EUROPÉENNES

Recours introduit par M. Jean E. Humblet, fonctionnaire de la Communauté européenne du charbon et de l'acier, contre l'Etat belge, représenté par M. le Ministre des finances.(Affaire no. 6-60).

La Cour de justice des Communautés européennes a été saisie le 1er avril 1960 d'un recours introduit par M. Jean E. Humblet, fonctionnaire de la Communauté européenne du charbon et de l'acier, domicilié à Horion-Hozemont (Belgique) et résidant à Luxembourg, 7, rue du Fort-Reinsheim, où il fait élection de domicile, assisté et représenté par Me Paul Orianne, avocat à la Cour d'appel de Bruxelles, contre l'État belge, représenté par M. le Ministre des finances.
Le requérant conclut qu'il plaise à la Cour
«dire pour droit:
Que l'article 11, b), du protocole sur les privilèges et immunités de la Communauté européenne du charbon et de l'acier prohibe l'établissement à charge d'un fonctionnaire de la Communauté d'une imposition quelconque qui trouve sa cause ou sa justification en tout ou en partie dans le versement du traitement payé par la Communauté à ce fonctionnaire;
dire pour droit:
Qu'en particulier la taxation d'un fonctionnaire de la C.E.C.A. à l'impôt complémentaire personnel établi par la législation belge ne peut, même pour le calcul du taux de cet impôt, être déterminée par l'existence ou le montant dudit traitement; que dès lors la taxation appliquée au requérant et qui fait l'objet de l'avertissement-extrait de rôle qui lui a été adressée le 18 décembre 1959 (article 912.321) pour un montant de 9.035 francs belges, est interdite par le protocole et partant est nulle et de nul effet;
en conséquence:
Mettre à néant la cotisation litigieuse et condamner l'État belge à restituer au requérant toutes sommes en principal, intérêts et frais qui ont été ou seront éventuellement payées par le requérant à raison de cette imposition;
le condamner de même au paiement des intérêts compensatoires au taux de 4,5 % l'an sur les sommes à restituer, depuis la date de leur paiement jusqu'au jour de leur restitution;
condamner l'État belge aux dépens».

Source: *Journal Officiel des Communautés Européennes*, 25 avril 1960.

SCHWEIZ - USA

DOPPELBESTEUERUNGSABKOMMEN MIT DEN USA UBER DIE EINKOMMENSSTEUER. KEINE ANWENDUNG DES ABKOMMENS AUF KAPITALGEWINNE.

Eine amerikanische Staatsangehörige, mit Wohnsitz in der Schweiz, erzielte auf ihrem in den USA gelegenen Wertschriftenvermögen Kapitalgewinne, welche in den Vereinigten Staaten besteuert wurden. Im Wohnsitzkanton wurden diese Gewinne ebenfalls erfasst. Die Pflichtige machte geltend, die Erfassung der Kapitalgewinne auf amerikanischen Papieren im Wohnsitzstaat verletze das schweizerisch-amerikanische Doppelbesteuerungsabkommen. Die kantonalen Instanzen verwarfen diesen Standpunkt. Das Bundesgericht wies die staatsrechtliche Beschwerde ab, wobei es dem Entscheid folgende Erwägungen zugrunde legte:

1. „Das Abkommen zwischen der Schweizerischen Eidgenossenschaft und den Vereinigten Staaten von Amerika zur Vermeidung von Doppelbesteueung auf dem Gebiete der Steuern vom Einkommen weicht ab von den mit andern europäischen Staaten geschlossenen Verträgen. Es folgt der Systematik, welche in andern von den Vereinigten Staaten zur Vermeidung von Doppelbesteuerung abgeschlossenen Abkommen enthalten sind. Anlässlich der Besprechungen der beiden Delegationen zum Abschluss des Abkommens wurden die schweizerischen Vorentwürfe als Verhandlungsgrundlage abgelehnt und den schweizerischen Unterhändlern die von den Vereinigten Staaten mit verschiedenen Staaten abgeschlossenen Verträge als Muster vorgelegt, mit dem Ergebnis, dass deren Systematik übernommen wurde. Bei der Behandlung der materiellen Fragen folgt das Abkommen dem von den Vereinigten Staaten verwendeten Schema. Es gibt zunächst in Art. I einen Steuerkatalog und in Art. II Definitionen für einzelne im Abkommen wiederholt verwendete Begriffe mit denen auf eine allfällig abweichende Umschreibung des internen Steuerrechts der beiden Staaten keine Rücksicht genommen wird. Soweit aber dem Abkommen der Inhalt eines bestimmten Begriffes weder ausdrücklich noch im Wege der Auslegung entnommen werden kann, haben die Vertragsstaaten, sofern sich aus dem Zusammenhang nichts anderes ergibt, zur Feststellung des Inhaltes auf ihre interne Steuergesetzgebung zurückzugreifen (Art. II Abs. 2). Das Abkommen enthält insbesondere keine Definition des Einkommensbegriffes. Es beschränkt sich darauf, die Steuern vom Gesamteinkommen sowie von Teilen desselben zu erwähnen. Was unter den Begriff des Einkommens fällt, ist deshalb nach dem internen schweizerischen Recht zu bestimmen (J. Blumenstein, Das schweizerisch-amerikanische Abkommen zur Vermeidung der Doppelbesteuerung auf dem Gebiet der Steuern vom Einkommen, Archiv für Schweiz. Abgaberecht Bd. 20 S. 321). Wenn einer der beiden Vertragsstaaten nach der Unterzeichnung des Abkommens neue, ihrem Wesen nach ähnliche Einkommens- oder Gewinnsteuern einführt, sollen auch sie dem Abkommen unterstehen (Art. I Abs. 2).

Hieraus folgt zunächst, dass das Abkommen die Erhebung schweizerischer Einkommenssteuern nur insoweit beschränkt, als Einkünfte in Frage stehen, für welche das Abkommen eine klare Zuteilungsregel enthält. Abgesehen von den Liegenschaftengewinnen (Art. IX Abs. 1) enthält es aber mit Bezug auf

Kapitalgewinne (ebenso wie für Spekulations- und Lotteriegewinne) keine derartige Zuteilungsnorm und für die Zuteilung nicht besonders erwähnter Einkommensarten auch keine Generalklausel. Es schränkt also die Erhebung schweizerischer Einkommenssteuern auf derartige Gewinne nicht ein (Kreisschreiben Nr. 1 des Bundesrates an die Kantone vom 2. November 1951, BBl. 1951 III 552).

2. Liegt dem Abkommen kein einheitliches Begriffssystem zugrunde, aus dem das Wesen des Einkommens erklärt werden könnte, und können von beiden staatlichen Rechtsordnungen die von ihnen verwendeten Begriffe frei bestimmt werden, so dass gleiche Begriffe einen verschiedenen Sinn haben können, so ist auch klar, dass bei Anwendung des Abkommens nicht der grammatikalischen, sondern der historischen Auslegung der Primat zukommen muss (in diesem Sinne für Doppelbesteuerungsabkommen allgemein: Baumgartner, Richterliche Auslegung von Doppelbesteuerungsabkommen, Archiv Bd. 20 S. 420 ff.). Nun steht fest, dass zwar der schweizerische Abkommensentwurf vom September 1949 einen Artikel XVII enthielt, der vorsah, dass Gewinne aus dem Verkauf, Tausch oder sonstiger Veräusserung beweglichen Kapitalvermögens nur in dem Staate der Besteuerung unterliege, in welchem der Einkommensempfänger seinen Wohnsitz hat, dass aber dieser Vorschlag in dem von der amerikanischen Verhandlungsdelegation überreichten Memorandum vom 14. Februar 1950 gestrichen wurde („the United States Senate required, as a condition to its consents to ratification of these conventions, that these articles (gemeint sind die Art. XII und XVII) be not accepted"), und dass in der Sitzung der schweizerisch-amerikanischen Verhandlungsdelegation vom 1. Mai 1950 an dieser Streichung festgehalten wurde. Die vorgeschlagene Bestimmung fand denn auch im Abkommen keine Aufnahme. Die Steuer auf Kapitalgewinne wird also nicht bloss nicht erwähnt, sondern sie ist bewusst ausgeschlossen worden, was die Annahme nicht zulässt, die Vertragspartner hätten der Meinung sein können, die Entscheidung solle der Praxis überlassen bleiben, wie die Beschwerdeführerin meint.

3. Aus Art. XV des Abkommens ergibt sich nichts Gegenteiliges. Er enthält die massgebliche Kollisionsnorm, d.h. er bestimmt, welche tatsächlichen Beziehungen das Steuersubjekt zu einem der Vertragsstaaten haben muss, damit diesem das Recht der Besteuerung zusteht. Bezüglich der Rechtsstellung der Steuerpflichtigen in der Schweiz werden dabei in lit. b zwei Gruppen unterschieden, nämlich einerseits Personen, schweizerische Gesellschaften und andere schweizerische Rechtsträger mit Wohnsitz in der Schweiz, und anderseits Angehörige der Vereinigten Staaten mit schweizerischem Wohnsitz. Den letztern wird eine besondere Rechtsstellung eingeräumt, indem bestimmt wird, dass die Schweiz alle aus den Vereinigten Staaten stammenden Einkommensteile von der Steuerbemessungsgrundlage ausnimmt. Das bezieht sich jedoch nur auf die Einkommensteile, die nach den übrigen Vorschriften des Abkommens der Besteuerung unterworfen sind. Es kann nicht Sache einer Kollisionsnorm eines Staatsvertrages sein, wie Art. XV sie darstellt, das in den vorangegangenen Vorschriften näher umschriebene Objekt der Besteuerung auf andere Einkommensteile auszudehnen. Etwas anderes folgt auch nicht daraus, dass in Abs. 1 lit. b bei der Ordnung der Frage, ob in der Schweiz gewisse Einkommensteile von Personen mit schweizerischem Wohnsitz von der Bemessungsgrundlage auszudehnen sind, von Einkommen die Rede, ist, mit dem sich dieses Abkommen befasst, während im zweiten Satz lediglich erklärt wird, darüber hinaus werde die Schweiz, soweit Angehörige der Vereinigten Staaten mit schweizerischem Wohnsitz in Frage stünden, alle aus den USA stammenden Einkommensteile von der Bemessungsgrundlage ausnehmen. Jene Beschränkung auf Einkommen, mit dem sich das Abkommen befasst, gilt selbstverständlich nicht bloss im ersten, sondern auch im zweiten Falle, so dass also Bund, Kantone und Gemeinden die Einkommenssteuern auf amerikanischen Kapitalgewinnen auch gegenüber ame-

rikanischen Staatsangehörigen erheben können. Die Doppelbesteuerung bleibt für diejenigen Einkünfte, mit denen sich das Abkommen nicht befasst, ebenso bestehen wie für nicht aus amerikanischer oder schweizerischer Quelle fliessende Einkommen (Locher, Handbuch und Praxis der schweizerisch-amerikanischen Doppelbesteuerungsabkommen Bf. I S. 73 Note 12 und S. 81)."

Urteil vom 16. 9. 59. Dr. Z.

Source: *Steuerrevue*, 4. April, 1960.

LUXEMBOURG

IMPOSITION D'ÉTABLISSEMENTS STABLES D'UNE SOCIÉTÉ LUXEMBOURGEOISE SITUÉS EN BELGIQUE

En séance du 8 juillet 1959 le Conseil d'Etat, Comité du contentieux, a rendu un arrêt important au sujet de l'imposition d'établissements stables d'une société luxembourgeoise situés à l'étranger. Nous publierons les principaux considérants qui intéresseront bon nombre de sociétés luxembourgeoises ayant des succursales ou des établissements stables en Belgique.

Le litige opposait l'Administration des Contributions à une compagnie d'assurance de droit luxembourgeois, ayant son siège social à Luxembourg, et des succursales en Belgique qui s'y livrent aux mêmes opérations d'assurance qu'au Luxembourg. Il s'agissait en l'occurrence de savoir de quelle façon les profits et pertes réalisés en Belgique et au Luxembourg seraient ventilés en vue de la fixation de l'impôt luxembourgeois sur le revenu des collectivités, et eu égard à la convention belgo-luxembourgeoise en matière de double imposition du 9 mars 1931.

La compagnie d'assurance fit valoir que cet impôt serait à percevoir sur la base du résultat global des opérations réalisées tant au Luxembourg qu'en Belgique et qu'il faudrait tenir compte des pertes subies par les succursales établies en ce pays.

L'Administration des Contributions invoquait l'article 4 de la convention belgo-luxembourgeoise ayant pour but d'éviter la double imposition en matière d'impôts directs. Cet article dit que «les exploitations industrielles, minières, commerciales ou agricoles sont imposables dans chacun des Etats au prorata des revenus produits par les établissements stables y situés». Selon l'argumentation de l'Administration, ce texte admet donc du point de vue fiscal une séparation nette entre les résultats obtenus soit au Luxembourg, soit en Belgique par l'un ou l'autre des établissements stables qui s'y livrent à des opérations commerciales. Et l'Administration des Contributions de conclure qu'uniquement les bénéfices réalisés au Luxembourg sont à imposer, sans que ni les pertes ni les bénéfices obtenus en Belgique ne puissent influencer cette taxation; qu'en conséquence la compagnie d'assurance en question ne saurait invoquer les dispositions du paragraphe 6 de la loi sur le revenu des collectivités, combinées avec le paragraphe 4 de la loi de l'impôt sur le revenu, dispositions d'après lesquelles les bénéfices imposables au Luxembourg doivent refléter le résultat fiscal unique de toute l'entreprise, y compris les exploitations situées à l'étranger.

L'Administration des Contributions conclut en conséquence que la réclamante prétendrait à tort à ce que, pour les exercices contestés, le bénéfice réalisé au pays devrait être diminué des pertes subies en Belgique, en vue de l'établissement de l'impôt sur le revenu des collectivités.

De son côté, la compagnie d'assurance invoque le fait que l'Administration a appliqué jusqu'en 1948 le système d'imposition préconisé par elle, et que, par conséquent, celle-ci serait forclose à y substituer sans préavis et avec effet rétroactif, un nouveau régime d'imposition de nature à troubler ses prévisions budgétaires, justifiées par la pratique administrative antérieure. Et la récla-

mante conclut que cette façon d'agir de la part de l'Administration constituerait pour elle un cas d'erreur invincible à propos d'une situation de fait et de droit admise depuis plusieurs années; que ce changement de régime fiscal adopté par l'Administration entraînerait pour elle des conséquences dommageables, pour lesquelles l'Etat lui redevrait réparation.

Dans ses principaux considérants, l'arrêt du Comité du contentieux tient ce moyen comme non justifié:

«qu'en effet aucun principe de droit n'interdit à l'Administration de revenir sur un système de taxation admis pendant un certain temps, si à la suite d'un réexamen des dispositions légales, elle a acquis la conviction qu'elle doit procéder à une application différente des textes;

qu'un revirement de pratique fiscale intervenu dans ces conditions ne peut être considéré, ainsi que le soutient la réclamante, comme contraire à la bonne foi devant régir les relations entre parties;

qu'il s'agit uniquement d'examiner si le système de taxation actuellement appliqué par l'Administration est conforme à la loi;

que, d'ailleurs, le juge fiscal n'est habilité qu'à examiner si le texte constituant la base de l'imposition a été régulièrement appliqué au cas du redevable dont il s'agit;

qu'il est incompétent pour vérifier si l'application des dispositions du traité susvisé du 9 mars 1931 a pu violer, en l'espèce, les droits acquis des parties et rendre, le cas échéant, l'Etat passible de dommages intérêts».

La réclamante avait soutenu que la disposition de l'article 4 de la convention du 9 mars 1931 concernant l'imposabilité des exploitations y visées au prorata des revenus produits par les établissements stables situés dans chacun des deux Etats ne s'appliquerait qu'au cas où ces établissements situés dans l'autre Etat sont en bénéfice; que le but de cette convention serait d'éviter la double imposition du même revenu et qu'il faudrait présupposer un bénéfice obtenu dans chacun des établissements situés au Grand-Duché et en Belgique, alors qu'en cas de résultat déficitaire obtenu dans l'établissement sis en territoire belge, le risque d'une double imposition n'existerait pas et, qu'en conséquence, on ne devrait plus appliquer la convention belgo-luxembourgeoise. La réclamante conclut que le principe de la «unbeschränkte Steuerpflicht» dominant notre droit interne serait seul applicable et que le bénéfice unique résultant de l'ensemble des résultats obtenus au Luxembourg et à l'étranger serait soumis à l'impôt et que par conséquent, les pertes essuyées en Belgique devraient être déduites du bénéfice du siège du principal établissement à Luxembourg.

A ce corps de conclusions, l'arrêt du Conseil d'Etat répond en substance ce qui suit:

«qu'en stipulant dans l'article 4 de la convention du 9 mars 1931 l'imposition distincte dans chaque Etat au prorata des revenus produits par les établissements stables y situés, les Etats contractants n'ont fait que confirmer le principe de la territorialité de l'impôt, principe qui est retenu d'une manière générale pour cette catégorie de revenus dans les conventions internationales destinées à éviter les doubles impositions;

qu'en vertu de ce principe les établissements stables situés dans chacun des Etats sont ainsi considérés comme des exploitations distinctes et indépendantes de sorte qu'en la présente espèce le déficit de la succursale belge, documenté par une comptabilité séparée, ne peut venir en déduction du bénéfice realisé au Grand-Duché».

Le Conseil d'Etat dit que c'est en vain que la réclamante a fait valoir que du point de vue civil, l'ensemble de son patrimoine situé au pays et à l'étranger ne fait qu'un; il constate au contraire que la convention avait créé fictivement, du point de vue fiscal, deux patrimoines qui sont imposables séparément.

L'arrêt considère ensuite comme irrelevant l'argument selon lequel les

dispositions de droit interne luxembourgeois prévoient l'imposabilité du résultat fiscal unique de toute l'entreprise, y compris les exploitations situées en Belgique, d'où il suivrait qu'en général les pertes subies en ce dernier pays seraient décomptées du résultat total de l'entreprise.
Voici ce qu'en dit l'arrêt:

«considérant, en effet, que les exploitations commerciales ayant un établissement stable en Belgique jouissant d'un régime fiscal particulier prévoyant le système d'imposition séparé et independant des résultats obtenus dans chaque pays et sans répercussion possible d'un bilan sur l'autre; que cette règle internationale a dès lors dérogé, pour ces exploitations, à une disposition du droit interne».

Par ces motifs, l'arrêt décide que c'est à bon droit que l'Administration des Contributions n'a pas admis en déduction des revenus obtenus par la compagnie d'assurance des pertes subies par son établissement stable en Belgique, que le recours introduit n'est pas fondé et déboute la réclamante avec charge des dépens.

Source: *L'Echo de l'Industrie,* 20 août 1960.

IV

REVIEWS - COMPTES RENDUS

BELGIUM

La valeur en douane des marchandises selon la définition de Bruxelles. Notes explicatives. Conseil de Coopération Douanière, 183, Avenue Louise, Bruxelles, 1960, 279 pp. Edition bilingue (français-anglais).

Cet ouvrage a pour objet de montrer que la Définition de Bruxelles permet aux Services des douanes d'évaluer les neuf dixièmes de toutes les marchandises importées en appliquant des règles simples conformes à la pratique commerciale usuelle, et, dans les cas plus complexes, d'employer des méthodes grâce auxquelles il est possible de donner rapidement mainlevée des marchandises. Ce résultat est atteint sans sacrifier l'uniformité, essentielle pour éviter toute discrimination entre les marchandises dont le prix résulte d'une vente bona fide, et celles qui font l'objet d'autres transactions. Après avoir rappelé brièvement l'origine de la Définition et montré qu'elle reflète la pratique commerciale normale, les Notes expliquent que pour cette raison et quoiqu'il soit nécessaire d'exprimer cette pratique sous la forme d'une notion théorique afin de sauvegarder le principe d'égalité, la Définition respecte dans tous les cas le critère du pris usuel de concurrence. Plusieurs chapitres importants des Notes ont été consacrés à des questions particulières: frais de transport, d'assurance, d'emballage, commissions, escomptes, etc. Les cas dans lesquels le prix commercial d'importation est incertain et ceux dans lesquels il est inconnu sont, par nature, des cas spéciaux, sinon exceptionnels: ils sont, néanmoins, analysés en détail en raison de leur complexité et de leur importance théorique. Un dernier et bref chapitre contient des indications sur les divers systèmes de déclaration et sur les méthodes de calcul applicables.

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 Règlement 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. 215-216*, ont paru.

The Belgian system of taxation in its relation to corporations. Ministère des Affaires Etrangères et du Commerce Extérieur, 5 rue de Louvain, Brussels, 1959, 61 pp.

This study consists of two parts. The first examines the Belgian system of taxation as it affects the activities of a corporation, as well as the individual income of directors and personnel, whereas the second compares the corporate

tax structure in existence in Belgium, the Netherlands, Luxemburg, France, Germany, Italy, Switzerland, Great Britain, U.S.A. The Belgian system of taxation offers special advantages for industrial investments, either domestic or foreign.

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 4 de 1960, de ce livre sur le système fiscal belge un compte rendu duquel a été publié dans le «*Bulletin*» *Vol. XII,* p. 32 a paru.

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

Le *Supplément 1960 no. 7* de cette documentation sur la jurisprudence fiscale belge a paru.

CANADA

MICHAEL B. JAMESON: *Ontario Succession Duties*. Butterworth & Co (Canada), 1367 Danforth Avenue, Toronto 6, 1959, 449 pp. Price $ 15.00.

Ontario and Quebec are the only provinces which levy succession duty today. However, there has been no text written on Ontario Succession Duties for at least fifteen years. Therefore the appearance of this treatise is a welcome event. This text sets forth the law and practise of succession duties in Ontario in logical order according to subject matter. Situs and valuation, for example, are dealt with in individual chapters. Reference to any particular section can, however, be made from the statute tables at the front of the book. Every section of the Act appears in the text, the appendices to the Act have been reproduced with comment where necessary. Portions of certain relevant statutes have been reproduced in Part 2 (Related Statutes) to facilitate quick reference. The author has not hesitated to express his own views. The extent of his research is revealed by the very large number of cases included in his index. His book gives an admirable blending of discussion upon broad principles and practical approach. A complete picture of taxation arising upon the death of a decedent cannot be obtained without reference to the federal Estate Tax Act. For this reason a companion book, Canadian Estate Tax, which will be linked to the present volume by a similarity of text headings, is in the course of preparation. Canadian Estate Tax will be available later this year.

CEYLON

The New Tax System. Part I-II. Issued by the Department of Inland Revenue, Colombo, 1959.

These two brochures contain information on the income tax, the taxation of capital gains, the wealth tax, expenditure tax and gift tax of Ceylon.

FRANCE

EDITIONS TECHNIQUES, 128 rue de Rivoli, Paris (1er) a publié les suppléments suivants de son ouvrage *Juris-Classeurs, Droit Fiscal:*

Code Fiscal-Impôts directs No. 120
Commentaires Impôts directs No. 1041
Code fiscal Chiffre d'affaires No. 5120
Commentaires Chiffre d'affaires No. 6041
Droit fiscal d'Outre-Mer No. 3037

Les objets de la présente livraison sont la deuxième codification du Code général des impôts d'une part et la Réforme fiscale d'autre part.

PUBLICATIONS FRANCIS LEFEBVRE, 15 Rue Viète, Paris (17e)

1. *Mémento pratique du contribuable 1960*

Cet ouvrage constitue un «condensé» de l'ensemble de la réglementation fiscale (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. En même temps qu'un exposé très clair des règles d'assiette des principaux impôts et taxes (détermination des revenus imposables, déclarations, etc. . . .), il contient de nombreux tableaux, barèmes et exemples d'application sur des questions telles que: calcul de l'impôt sur le revenu des personnes physiques, échéances d'impôt sur les sociétés, dates de paiement des impôts , modèles de réclamations, taux effectifs des taxes sur le chiffre d'affaires, décote ou dotation sur les stocks, régime fiscal des dirigeants de sociétés, tarifs des principaux droits d'enregistrement (et plus particulièrement des droits applicables aux sociétés et aux successions), tarif des droits de timbre, des taxes sur les automobiles, etc . . . . Il comporte enfin un exposé sommaire de certaines grandes questions de Sécurité sociale et de Législation du travail (cotisations et prestations de Sécurité sociale, salaires, congés payés, etc. . .). Une table alphabétique détaillée permet de trouver immédiatement le renseignement recherché. Sous un volume réduit, cet 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. Entièrement à jour au 15 mai 1960: 568 pages; prix 18 NF (19,50 NF franco)

2. *Feuillets de Documentation Pratique des Impôts directs*

L'envoi No 2 de feuillets met à jour toutes les séries concernant les Impôts directs qui ont subi des modifications du fait de la Réforme fiscale instituée par la loi du 28 décembre 1959.

3. *Feuillets de Documentation Pratique des Taxes sur le Chiffre d'affaires*

L'envoi No 2 de feuillets met à jour un certain nombre de Séries concernant les taxes sur le Chiffre d'affaires et refont entièrement les feuillets qui donnent les taux applicables de chaque taxe.

4. *Feuillets de Documentation Pratique de l'Enregistrement et du Timbre*

L'envoi No 2 met complètement à jour notre ouvrage au 14 juillet 1960.

5. *Feuillets de Documentation Sécurité Sociale et Législation du Travail*

L'envoi No 2 met à jour la plupart des séries concernant ces matières.

Il comprend également certaines refontes concernant notamment les litiges entre employeurs et salariés — la réglementation des salaires — l'emploi et le chômage — les professions à statut particulier.

L'ASSOCIATION NATIONALE DES SOCIETES PAR ACTIONS (A.N.S.A.) 15, Place Malesherbes, Paris (XVIIe) a publié les brochures suivantes:

No. 128 JOSEPH HAMEL: *Les sociétés d'investissement,* 1960, 132 pp.

Les nombreuses modifications récemment apportées au statut, tant juridique que fiscal, des sociétés d'investissement, afin d'en faciliter la création, ainsi que le vif intérêt suscité par ce nouveau type de sociétés d'épargne, commandaient une réédition, mise à jour, des précédentes études.

No. 129 *L'association ou l'intéressement des travailleurs à l'entreprise,* 1960, 51 pp.

Ordonnance du 7 janvier 1959 et textes d'application.

Tarif Fiscal. 24e édition, à jour au 15 février 1960.

W. GARCIN et F. HEPP: *Recueils pratiques du droit des affaires dans les pays du Marché Commun.Tome I. Régime des sociétés. Supplément no. 8.* Editons Jupiter, 23 rue de Mont-Thabor, Paris (1er).

Un compte rendu du présent ouvrage a été publié dans le *Bulletin* Tome XIII, p. 105. Le supplément no. 8 contient le texte original en allemand du «Gesetz betreffend die Gesellschaften mit beschränkter Haftung» et la traduction française de cette «Loi sur les sociétés à responsabilité limitée».

SETECA, 14 rue Clapeyron, Paris VIIIe a publié les suppléments suivants de ses ouvrages suivants:

Code Annoté des Impôts Directs, mise à jour de mai 1960 comprenant 107 feuillets de mise à jour.

Taxes par Professions, mise à jour mars 1960 comprenant 37 feuillets datés mars 1960 à substituer aux mêmes feuillets datés mars 1959.

Traité de la Patente, mise à jour mai 1960 comprenant 87 feuillets de mise à jour.

Code annoté de l'enregistrement, envoi no. 6, mai 1960. Cette livraison comporte 3 feuillets de couleur et 107 feuillets intercalaires et de substitution à classer suivant les indications figurant en tête de chaque feuillet.

GERMANY

HUBSCHMANN-HEPP-SPITALER: *AO-Kommentar.* 1.-4-Auflage. Lieferung 32, Juli 1960. Verlag Dr. Otto Schmidt, Ulmenallee 96-98, Köln-Marienburg.

Die ständige Nachfrage nach diesem Werk hat jetzt eine 4. Auflage notwendig gemacht. Aus diesem Grunde liegen dieser Lieferung neue Titelblätter bei. Diese Lieferung 32 enthält die Erläuterungen zu §§ 212-214 AO von Prof. Dr. Spitaler und Dr. Felix sowie Überarbeitungen einzelner Bestimmungen von Geheimrat Hepp, Staatsrat Lademann und Prof. Dr. v. Wallis. Der zugleich ausgelieferte vierte Sammeleinband macht eine neue Aufteilung der Blätter auf nunmehr vier Bände erforderlich.

Dr. FRANZ SCHOLZ: *Bewertung und Besteuerung des Grundbestizes. Lieferung 13,* August 1960, 9. *Ersatz und Ergänzungslieferung.* Verlag Dr. Otto Schmidt, Ulmenallee 96-98, Köln-Marienburg.

Neben umfassender und systematischer Behandlung der Bewertung des Grundbesitzes, der Grundsteuer und des Grunderwerbsteuerrechts, sowie der Berücksichtigung des Grundbesitzes bei der Gewerbesteuer, Umsatzsteuer und Erbschaftsteuer, enthält dieses grosse Loseblattwerk auch die Darstellung der Vorschriften des Körperschaftsteuer- und des Vermögensteuerrechts, soweit es den Besitz von Grundvermögen oder den Grundstücksverkehr betrifft. *Lieferung 13* ist erschienen.

Schnellkartei des deutschen Rechts. Reihe III. Verlag Dr. Otto Schmidt, Ulmenallee 96-98, Köln-Marienburg.

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.
Die *Lieferung* 94-98 zu Band 10 ist erschienen.

Dr. HANS MARTIN SCHMIDT: *Das Recht der GmbH.* Systematische Zusammenstellung aller für die GmbH wichtigen Vorschriften mit Verweisungen und Registern. Verlag Dr. Otto Schmidt, Ulmenallee 96-98, Köln-Marienburg, 1960, 482 S.

Der Gesellschaftsform der GmbH kommt in ganz Europa eine grosse Bedeutung zu. Dieses Buch will nicht nur dem Nichtkenner des deutschen GmbH-Rechts einen umfassenden Überblick über die für die GmbH gültigen Rechtsvorschriften (einschliesslich Steuer-, Verfahrens- und Strafrecht) geben, sondern ist eine handliche und leicht lesbare Textsammlung für alle diejenigen, die in der Praxis mit GmbH-Fragen befasst sind. Das Buch führt den Leser jeweils auf möglichst angenehme Weise unmittelbar an das Gesetz als den Ausgangspunkt einer jeden rechtlichen Überlegung heran. Die Vorschriften der verschiedenen Gesetze sind systematisch gegliedert und das ausführliche Inhaltsverzeichnis, das Sach- und Paragraphenregister und die häufigen Querverweisungen helfen den Leser schnell seinen Weg zu finden. Wer sich über eine bestimmte Vorschrift näher unterrichten will, findet Hinweise auf die in Frage kommenden Seitenzahlen des im gleichen Verlag erschienenen „Handbuchs der GmbH" von Wilke-Berg-Gottschling-Kunkel-Köhler (besprochen in Bulletin, Bd. XII, S. 256). Umgekehrt kann der Leser des „Handbuchs der GmbH" mit Hilfe des Paragraphenregisters leicht jede im Handbuch zitierte Vorschrift mit ihrem genauen Text und in ihrem richtigen Zusammenhang auffinden.

Steuerrechtsprechung in Karteiform. Höchtstgerichtliche 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 Steuerrechtsprechung 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 98-105.

Dr. Dr. EDGAR LENSKI und Dr. WILHELM STEINBERG: Kommentar zum Gewerbesteuergesetz. *Lieferung 10,* August 1960. Verlag Dr. Otto Schmidt, Ulmenallee 96-98, Köln-Marienburg.

Diese Lieferung enthält den Schluß der Erläuterungen zu § 2 sowie die Kommentierung der §§ 4 und 5 vom MinRat Dr. Steinberg, ferner eine Überarbeitung der §§ 8 Ziff. 1 und 12 von Min-Dirig. Dr. Dr. Lenski. Nunmehr liegt der Kommentar vollständig vor. Der Verlag kündigt an, dass Einleitung und Sachregister baldmöglich folgen werden.

SCHOLZ-BOYENS-WELL-HERRMANN-STEINBRING-STENGER-FELIX: *Bewertung und Besteuerung des Grundbesitzes. Lieferung 13,* August 1960. 9. Ersatz- und Ergänzungslieferung. Verlag Dr. Otto Schmidt, Köln.

Neben umfassender und systematischer Behandlung der Bewertung des Grundbesitzes, der Grundsteuer und des Grunderwerbsteuerrechts, sowie der Berücksichtigung des Grundbesitzes bei der Gewerbesteuer, Umsatzsteuer und Erbschaftsteuer, enthält dieses grosse Loseblattwerk auch die Darstellung der Vorschriften des Körperschafsteuer- und des Vermögensteuerrechts, soweit es den Besitz von Grundvermögen oder den Grundstücksverkehr betrifft. Dem Lastenausgleichsrecht ist ein besonders umfangreicher Abschnitt gewidmet. Dieses Buch ist ein wertvolles Hilfsmittel für alle diejenigen, die sich mit irgend welchen Fragen der Steuerbelastung von Grundstücken zu befassen haben. Die *Lieferung 13,* August 1960 ist erschienen.

Das INSTITUT „FINANZEN UND STEUERN" Markt 14, Bonn am Rhein, hat die folgenden „Grüne Briefe" veröffentlicht:

Nr. 28 Die steuerliche Abschreibung in Frankreich.
Nr. 29 Diktatur des Faktischen.
Nr. 30 Zwischen den Haushalten.

HERBERT ZIEMER, HEINZ KALBHENN und Dr. GUNTHER FELIX: *Steuer-Fundhefte*. Leitsätze der Entscheidungen — Literaturübersicht — Nachweis der Gesetze und Verwaltungsvorschriften. *Band VII: 1959*. Verlag C. H. Beck, Wilhelmstrasse 9, München.

Auch dieses Jahr wird das Steuer-Fundheft wieder mit Freude begrüsst. Das unentbehrliche Werk ermöglicht es sich durch ein kurzes Nachschlagen zu informieren über das gesuchte Subjekt. Jeder der auf dem Gebiete des Steuerrechts Wert auf umfassende Information legt braucht diese Bände. Sie enthälten die Leitsätze von sämtlichen in über 130 Fachzeitschriften veröffentlichten steuerrechtlichen Entscheidungen, Nachweise der gesamten in der Fachpresse veröffentlichten Aufsätze und der besprochenen Bücher, Nachweise der Fundstellen aller Gesetze, Verordnungen, Erlasse, Verfügungen, Verwaltungsanordnungen, Richtlinien und Gesetzesentwürfe. 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. In den Fundheften kann man sich 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 beschäftigende Frage finden. Sie stellen ferner eine lückenlose, immer wieder ergänzte, also stets aktuelle Bibliographie dar, mittels derer man ersehen kann, welche Buch- und Zeitschriften-Literatur es zu einem Rechtsgebiet oder einem Rechtsproblem gibt. Schließlich geben die Fundhefte Aufschluß über der Gesetzesstand, über alle Novellen, Verordnungen, Erlasse, Verfügungen usw., so daß dem Leser nichts entgehen kann. Auch über die Entwicklung des ausländischen Rechts und der einschlägigen Literatur vermitteln dem Leser die Fundhefte einen Überblick.

Steuergesetze. Textsammlung mit Verweisungen und Sachverzeichnis. *8. Ergänzungslieferung* zur Neuausgabe (14. Auflage). Verlag C. H. Beck, Wilhelmstrasse 9, München.

Mit der *Erganzungslieferung Juni 1960* werden die „Steuergesetze" auf den Stand vom 1. Juni 1960 gebracht. Die Lieferung enthält die Änderungen, die das Einkommensteuergesetz, die Umsatzsteuer-Durchführungsbestimmungen, die Ausgleichsteuerordnung und das Verwaltungszustellungsgesetz erfahren haben, sowie die neuen Fassungen der Durchführungsverordnungen zum Wohnungsbauprämiengesetz, zum Sparprämiengesetz, zum Kapitalverkehrsteuergesetz, zum Versicherungsteuergesetz und zum Wechselsteuergesetz. Infolge der mannigfachen Verschiebungen der Paragraphenfolgen der neuen Fassungen ist das Sachregister überarbeitet worden. Die nächste Ergänzungslieferung wird das Steueränderungsgesetz 1960 bringen.

Dr. WILHELM HARTZ und JOSEF OVER: *A B C - Führer Lohnsteuer*. Fachverlag für Wirtschafts- und Steuerrecht Schäffer & Co., Hackländerstr. 33, Stuttgart O. Grundwerk auf neuestem Stand DM 12.—.

Die *Lieferungen 33 und 34* enthalten u.a. die Anpassung der Stichworte „Aufwandsentschädigungen", „Jubiläumsgeschenke", „Kinderfreibeträge", „Rechtsmittel", „Reisekosten" und „Wohnungsbau-Prämiensparen" an die neue Rechtslage. Im Anhang ist enthalten die neue Verordnung zur Durchführung des Wohnungsbau-Prämiengesetzes. Bei aller Gründlichkeit sind die

Stichworte so klar und knapp gehalten, daß der ABC-Führer Lohnsteuer stets das handliche und übersichtliche Nachschlagewerk bleibt.

Aktuelle Gesellschaftsprobleme und Grundfragen der EWG. Herausgegeben vom Institut für Steuerrecht der Rechtsanwaltschaft e.V. Sitz Bochum. Industria Verlagsbuchhandlung, Herne, 1960, 271 S.

Die besondere Bedeutung der Schriftenreihe „Steuer und Recht" liegt für den Praktiker darin, daß die zum Abdruck gelangenden Referate der steuerrechtlichen Arbeitswochen Sonderfragen rechtlicher, steuerrechtlicher und wirtschaftlicher Natur so behandeln, daß ein geschlossener Überblick über den Stand des jeweils angesprochenen Problems — unter Berücksichtigung der zahlreichen Hinweise in den Fußnoten — gegeben wird, auf dem die eigene Weiterarbeit aufgebaut werden kann. Auch die vorliegende Schrift entspricht diesem Zweckgedanken. Das in den Grundsatzreferaten von wissenschaftlicher Warte aus behandelte Rechsgut ist latent Voraussetzung der in den Spezialreferaten abgehandelten Themen: ORR Dr. Troll *„Gesellschaftsvertrag und Erbfolge, steuerlich gesehen"*, Reg.-Dir. Dr. Stutz *„Steuerliche Probleme der GmbH"*. Ra Spörlein *„Der Gesellschafter-Geschäftsführer"*, Min.-Rat Dr. Steinberg *„Kapitalgesellschaften und ihre Besteuerung im Hinblick auf ihre wirtschaftliche Gestaltung"*, RA von Kleist-Retzow *„Die personenbezogenen Gesellschaften und ihre Besteuerung"*, RA Beusch *„Organschaft und Erfolgsteuer"*. In diesen Abhandlungen werden Fragen des Gesellschaftsrechts, die von besonderer Bedeutung für den Praktiker sind, angeschnitten und wegweisend und kritisch dargelegt. *„Fragen des steuerlichen Rechtsmittelverfahrens"*, die von FG-Dir. Blencke in exakter übersichtlicher Darstellung betrachtet werden, sind für den Praktiker stets aktuell; dies um so mehr, als das „Steuerliche Rechtsmittelverfahren" sich von den übrigen Rechtsmittelverfahren in mannigfacher Hinsicht unterscheidet und durch eine längere Praxis noch nicht geläutert ist. Es ist zu begrüßen, daß die Schrift V auch die zur Beurteilung von EWG-Fragen grundsätzlichen Referate: Reg.-Dir. Feldmann *„Die Europäische Integration— die Grundlage des gemeinsamen Marktes"* und Min.-Rat Wohlfarth *„Die Rechtsgrundlagen und Rechtsprobleme der Europäischen Wirtschaftsgemeinschaft"* veröffentlicht. Auch diese Referate gehen von der Zweckbestimmung, in klarer übersichtlicher Form dem Praktiker einen Gesamtüberblick zu geben, aus. Die Schrift V der Schriftenreihe „Steuer und Recht" setzt die Tradition, dem Praktiker das „Handmaterial" für seine Arbeit zu geben, in bewährter Weise fort.

Die Steuertarife sämtlicher Steuergesetze. 14. Auflage. Verlag der Steuertarife P. Wachsmann, Mönchen-Gladbach.

Die Steuertarife erscheinen nunmehr bereits in der 14. Auflage. Allein schon hieraus erweist sich die Nützlichkeit und Brauchbarkeit. Dass sie in der Praxis nicht nur für die Steuerbeamten, sondern auch für die Steuerpflichtigen eine Lücke füllen, erhöht ihren Wert. In dieser 14. Auflage sind „Die Steuertarife" erweitert, umgebaut, neu eingeteilt und neu durchnumeriert worden. Das Buch enthält u.a. Einkommensteuer mit zahlreichen Hilfstafeln und Tabellen, Steuerabzug der beschränkt Steuerpflichtigen, Aufsichtsratsteuer, Körperschaftsteuer, Gewerbesteuer, Umsatzsteuer, Vermögensteuer, Erbschaftsteuer, Kraftfahrzeugsteuer, Wechselsteuer, und viele andere Steuertabellen. Es sind zu dieser Auflage schon 6 Ergänzungslieferungen erschienen, wodurch das Buch stets auf der Höhe bleibt.

Deutsche Steuer-Zeitung Ausgabe C. Herausgeber Ministerialdirektor Mersmann, BFM. Industrie-Verlag Carlheinz Gehlsen, Industriestrasse 63, Postfach 448, Heidelberg.

Die Deutsche Steuer-Zeitung Ausgabe C bringt als selbständiges Nach-

schlagewerk in bewährter Loseblattform die steuerlichen Gesetze und Verordnungen im Wortlaut mit Erläuterungen von Referenten und Sachbearbeitern des Bundesfinanzministeriums. Diese Ausgabe ist eine Ergänzung zur Deutschen Steuer-Zeitung A und B.

Im *Bulletin* Bd. XI, S. 225 ist als letzte die Lieferung 130 angekündigt worden. Seitdem sind die folgenden Ergänzungen zu dieser nützlichen Sammlung erschienen: *In 1957* die Lieferungen: 131 Verordnung zur Änderung und Ergänzung der Lohnsteuer-Durchführungsverordnung vom 21. Dezember 1956; 132 Steuerreform 1956; 133 Bodenwert-Richtlinien; 134 Steuerstrafrechts-Änderungsgesetz; 135 Hypothekengewinnabgabe-Erlass; 136 Verordnung über die steuerliche Behandlung von Prämien für Verbesserungsvorschläge vom 18. Februar 1957; 137 Die amtlichen AfA-Tabellen; 138 Generaltabelle der Einkommensteuertarife; 139 Achte Verordnung zur Änderung der Durchführungsbestimmungen zum Umsatzsteuergesetz vom 7. Februar 1957; 140 Umsatzsteuergesetz und Umsatzsteuer-Durchführungsbestimmungen; 141 Lohnsteuer-Ergänzungsrichtlinien 1957; 142 Vermögensteuer-Ergänzungsrichtlinien 1957.

In 1958 die Lieferungen: 143 Steueränderungsgesetz 1957; 144 1. Ergänzungslieferung der AfA Tabellen; 145 18. Abgaben DV-LA; 146 Einkommensteuer-Ergänzungsrichtlinien für die Kalenderjahre 1956 und 1957; 147 Zweite Verordnung zur Änderung der Einkommensteuer-Durchführungsverordnung; 148 Verwaltungsanordnung zur Bewertung nichtnotierter Aktien und Anteile; 149 Gesetz über Steuererleichterungen bei der Umwandlung von Kapitalgesellschaften und bergrechtlichen Gesellschaften; 150 21. Abgaben DV-LA; 151 Lohnsteuer-Durchführungsverordnung 1957 und Jahresausgleichsverordnung; 152 Steuerreformgesetz 1958 mit Einkommensteuertabelle; 153 8. Gesetz zur Änderung des Lastenausgleichsgesetzes; 154 Lohnsteuertabellen gültig ab 1. September 1958, Lohnsteuer-Richtlinien 1957; 155 16. Abgaben DV-LA; 156 AfA -Tabellen 2. Ergänzungslieferung; 157 Verordnung über die Jahreslohnsteuertabelle; 158 Einkommensteuergesetz 1958, Körperschaftsteuergesetz 1958, Gewerbesteuergesetz 1957.

In 1959 die Lieferungen: 159 22. Abgaben DV-LA; 160 12. Abgaben DV-LA 161 Verordnung zur Änderung einkommensteuerlicher Durchführungsvorschriften vom 12. März 1959 mit der „Splitting-Tabelle" 1958, Einkommensteuer-Durchführungsverordnung in der Fassung vom 13. März 1959; 162 AfA-Tabellen 3. Ergänzungslieferung; 163 Erbschaftsteuergesetz in der Fassung vom 1. April 1959; 164 Einkommensteuer-Richtlinien für das Kalenderjahr 1958; 165 Kapitalertragsteuer; 166 Lohnsteuer-Durchführungsverordnung 1959 und Lohnsteuer-Richtlinien 1959; 167 Richtsatz-Sammlung für das Kalenderjahr 1958; 168 Körperschafsteuer-Richtlinien für das Kalenderjahr 1958; Gewerbesteuer-Richtlinien 1958.

In 1960 die Lieferungen: 169 Neufassung des Bundesvertriebenengesetzes, Änderungen des Lastenausgleichsgesetzes; 170 Änderung des Umsatzsteuerrechts; 171 Die Kapitalerhöhung aus Gesellschaftsmitteln im Handels- und Steuerrecht; 172 Verwaltungsanordnung über die Vermögensteuer-Richtlinien für die Vermögensteuer-Hauptveranlagung 1960. Alle diese Lieferungen sind mit Kommentar, Anmerkungen oder Erläuterungen von Beamten des Bundesfinanzministeriums versehen.

NETHERLANDS

N. J. Polak: *De procedure in belastingzaken.* Ned. Bond van Gemeente-Ambtenaren, H. v. Viandenstraat 17, Amersfoort, 1959. 24 pp.

The Act for the jurisdiction in tax cases has come into force in 1957. The author gives in this brochure, which is a reprint of three articles in „Weekblad van de Nederlandse Bond van Gemeente-Ambtenaren", an explanation of the application of this Act on local taxes. He has meant to point out for

government employees which legal provisions are of importance for them in their local practice. Following the paragraphs of the Act the author has explained the course of the legal procedure.

D. J. MULLER: *De nieuwe belastingontwerpen.* Verschillen tussen nu en straks. Uitg. Mij AE. E. Kluwer, Deventer, 1960, 56 pp. Price f 2,75.

The new Dutch tax bills for the income tax, property tax, wage tax, dividend tax and corporation tax have systematically discussed in this brochure. These bills bring principally a technical reform. The author has made a comparison between the old and the new Acts and has added his explanations.

Handboek voor in- en uitvoer onder redactie van Prof. Dr. B. SCHENDSTOK en J. DE WILLIGEN. (Handbook for import and export). AE. E. Kluwer, Deventer, N. Samsom, Alphen aan den Rijn.

A review of this Handbook for import and export was published in Bulletin Vol. XIV, p. 169. Since then the following supplements have appeared:
Deel A *Belastinghe ffing bij invoer,* Aflevering III en IV
Deel B 1 *Tarief van invoerrechten,* Heffingspercentages Supplementen 7, 8, 9
Deel B 2 *Tarief van invoerrechten,* Toelichting en Beslissingen, Supplement 2

Prof. Dr. M. J. H. SMEETS and J. H. MEIHUIZEN a.o.: *Beknopte Belastinggids.* (Concise tax guide). 10th edition. *10th 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.

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* 41-42 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* 34 has appeared.

W. E. C. DE GROOT: *Nederlandse Belastingwetten.*
N. Samsom N.V. — Publisher — Alphen aan den Rijn, Netherlands.

The seven volumes of this loose-leaf system on Dutch taxation contain the texts of the Dutch Tax acts. The *nos.* 165-168 *of the supplements,* which keep these volumes up-to-date, have been published.

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

Supplements 61 D-E to these loose-leaf volumes have been published.

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

Nos. 736-750 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. 10-12 have been received.

H. J. HOFSTRA: *Invordering*. (Collection). 4th edition. Supplement 5, July 20th, 1960. De Belastingwetgeving Serie D.B. No. 3. J. Noorduijn en Zoon N.V. — Publishers — Gorinchem.

P. KARMELK: *Belasting op wijn en gegiste vruchtendranken. Supplement 6,* July 30th, 1960. De Belastingwetgeving Serie I. & A. No. 2. J. Noorduijn en Zoon N.V. — Gorinchem — Netherlands.

J. B. KLOOSTERMAN: *Wetten inzake den accijns op het gedistilleerd*. 3rd edition. *Supplement 8,* July 27 th,1960. De Belastingwetgeving Serie I. & A. No. 8. J. Noorduijn en Zoon N.V. — Gorinchem — Netherlands.

P. KARMELK: *Tabakswet*. (Tobaccoact) 4th edition. *Supplement 5,* July 13th, 1960. De Belastingwetgeving Serie I. &. A No. 3. J. Noorduijn & Zoon N.V. — Gorinchem — Netherlands.

A. C. GORREN: *Zegelwet 1917*. 2nd edition. Supplement 7, August 22nd, 1960. De Belastingwetgeving Serie R. & D. No. 3. J. Noorduijn en Zoon N.V. — Gorinchem — Netherlands.

P. KARMELK: *Wet op de personele belasting 1950*. 5th edition. Supplement 5, August 6th, 1960. De Belastingwetgeving Serie D. B. No. 1. J. Noorduijn en Zoon N.V. — Gorinchem — Netherlands.

NEW ZEALAND

CHARLES A. STAPLES: *A guide to New Zealand income tax practice*. 1960 edition. Financial Publications Ltd., P.O.Box 6387, Wellington, 1960, 424 pp.

The publication of this edition marks the twentieth anniversary of the first publication of A guide to New Zealand income tax practice. The present edition incorporates changes in the law introduced since the 1959 edition was published, including two important enactments — the Land and Income Tax Amendment Act, 1959, which made provision for the new averaging basis of assessment to apply to certain taxpayers in the under £ 1,040 group, and for bonus issues of shares out of profits accumulated by companies prior to the 1957/58 income year to be treated as non-assessable income of the shareholders, and the Land and Income Tax Amendment Act (No. 2) 1959, which lays down new basic rates of tax and provides for more liberal special exemptions, and sets out a new basis for the calculation of provisional tax by self-employed persons.

SPAIN

Manual de la Administración. T. A. L. E., Hortaleza 20, Madrid-4.

Reviews of this useful looseleaf book on Spanish taxation were published in *Bulletin* XIV p. 43 and 108. *Supplement 21* containing new pages for replacement has recently been published.

SWEDEN

Jur. dr. K. G. A. SANDSTRÖM: *Beskattning av aktiebolag och aktieägare i*

Sverige samt i vissa utländska stater. 2:a upplagan. Skattenytts skriftserie nr. 3. Utgiven av Taxeringsnämndsordförandenas Riksförbund, Stockholm, 1958. 69 pp.

This is a comparative study of the taxation of corporations and shareholders in Sweden and a number of other countries by Dr. K. G. A. Sandström, the wellknown authority on Swedish and international tax law, Director of the Swedish Institutet för Utländsk Rätt, Vasagatan 12, Stockholm.

SWITZERLAND

Dr. H. J. MEYER-MARSILIUS: *Doppelbesteuerungsabkommen zwischen der Schweiz und der Bundesrepublik Deutschland*. Text mit Einführung, Erläuterungen und eingearbeiteten Zusatzbestimmungen. Handelskammer Deutschland-Schweiz, Talacker 41, Zürich 1, 1959, 62 S.

Die vorliegende Publikation ist eine mit Erläuterungen versehene Gebrauchsausgabe des geltenden deutsch-schweizerischen Doppelbesteuerungsabkommen. Für die systematische Gestaltung wurde vom Text des Abkommens ausgegangen. Den einzelnen Artikeln des Abkommens werden die zugehörigen Ausführungsbestimmungen, wie sie in Schlussprotokoll, Verhandlungsprotokoll und Verwaltungsbestimmungen enthalten sind, beigedruckt. Die Ausgabe bietet eine Einführung anhand deren man sich einen Überblick über die durch das Abkommen geregelten Fragen verschaffen kann.

UNION OF SOUTH AFRICA

B. E. J. BLANN and R. W. WHITE: *Butterworths taxation statutes service*. Butterworth & Co. (Africa), 33-35 Beach Grove, Durban.

In *Bulletin XI* p. 233 a review of these volumes containing the Tax Legislation in the Union of South Africa and Rhodesia has been published. They consist of the Union of South Africa, the Southern and Northern Rhodesia main and subsidiary legislation. The double taxation conventions concluded by both countries have been printed in full. Alphabetical indexes facilitate the use of these practical books. During the last few years *Supplements 14-27* have appeared which have kept subscribers up-to-date as regards the tax legislation of these countries. They contain i.a. the following texts: the tax conventions of South Africa with Sweden, France, Germany, Switzerland, the Federation of Rhodesia and Nyasaland, Canada, Belgium, Portugal, Kenya, Uganda, Tanganyika, Zanzibar, South West Africa, Basutoland, Bechuanaland, Swaziland; the tax conventions of the Federation of Rhodesia and Nyasaland with Denmark, U.S.A., Canada, Kenya.

UNITED KINGDOM

Income Taxes in the Commonwealth, Volume II. Compiled by Direction of the Board of Inland Revenue. Her Majesty's Stationery Office, P.O.Box 569, London S.E.1, 1960.

A review of Volume I of this reference work to the Income Taxes in the Commonwealth was published in Bulletin Vol. XIII p. 169. It contains summaries of the income tax laws in Commonwealth countries in Africa and America. The present Volume II summarizes income tax laws in Commonwealth countries in Asia, Australia, New Zealand and the Pacific Islands, and Europe. Subscribers will find information on India, Pakistan, Ceylon, Federation of Malaya, Singapore, Brunei and Serawak, North Borneo, Aden, Hongkong, Australia, New Zealand, Cook Islands, Fiji, Territory of Papua and New Guinea, Solomon Islands, Gilbert and Ellice Islands, Tonga and Western Samoa. The great advantage of these volumes is that information which is otherwise hard to obtain is brought together in handy binders. Loose-leaf

supplements will be available from time to time to keep the information in both volumes up to date.

Income taxes outside the Commonwealth. Fourth Supplement. Compiled by Direction of the Board of Inland Revenue. Her Majesty's Stationery Office, P.O. Box 569, London S.E.1, 1960.

This is a loose-leaf work, intended to provide a series of summaries of the income tax laws of selected countries. It is divided into self-contained parts, and is designed to incorporate periodical supplements bringing existing material up to date and incorporating additional summaries as completed. Part I (United States) and Part II (Republic of Ireland) were published together in 1956. The first, second and third supplements published in June 1957, May 1958 and April 1959, respectively, added notes on France, Belgium, the Netherlands, the Federal Republic of Germany, Norway and Sweden under Part III (Continental Europe) and revised the information already given. The present *Fourth Supplement* again revises the information previously given and adds a further three notes on Austria, Denmark and Finland under Part III.

Taxation in Western Europe. A guide for industrialists. Federation of British Industries, 21 Tothill Street, London, S.W.1, 1959, 157 pp.

A review of the first edition of this booklet which appeared under the title *Taxation in the proposed European Free Trade Area* was published in *Bulletin* Vol. XII, p. 41. A second edition was published with the same title in 1958. To meet the continuing demand as well as to bring up-to-date the tax information about the countries covered, the Federation has decided to publish a third edition. As the circumstances have changed the booklet appears under its present new title. The opportunity has also been taken to make some alterations and the text has been brought up-to-date as at 1st July, 1959. It contains a comparative introduction and a summary of the tax systems of Austria, Belgium, Denmark, Finland, France, Federal Republic of Germany, Italy, Luxemburg, Netherlands, Norway, Sweden, Switzerland, United Kingdom.

PERCY F. HUGHES: *Key to income tax and surtax 1960-61.* Taxation Publishing Company, 98 Park Street, London W. 1.

This handy and clear book gives again full reference to the income tax Acts the new provisions of the Budget 1960 and is equipped with thumb-index. There is a section on Eire and the rates of the previous fifty-three years have been included.

HENRY E. SMITH and P. H. FLETCHER: *Hanson's Death Duties.* Tenth edition. *Fourth cumulative Supplement* (to August 1, 1959). Sweet & Maxwell, 11 New Fetter Lane, London, 1959, 157 pp.

A review of *Hanson's Death Duties* was published in *Bulletin* XI, p. 47. Hanson is a detailed section-by-section commentary and possesses the indisputable advantage of directly relating the case law and the Editor's notes to the terms of the relevant statutes. This *fourth supplement* covers a period of seven months instead of the customary twelve. The object of the change is to enable the commentary on new legislation in this and in any future supplements to follow more promptly upon the passing of the relevant Act than has hitherto been the case. The most noteworthy estate duty provision of the Finance Act, 1959, is the repeal of the enactments which imposed duty on moneys payable under life policies kept up by deceased persons for donees and their replacement by clauses which impose duty on a proportion of each

such policy commensurate with the premiums paid by the life assured within the five years preceding his death.

UNITED NATIONS

Public Finance - Finances Publiques. Extract from United Nations Statistical Yearbook 1959. United Nations, New York, 1960, 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.

UNITED STATES OF AMERICA

PRENTICE-HALL, Englewood Cliffs, New Jersey has issued the following publications: ALAN R. RADO and ROBERTO CASAS:
Taxation of income from international trade in the United States and Mexico. (reprint from Prentice-Hall Tax Ideas)

New tested ways to increase travel and entertainment expense deductions under the tough new 1960 tax rules (Federal Tax Report Bulletin Vol. XL, No. 21, Section 2)

Tax Digests of the world. Volume One. *Aden Colony to Burma*. Published for Members of the Foreign Tax Law Association, Inc., Post Office Box 788, Deer Park, Long Island, New York.

This volume and all subsequent volumes of the *Tax Digests of the World* have been prepared for the most part from the world-wide Income Tax Reporter Services which are published by the Foreign Tax Law Association. To complete the tax digests for smaller countries Government publications of the United Kingdom and the United States have been used. Space has been allowed to insert tax information on additional countries as they are received as well as to add up to date supplements to existing digests. These tax digests should be used with the Association's *Foreign Tax Law Weekly Bulletin* which is now in its tenth year of publication. The Association also publishes the entire tax laws and regulations, income tax forms, tax case decisions and commentaries for many countries. In addition the Association is publishing corporation and business laws. Volumes for over twenty countries have already been published.

Italian Income Tax Reporter Service. Published for members of the Foreign Tax Law Association, P.O.Box 788, Deer Park, Long Island, New York.

This is a translation in the English language of the *Italian Income Tax Act*. It is one of the many income tax reporter services which are published by the *Foreign Tax Law Association* and which are such a great help for those who cannot read the language of the original acts of the countries concerned. Moreover these translations are equipped with a general contents and an extensive alphabetical index which greatly facilitate the finding of the subject required. This is also the case with this translated Italian income tax act. The text of the act, the tax rates and the index are all printed in clear, bold type and brought together in a handy and firm binder. Where necessary examples are given to elucidate the text.

Federal Tax Treaties and Related Matters. Prentice-Hall, Inc. Englewood Cliffs, New Jersey.

P-H "Tax Treaties and Related Matters" contains the full text of all the treaties to which the United States is a party. Each treaty has an annotated editorial text which summarizes the treaty provisions under a uniform paragraph plan. The "History" paragraph of each treaty summary keeps subscribers up-to-date with regard to supplementary treaties, regulations, protocols and other matters. The other uniform editorial paragraphs reflect the treaty changes when they become effective and cases and rulings relating to the subject matter. The references in each editorial paragraph lead directly to the actual treaty article or regulation that is the source of the summary. *Reports 30-32* which have recently appeared contain i.a.: a note on Curaçao as tax haven, Luxemburg treaty proposed; Treasury discusses Indian treaty; how to use a foreign holding company to make the most of your foreign tax credit; and pages to be exchanged.

PRENTICE-HALL: *Federal Taxes 1960*. 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 developments 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 porposed 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

FRANCE

CONVENTIONS INTERNATIONALES

Extrait d'une instruction n° 8065 de la Direction générale des Impôts

L'Administration française a négocié avec l'Administration des Pays-Bas un arrangement destiné à coordonner l'application des conventions fiscales signées tant par ce pays que par la France avec les Etats-Unis et, notamment, à mettre fin aux difficultés rencontrées par les porteurs de certificats néerlandais de valeurs mobilières américaines ayant la qualité de résident français et par les sociétés et résidents des Pays-Bas qui possèdent des actions de sociétés américaines en dépôt en France pour obtenir le bénéfice, respectivement, de la convention *franco-américaine* du 22 juin 1956 et de la convention du même ordre passée entre les *Pays-Bas* et les *Etats-Unis*.

En vertu de cet arrangement qui est entré en vigueur le 1er février 1960, les résidents de France dont les valeurs mobilières américaines sont en dépôt aux Pays-Bas ou immatriculés au nom d'un «nominée» néerlandais, peuvent obtenir, dans le pays où ils encaissent les revenus, le bénéfice de la perception de l'impôt américain au taux réduit de 15% en remplissant, en double exemplaire, un imprimé: Série R, no. 512. Les deux exemplaires doivent être envoyés à la banque néerlandaise auprès de laquelle les titres sont déposés ou à la société néerlandaise ou au bureau d'administration néerlandais qui a émis les certificats au porteur, à l'appui de chaque envoi à l'encaissement des coupons de valeurs mobilières américaines ou de certificats au porteur émis en représentation de ces valeurs.

Ces demandes pourront éventuellement être souscrites sans procuration par les établissements bancaires français déjà habilités, dans le cadre de la convention *franco-néerlandaise,* à souscrire des déclarations collectives «modèle B».

De leur coté, les sociétés et résidents des Pays-Bas qui possèdent des actions émises par des sociétés américaines, en dépôt en France, peuvent obtenir des avantages analogues au titre de la convention fiscale passée entre les Pays-Bas et les Etats-Unis en remplissant une déclaration sur un imprimé spécial Inkomstenbelasting no. 94 Frankrijk mis à leur disposition par l'Administration fiscale des Pays-Bas. Cet imprimé doit être adressé en double exemplaire à la banque ou à l'intermédiaire français qui a reçu les titres en dépôt et remis par cet établissement au bureau dont il relève pour la perception de la retenue à la source sur les revenus des valeurs mobilières étrangères. L'un des exemplaires est transmis à la Direction générale sous le timbre du bureau 1 *bis* de la Division centrale en même temps que les renvois ordinaires.

Les contribuables résidents de France qui sont susceptibles de bénéficier des nouvelles mesures peuvent se procurer des imprimés Série R no. 512 auprès de la Direction des Sociétés de la Seine, 6, rue des Pyramides, à Paris (1er) ainsi qu'auprès des banques, des agents de change et des courtiers en valeurs mobilières, qui ont été approvisionnés par l'intermédiaire des organismes représentant ces professions.

Un des exemplaires des déclarations ainsi souscrites est destiné à être transmis aux fins de contrôle à l'Administration fiscale du pays dont l'assujetti a déclaré avoir la qualité de résident.

Source: *Droit Fiscal,* mars 18, 1960.

CANADA — "IN CAMERA" HEARINGS

After ten years the secrecy which has surrounded an *in camera* hearing and judgment by the Tax Appeal Board is ended. This was made known in an announcement by the Chairman, Cecil L. Snyder, Q.C., dated February 4, 1960, in which it was indicated that henceforth the Board would discontinue the practice of writing what have been referred to as *"in camera"* judgments. Since this is a pronouncement of no little moment to the taxpaying public, substantial portions of Mr. Snyder's announcement are reproduced here following:

"When a taxpayer who is an appellant before the Board has requested that his appeal be heard *in camera* it has been so heard pursuant to what is directed in the above section. In addition it has been the practice of the Board in past years in such appeals to go still further and render a judgment in *"in camera"* form in which a number is substituted for the name of the appellant. In addition, the place where the appeal was heard has been kept secret and no reference has been made by name of any of the persons called to give evidence. All information which might disclose the name of the appellant or the place of his residence or business has remained undisclosed. In fact, in an endeavour to give the appellant complete anonymity, the name of the counsel or agent acting in his behalf as well as the name of counsel for the Minister of National Revenue has been omitted in the reports of the judgments.

Substantial reasons have arisen which have caused the Board to review this practice. Appeals are coming before the Board in an ever-increasing number each year and, as may be well understood, the appeals are becoming more and more complicated. In recent judgments the difficulties encountered by members of the Board have been pointed out when endeavouring to explain facts and circumstances of an appeal heard *in camera* when the judgment was being prepared and written in *"in camera"* form. As was said in one appeal, "As these appeals become more and more complicated from year to year the time is fast approaching when the Board will have to reconsider its position in endeavouring to render judgment in *"in camera"* form in addition to hearing the appeal *in camera* for which the *Income Tax Act* makes provision." With these additional appeals ever pressing upon members of the Board for attention, it was realized that the preparation and writing of judgments in *"in camera"* form was taking far too much time in comparison to the time required to deliver a judgment in the ordinary form. Still another reason was that in certain instances it seemed almost impossible to write a reasonable understandable judgment when so many material items had to remain undisclosed.

In the result the Board has decided to discontinue the practice of writing what have been referred to and called *"in camera"* judgments. Effective with the several sittings of the Board scheduled to be held in February, 1960, the practice will be that appeals will continue to be heard *in camera* in the courtroom when the appellant so requests but the judgment to follow will not be in *"in camera"* form as in the past. As stated, this new practice will take effect only with such appeals as may be heard after February 1st, 1960. The judgments remaining to be prepared in all appeals heard *in camera* up

to the end of 1959 will be rendered in accordance with the former practice. However, in all appeals to be heard from this date forward the name of the appellant will appear in the written report of the judgment as well as the names of the counsel or agents acting or participating on behalf of the appellant or the Minister of National Revenue. The practice of reporting judgments under a number with relevant material omitted will be discontinued forthwith.

In the future when appeals are heard *in camera* in the courtroom or other place of hearing there may be occasions when the publication of certain intimate details might be embarrassing to an appellant or might be injurious to his reputation, his welfare or his business. These may well be omitted although the name of the appellant, whether the appellant be an individual or a corporation, and all necessary relevant matters will be contained in the judgment in the same manner as is done in judgments delivered by the learned judges of the Exchequer Court of Canada when appeals are heard *in camera* in the Exchequer pursuant to Section 102 of the *Income Tax Act*.

(signed) Cecil L. Snyder, Chairman".

Ottawa, Canada. 4th February, 1960.

This announcement would appear to be a salutory step toward increasing the similarity between the Board and a court of law. The Exchequer Court of Canada has always, upon request and justification, consented to the exclusion of the public from the courtroom during a trial thus making it an *in camera* proceeding but has never refrained from giving the names of the parties or the relevant material facts and names of witnesses in the judgments.

This change will bring the Appeal Board's practice into conformity with that of most other Canadian courts and will also perhaps serve to impress upon taxpayers afresh the seriousness and earnestness with which they must contemplate an appeal to that body which is, after all, the embarking upon a judicial proceeding.

Source: *Canada Tax Service*, February 22nd, 1960.

SUISSE
IMPOSITION DES SOCIETES SUISSES EXERÇANT LEUR ACTIVITE COMMERCIALE PRINCIPALEMENT A L'ETRANGER

Les enquêtes faites par l'Administration fédérale des contributions ayant révélé que la taxation de ces sociétés n'était pas toujours opérée selon les mêmes principes, elle a invité les administrations cantonales de l'impôt pour la défense nationale à suivre dorénavant les règles que voici:

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 quelque droit que ce soit, tous les rendements provenant de Suisse 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'exploitation 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 être 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 prendre pour base le total des prix de revient. Selon les circonstances, il pourra être aussi utilisé 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, il sera ajouté les autres recettes de la société, par exemple celles qui proviennent de contrats de licences, de placements de capitaux, etc.

c) Aux sociétés qui déduisent des prestations en faveur d'actionnaires ou de personnes leur touchant de près, il sera demandé 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 considérés comme établissements 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, à savoir lorsqu'ils exercent leur activité exclusivement pour une seule entreprise, à laquelle ils sont liés par un engagement, ou lorsqu'ils disposent en permanence 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 % 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 rapport des éléments 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 eux-mêmes).

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.

Source: *Steuerrevue,* février 1960.

UNITED STATES OF AMERICA
PERSONAL HOLDING COMPANY

Below, we reproduce Revenue Ruling 60-34, which, although having regard to a special case only, may be of interest to the readers of this Bulletin.

A Netherlands corporation, which meets both requirements of the personal holding company definition contained in section 542 (a) of the Internal Revenue Code of 1954 and which fails to meet either of the exception requirements contained in section 542 (c) (10) of the Code, is classifiable as a personal holding company. Since the Netherlands Income Tax Convention does not specifically exempt undistributed income, such corporation is, therefore, subject to the tax prescribed in section 541 of the Code. It is entitled to a deduction for dividend paid during the taxable year within the meaning of section 561 (a) of the Code to the extent that it distributed dividends to stockholders.

Even though the corporation's Federal income tax on dividends received from sources within the United States is fully satisfied at the source, it must file Form 1120NB together with Schedule PH (Form 1120). Willful failure to file a timely income tax return on the part of the corporation will result in its being deprived of the benefits of section 547 of the Code relating to the deduction for deficiency dividends. Failure by the corporation to file Schedule PH (Form 1120) or to furnish the information required thereon with respect to income and stock ownership will permit the assessment of personal holding company tax at any time within six years after the return for such year had been filed.

Advice has been requested with respect to the Federal income tax consequences of a corporation formed under the laws of the Netherlands, the majority of whose stock is owned by five individuals who are neither citizens nor residents of the United States, and which invests its capital exclusively in stocks and bonds issued by domestic corporations.

A corporation was formed under the laws of the Netherlands. More than fifty percent in value of its outstanding stock is owned by five individuals who are neither citizens nor residents of the United States. The capital of the corporation is invested in stocks and bonds issued by domestic corporations. Therefore, its entire income consists of dividends and interest from such sources within the United States. The tax on the income so derived is fully satisfied at the source. The corporation is not engaged in a trade or business in the United States.

The specific questions presented by the taxpayer in this case are as follows:

(1) Is the taxpayer classifiable as a personal holding company within the meaning of section 542 (a) of the Internal Revenue Code of 1954?

(2) If the corporation is so classified, may it eliminate its liability for tax either by making actual dividend distributions or by following the consent dividends procedure?

(3) What is the possible effect upon the taxpayer if it fails to file corporation income tax returns and/or personal holding company schedules?

Section 542 (a) of the Code defines a "personal holding company" as any corporation, other than a corporation described in section 542 (c) thereof, if 80 percent or more of its gross income for the taxable year is personal holding company income as defined in section 543 and if at any time during the last of the taxable year more than 50 percent in value of its outstanding stock is owned, directly or indirectly, by or for not more than five individuals. For the purpose of this definition, it is immaterial whether the individual stockholders are citizens, resident aliens, or nonresident aliens, or whether the corporation is a domestic or a foreign corporation. However, as provided in section 542 (c) (10) of the Code, the term "personal holding company" does not include a foreign corporation if its gross income from sources within the United States for the three-year period ending with the close of its taxable year is less than 50 percent of its total gross income from all sources and all of its stock outstanding during the last half of the taxable year is owned by nonresident alien individuals, whether directly or indirectly through other foreign corporations.

Accordingly, a foreign corporation, which meets both requirements of the personal holding company definition and fails to meet either of the exception requirements referred to above, is a personal holding company unless specifically exempted under a treaty provision with the country concerned.

Article VII of the United States-Netherlands Income Tax Convention, T. D. 5778, C.B. 1950-1, 92, provides, in part, that the rate of United States tax on dividends derived from a United States corporation by a resident or corporation of the Netherlands not engaged in trade or business in the United States through a permanent establishment shall not exceed 15 percent. Article VIII (1) of the convention provides that interest, other than interest from mortgages secured by real property, derived from sources within the United States by a resident or corporation of the Netherlands not engaged in trade or business in the United States through a permanent establishment, shall be exempt from United States tax. However, the tax imposed by section 541 of the Code is upon undistributed profits and not upon dividends or interest. Article XIII of the convention, which had originally granted an exemption with respect to undistributed earnings, profits, income, or surplus to Netherlands corporations, was deleted from the convention.

In this connection, the Senate Report of the Committee on Foreign Relations, covering various tax conventions, states that Article XVI of the Convention with Ireland (similar to Article XIII of the Netherlands Convention) was stricken on the ground that it would give Irish corporations doing business in the United States a competitive advantage over domestic corporations. See Senate Executive Report No. 1, 82d Congress, at page 20.

In enacting the personal-holding-company provisions, Congress made it clear that the tax was being levied upon the holding company without any necessity for proving a purpose to avoid surtaxes. See Senate Report No. 558, 73d Cong., C.B. 1939-1 (Part 2), 197.

In *A. G. Fides* v. *Commissioner*, 137 Fed. (2d) 731, certiorari denied, 320 U.S. 797, the taxpayer, a foreign corporation, contended that it did not come within the evil which section 351 of the Revenue Act of 1936 (comparable to section 541 of the 1954 Code) sought to prevent, that is, the so-called "incorporated pocketbook," since the taxpayer's distributions of dividends to its alien stockholders would not be subject to tax by the United States. The taxpayer in the *Fides* case also argued that the term "any corporation" referred to in section 351 (b) of the Revenue Act of 1936 (section 542 (a) of the 1954 Code) must be construed to mean "any corporation whose stockholders would be subject to surtax on distributed corporation earnings." The court rejected both of these contentions.

The taxpayer in the instant case is classifiable as a personal holding company within the meaning of section 542 (a) of the Code and is subject

to the tax prescribed in section 541 of the Code. The deduction for dividends paid under section 561 (a) of the Code includes dividends paid during the taxable year and consent dividends determined under section 565 of the Code. It would, therefore, be entitled to a deduction for dividends paid during the taxable year under section 561 (a) of the Code to the extent that it distributes dividends, either actually or by consent, to its shareholders. In order for a distribution to be allowed as a dividend-paid deduction, the recipient of the distribution need not itself be taxable upon the amount of the distribution thus received. It is only necessary that the amount of the distribution be taxable in character so that it is subject to tax if the recipient is taxable on such dividend. See, generally, I.T. 4099, C.B. 1952-2, 117.

Section 6012 (a) (5) of the Code provides in part that, subject to such conditions, limitations, and exceptions and under such regulations as may be prescribed by the Secretary of the Treasury or his delegate, foreign corporations subject to the tax imposed by section 881 of the Code may be exempted from the requirement of making returns. However, section 6011 (a) of the Code provides that, when required by regulations prescribed by the Secretary or his delegate, any person made liable for any tax imposed by this title, or for the collection thereof, shall make a return or statement according to the forms and regulations prescribed by the Secretary or his delegate. A portion of the last paragraph of the "Return and Tax Requirements," attached to Form 1120 NB, Nonresident Foreign Corporation Income Tax Return, reads as follows:

If the corporation is not a foreign personal holding company within the meaning of section 552 but is a personal holding company within the meaning of section 542, Schedule 1120PH must be attached to the corporation's return.

Thus, although its Federal income tax on dividends received from sources within the United States is fully satisfied at the source, it will be necessary for the taxpayer to file Form 1120 NB in any year in which it is classifiable as a personal holding company, together with Schedule PH (Form 1120), Computation of U.S. Personal Holding Company Tax.

Section 547 (g) of the Code provides that no deficiency dividend deduction shall be allowed if the determination contains a finding that any part of the deficiency is due to fraud with intent to evade tax, or to wilful failure to file an income tax return within the time prescribed by law or prescribed by the Secretary of the Treasury or his delegate in pursuance of law. Section 1.545-1 (b) of the Income Tax Regulations provides in part that for purposes of the imposition of the personal holding company tax on a foreign corporation, resident or nonresident, which files no return, the undistributed personal holding company income shall be computed on the basis of the gross income from sources within the United States without allowance of any deductions.

Under section 6501 (f) of the Code, if a corporation which is a personal holding company fails to file with its return under chapter 1 a schedule setting forth certain specified information, the personal holding company tax for such year may be assessed at any time within six years after the return for such year was filed. Thus, failure to file Schedule PH (Form 1120) or to furnish the information required thereon with respect to income and stock ownership will permit the assessment of the personal holding company tax at any time within six years after the return for such year has been filed.

Source: *Internal Revenue Bulletin,* February 1, 1960.

UNITED STATES OF AMERICA
COMMUNITY PROPERTY IN PANAMA CANAL ZONE

Advice has been requested whether the Panama Canal Zone is a community property jurisdiction for Federal income tax purposes and whether a husband and wife who are citizens of the United States domiciled in the Canal Zone are entitled to divide their earnings as community income where they file separate Federal income tax returns.

Chapter 6 of Title 3 of the Code of Laws of the Canal Zone, 1934, sets forth the relative personal and property rights and obligations of a husband and wife who are subject to the laws of the Canal Zone. Sections 138, 139, 140, and 149 of Chapter 6, Title 3, and section 649 of Chapter 26, Title 3, of such Code of Laws control the ownership and disposition of property acquired before and after marriage by persons subject to the laws of the Canal Zone.

These sections apparently were modeled after and are substantially similar to the community property statutes of the Civil Code of California as they existed prior to July 29 ,1927. Before that date, the community property statutes of California were interpreted as vesting complete dominion and control over the community property in the husband and preventing him from dividing his income with his wife for Federal income tax purposes. Thus, the wife did not have a vested interest in her husband's personal property and could not report a share of his income in a separate income tax return. See *United States* v. *Reuel D. Robbins,* Jr., et al., 269 U.S. 315, T.D. 3817, C.B. V-1. 188 (1926); and *D. Cerruti et al.* v. *Commissioner,* 4 B.T.A. 682.

However, on July 29, 1927, section 161a was added to the Civil Code of California. That section provides as follows:

> "The respective interests of the husband and wife in community property during continuance of the marriage relation are present, existing and equal interests under the management and control of the husband as is provided in sections 172 and 172a of the Civil Code. This section shall be construed as defining the respective interests and rights of husband and wife in community property".

In determining the effect of this provision, the Supreme Court of the United States, in the case of *United States* v. *Robert K. Malcolm,* 282 U.S. 792, held that section 161a vested in the wife such an interest in the community income as to enable her to file a separate Federal income tax return reporting one-half of the income earned by her husband. In Mimeograph 3859, C.B. X-1, 140 (1931), the Internal Revenue Service stated with respect to the *Malcolm* decision, in part, as follows:

> "This decision is applicable to income from community property acquired on and after July 29, 1927, and to salaries, wages, and fees earned on and after that date which constitute community property".

No provision similar to section 161a of the Civil Code of California has been incorporated in the Code of Laws of the Canal Zone. Thus, no material distinction exists between the present laws of the Canal Zone with respect to community property and the community property laws of California as they existed prior to July 29, 1927.

Accordingly, it is held that the Panama Canal Zone is not a community property jurisdiction for Federal income tax purposes. The earnings in the instant case are all taxable to the husband and cannot be divided with the wife for Federal income tax purposes.

Source: *Internal Revenue Bulletin,* May 23, 1960

UNITED STATES OF AMERICA

ELECTION OF STANDARD DEDUCTION

Income Tax Regulations amended to clarify certain sections and to delegate certain functions provided by the Internal Revenue Code of 1954.

Department of the Treasury,
Office of Commissioner of Internal Revenue,
Washington 25, D.C.

To Officers and Employees of the Internal Revenue Sereice and Others Concerned:

In order to make certain clarifying changes in the Income Tax Regulations (26 CFR Part 1) and to delegate herein the functions provided by sections 144(b)(2) and 902(c) of the Internal Revenue Code of 1954, such *regulations* are amended as follows:

Paragraph 1. Paragraph (b) of § 1.144-2 is amended to read as follows:

"§ 1.114-2 *Change of election to take, or not to take, the standard deduction.*

(b) If the spouse of the taxpayer filed a separate return for any taxable year that corresponds, for the purpose of section 142(a), to the taxable year of the taxpayer, a change of election may not be made by the taxpayers unless: (1) The spouse makes a change of election in such separate return with respect to the standard deduction consistent with the change of election sought by the taxpayer, and (2) the taxpayer and his spouse file with the district director for the district in which the taxpayer applies for the change of election a consent in writing to the assessment, within such period of time as may be agreed upon with such district director, of any deficiency of either the taxpayer or his spouse to the extent attributable to such change of election, even though at the time of filing of such consent the assessment of such definciency would otherwise be prevented by the operation of any law or rule of law".

Par. 2 Paragraph (b) of § 1.318-3 is amended by adding at he end thereof the following new sentences:

. . . . . .

"§ 1.318-3 *Estates, Trusts, and Options.*

(b) The factors and methods prescribed in § 20.2031-7 of the Estate Tax Regulations (part 20 of this chapter) for use in ascertaining the value of an interest in property for estate tax purposes shall be used in determining a beneficiary's actuarial interest in a trust for purposes of this section. See § 20.2031-7 for examples illustrating the use of these factors and methods".

Par. 3. The last sentence in paragraph (c) (2) (ii) of § 1.641(b)-3, as amended by Treasury Decision 6353 (C.B. 1959-1, 163), approved January 8, 1959, is further amended by striking "sections 661 and 622" and inserting in lieu thereof "sections 661 and 662".

Par. 4. Paragraph (b) of § 1.874-1 is amended by adding at the end thereof the following new sentences:

"§ 1.874-1 *Allowances of deductions and credits to nonresident alien individuals.*

. . . . . .

(b) *Tax on gross income.* Notwithstanding the requirement that a nonresident

alien must file a return in order to receive the benefit of the deductions and credits allowed to him with respect to the income tax, he may, for purposes of determining the amount of tax to be withheld under section 1441 from remuneration paid for labor or personal services performed by him within the United States, receive the benefit of the deduction of one personal exemption provided in section 151 by filing a claim therefore with the withholding agent. See section 873(d), relating to the number of personal exemptions allowed nonresident aliens. The amount of the deduction for such personal exemption and the amount of the tax to be withheld under such circumstances shall be determined in accordance with paragraph (e) (2) of § 1.1441-3".

Par. 5. Paragraph (a) of § 1.902-1 is amended by inserting the designation "(1)" immediately before the first sentence thereof and by adding at the end of paragraph (3) the following:

"(2) For purposes of section 902 and this section the accumulated profits of a foreign corporation consist of its gains, profits, or income in excess of the income, war profits, or excess profits taxes imposed on or with respect to such gains, profits, or income. The district director in whose district is filed the income tax return of the taxpayer claiming a credit by virtue of the provisions of section 902 shall have the power to determine from the accumulated profits of what year or years the dividends received were paid. In making such determination, any dividends which are paid in the first sixty days of any year shall be treated as having been paid from the accumulated profits of the preceding year or years (unless to the district director's satisfaction shown otherwise), and in other respects such dividend shall be treated as having been paid from the most recently accumulated profits".

Par. 6. Paragraph (a) (1) of § 1.932-1 is amended by striking the first sentence and inserting in lieu thereof the following two sentences:

"§ 1.932-1 *Status of citizens of United States possessions.* — (a) *General rule.* — (1) *Definition and treatment.* — A citizen of a possession of the United States (except Puerto Rico), who is not otherwise a citizen or resident of the United States, including only the States and the District of Columbia, is treated for the purpose of the tax as if he were a nonresident alien individual. For purposes of the tax imposed by chapter 2 of the Code, the preceding sentence shall have no application to citizens of the Virgin Islands".

Because this Treasury Decision merely makes clarifying changes in the present regulations and delegates certain functions which are authorized by the Internal Revenue Code of 1954, it is found that it is unnecessary to issue this Treasury Decision with notice and public procedure thereon under section 4(a) of the Administrative Procedure Act, approved June 11, 1946, or subject to the effective date limitation of section 4(c) of such Act.

(This Treasury Decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).)

Dana Latham,
Commissioner of Internal Revenue

Source: *Internal Revenue Bulletin,* May 31, 1960.

ÖSTERREICH — ORGANSCHAFT ÜBER DIE GRENZEN

In der Zeit von 1938 bis 1945 bestand gar kein Zweifel darüber, dass die Einrichtung der Organschaft nicht nur innerhalb der Staatsgrenzen, sondern auch über diese hinaus bzw. herein wirksam sei. Die gleiche Auslegung besteht heute noch oder schon wieder in der Bundesrepublik Deutschland, wo allerdings die Einrichtung der Organschaft durch viele Jahre überhaupt aufgehoben war und erst 1957 wieder eingeführt worden ist. In Österreich dagegen liess man diese Frage von 1945 bis 1955 stillschweigend auf sich beruhen und versuchte sie dann (3. Dezember 1955) durch einen Erlass des BMfF in dem Sinn zu regeln, dass die Organschaft *nicht* über die Staatsgrenzen hinaus- bezw.. hereinwirken sollte. Dieser Erlass war juristisch sehr wenig untermauert, er „begründete" seinen Standpunkt einfach damit, dass es praktisch kaum möglich wäre, über die Grenzen hinaus zu erforschen und zu überwachen, ob die Voraussetzungen der Organschaft und ihre Folgen (z.B. der Grosshandelssatz) wirklich vorliegen bzw. anerkannt werden können. Für den Fachmann war es daher nicht schwer vorauszusehen, dass dieser Erlass einem ernstlichen Angriff kaum standhalten würde.

Dieser Angriff ist nun seitens einer österreichischen Gesellschaft mit beschränkter Haftung geritten worden, deren Anteile mittelbar einer deutschen Aktiengesellschaft gehörten, für die sie entgeltliche Leistungen vollbrachte. Sie machte für diese Leistungen Umsatzsteuerfreiheit infolge Organschaft geltend; denn innerhalb der organmässig verbundenen Gebilde sind ja bekanntlich die sogenannten „*Innenumsätze" nicht steuerbar*. Der Fall kam vor den Verwaltungsgerichtshof und dieser sprach in seinem Erkenntnis vom 21. März 1960, Zl. 227/58, aus:

„Davon, dass die Organschaft (als eine Einrichtung des innerstaatlichen Steuerrechtes) im Verhältnis zum Ausland nicht anwendbar sei, ist in § 2 Absatz 2 Ziffer 2 UStG keine Rede. Diese Ansicht wird auch von der Rechtslehre nicht geteilt. Auch der Reichsfinanzhof hat in seinem Urteil vom 3. November 1933, RStBl. 1934, Seite 524, in einem Fall, in dem es um die Beurteilung der Bindung deutscher Firmen an eine ausländische juristische Person ging, die Frage der finanziellen und organisatorischen Verflechtung dieser Firmen geprüft und Organschaft nicht schon deshalb ausgeschlossen, weil eine inländische Gesellschaft nicht Organgesellschaft einer ausländischen Obergesellschaft sein könne. Die Bestimmungen des Umsatzsteuergesetzes und des Gewerbesteuergesetzes stimmen hinsichtlich der Organschaft nicht völlig überein. Nach § 1 Absatz 2, Ziffer 2 des Gewerbesteuergesetzes muss nämlich das beherrschende Unternehmen ein *inländisches* Unternehmen sein, während das Umsatzsteuergesetz diese Einschränkung nicht enthält und nicht ausschliesst, dass die Obergesellschaft eine *ausländische* Gesellschaft sein kann. Schliesslich ist noch auf § 23 UStDB hinzuweisen, der Aufschluss darüber gibt, wer bei einer Ausfuhrlieferung als „ausländischer Abnehmer" anzusehen ist. Er führt als einen solchen u.a. die Organgesellschaft eines in Österreich ansässigen Unternehmers an, die ihren Sitz ausserhalb des Bundesgebietes hat, und lässt damit erkennen, dass die Ansicht, die Organschaft könne im Verhältnis zum Ausland nicht wirksam sein, unzutreffend ist".

Somit gilt also — streng genommen rückwirkend für alle noch nicht verjährten Steuerfälle — die Organschaft auch im Verhältnis zum Ausland. Das hätte z.B. die Folge, dass die inländischen Verkaufsgesellschaften ausländi-

scher Erzeuger deren Artikel nicht mehr — im Grosshandel — mit 1,8 Prozent Umsatzsteuer verkaufen könnten, sondern sie mit 5,25 Prozent versteuern müssten, weil eben *Bearbeitungen,* die der beherrschende Unternehmer vornimmt, innerhalb des Organverhältnisses als Bearbeitungen der verkaufenden Organgesellschaft gelten. Es hätte weiter zur Folge, dass solche Gesellschaften den begünstigten Satz von 1,8 Prozent nur noch für andere Artikel als die des beherrschenden Unternehmers haben könnten und für diese anderen Artikel einen *Buchnachweis* führen müssten; dieser Buchnachweis wäre zwar im Inland zu führen, würde aber fast durchwegs Vorgänge zum Gegenstand haben, die im Ausland spielen und nur dort kontrolliert werden können. Ebendeshalb hatte ja seinerzeit Dr. Pucharski sich mit dem Erlass vom 3. Dezember 1955 mehr oder weniger über die Rechtsauslegung hinweggesetzt. Nunmehr wird dieser Erlass aufgehoben werden müssen. Die manchenorts aufgestellte Behauptung, dass er „automatisch" schon mit dem Inkrafttreten des Umsatzsteuergesetzes 1959 ausser Kraft getreten sei (1. Jänner 1959), ist zweifellos unzutreffend, weil Erlässe mangels ausdrücklicher Aufhebung durch die Behörde, die sie hinausgegeben hat, nur durch eine Änderung des Gesetzes ausser Wirksamkeit treten können und eine solche gerade im Punkte Organschaft damals bewusst nicht vorgenommen worden ist.

Es liegt auf der Hand, dass sich die Betroffenen diese — volle 15 Jahre nach dem Wiedererstehen der Republik Österreich eintretende — Mehrbelastung nicht einfach gefallen lassen werden. Sie verweisen darauf ,dass sie doch sowieso die *Ausgleichsteuer* in Höhe von 5,25 Prozent zu bezahlen haben; damit seien sie aber dann den Erwerbern inländischer Ware gleichgestellt, denn eben das sei ja der Zweck der Ausgleichsteuer und eben davon habe sie sogar ihren Namen. Besonders schwerwiegend ist dieser Hinweis gegenüber allen jenen Ländern, mit denen Österreich sogenannte Meistbegünstigungs- oder Nichtbenachteiligungsklauseln vereinbart hat, wie es beispielswiese im EFTA-Abkommen der Fall ist. Denn es wäre natürlich eine Benachteiligung, wenn die Verkaufsgesellschaft eines inländischen Erzeugers *ohne* Organschaft den Grosshandelssatz hätte, die Verkaufsgesellschaft eines ausländischen Erzeugers *mit* Organschaft aber nicht. Zahlen doch beide 5,25 Prozent auf ihren Einkauf (im ersten Fall im Kaufpreis, im zweiten Fall bei der Einfuhr), stehen einander also mit gleichem Start gegenüber.

Es ist daher wohl auch damit zu rechnen, dass im Wege zwischenstaatlicher Wirtschafts- oder Steuerverhandlungen die Wirksamkeit der neuen Auslegung, sei es generell durch Gesetzesänderung, sei es regional, das heisst, von Staat zu Staat, aufgehoben werden könnte. Wir werden über diese Entwicklung laufend weiterberichten."

Source: *Österreichische Steuer- und Wirtschaftskartei,* 10. Juni 1960.

BELGIQUE

Etablissement stable — Société — Immeuble

Question parlementaire no. 85 du 29.31.960, posée par M. le Représentant De Saeger — Bulletin «Questions et réponses» no. 22 du 26.4.1960. Chambre des Représentants, session ordinaire de 1959-1960, p. 830.

Une société étrangère possède en Belgique une habitation qu'elle loue à un particulier. Elle touche de ce dernier un loyer sans intervention d'aucun tiers.

L'existence de cette maison en Belgique doit-elle être considérée comme un établissement au sens de l'article 27 § 4, des lois coordonnées relatives aux impôts sur les revenus?

Réponse: En vertu de l'article 2, 1°, des lois coordonnées relatives aux impôts sur les revenus, les revenus de tous les biens immobiliers ou mobiliers produits ou recueillis en Belgique sont assujettis à l'impôt, alors même que le bénéficiaire n'y aurait pas son domicile ou sa résidence.

D'autre part, suivant la jurisprudence, une société commerciale est un être moral créé exclusivement en vue de l'exercice d'une profession lucrative, de sorte qu'elle ne possède rien qui ne soit affecté à cette fin et que tout ce qu'elle recueille, le capital souscrit exepté, constitue un profit de son activité professionnelle qui, le cas échéant, après déduction de charges, est imposable à la taxe professionnelle, sauf défalcation éventuelle de la partie nette des éléments déjà taxés, tels les revenus fonciers ou mobiliers, qui se retrouvent dans lesdits revenus professionnels (cf. arrêts de la Cour de Cassation du 28 février 1956, en cause de la S.A. Société Technique, Industrielle et Financière «STIFF» Pas. 1956, I, 675, et du 9 septembre 1958, en cause de la société civile sous forme anonyme „Het Landhuis" — Pas. 1959, I, 20).

S'appuyant sur le premier des arrêts précités, la Cour d'appel de Bruxelles a jugé dans un arrêt du 14 mai 1957, en cause de la S.A. de droit hollandais «Nederlands-Belgische Trust», que la circonstance que l'activité en Belgique de cette société étrangère consiste uniquement à y percevoir les loyers, à payer les frais de réparation et la contribution foncière relatifs à ses immeubles sis en Belgique, ne constitue pas un obstacle à ce qu'elle soit assujettie à la taxe professionnelle.

Si la société étrangère visée dans la question est constituée sous la forme d'une société commerciale, celle-ci est redevable en principe de la taxe professionnelle sur les revenus qu'elle recueille de la location de biens immobiliers situés en Belgique, sauf dispositions dérogatoires contenues dans les conventions conclues par la Belgique avec certains pays, en vue d'éviter les doubles impositions.

Étant donné que l'honorable Membre vise certainement un cas déterminé, une enquête sera faite s'il veut bien me communiquer la dénomination et l'adresse de la société, ainsi que la situation de ses biens immobiliers sis en Belgique.

Source: *Bulletin des Contributions*, juin 1960.

DEUTSCHE BUNDESREPUBLIK
VORSCHLAG DES WISSENSCHAFTLICHEN BEIRATS

Steuerpolitische Massnahmen zur Konjunkturdämpfung hat der Wissenschaftliche Beirat beim Bundesministerium der Finanzen vorgeschlagen. Er führt aus: Die Gefahr, dass die Bildung von Budget-Überschüssen den Anstoss zu einer Vermehrung der Ausgaben im Inland gibt, würde auch dann vermieden werden, wenn die zusätzlichen Steuerbeträge den Steuerpflichtigen gutgeschrieben und bis zu ihrer Freigabe in einer geänderten Konjunkturlage im Zentralbanksystem stillgelegt würden. Ein solcher „Juliusturm für Jedermann", der als eine Art Zwangsanleihe bei breitesten Schichten anzusprechen ist, würde dem Zugriff des Publikums entzogen sein und das Ziel der Stilllegung von Geldern verwirklichen.

Sollten diese Pläne nicht in Betracht gezogen werden, so wird man sich auf die Forderung beschränken müssen, die nicht weiter reduzierbaren Ausgaben in vollem Umfange durch Steuereinnahmen zu decken. In diesem Zusammenhang ist auch zu beachten, dass unmittelbare Einschränkungen des Konsums nur bei Steuerfinanzierung zu erwarten sind. Abgesehen von der allgemein-quantitativen Zielsetzung ist ferner zu erwägen, ob nicht durch gezielte Massnahmen steuerlicher Natur konjunkturell erwünschte Effekte herbeigeführt werden können.

Da das Schwergewicht der bisherigen Auftriebstendenzen im Investitionssektor liegt, muss das Ziel etwaiger steuerpolitischer Massnahmen in erster Linie eine Beschränkung der Nachfrage auf diesem Gebiete sein. In diesem Zusammenhang ist allerdings auch eine Drosselung der Konsumgüternachfrage von Bedeutung, weil sie über die Veränderung der Absatzchancen zu einer gewissen Verminderung der Investitionsneigung führt. Angesichts dieser Situation erscheint es angebracht, steuerliche Massnahmen zu ergreifen, die sowohl zu einer Dämpfung der Investitionen als auch der Konsumgüternachfrage zu führen geeignet sind.

Falls durch die vom Beirat in erster Linie vorgeschlagene Ausgabensenkung das Haushaltsgleichgewicht noch nicht hergestellt werden kann, käme vor allem eine Erhöhung der Einkommensbesteuerung in Betracht, die selbstverständlich — damit eine konjunkturpolitisch ausreichende Breitenwirkung erzielt würde — alle Einkommensteuerpflichtigen mit einem Zuschlag zur bisherigen Steuer belasten müsste.

Eine vermehrte Steuerbelastung in der Form, dass nur diejenigen Steuern erhöht werden, die vorwiegend den Konsum treffen, würde den Erfordernissen der gegenwärtigen konjunkturellen Lage nicht entsprechen. Es kommt hinzu, dass die für eine solche Massnahme in erster Linie in Betracht zu ziehende Umsatzsteuer beträchtliche Mängel aufweist und ohne Durchführung eines grundsätzlichen Umbaus keinesfalls weiter erhöht werden sollte. Ebensowenig wie eine spezielle steuerliche Belastung des Konsums ist aus den gleichen Gründen eine unmittelbare Besteuerung der Investitionen empfehlenswert.

Die Drosselung der degressiven Abschreibung als Massnahme zur Konjunkturdämpfung hält der Wissenschaftliche Beirat beim Bundesministerium der Finanzen für ein wirksames Mittel (!). Er führt zu diesem Punkt aus:

Im Rahmen der Einkommensbesteuerung bildet einen weiteren Ansatzpunkt für konjunkturdämpfende Massnahmen die Regelung der Abschrei-

bungen. Es besteht weitgehend Übereinstimmung darüber, dass der gegenwärtige Satz der degressiven Abschreibung in Höhe des 2 ½ fachen der linearen Abschreibung in der Mehrzahl der Fälle über das betrieblich notwendige Mass hinausgeht und damit eine wichtige Finanzierungsquelle für zusätzliche Investitionen bildet. Eine Herabsetzung des Höchstsatzes auf das 2fache der linearen Abschreibung — unter gleichzeitiger Senkung auch des Höchstbetrages der zulässigen Abschreibung auf 20% des Anschaffungswertes — würde nicht nur eine stärkere Annäherung an die im Durchschnitt betrieblich notwendige Abschreibung bedeuten, sondern vor allem auch den Investitionsanreiz in nicht unerheblichem Masse vermindern und so zur Dämpfung der Investitionsgüternachfrage beitragen. Wenn eine derartige im gegenwärtigen Zeitpunkt konjunkturgerechte Massnahme vom Gesetzgeber erwogen werden sollte so müssten allerdings eine Reihe von wichtigen Momenten bedacht werden. Zunächst ist zu berücksichtigen, dass die Bekanntgabe der Absicht einer solchen Herabsetzung des Abschreibungssatzes kurzfristig leicht zu einer zusätzlichen Auftrags- und Investitionswelle führen kann. Eine solche Massnahme müsste infolgedessen unter dem Datum des Regierungsbeschlusses in Kraft gesetzt werden. Dabei könnten gewisse Übergangsbestimmungen zur Vermeidung von Härtefällen geschaffen werden. Eine weitere Rücksichtnahme bezieht sich auf die internationalen Wettbewerbsverhältnisse, insbesondere im Rahmen der EWG. Die Änderung der Abschreibungsvorschriften sollte nicht zu einer wesentlichen Benachteiligung der deutschen Industrie gegenüber der konkurrierenden ausländischen Industrie führen. Schliesslich sollte die Änderung der Abschreibungsbestimmungen mit der Massgabe erfolgen, dass bei rückläufiger Konjunktur eine Wiedererhöhung des Höchstsatzes in Aussicht genommen wird um damit in einer solchen Lage einen Anreiz zur Investition zu schaffen. Grundsätzlich wäre es erwünscht, wenn der Höchstsatz der Abschreibung in beweglicher Form den Verhältnissen angepasst werden könnte.

Source: *Der Betriebsberater,* 30. Mai 1960.

COMMUNAUTE ECONOMIQUE EUROPEENNE

Une question écrite posée à la Commission de la Communauté Economique Européenne sur les matières fiscales nous a paru assez importante pour faire suivre ci-dessous la question et la réponse. Dr. K. Pater écrit dans Internationale Wirtschaftsbriefe 1959, nr. 22, concernant cette réponse:
– «La supervision des droits fiscaux nationaux par la C.E.E. a commencé».

QUESTION ÉCRITE No 34
de M. Margulies,

(24 juillet 1959)

Le gouvernement français a publié, sous le numéro 59-248, un arrêté du 4 février 1959 accordant des facilités fiscales aux entreprises petites et moyennes qui fusionnent. La Commission de la Communauté Économique Européenne est-elle d'avis que ledit arrêté est contraire au traité de la C.E.E., et en particulier à son article 92?

Par arrêté du 28 mai 1959, le ministère français des finances et de l'économie a créé des facilités fiscales en faveur de certaines immobilisations nouvelles d'origine française et commandées entre le 29 mai 1959 et le 1er janvier 1960. La Commission de la Communauté Économique Européenne est-elle d'avis que ledit arrêté est contraire au traité de la C.E.E., et en particulier à ses articles 7 et 92?

Que compte faire la Commission européenne pour éliminer sans délai ces lésions du traité?

RÉPONSE

(21 septembre 1959)

1. La Commission a examiné en son temps le texte de l'ordonnance française no 59-248 du 4 février 1959 relatif aux sociétés pour le développement de l'industrie, du commerce et de l'agriculture.

Les mesures dont il s'agit n'ont pas pour objet d'encourager la «fusion» — au sens précis de ce terme — des entreprises petites et moyennes, mais simplement la mise en commun et l'utilisation, sous le contrôle de l'État, d'une partie de leurs ressources, en vue de réaliser, pour compte commun, les tâches mentionnées à l'alinéa 2 de l'article premier de l'ordonnance précitée.

Dans son principe, le texte adopté par le gouvernement français poursuit des objectifs qui s'inscrivent logiquement dans le cadre tracé par le traité de Rome. Il semble opportun, en effet, sur le plan communautaire, de faciliter l'adaptation des petites et moyennes entreprises aux conditions nouvelles du marché résultant notamment du développement de la concurrence consécutif au fonctionnement de l'union douanière, pour autant toutefois que les dispositions prises en ce sens soient par ailleurs conformes aux règles du traité.

A cet égard, il a semblé, en première analyse, à la Commission que les avantages fiscaux assez modestes consentis aux petites et moyennes entreprises, actionnaires des sociétés conventionnées, n'étaient pas susceptibles d'altérer les conditions de concurrence sur le marché commun.

La Commission ne méconnaît pas d'ailleurs que le caractère général des dispositions du texte français ne lui permet pas d'en préjuger tous les effets possibles. Elle se réserve donc, dans l'exercice des missions dont elle a la charge d'en suivre l'application, de manière à déceler le cas échéant l'usage abusif qui pourrait en être fait en violation des règles de concurrence prescrites par le traité de la C.E.E.

2. La Commission n'a pas manqué, par ailleurs, de se préoccuper des décisions prises par le gouvernement français en faveur de son industrie des biens d'équipement et qui ont fait l'objet de l'arrêté du 28 mai 1959 sur les dispositions duquel l'honorable parlementaire a appelé son attention.

Après un examen des problèmes soulevés par le texte de l'arrêté, la Commission a obtenu du gouvernement français un certain nombre de précisions. La Commission est arrivée à la conclusion que les prescriptions des articles 92 et suivants du traité étaient applicables à ce cas.

Sur la base des démarches engagées, la Commission sera bientôt à même de prendre une décision. Elle en informera l'honorable parlementaire.

Source: *Journal Officiel des Communautés Européennes,* 30 septembre 1959.

QUESTION ÉCRITE No 6
de M. de la Malène
(12 avril 1960)

Objet: Réciprocité en matière de tarif douanier.

M. de la Malène demande à la Commission de la Communauté économique européenne de bien vouloir lui préciser comment elle entend la réciprocité en matière de tarif douanier.

En effet, les négociations G.A.T.T. s'effectuent sur la base de compensations évaluées en perceptions douanières calculées sur les échanges effectifs pendant une année de référence. Ce qui a pour résultat:

1. Si l'on veut obtenir une diminution en pourcentage du tarif d'un pays relativement protectionniste d'obliger le pays à tarif moins élevé à un abaissement en pourcentage très supérieur à celui qu'il demande à son partenaire;

2. Étant donné que, si l'on considère les échanges bilatéraux entre deux pays, les recettes douanières sont en règle générale plus élevées pour les pays protectionnistes que pour les pays libéraux, d'aboutir à augmenter l'écart entre les pays à tarifs protectionnistes et les pays à tarifs libéraux.

Le résultat en matière de réciprocité peut être donc totalement différent du résultat obtenu en procédant à une diminution égale en pourcentage sur les deux tarifs.

RÉPONSE

L'accord général sur les tarifs douaniers et le commerce (article XXVIII bis) précise que les négociations tarifaires visent, *sur une base de réciprocité et d'avantages mutuels,* à la réduction substantielle des droits de douane et autres impositions perçues à l'importation et à l'exportation, en particulier à la réduction des droits élevés qui entravent les importations de marchandises même en quantités minimes.

La réciprocité ne s'apprécie pas, comme l'indique l'honorable parlementaire d'une manière systématique sur la base de compensations évaluées en perceptions douanières sur les échanges effectifs pendant une année de référence. S'il en était ainsi, les pays à tarifs élevés seraient en effect placés dans une situation particulièrement avantageuse.

En fait, les éléments qui entrent en ligne de compte pour la détermination de l'équilibre des concessions réciproques sont: le volume des échanges touchés par les concessions, l'importance des réductions de droits consenties ainsi que la sécurité des échanges que présente la consolidation des droits négociés.

Le règlement des négociations prévoit expressément que la consolidation de droits peu élevés ou d'un régime d'admission en franchise sera reconnu comme une concession égale à une réduction de droits élevés. Cette règle tient compte ainsi de la situation des pays qui, tout en appliquant des droits faibles ou nuls à la plupart des produits qu'ils importent de leurs principaux fournisseurs, constatent que leurs exportations sont entravées par l'application de droits élevés dans les pays avec lesquels ils négocient; elle laisse aux pays à bas tarifs des possibilités réelles de négociations mutuellement avantageuses.

Source: *Journal Officiel des Communautés Européennes,* 10 juin 1960.

I

RELATIONSHIP OF INCOME TAX AND BUSINESS PROFITS REPORTED ON THE "PRECEDING YEAR" BASIS IN THE UNITED KINGDOM

by

H. S. A. MACNAIR, Londen

Some taxes on business profits are based on the results reported for a given accounting period, irrespective of the duration of the period. This is the case with regard to corporation profits tax in the United Kingdom. For historical reasons however the charge to the United Kingdom business income tax is required to be imposed by reference to the fiscal year which runs from 6th April in one year to 5th April in the next. In the ordinary course of events the measure of this tax in the case of a continuing business is related to the profits reported for the taxpayer's accounting year which ends in the twelve months preceding the 6th April and it is collected on the 1st January in the fiscal year (with six months deferment of half the tax in the case of sole traders or partnerships). Thus a company which reports its profits for the year to 31st March will pay its tax on those profits nine months later while a company reporting to end-June will not pay tax until twice that time has elapsed.

Example	*Company A*	*Company B*
Period of Report	12 months ended 31st March 1958	12 months ended 30th June 1958
Profits reported	£ 12,000	£ 12,000
Fiscal Year of Charge	1958/59	1959/60
Rate of income tax for the year	42.5%	38.75%
Date Tax Payable	1st January 1959	1st January 1960
Tax Paid	£ 5,100	£ 4,650

From an administrative point of view the use of the preceding year basis in place of the current year basis offers the advantage that

the measurement of the taxpayer's liabilities is likely to have been completed by the time the due date of payment arrives. The importance of this result for the United Kingdom fiscal administration lies in the latter's relative inability to enforce adequate payments on account such as are required in other countries such as Australia. This weakness means that a taxpayer who delays the reporting of his results may succeed in postponing payment of a substantial part of the liability ultimately ascertained, without incurring any penalty.

Recent official enquiries into the United Kingdom tax system have led to the recommendation that in the case of companies the current year basis should be substituted for the preceding year basis. The latter is condemned on the grounds that it provides no satisfactory relationship over the life of a business as a whole between reported profits and the amounts on which tax is charged. The discrepancies which occur may be studied under three headings: (1) Commencing years (2) Final years (3) Change of Accountin Date.

When a business is commenced in the United Kingdom, the profits reported for the first twelve months would normally form the basis of the fiscal year preceded by its terminal date, the third fiscal year after the commencement. The measurement of liability for the two initial years is achieved by the use of the current year basis for the first fiscal year (apportioned to 5th April) and by an arbitrary measure for the second year, namely the first twelve months.

Example

A company commences to trade at 1st January 1959 and reports profits £ 12,000 for its first twelve months to 31st December 1959. The tax payable for the first three fiscal years would be measured as follows:

Fiscal Year	*Profits Chargeable*	*Rate of Tax*	*Due Date*	*Tax Payable*
First 1958/59 ($3^5/_{30}$ months)	£ 3,167	42.5%	1st Jan. 1959	£ 1,346
Second 1959/60	£ 12,000	38.75%	1st Jan. 1960	£ 4,650
Third 1960/61	£ 12,000	38.75%	1st Jan. 1961	£ 4.650
			Total	£ 10,646

It will be seen that the tax measured by reference to the profits of the first trading period is equivalent to a real rate of 88.72%. This does not include the corporation profits tax also payable (on a current year basis) at 10%, raised to 12½% from 1st April 1960, so that virtually the whole of the first years profits must be set aside against taxes due for collection within twelve months of the end of that year. It may be noted however that if the initial rate of earnings shows a decline, the taxpayer can take advantage of an option available to him (but not to the fiscal administration) to substitute the current year basis in the second and third fiscal years.

Comparable problems arise when a business ceases. The current year basis is applied to the final fiscal year, taking the proportion from 6th April. As regards the immediately preceding year the fiscal administration (but not the taxpayer) has the option to substitute the current year basis.

Example

A company reported profits of £ 12,000 in each of the years 1958 and 1959. It ceased to carry on business at the end of 1960 for which year reported profits were £ 16,000. The tax payable for the last two fiscal years would be measured as follows:

Fiscal Year	*Profits Chargeable*	*Rate of Tax*	*Due Date*	*Tax Payable*
Penultimate				
1959/60	£ 13,000	38.75%	1st Jan. 1960	£ 5,037
Ultimate				
1960/61	£ 12,000	38.75%	1st Jan. 1961	£ 4,650
			Total	£ 9,687

It will be seen that the tax measured by reference to the profits of the last three trading years is equivalent to a real rate of 24.22%.

The third occasion of discrepancy and the one which gives rise to the greatest difficulty in practice is that which occurs when a change is made in the terminal date of the annual accounts. Such a change is usually decided upon by the management for reasons of administrative convenience but may result in an unexpected addi-

tional burden of tax if the trend of profits is upward. It will be appreciated that an adjustment of the assessed tax on a proportionate time basis would not suffice to prevent manipulations disadvantageous to the fiscal administration. Hence complex rules have been established which seek to achieve an equitable solution by relating the aggregate profits assessed to tax for the period of change to the average rate of profits reported for that period. In accordance with the rules the period of change may include two or more fiscal years. It will be found that a double liability is imposed to some extent if profits are rising, while a decline in profits leads to a lower effective rate of tax.

Example I

A company that has been trading for many years reports these results:

12 months ended 30th September 1958	£ 14,000
12 months ended 30th September 1959	£ 30,000

It is decided to make up accounts in future to 31st March and the profits reported for the 6 months to end-March 1960 are £ 22,000. The measurement of assessable profits is as follows:

Total profits reported for 30 months £ 66,000 = monthly rate £ 2,200.

Profits assessed for the fiscal year 1960/61 based on year to 31st March 1960 are £ 22,000 + $^{6}/_{12}$ × £ 30,000	= £ 37,000

Profits to be assessed for the two fiscal years 1959/60 and 1960/61 are 24 months at £ 2,200	= £ 52,800
Deduct the assessment for 1960/61 (as above)	£ 37,000
The balance is the assessment for 1959/60	£ 15,800

The assessment originally made for 1959/60 before the change of accounting date was known would have been £ 14,000 so that an additional liability arises on £ 1,800 (£ 15,800 — £ 14,000).

Example 11

A company that has been trading for many years reports these results:

12 months ended 31st March 1957 £ 16,000
12 months ended 31st March 1958 £ 32,000

It is decided to make up accounts to the 30th June in future and profits £ 24,000 are reported for the 15 months ended 30th June 1959. In consequence the old March terminal date of the basis period will be retained for the fiscal year 1957/58 only, the new June date being adopted for the two fiscal years 1959/60 and 1960/61. Hence the average adjustment is applied in computing the assessable profit for the intermediate fiscal year 1958/59 as follows:

Total profits reported for 39 months £ 72,000 = monthly rate £ 1,846 Profits to be assessed for the four fiscal years 1957/59 to 1960/61 are 48 months at £ 1,846 £ 88,608

Deduct-

1957/58 (year to 31st March, 1957)	£ 16,000
1959/60 (year to 30th June 1958)	£ 28,800
1960/61 (year to 30th June 1959)	£ 19,200
	£ 64,000
The balance is the assessment for 1958/59:	£ 24,608

The assessment originally made for 1958/59 would have been £ 32,000 (on the basis of the year to 31st March 1958). The tax due for that year would of course have been paid on 1st January 1959 but the subsequent reduction of the assessment to £ 24,608 would give rise to a refund of the tax overpaid. It may be noted however that the rules do not allow of an adjustment where the amount of the adjustment was less than £ 1,000 and less than 10% of the relevant assessments.

In considering problems relating to a change of accounting date it should be appreciated that the rules are complex and have not been fully dealt with in these examples. Moreover there are many special cases the treatment of which are reserved to the discretion of the fiscal authorities, such as the case arising where there are substantial seasonal variations in the rate of profit.

A FEW NOTES ON THE RECENT EVENTS IN FINNISH TAX LEGISLATION

by

EERO SCHREY, Helsinki

In 1956, on pages 277-279 this journal contained a short article on taxation of enterprises in Finland mentioning also the most important changes in this field of taxation which had been effectively introduced during that year. In the following article subsequent events of more general interest are reviewed.

Complementary to the above article it should be mentioned that the corporations' income tax rates have been as follows: In 1957 and 1958 38%, in 1959 45% (on incomes below 4 million marks a year a degressive scale has been applied) and in 1960 38%. The state property tax has been 1% in all these years. The average local income tax in 1958 was in towns 12% and in rural communities 11.33% and the church income tax 1.1%. In computing the taxable income these taxes are not deductible.

A new law on tax procedure

A complete reform of the direct taxation has been pending for many years in Finland. As a partial reform a new statute on tax procedure came into effect from the beginning of 1960. The main purpose of this statute is to unify the procedures in state and local taxation which up to now have been carried out as two separate functions. According to the new law one and the same commission carries out both taxations at the same time. For both taxations one single tax return is given. The material rules for state and local taxation, however, still differ to a certain extent and the commission accordingly has to compute two different taxable incomes for each subject. An appeal against both taxations can be made at the same time and to one and the same authority.

Permanent establishment in local taxation

The question of the place of assessment forms a difficult problem in local taxation as well as internationally. In Finland local income tax is paid a) on income derived from real property to the commune where the property is situated, b) on wages, salaries, dividends and other personal income to the commune of domicile, and c) on income derived from business or from a profession to the commune where the business or profession has been carried on from a permanent establishment.

The new law also includes a definition of permanent establishment. This is a place where, for the continuous carrying on of a business or of a profession, a special establishment has been founded or where special arrangements have been made for that purpose. Such are for instance a place of management, a branch, a factory, a workshop or a store as well as any other permanent arrangement for selling or purchase. A permanent establishment is also a mine, quarry or any other place of natural resources subject to exploitation. Further also, in professional real-estate dealing, the real estates which are, or are intended to be, divided up into building lots, a place where building construction is carried on by contract to a considerable extent and a fixed place of maintenance, or other service for road transport business purposes.

This definition of permanent establishment is in its main characteristics similar to that generally accepted in international conventions for the avoidance of double taxation. It differs however in certain details from what e.g. the Fiscal Committee of the OEEC has recommended.[1]) According to the new law a place for purchase of goods or merchandise will constitute a permanent establishment. This is a consequence of the rural communes' wish to assess the income of the wood-working industries in the place of logging. Anyway the idea is not in the new law realised in the most practical way to serve this purpose. The fact is, that the forestry offices which will constitute a permanent establishment of woodworking companies, are often located in towns or other business centers where the purchase of wood from the neighbouring communes takes place.

It should be noted that in the conventions for the avoidance of

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1) The elimination of double taxation, Report of the Fiscal Committee of the OEEC, 1958 p. 33-34.

double taxation which Finland has concluded with Sweden in 1950 and with Norway in 1955, also a place for purchase is considered as a permanent establishment. It has moreover been agreed that when an enterprise in either country buys wood form the other country and there sells or refines it, or transports it to an export harbour, the income derived from such activity shall be taxed in the country where the trees have been felled, independent of the fact as to whether the enterprise in question in that territory has or has not a permanent establishment for that purpose.

Also according to the convention concluded between Norway and Sweden, a place for purchase constitutes a permanent establishment. As to income derived from felled wood this convention, however, differs from what has been agreed with Finland. The income derived from felling of wood is taxed as income from real property, i.e. in the territory where the property is situated. The feller of wood, but no succeeding possessor of it, can also be assessed for selling or refining of this wood, although he has not a permanent establishment in the territory.

The fact that a place for purchase will constitute a permanent establishment, will evidently cause many difficult problems when dividing the taxable income of the enterprises between different communes.

The definition of permanent establishment also seems to differ from the recommendations of the Fiscal Committee of the OEEC in respect of professional real estate dealing.

Advance decision

In the 11th Congress of I.F.A. in 1957 in Vienna the juridical guarantees of the taxpayers vis-a-vis fisc were discussed. In the resolution concerning this subject the Congress was of the opinion, that the tax authorities should give guidance to the tax payer, where so required, on the tax effect of contemplated transactions. The Congress moreover requested the Permanent Scientific Committee of the I.F.A. to study in the light of the Swedish procedure, the possibility of creating, in each country, a national bureau for giving information in tax problems.[1]) In the new Statute of Tax Procedure

[1]) C. O. Sandström, Au sujet de la décision anticipée en matière d'impôts, Bulletin for I.F.D., Vol. XII (1958) p. 129—140, 211—219.

a similar body (The Central Commission for Taxation) has been created in Finland.

The Central Commission for Taxation consists of a chairman and six other members elected for a period of five years. Two members are nominated amongst the civil servants of the Treasury, two amongst persons proposed by the communal central organizations and the remaining three shall represent expert knowledge in different fields of economic life.

On application by tax payers the Central Commission for Taxation pronounces an advance decision on the fiscal consequences of a given situation if this is considered to be of particular importance to the applicant. In the practice of the Commission such is the case when the fiscal consequences may influence the applicant's decision of whether to make a certain business transaction or not. Advance decision is on the contrary generally refused in cases which are already out of the applicant's sphere of influence. Neither is advance decision pronounced on cases subject to consideration, such as the tax value of property.

The advance decision is, if the applicant so demands, binding in the assessment concerned.

The decision can be appealed to the Supreme Court of Administration either by the applicant or by the appropriate tax authorities. A decision refusing an advance decision can not be appealed against.

Price index clauses

The fall in the monetary value in Finland since 1938 has been considerable. The general index for home market goods is today nearly 20 times higher than in 1938. This has resulted in a fairly general use of index clauses in credit contracts, the most usual bases being the cost of living index, the whole sale price index and the building cost index. This again causes fictious profits and losses.[1])

According to Finnish tax law the increase of capital caused by an index clause is considered to be taxable income. On the other hand, index losses are deductible as necessary cost for gaining an income.

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[1]) As to an attempt to prevent the tax to affect fictious income, by correcting the depreciation allowances with coefficients see Vol. VIII (1954) p. 71—73 of this Bulletin. This arrangement was applied only in 1954; it was repealed for fiscal reasons!

If, however, an index-bound credit has been taken up for the procuring of fixed assets, the index loss is deductible as yearly depreciations of 15%. If the debt has not been incurred for business purposes, the index losses yearly not exceeding 2 per cent of the borrowed capital, can be deducted in the same manner as interest paid.

The corresponding rules are applied to gains and losses caused by loans in foreign currency.

Depreciation

In the article of 1956, mentioned above, the then new rules concerning depreciations allowances were described. At that time a reducing balance method was accepted providing for a yearly rate of 20% of the remaining book value of the assets. In 1957 the possibilities to reduce the value of assets were increased in so far that movable assets acquired after the 1st January 1956 may be depreciated on a reducing balance base at 30%, with a minimum rate of 12% of the historic cost.

In respect of buildings built in 1958 or later and used as factories, workshops or power stations 30% may be written off at will during the first four years. To the rest, i.e. 70%, straight line depreciation is applicable.

Sales tax

Sales tax is payable by the manufacturer on sales, rental or repair of goods, and by the importer on imports. The rate is 25% of the sale price (= 20% of the actual sale price inclusive of tax). There is a reduced rate of 11.2% (= 10% of the price inclusive of tax) for certain small enterprises. No tax is imposed on artisans not employing other people than their wives and descendants not older than 21 years.

There is a large number of goods which are exempt: farm products, most foodstuffs, most textile products, shoes, medicines, books, newspapers, agricultural machinery, ships, aircraft, fuel peat, fuel wood, sawn timber etc. The tax on specified industrial machinery is 15 (13)% and on coal, coke and oil 11.2 (10)%.

The actual sales tax system is however rather unsatisfactory. The list of exempt products has grown too large and many of the excep-

tions are not motivated from the point of view of the purpose of the sales tax. As the tax is levied at a single stage, on the producers price, the tendency to transfer costs from the production to the commercial line is considerable. The progressivity of the tax (artisans 0, smaller firms 11.2%, bigger firms 25%) forms an obstacle to the expansion of enterprises. The collecting of the tax at an early stage binds the financial means of economic life, especially those of commerce. The too high percentage of the tax aggravates all disadvantages of the system.

A committee which in 1956 studied this problem suggested the collection of the tax at the retail trade stage, a uniform percentage and fewer exemptions from tax. Against this suggestion it was held that the great number of retail-dealers would make the control rather complicated. Another committee suggested in 1958 that the tax be collected at two stages, at the wholesalers as well as at the retail-dealers. At the wholesale stage, the tax should be levied on the entire sale price when the tax at the retail stage should be imposed only on the added value. Thus the whole retail price would be taxed and the question of control would be of minor importance as the retailers would collect a relatively small part of the tax.[1]) The list of exempted products would be as restricted as possible and the tax percentage the same for all products. To maintain the present yield of the sales tax would imply a percentage of about 9%.

The suggestion of the committee has met with opposition from various sources. It is of course not difficult to make unpopular a proposal of tax on textiles, footwear and on many foodstuffs, which would cause a rise in prices. Many retailers oppose the suggestion as it would cause them more trouble. The cooperative enterprises are also against it, the reason probably being that they generally are producers as well as merchants. The defects of the present system however require urgent reform as soon as possible.

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[1]) This system is very similar to that recommended by Ganser and Wilhelmi in their book "Harmonisierung der Steuersysteme in der Europäischen Wirtschaftsgemeinschaft, Bergisch Gladbach (1958) p. 37.

THE NEW SWEDISH SCHEME FOR TAXATION OF DIVIDENDS

by

C. O. SANDSTRÖM, Stockholm

According to current tax legislation Swedish corporations are subject to a national and a local income tax on all taxable income, whether distributed or undistributed. The two taxes are levied at a uniform rate on the whole of the profits.

As the individual shareholders are also subject to the national tax (at a progressive rate) and the local tax (at a flat rate) on dividends received from a corporation without credit for the income tax paid by the corporation, a 'double taxation' is established with regard to the distributed part of corporation profits. The same applies to dividends received from Swedish economic associations.

If, however, the shareholder is a Swedish corporation or a Swedish economic association, the corporation or the association is generally exempt from income taxes on dividends received from other Swedish corporations and economic associations. Otherwise a manifold taxation would result where distributed profits of one corporation has to pass through one or several other corporations before being finally paid to the individual shareholder. As will appear further on, there are certain exceptions from this intercorporate exemption.

These principles for the taxation of corporate dividends have been in part reconsidered by a Royal committee in a report of March 21st, 1960. On the basis of the report a government bill was brought before the parliament this spring. According to the bill Swedish corporations will be allowed an annual deduction during six subsequent years for dividends on new shares for which payment has been made during the period July 1st 1961 — December 31st 1966. The right of deduction will be valid at the 1963-1973 assessments. In addition, the present intercorporate exemption for dividends is proposed to be restricted to some extent during the same period. An account of this tax proposal will be given here.

The deduction for new share dividends

The idea of introducing a more favourable treatment of distributed corporation profits has been inspired by foreign tax systems such as the one existing in Western Germany. The German system for company taxation has attracted attention because of the significantly different rates applicable to undistributed and distributed profits. Broadly speaking the German company tax is levied at a rate of 51 per cent on undistributed profits and at a rate of 15 per cent on distributed profits. The lower rate on distributed profits is intended i.a. to encourage the acquisition of capital by means of new shareissues.

In the terms of reference of the committee the Minister of Finance pointed out that suggestions for similar changes in the Swedish legislation had been made in the public discussion with the aim to achieve the same purpose. He expressed the opinion that these suggestions ought to be taken into consideration by the committee.

The committee states in the report that hitherto the Swedish corporations had financed their activities by means of new share-issues in a small degree only. The main reason for this the committee supposed to be that the rising trend of the company profits as well as current liberal provisions on depreciation, valuation of stock in trade, and on tax free allocations to pension and other personnel trusts and to investment reserves had facilitated the self-financing of the companies. Most large enterprises had found it unnecessary to procure capital from outside by issuing new shares. In case of actual need of such contributions of capital the corporations had in general preferred loans, an essential reason being that interests paid on the sums borrowed are deductible when computing the taxable income, whereas dividends are not.

Although the conditions for self-financing had as yet been rather favourable, the committee held that they would not remain so in the future considering the new and restrictive provisions on valuation of stock in trade coming into force at the 1961 assessment and the new provisions concerning allocations to pension trusts, which are to be adopted in consequence of a recently instituted government programme for additional pension benefits of employees, supplementing the general old age pension system. Consequently, it could be expected that the corporations would feel an increasing need to

raise fresh capital. At present, however, the possibilities of borrowing in the capital market are very limited. In view of this the committee supposed that, if some relief from the 'double taxation' were given in regard to profits arising from capital acquired by way of an issue of new shares, the acquisition of capital by this method would increase. A development in this direction might also be in the public interest.

To this point of view, as expressed by the committee, the Minister of Finance added in the bill that it might be put under question whether or not the somewhat exaggerated measure of self-financing, characteristic of the Swedish enterprises, had bound too much capital in the enterprises and thus prevented the capital from finding more useful ends in the field of public economy. He also referred to remarks made on the practice of some enterprises to use reserved profits, not employed in the business, for investment in shares quoted on the exchange and he further pointed to the difficulties met with by new or expanding enterprises in acquiring capital by means of new share-issues. The Minister of Finance concluded that some limited measures had to be taken to counteract the disadvantages of the present system.

In this respect the Minister of Finance accepted the proposal of committee. The committee had declined a solution in conformity with the Western Germany pattern as it was not considered convenient for the present to stimulate the corporations to increase their dividends in a general way. The committee instead recommended measures which are more apt to make new share-issues attractive.

On the basis of the committee report the government bill thus suggests, as mentioned before, an annual deduction during six subsequent years for dividends payable on new shares, paid in after July 1st, 1961 and up to December 31st, 1966. The right of deduction is intended to stand open to corporations deriving profits from business, agriculture and forestry and to be effective at the 1963-1973 assessment.

According to the bill the deduction may not exceed four per cent of the share capital paid up before the end of the income year, no matter whether this capital has increased the share capital or has been set aside to the reserve funds. If in special cases the income year is shorter or longer than twelve months, or the issuing corpo-

ration is engaged in other activities beside business, agriculture or forestry, the amount of the deductions is to be adjusted accordingly. It has been thought that a more generous deduction would cause too many share issues with result that the capital market would become too strained.

An other important limitating condition has been laid down with regard to the proposed right of deduction. In order to avoid preferential treatment to capital transfers between closely connected enterprises taking the form of share-issues, the proposal prescribes that deduction will be disallowed, if at the end of the income year more than fifty per cent of the shares of the issuing corporation are owned or in a similar manner held by other Swedish corporations or economic associations or foreign corporate bodies.

This provision is warranted by the existing intercorporate dividend exemption. Otherwise a parent company which has a claim on a subsidiary would be able to exchange the claim for new shares in the subsidiary. The subsidiary would thus derive a right of deduction for dividends payable on these shares, whereas the dividends would be tax free income in the hands of the parent company. The amount of fifty per cent has been chosen for the practical purpose of avoiding difficulties in establishing close interrelations between enterprises.

If, however, the recipient of the dividends is a corporation or an association not exempt from tax liability in respect of the dividends, there is evidently no reason in itself to deny the issuing corporation the deduction in question. Consequently, the provision includes a reservation to the effect that shares held by such Swedish corporations and Swedish economic associations may be disregarded when estimating whether the fifty per cent-rule is applicable or not. This reservation relates to the second part of the government bill. In this part of the proposal it is suggested — as will be described in detail later — that the intercorporate dividend exemption will be suspended as regards shares acquired for capital investment purposes and shares held by certain holding and investment corporations or associations. Accordingly, all such shares may be disregarded when applying the fifty per cent-rule mentioned above. An exception, however, is made in case more than fifty per cent of the shares of the issuing corporation are held by one or several holding or investment corporations or associations or, as the case may be, in combination

with one or several other corporations or associations closely associated in respect of ownership or organisation. This follows as a result of the main fifty per cent-rule.

In the application of these provisions, shares owned by pension or other personnel trusts are to be considered as owned by the corporation or association owning the trust. Otherwise the fifty per cent-rule might be circumvented by transferring to such trusts so many of the shares of the issuing corporation as to make the rule inapplicable.

The deduction of dividends payable on new shares is granted on condition that the share-capital is paid up in cash or in equivalent value excepting, however, payment in the form of shares in other corporations or associations, as the issuing corporation may be exempt from tax liability in respect of dividends accruing on such shares.

According to the bill, a corporation which wants to get the benefit of the proposed deduction for distributed profits has to include in its return the necessary information as to share-holders. It is assumed that an information on the principal share-holdings will be sufficient. Extensive demands in this respect have been deemed unnecessary. The Minister of Finance expressed the opinion that a corporation would have no great difficulty in establishing whether the conditions as to shareholdings are fulfilled as the managers certainly would be informed of the principal share-holders. He pointed out that in case of doubt the corporation could apply for an advance ruling from the National Tax Board before an issue of shares is decided upon. (In Sweden a taxpayer may obtain an advance ruling on the tax consequences of a proposed transaction. The advance decision is binding on the tax authorities if and to the extent the taxpayer so requests. In so far as the taxpayer himself is concerned, the advance ruling is only advisory.)

As mentioned above, the new deduction for distributed profits will not apply to shares issued earlier than July 1st 1961. The reason assigned in the bill is that this time limit will have the effect of making the corporations postpone their demands of fresh capital until that day and thus indirectly reduce their investments during this year.

Restrictions on the intercorporate dividend exemption

Partly as a consequence of the new deduction of distributed pro-

fits and, partly, in consideration of the increasing tendency of Swedish corporations to invest moneys not employed in the business in quoted shares, the government bill proposes certain limitations on the exemption for intercorporate dividends in addition to those already in existence.

In the committee report it was recalled that, in introducing the intercorporate dividend exemption the legislators had in view only dividends received from corporations or economic associations which are owned by the receiving corporation or association as a link in the organisation of the business.

Here it should be mentioned that originally only one exception from the exemption rule was expressly made in the tax legislation. This exception referred to corporations and economic associations which carry on banking, insurance or other financial business. Shares in other companies held by these institutions are regarded as equivalent to stock in trade or inventory, and dividends therefrom are treated as ordinary business income. But it is interesting to note that also these corporations and associations may enjoy the intercorporate exemption in certain circumstances. Dividends received by a bank or a financial institution, other than a life insurance company, on shares held in a company which is owned as a link in the organization of the economic activities of the bank or the financial enterprise are not treated as taxable income in proportion to the extent that the owner carries on business activities other than the mere holding or administration of securities, real property, or similar assets. Insurance companies, other than life insurance companies, receive the benefit of the exemption for dividends on shares in subsidiaries owned as links in the organization of the parent's economic activity. In these cases the exemption expressly depends on the element of organization between the two companies.

Furthermore it was recalled in the committee report, that when the intercorporate dividend exemption was introduced the legislators were well åware of the risk of misuse of the new right of exemption although no special rules against such possible misuse were enacted immediately. However, such restrictive rules, were adopted in 1951. The exemption for intercorporate dividends was then made inapplicable to closely held companies — businessoperating companies as well as holding companies — which fail to make adequate

distributions of dividends to their shareholders. It is here question of corporations or economic associations the shares of which are chiefly controlled directly or through the intermediary of some legal entity by one or a few individuals only. Secondly, the closely held corporation or association must be one which cannot show that its earnings have been distributed to 'a reasonable degree' to its owners. In any event, however, the exemption was retained as regards dividends from any company which is a 'link' in the organization, provided that the parent's activity consists of something else than the mere administration of real estate, securities or similar assets.

The committee report as well as the government bill emphasised that the proposed limitations on the intercorporate dividend exemption should be viewed against the development accounted for. The new limitations were thus to be regarded as a fulfilment of the original intentions of the legislators. In conformity to these original intentions it had been deemed of importance to take into special consideration the 'organization-link' point of view. With reference to this particular point of view the committee recommended that the test governing the exemption rule should be the nature of and the intensity of the element of organization connecting the two companies between which the dividends goes. The more intimate this connection is, the stronger the reasons are for regarding the companies as an organic unity and, consequently, also the reasons for granting tax exemption in respect of the dividends transferred from one of the companies to the other. On the other hand, if there is no such connection, there is scarcely any reason for exempting intercorporate dividends.

Business operating companies

From this starting-point it has been suggested in the government bill that the intercorporate dividend exemption should not apply to dividends received by Swedish corporations and Swedish economic associations — other than holding companies — from other Swedish corporations or Swedish economic associations, if the shares in these latter corporate bodies have been acquired for capital investment purposes. According to the report this may be the case especially when a corporation or an association invests ready money in shares quoted on the exchange. On the other hand, shares are not to be considered as acquired for such purposes if the acquisition has been

caused by the business carried on by the owning enterprise or by closely held associated enterprises. Thus tax exemption is still to be applicable if the shares are acquired in order to secure the supply of raw materials or to co-ordinate several businesses or branches etc. In this connection the 'organization-link' conception is wider than the one referred to above.

In order to facilitate the application of the proposed legislation a provision is suggested to the effect, that shares should be considered as acquired for capital investment purposes, provided that the voting value of the shares at the end of the income year does not reach 25 per cent of the total voting value of all the shares of the distributing corporation or association and provided further that the recipient fails to show sufficient proof that the acquisition of the shares has been caused by a business, or an agricultural or forestry enterprise operated by the recipient or by a closely connected company. The provision also prescribes — in order to counter abuse — that shares held in a holding company are to be regarded as acquired for capital investment purposes, if the holding company in its turn owns shares which should have been considered as acquired for such purposes, had they been owned directly by the parent company.

Holding companies

By the expression 'holding companies' is here understood corporations or economic associations whose activity consists of the administration of real estate, securities or similar assets. In its wider sense the expression includes also investment companies, i.e. companies whose activity exclusively consists of the administration of securities. But as regards these latter companies special rules are proposed as will appear later on.

As far as holding companies in general are concerned, the committee expressed the opinion that all shares held by them could as a rule be regarded as acquired for capital investment purposes, except in the case where the shares, if held directly by a corporation or association owning the holding company, should have been considered as acquired by the owner as a link in the organization of the business carried on. But the committee stated that the holding companies had the special task to disperse the risks of their partners. The capital of the holding company could be presumed to be invested in such a way that the partners get more safety and regularity of in-

come in respect of this capital. In spite of the general position taken by the committee, they therefore recommended that a holding company should still be exempt from tax liability for dividends received, if the company acts exclusively as an intermediary to its partners.

In the government bill the Minister of Finance endorsed the committee's recommendation. Consequently it is proposed in the bill that a holding company shall be liable to income tax for dividends received from other Swedish corporations or Swedish associations only in so far these exceed the dividends distributed by the holding company.

Investment companies

The committee recognized that the rule suggested for holding companies in general could possibly be too hard on holding companies deriving income solely from shares or similar assets. This statement was made with particular reference to the big investment companies whose shares are quoted on the exchange. These companies are often taking risks in financing the reconstruction of enterprises etc. Consequently they will need some reserves to meet such risks.

Basing themselves on this view and some other reasons also the committee recommended a special provision concerning investment companies, which provision has been included in the bill. Qualified to benefit from this provision are, however, only such investment companies which are owned by a great number of individual share-holders and whose main object is to disperse the risks of these partners by a well spread stock of shares. Under these conditions the investment companies are to be liable to income tax for dividends received only in so far the amount of the dividends received exceeds 125 per cent of the dividends distributed by the investment company.

Shares in foreign companies

According to provisions contained in some Swedish double taxation treaties dividends received from foreign companies shall be regarded for income tax purposes as received from Swedish companies. It has therefore been pointed out in the committee report that the proposed legislation formally could lead to an aggravation of the taxation of dividends from foreign companies in cases where the shares in the foreign company have been acquired for capital investment purposes. On the other hand the committee thought that the shares in foreign companies held by the Swedish corporations mostly

are acquired as a link in the organization of the business. Accordingly the proposed legislation was supposed not to affect the dividends from abroad. Of importance is here that tax liability will not be created if the share-holding amounts to 25 per cent of the share capital of the distributing company. It was furthermore pointed out that the tax exemption provided for in the tax agreements first of all has in view dividends on shares acquired as a link in the organization of the receiving company. The committee held that, if the case should arise, the co-contracting state has the possibility of asking for negotiations on the subject of adjustments in the existing agreement. In this connection could also be raised the question whether the proposed legislation concerning deductions for dividends are to affect the provisions in the agreements applicable to the relief from the Swedish Coupon tax.

According to the committee report the new rules concerning the tax liability of the corporations and the associations for dividends received were to be incorporated with the ordinary tax laws and consequently were to be given a permanent character. As a result of the criticism by which the report was met, the bill has proposed that the rules will be only temporary in the same way as the regulations regarding the right of deductions of dividends. Thus the rules referring to the tax liability are suggested to be valid at the 1963-1973 assessments only.

Finally it can be mentioned that the Minister of Finance recently has appointed a commission which has been given the enormous task to reconsider the whole system of business taxation. (Another commission is going to overlook the general tax system as whole. Both commissions have the same chairman.) The commission will have to discuss among other things proposals to change the basis of business taxation in Sweden from net income to gross receipts or expenditures. With reference to this commission the Minister of Finance said in the government bill accounted for above that the new legislation which would follow as a result of the commissions work could be expected to be achieved before 1973. When this legislation was to be introduced it naturally had to be investigated if the legislation now proposed ought to be maintained in the new tax system.

II

SURVEY OF TAX LEGISLATION
APERÇU DE LEGISLATION FISCALE

BELGIUM *Period from September 1st until October 31st, 1960*

Douanes

Arrêté royal du 28 octobre 1960 relatif à l'exemption des droits d'entrée pour les marchandises importées des Pays-Bas, p. 8558. Mon. Belge, 31.10. 1960.

FRANCE *Period from September 1st until October 31st, 1960*

Droits de timbre

Décret no. 60-1151 du 29 octobre 1960 relatif à la taxe sur la publicité faite en dehors des agglomérations, p. 9827. J.O., 30.10.1960.

GERMANY *Period from September 1st until October 31st, 1960*

Customs and excises

1. Verordnung vom 9.9.1960 zur Änderung der Erläuterungen zum deutschen Zolltarif 1960. BGBl. II, 17.9.1960, p. 2213.

8. Verordnung vom 14.9.1960 zur Änderung der Verordnung zur Durchführung des Mineralölsteuergesetzes. BGBl. I, 21.9.1960, p. 745.

Income tax

Bekanntmachung vom 11.10.1960 der Neufassung des Einkommensteuergesetzes. BGBl. I, 15.10.1960, p. 789.

Conventions

Bekanntmachung vom 13.10.1960 über das Inkrafttreten des Abkommens zwischen der Bundesrepublik Deutschland und der Islamischen Republik Pakistan zur Vermeidung der Doppelbesteuerung und zur Verhinderung der Steuerverkürzung bei den Steuern vom Einkommen. BGBl. II, 28.10.1960, p. 2349.

LUXEMBURG *Period from September 1st until October 31st, 1960*

Conventions

Rectification 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'impôts sur le revenu et sur la fortune et en matière d'impôt commercial et d'impôt foncier, signée à Luxembourg, le 23 août 1958. Mémorial, 24.10.1960, 372.

NETHERLANDS *Period from September 1st until October 31st, 1960*

Turnover tax

Decree of October 24th, 1960, to alter the Royal Decree of February 12th, 1960, containing indication of the import wares of which the turnover tax on import will be increased. Stbl. 420.

Alteration of the executive regulation as regards turnover tax. Ned. Stcrt., 26.9.1960, p. 6.

Alteration of October 27th, 1960, of the Regulation concerning refund of turnover tax 1960. Ned. Stcrt., 28.10.1960, p. 6.

Conventions

Execution of the Double Taxation Agreement of 30.12.1949 between France and the Kingdom of the Netherlands as regards taxes on income and some other tax matters. Ned. Stcrt., 5.10.1960, p. 2.

Agreement of 20.2.1957 between the Kingdom of Belgium and the Kingdom of the Netherlands to prevent double taxation and to determine the rules for mutual administrative assistance as regards taxes on income and property with Protocol and exchange of notes. Tractatenblad no. 119, 4.10.1960.

MISCELLANEOUS-FAITS DIVERS

AUSTRALIA

The new Budget

The Treasurer introduced the new Budget last August. A number of tax increases was announced to convert last year's cash deficiency to a cash surplus in 1960/61. Main changes are the following:

- Personal income tax rates for 1960/61 are increased by discontinuing last year's 5 % rebate.
- All company tax rates are increased by 6 d. in the £ excepting the undistributed profits tax on private companies, which remains at 10 sh. in the £ applying to the income year 1959/60. This means that i.a. the rate of tax for private companies will be 5 sh. in the £ on the first £ 5,000.— of taxable income, and 7 sh. in the £ on the remaining part of income, while the ordinary rates for public companies will be 7 sh. (on the first £ 5,000.—) and 8 sh. on the remaining taxable income.
- Additional income tax relief is granted to aged taxpayers, by small increases of the tax free minimum incomes.
- Sales tax is removed from motor vehicles used by disabled persons; sales tax on electric razors is increased from 12.5 % to 25 %.

Source: *The Taxpayers' Bulletin*, 20.8.60.

BELGIUM

Prospection of Oil

On July 11th, 1960 an act was passed to further the prospecting of oil in Belgium (Mon. Belge, July 30th, 1960). Oilcompanies are granted a relief of income tax on 50 % of their taxable profits resulting from the sales of Belgian oilproducts, provided that those amounts are reinvested in the company or in a participation in a Belgian company within 5 years.

Source: *Mon. Belge*, 30.7.60

DENMARK

Revision of Corporation Profits Tax

As from January 1st, 1960, a completely revised Corporation Profits Tax system will come into force in Denmark. Instead of the very complicated tax structure, consisting of national and municipal income tax, tax on distributed profits and tax on undistributed profits, a uniform proportional profits tax has been adopted. Foreign corporations, formerly subject to the steeply progressive personal income tax will fall under the scope of the new corporation profits tax as well. The rate will be 44 % for Danish corporations and 41 % for foreign corporations, half of the tax paid during a year being deductible in calculating taxable income. This leads to effective rates of about 36 and 34 per cent in case of equal annual profits through the years. Moreover, only Danish corporations may deduct half of the profits derived

during a year with a maximum of 2.5 per cent of paid-up share capital. This deduction is not granted to foreign corporations in order to avoid difficulties in computing the paid-up share capital attributable to the Danish establishment. This drawback is partially compensated by the lower rate of 41 per cent. The National Government will pay part of the tax yield to the municipalities as compensation for the withdrawing of the municipal income tax on corporations.

Source: *Skattepolitisk Oversigt no. 4,* 1960.

INDIA

New legislation

The Finance Act 1960 has received the consent of the President on April 28th, 1960. Further a Taxation Laws (Amendment) Bill, 1960, has been introduced in the Lok Sabha which Bill is meant to amend further the Indian Income Tax Act 1922, the Wealth Tax Act 1957, the Expenditure Tax Act 1957 and the Gift Tax Act 1958. The Bill contains i.a. provisions to secure exemption in respect of salaries of non-resident employees of foreign shipping concerns when their total stay in India does not exceed 90 days, to withdraw the development rebate for road vehicles and office appliances etc.

Source: *Taxation,* June 1960.

NETHERLANDS

Tax bills.

On September 20th, 1960, three new tax bills have been put before the Dutch Legislative. The most important provisions are: 1) The rate of the income tax and wage tax will be lowered. As a result of the diminishing purchasing power of the Dutch guilder the relative tax burden has been increased considerably during the last years, and it is considered to be necessary to adapt the tax rates accordingly. In addition to the lowering of the rates the Government proposes to raise the minimum amount of income which is tax exempt. These provisions will take effect as from July 1st, 1961, unless the financial situation of the Netherlands demands a postponement. 2) The rate of the Dutch Corporation Profits tax will again be fixed at 40-43 %, which last rate has been the normal rate before. (At present the rates are 44-47 %.) The rate of the investment allowance will be reduced permanently to 10% to be spread over two years. 3) The rate of the Dutch net wealth tax which has been also increased as a temporary measure will be reduced from 6 ‰ to 5 ‰. 4) The same will be done with the turnover tax on cigarettes which is reduced from 7 % to 5 %. The turnover tax on passenger cars, motor bicycles and tires for these vehicles is reduced from 20% to 18%. The exemption of turnover tax on cigars will be continued again for a period of three years. 5) Some rates which were temporarily increased will stay so permanently. *a* the special customs duty on gasoline will remain Dfl. 24.25 per hl.; *b* the turnover tax on television sets will remain 18%; *c* the "semi luxury" rate of the turnover tax will remain 10% and the rate for luxury goods 18%.

Source: *Persbericht Ministerie van Financiën,* 20.9.60.

General tax act for the Netherlands, Netherlands Antilles and Suriname.

A discussion has taken place between the State secretary of Finance, the Surinam Finance Minister and an Antilles Government representative in order to draft an act for the regulation of certain tax matters which will give provisions for the three parts of the Kingdom of the Netherlands. The most

important points are: *1* the problem of discrimination in tax matters as regards residents and non-residents; *2* taxation of interest, dividends and royalties; *3* allocation of profits of companies doing business in two or more parts of the Kingdom of the Netherlands; *4* taxation of shipping companies; *5* reciprocal assistance between the tax administration of the three parts of the Kingdom.

Source: *Algemeen Handelsblad,* 8.10.60.

PAKISTAN

New legislation

In Pakistan the new Finance Ordinance 1960 making certain provisions relating to the customs duties, excise duties, income tax, supertax, sales tax and estate duty and to fix the rates of income tax, supertax and estate duty has come into force as from July 1st, 1960.

Source: *Income Tax Reports,* 29.8.1960.

UNITED KINGDOM

Finance Act, 1960

On July 29th the Finance Act 1960 received the Royal Assent, after having gone through a great number of changes.

Source: *The Accountant,* 6.8.60.

TAX AGREEMENTS

German Federal Republic-Netherlands

On September 18th, 1960, the German - Dutch double taxation convention has come into force. The convention will have effect as from January 1st, 1956, for certain dividends as from December 1st, 1958.

Source: *Persbericht Ministerie van Financiën,,* 23.8.60.

Union of South Africa - Kenya, Tanganyika, Uganda, Zanzibar

A draft double taxation convention has been concluded between the Union of South Africa and Kenya, Tanganyika, Uganda and Zanzibar. The double taxation convention between the Union of South Africa and Basutoland, Bechuanaland Protectorate and Swasiland has come into force on the 13th of November, 1959, which means that it takes effect as from July 1956.

Source: *The Taxpayer,* August 1960.

German Federal Republic - India

The German-Indian double taxation agreement of March 18th, 1959, has come into force on September 13th, 1960. The convention will take effect as from 1957.

Source: *Der Betrieb,* 21.9.60.

III

BELGIQUE - TRAITEMENT DE REVENUS TOUCHES PAR DES FONCTIONNAIRES INTERNATIONAUX

Taux de l'impôt. — Influence de revenus internationaux.

Les revenus internationaux des fonctionnaires du Traité de l'Atlantique Nord doivent entrer en ligne de compte pour la détermination du taux applicable aux autres revenus.

Charges professionnelles. - Conditions. - Charges diverses.

L'interdiction de transfert de l'étranger en Belgique, d'une partie du traitement, est sans influence sur les charges professionnelles.

1. — *En approuvant la convention sur l'organisation du Traité de l'Atlantique Nord, la Belgique n'a pas renoncé à appliquer à ses nationaux toutes les autres dispositions de la loi nationale et notamment l'art. 37, L.C., aux termes duquel l'impôt complémentaire personnel est perçu sur l'ensemble des revenus.*

Il ne peut se déduire d'une exonération d'impôts, une immunisation de revenus [1]).

2. — *Ne constitue pas une preuve du montant des charges professionnelles déductibles, l'interdiction de transfert de 50 p.c. du traitement en Belgique. Ce fait est une conséquence des engagements professionnels de l'intéressé et non une dépense professionnelle.*

COUR D'APPEL DE BRUXELLES (11e Chambre B).
1er décembre 1959.

de Burlet, Gérard,

contre

l'Etat belge (Ministre des Finances).

Attendu que le recours n° 19.364, régulièrement déposé au greffe de la Cour le 14 février 1958, en même temps que l'original de sa dénonciation au directeur des contributions directes de la province de Brabant. 1ère direction, est dirigé contre la décision rendue par celui-ci le 13 janvier 1958 et notifiée le 14 janvier 1958; qu'il est recevable;

Attendu que la décision statuait sur la réclamation présentée le 18 juillet 1957 contre la cotisation à l'impôt complémentaire personnel établie à charge du requérant sous l'article du rôle 651.005 de l'exercice 1956, formé pour le bureau des contributions de Perwez;

Attendu que le recours n° 20.091 du rôle de cette Cour, régulièrement déposé au greffe de la Cour le 5 décembre 1958, en même temps que l'original de sa dénonciation au directeur des contributions directes de la province de Brabant, 1ère direction, est dirigé contre la décision rendue par celui-ci le 29 octobre 1958 et notifiée le 30 octobre 1958; qu'il est recevable;

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[1]) La Cour d'appel de Bruxelles a rendu le même jour, un arrêt dans le même sens, en ce qui concerne un fonctionnaire du Conseil de Coopération Douanière (M. de Selys Longchamps).

Attendu que cette décision statuait sur la réclamation présentée le 16 avril 1958 et afférente aux cotisations à l'impôt complémentaire personnel établies sous les articles 750.231 et 750.501 des rôles des exercices respectifs 1957, rappel de droits de 1955, et 1957;

Attendu que le recours n° 20.477 du rôle de cette Cour régulièrement déposé au greffe de la Cour le 29 mai 1959, en même temps que l'original de sa dénonciation au directeur des contributions directes de la province de Brabant, 1ère direction, est dirigé contre la décision rendue par celui-ci le 24 avil 1959 et notifiée le 25 avril 1959; qu'il est recevable;

Attendu que la décision statuait sur la réclamation présentée le 21 janvier 1959 et afférente à la cotisation à l'impôt complémentaire personnel établie à charge du requérant pour l'exercice 1958 sous l'article 850.207 du rôle;

Attendu que le requérant s'élève contre les susdites cotisations en faisant valoir;

1° que les revenus professionnels dont il bénéficie en sa qualité de fonctionnaire du Traité de l'Atlantique Nord sont exempts d'impôts; que, dès lors, il n'y a pas lieu pour la détermination du taux applicable, d'ajouter ces revenus aux autres revenus taxables à l'impôt complémentaire personnel;

2° qu'au cas où l'administration n'admettrait pas le point de vue qui précède, les revenus professionnels ne devraient intervenir qu'à concurrence de la moitié de leur montant brut afin de tenir compte des charges professionnelles exceptionnelles nécessitées par la vie à Paris;

1. *En ce qui concerne la première contestation:*

Attendu que le requérant a occupé depuis le 29 juin 1953 jusqu'à fin juin 1957 le poste de fonctionnaire permanent au Secrétariat International de l'Organisation du Traité de l'Atlantique Nord;

Attendu qu'il se fonde sur les dispositions de l'article 19 de la convention sur l'organisation dudit traité, approuvé par la loi belge du 1er février 1955 (Moniteur belge du 6 mars 1955) aux termes desquels les fonctionnaires de l'organisation visés à l'article 17 seront exemptés d'impôt sur les appointements qui leur seront payés par l'organisation en leur qualité de fonctionnaire de celle-ci;

Attendu que l'appelant, outre les revenus professionnels promérités en sa qualité de fonctionnaire de l'O.T.A.N. a bénéficié durant les exercices litigieux de revenus immobiliers et mobiliers taxables à l'impôt complémentaire personnel;

Attendu que ces revenus immobiliers et mobiliers taxables à l'impôt complémentaire personnel ont été assujettis à ce dernier impôt aux taux correspondant à l'ensemble des revenus recueillis par l'intéressé pendant chacune des années antérieures aux exercices litigieux y compris les revenus professionnels (article 39 des lois coordonnées);

Attendu que la disposition ci-dessus de l'article 19 de la convention n'a pas assimilé le requérant aux agents diplomatiques bénéficiant de l'exemption fiscale majeure dictée par la courtoisie entre les nations et limitée au chef de la mission, du personnel reconnu comme tel et des membres vivant sous le même toit;

Attendu, au contraire, que la convention s'est bornée à assimiler le requérant, simple fonctionnaire international, aux agents diplomatiques de rang comparable quant aux privilèges (article 18 de la convention);

Attendu que les dérogations à la souveraineté des états d'une part, à l'égalité fiscale entre les citoyens d'autre part sont d'interprétation restrictive; qu'en approuvant la convention sur l'Organisation du Traité de l'Atlantique Nord, la Belgique n'a pas renoncé à appliquer à ses nationaux toutes les autres dispositions de la loi nationale et notamment l'article 37 des lois

coordonnées, aux termes duquel cet impôt est perçu sur l'ensemble des revenus;

Attendu qu'il ne peut se déduire d'une exonération d'impôt une immunisation de revenus;

Attendu que l'administration s'est bornée à considérer conformément à l'article 37 des lois coordonnées l'ensemble des revenus du requérant afin de déterminer la progressivité du taux de l'impôt, mais qu'il y a eu exonération de la partie de cet impôt se rapportant au traitement de fonctionnaire international et que celle afférente aux autres revenus restait seule due;

Attendu que les cotisations litigieuses n'ont ainsi porté préjudice ni à l'immunisation fiscale prévue à la convention sur l'Organisation du Traité de l'Atlantique Nord approuvée par la loi du 1er février 1955, ni à aucune autre disposition légale;

Attendu que le taux des cotisations litigieuses a été légalement déterminé et que cette contestation n'est pas fondée;

2. *Sur la seconde contestation:*

Attendu qu'aux termes de l'article 29, § 3, 2ème alinéa, «à défaut d'éléments probants les charges professionnelles des personnes visées à l'article 25, §§ 1er et 2, littera a, sont fixées à 25 p.c. des rémunérations»;

Attendu que le requérant n'apporte pas la preuve du montant de charges professionnelles s'élevant à 50 p.c. de son traitement;

Attendu, en effet, que ne constitue pas cette preuve l'interdiction du transfert de 50 p.c. de son traitement en Belgique, ce fait étant une conséquence de ses engagements professionnels et non une dépense professionnelle;

Attendu que le requérant n'apporte pas cette preuve non plus en invoquant le coût d'un double ménage, dont l'un à Paris; que la nécessité professionnelle d'un double ménage n'est pas établie et que le fut-elle, la Cour, à défaut d'éléments, ne pourrait déterminer les montants déductibles;

Attendu que l'administration a évalué les dépenses professionnelles à 25 p.c. et que cette contestation n'est pas fondée;

Par ces motifs,

La Cour.

Statuant contradictoirement;

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

Ecartant comme non fondées ou dénuées de pertinence toutes conclusions autres, plus amples ou contraires;

Reçoit le recours tel qu'il a été limité; le déclare non fondé; en déboute le requérant et condamne celui-ci aux dépens[1]).

Source: *Bulletin des Contributions*, juin 1960.

[1]) Le requérant s'est pourvu en cassation.

IV

REVIEWS - COMPTES RENDUS

AUSTRALIA

Income tax and social services contribution ready reckoner. Financial Year 1959-60. Issued to subscribers to The Law Book Company's Taxation Service. The Law Book Co. of Australasia Pty. Ltd., 140 Phillip Street, Sydney, 1960, 99 pp.

As in previous years, this Ready Reckoner contains information regarding such subjects as concessional deductions and the averaging of taxable incomes of primary producers as well as illustrations of the application of the rates of tax. Rates of tax and contribution payable by companies are also included.

J. A. L. GUNN, O. E. BERGER and M. MAAS: *Gunn's Commonwealth Income Tax Law and Practice,* 6th edition. Butterworth & Company (Australia) Ltd. (Incorporated in England). 6-8 O'Connell Street, Sydney, 1960, 1832 pp.

This handbook contains a carefully written examination of Australian income taxation. It consists of a comprehensive treatise of the Income tax and Social services contribution assessment Act, the Income tax and Social services contribution regulations and the Income tax (International Agreements) Act. The index alone numbers 230 pages. The Sixth Edition of Commonwealth Income Tax Law and Practice includes all amending income tax legislation passed by the Commonwealth Parliament since the Fifth Edition was published in May 1957. The latest amending Act is the Income Tax and Social Services Contribution Assessment Act (No. 3) 1959, No. 85. Thus, the statute law is stated as at 1 May 1960. Regulations made up to 1 March 1960 are also included in the text, which cites decisions of the Australian Courts up to the close of 1959. The present edition contains references to many new and important decisions, including Volume 7 of the Australian and New Zealand Income Tax Reports, also Volumes 7 and 8 of the New Series of Commonwealth Taxation Board of Review Decisions. The volume also contains references to all relevant income tax decisions of the Courts of England, Scotland, Canada and South Africa since the Fifth Edition was published. The Taxation Agreement with Canada also appears in this volume. Like the previous editions Gunn's Commonwealth Income Tax Law and Practice is impressively broad and penetrating in its coverage of topics. This manual will be of practical service not only to the professional man who may wish to ascertain whether the Department's view of the law is correct, but also to the general taxpayer whose main concern is to ascertain the methods adopted in assessing his own particular taxes.

AUSTRIA

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

Dieses Werk beinhaltet eine übersichtliche Darstellung des Einkommen-

steuergesetzes 1953 mit den Durchführungserlässen, sowie kurze Auszüge einschlägiger Erkenntnisse des Verwaltungsgerichtshofes. Durch die laufenden Ergänzungslieferungen werden die Leser stets über die neuesten Gesetze, Erlässe und Verwaltungsgerichtshofentscheidungen usw. unterrichtet. Das Grundwerk enthält den nach Paragraphen geordneten Rechtsstoff des Einkommensteuergesetzes. Im Anhang werden ausser den im § 106 des Einkommensteuergesetzes aufgezählten weitergeltenden Vorschriften, die mit dem Einkommensteuerrecht in Zusammenhang stehenden Bestimmungen aufgenommen. Die jetzt vorliegende XII. *Ergänzungslieferung* bringt das Werk durch Berücksichtigung der zwischenzeitig zum Gegenstand herausgekommenen gesetzlichen Bestimmungen, BMfF.-Erlässe sowie VwGH.-Erkenntnisse auf den Stand vom April 1960.

BAHAMAS

SIDNEY R. PINE and STRAFFORD L. SANDS: *Tax and business benefits offered by the Bahamas*. Prentice-Hall Tax Ideas, Englewood Cliffs, New Jersey, 1957, 24 pp.

This brochure discusses the United States and Bahamian tax considerations, the recommended forms for business and individual operations and the procedures to be followed. The discussion is divided into the following main points: 1. Reasons for increased business and investment interest in the Bahamas; 2. United States tax considerations; 3. The holding company; 4. The investment company; 5. Trusts; 6. Freeport.

BELGIUM

Nota betreffende de vestiging van Nederlandse personen en bedrijven in Belgie. Nederlandse Kamer van Koophandel voor België en Luxemburg, Warandeberg, Brussel.

This report has been written on behalf of Dutch persons who want to establish a business in Belgium. The aim of this study is to point out the way through the formalities which have to be fulfilled.

CANADA

Corporate Management Conference, Montreal, 1960. Canadian Tax Papers No. 19. Canadian Tax Foundation, 154 University Avenue, Toronto 1, 1960, 52 pp.

This conference report contains the following papers: Federal and provincial profits taxes, by Harvey Perry; Inventory valuation, by George P. Keeping; Making the most of losses, by Campbell L. Leach; Deferred compensation for executives, by George T. Tamaki.

IRVING JAY GOFFMAN: *Erosion of the personal income tax base in Canada and the United States*. Canadian Fiscal Theses Series. No. 2. Canadian Tax Foundation, 154 University Ave. Toronto 1, 1959, 194 pp.

The *Canadian Fiscal Theses Series* is published by the Canadian Tax Foundation in the interests of encouraging advanced study of Canadian fiscal and taxation problems at the university level by giving circulation to doctorate theses and similar works in this field. Chapter one of this second volume in the Series begins with a cursory examination of the development of the income tax in Canada and the United States and is followed by a statement and description of the problem dealt with. Chapter two discusses the concept of income. The main differences between the economic and legal concepts are analyzed in chapters three and four. These are the first sources of erosion and are referred to as exclusions. Chapter five deals with the tax

treatment of capital gains. Chapter six discusses the erosion due to personal exemptions, while chapter seven is concerned with non-business deductions. Chapter eight examines certain deductible business expenses which contribute to the erosion of the tax base. Finally, chapter nine summarizes the main findings of the study and suggests some of the economic and political implications of the erosion problem.

CHANNEL ISLANDS

Tolley's Synopsis of Taxation in the Channel Islands and Isle of Man. Chas. H. Tolley & Co, 33 Nottingham Place, London, W.1, *Price 6/-d.*

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 1960 Budgets in each case.

EIRE

Tolley's Synopsis of Taxation in the Republic of Ireland Chas. H. Tolley & Co, 33 Nottingham Place, London W. 1 *Price 2/6d.*

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 1960 are covered.

GERMANY

Das Institut „FINANZEN UND STEUERN", Markt 14, Bonn am Rhein, hat die folgenden „Grünen Briefe" veröffentlicht: Nr. 31 Professor Dr. RUDOLF STUCKEN: *Geldpolitik, Finanzpolitik und Konjunktur,* 1960, 18 S.

Dieser Vortrag wurde in der Mitgliederversammlung des Institutes am 30. Juni 1960 in Bad Godesberg gehalten.

Schnellkartei des deutschen Rechts. Verlag Dr. Otto Schmidt, Ulmenallee 96-98, Köln.-Marienburg.

Die „Schnellkartei des deutschen Rechts" bringt die vollständigen amtlichen Texte einschl. der ergänzenden Bestimmungen und der dazugehörigen Nebengesetze. Fussnoten unterrichten über Fundstellen und den Zeitpunkt des Inkrafttretens. Die Loseblattform hält das Werk durch schnellste Berücksichtigung etwaiger Gesetzesänderungen stets auf dem neuesten Stand. Das Werk erscheint in 3 Reihen, Reihe III enthält Steuerrecht mit Lastenausgleich. Erschienen sind die *Lieferungen*: *99,* Inhalt: Vermögensteuer-Richtlinien 1960, Änderungen versch. Erlasse; *100,* Inhalt: Steuerkurswerte 1960, Änderungen des I. und II. WoBauG, Neufassung der WoPGDV, Änderung des KraftStG; *101,* Inhalt: Änderungen durch das StÄndG 1960, Änderungen der AStO, Änderungen des KVStG, Neufassung der KVStDV 1960, WStDV 1960 und VStDV 1960, Änderungen des GrStG 1951, u.z.

Deutsche Steuer-zeitung Ausgabe C. Herausgeber Ministerialdirektor MERSMAN, BFM. Industrie-Verlag Carlsheinz Gehlsen, Industriestrasse 63, Postfach 448, Heidelberg.

Die Deutsche Steuer-Zeitung Ausgabe C bringt als selbständiges Nachschlagewerk in bewährter Loseblattform die steuerlichen Gesetze und Ver-

ordnungen im Wortlaut mit Erläuterungen von Referenten und Sachbearbeitern dès Bundesfinanzministeriums. Diese Ausgabe ist eine Ergänzung zur Deutschen Steuer-Zeitung A und B. Erschienen sind:

Lieferung Nr. 173 vom 10. August 1960: *Vierundzwanzigste Durchführungsverordnung über Lastenausgleichsabgaben nach dem Lastenausgleichsgesetz,* vom 2. Juli 1959. Kommentiert von Amtsrat Obermann. Mit den Wortlauten der BdF-Erlasse vom 29. Dezember 1959, 9. Mai 1960 und 13. Mai 1960. 108 Seiten.

Lieferung Nr. 174. Stundung und Erlass der Vermögensabgabe wegen Alters oder Erwerbsunfähigkeit kommentiert von Regierungsoberinspektor Ostendorf, Bundesfinanzministerium, 90 Seiten.

Lieferung Nr. 175. Richtsatz-Sammlung für das Kalenderjahr 1959 für nichtbuchführende Gewerbebetriebe, 115 Seiten.

Steuerrechtsprechung in Karteiform. Verlag Dr. Otto Schmidt, Ulmenallee 96-98, Köln. — Marienburg.

Das Werk ist die Fortführung der von Senatspräsident Mrozek begonnenen Sammlung höchstgerichtlicher Entscheidungen in Steuersachen, der „Mrozek-Kartei", die bis 1944 erschienen ist. Die StRK enthält als vollständige Sammlung: 1. die Entscheidungen des Bundesfinanzhofes, 2. Urteile des RFH von 1944 bis zu dessen Auflösung im Jahre 1945 und 3. die Entscheidungen des OFH in München. Die StRK wird besonders wertvoll durch den gleichzeitigen Abdruck der vollständigen Urteilsbegründungen mit dem Gesetzestext in einer kommentarähnlichen Form der Anordnung, besonders auch wegen der ausführlichen Register. Erschienen ist die *Lieferung* 105. September 1960.

Hübschmann - Grabower - Beck - von Wallis - Schwarz: *Kommentar zum Umsatzsteuergesetz. Lieferung* 16, Sept. 1960. Verlag Dr. Otto Schmidt, Ulmenallee 96-98, Köln-Marienburg.

Diese Lieferung enthält neben Änderungen des Textes der AusglStO die Erläuterungen zu § 4 Ziff. 11 von OFinPräs. a.D. Prof. Dr. Dr. Grabower und zu § 7 Abs. 3 von FinPräs. a D. Beck.

Schriftenreihe des Instituts für Steuerrecht der Universität zu Köln, herausgegeben von Prof. Dr. Armin Spitaler. Verlagsbuchhandlung des Instituts der Wirtschaftsprüfer, Cecilienallee 36, Düsseldorf.

Band 13 Dr. Dr. Erwin Raben: *Warendarlehen im Steuerrecht.* 1960, 108 Seiten, DM 9,50.

Der Verfasser verficht nachdrücklich die These, dass das Warendarlehen im Bilanzsteuerrecht nicht wie ein Gelddarlehen behandelt werden kann. Ferner wendet sich der Verfasser gegen die umsatzsteuerliche Behandlung der Warendarlehen.

Band 14 Dr. Wolfgang Polland: *Steuerrecht und Privatrecht unter besonderer Berücksichtigung der Rechtsprechung des Bundesfinanzhofs und der Finanzgerichte.* 1960, 148 Seiten, DM 17.—

Der Autor hat erkannt, dass auch im Steuerrecht allgemeine Rechtsgrundsätze gelten. Dabei handelt es sich nicht um überpositives Recht im Sinne von Naturrecht, sondern um Rechtsprinzipien mit Gesetzesrang, die lediglich nur nicht kodifiziert worden sind.

Band 15 Werner Kupsch: *Nachsichtgewährung bei Fristversäumnis im Steuerrecht,* 1960, 85 S.

Diese Arbeit gibt nicht nur die veröffentlichten Erkenntnisse, sondern

entwickelt auch eigene Gedanken. Sie enthält rechtsvergleichende Untersuchungen mit den Rechten anderer Verfahrensordnungen, und die von dem Autor erarbeitete Feststellung, dass von einer einheitlichen Tendenz in der Auslegung des § 86 AO durch die Gerichte nicht die Rede sein kann.

Band 16 WILLY CHRISTOPH SCHLIEDER: *Berufs- und Wirtschaftsverbände im Steuerrecht,* 1960, 144 S.

Die ausführliche Behandlung des „wirtschaftlichen Geschäftsbetriebs" und seine Abgrenzung vom Begriff der Vermögensverwaltung darf über das hier behandelte Gebiet hinaus Interesse beanspruchen, insbesondere im Bereich des steuerlichen Gemeinnützigkeitsrechts.

Dr. RICHARD SIGL: *Ladenschlussgesetz.* Kommentar mit systematischer Einleitung. Fachverlag für Wirtschafts- und Steuerrecht Schäffer & Co., Hachländerstrasse 33, Stuttgart, 1960, 298 S. Gebunden DM 22.—

Der Bundesrat hat eine neuerliche Änderung des Ladenschlussgesetzes abgelehnt, weil sich die Regelung des Gesetzes inzwischen weitgehend eingelebt hat. Mit anderen Worten, die lange Zeit so heftig umkämpften Bestimmungen sind auf dem Wege der Gewöhnung in das allgemeine Rechtsbewusstsein eingegangen. Der Kommentar gibt den beteiligten Kreisen eine zusammenhängende Erläuterung der Novelle vom 17.7.1957 und der inzwischen in der Praxis aufgetauchten Probleme an die Hand. Das Buch ist auch für die Ladenbesitzer selbst bestimmt. Daher wurde die Materie durch eine systematische Einleitung in ihrem zeitlichen, räumlichen und sachlichen Zusammenhang hineingestellt. Für die praktische Handhabung ist von besonderem Wert die Organisation der Gewerbeaufsicht sowie die Aufnahme von Ausführungsbestimmungen des Bundes und der Länder im Anhang. Der Text der Anmerkungen ist zusammenhängend leicht und flüssig geschrieben.

Die *Verlagsbuchhandlung des Instituts der Wirtschaftsprüfer,* Cecilienallee 36, Düsseldorf, hat die folgenden Werke veröffentlicht: 1. *Die Vermögensteuer-Hauptveranlagung 1960,* 336 Seiten, DM 12,80.

Das Buch enthält das Bewertungsgesetz und Vermögensteuergesetz in der derzeit geltenden Fassung mit Durchführungsverordnungen und Vermögensteuer-Richtlinien 1960. Als Anlagen u.a. Sonderbestimmungen für das Saarland; Abgrenzung der Betriebsvorrichtungen vom Grundvermögen. Im Anhang: Erbschaftsteuergesetz mit Durchführungsverordnung. Ein ausführliches Stichwortverzeichnis dient dem leichteren Auffinden der gesuchten Bestimmungen.

2. *Steuerkurswerte und amtliche Kurswerte zur Vermögensteuer-Hauptveranlagung 1960.* 128 Seiten, DM 4,20.

Nach § 70 des Bewertungsgesetzes werden die Steuerkurswerte veröffentlicht, die für die Wertpapiere bei der Hauptveranlagung der Vermögensteuer und bei der Hauptfeststellung der Einheitswerte der gewerblichen Betriebe massgebend sind.

3. *Vom Rechtsschutz im Steuerrecht.* Herausgegeben von DR. GÜNTHER FELIX. 1960, 397 Seiten.

Seit Jahren werden in der steuerrechtlichen Rechtsprechung und im steuerrechtlichen Schrifttum Rechtsschutzprobleme erörtert. Die Steuergerichte, insbesondere der Bundesfinanzhof, haben in einer Reihe bahnbrechender Entscheidungen den überkommenen Rechtsschutz, wie er in der Reichsabgabenordnung normiert ist, an die neue Verfassungsrechtslage angeglichen. Das Steuerrecht hat verfassungsrechtliche Einwirkungen anzu-

erkennen. Der Grad der Einwirkung verfassungsrechtlicher Grundsätze auf das Steuerrecht richtet sich in erster Linie nach der Auslegung der Verfassungsurkunde selbst. Inhalt: Rechtsstaat im Steuerrecht, von Dr. Jürgen Salzwedel; Rechtssicherheit im Steuerrecht, von Dr. Günter Jaenke; Gesetzmässige Verwaltung, tatbestandsmässige Besteuerung, von Dr. Heinrich Wilhelm Kruse; Aktuelle Rechtsschutzfragen in der Praxis der Finanzgerichte, von Dr. Klaus Tipke; Steuerliche Verfahrensnormen als Zweckmässigkeitsvorschriften, von Dr. Brigitte Gast; Grenzen der „allgemeinen Steueraufsicht", von Dr. Klaus Vogel; Aussetzung der Vollziehung bei behaupteter Verfassungswidrigkeit des angewandten Steuergesetzes, von Dr. Günther Felix; Probleme des Rechtsschutzes im Steuerrecht, von Heinz Lohmeyer; Der Rechtsschutz im schweizerischen Steuerrecht, von Dr. Ernst Höhn; Der Rechtsschutz im französischen Steuerrecht, von Dr. Friedhelm Breuers; Der Rechtsschutz im amerikanischen Steuerrecht, von Dr. Helmut Debatin, LL.M.; Der Rechtsschutz im britischen Steuerrecht, von Dr. Hans Flick.

4. Hermann Greiffenhagen: *Wirkung der Steuerbegünstigung auf die Finanzstruktur der Molkereigenossenschaften im Vergleich zu den privaten Molkereiunternehmen,* 1960, 116 Seiten, DM 11.—

Hier wird an einem Erwerbszweig dargestellt, dass in dem deutschen Steuersystem konkurrierende Unternehmungen von verschiedenen Unternehmungsformen aber mit gleicher wirtschaftlicher Zielsetzung ungleich besteuert werden. Der Verfasser hat diese Problematik allgemein behandelt in: „Vom Einfluss der Steuern auf die Unternehmungs-Finanzierung" (besprochen in *Bulletin* Bd. XIII, Seite 222).

5. Hermann Greiffenhagen: *Bedenken gegen die Änderung der Rechtsprechung über rechtsverbindliche Pensionszusagen an Gesellschafter-Geschäftsführer von Einmann-Gesellschaften und an beherrschende Gesellschafter-Geschäftsführer von Kapitalgesellschaften,* 1960, 64 Seiten, DM 7,50.

In diesen Ausführungen werden die BFH-Urteile I 11/58 S vom 5.5.1959 und I 4/59 S vom 4.8.1959 einer kritischen Betrachtung unterzogen und eine Reihe von Zweifelsfragen hinsichtlich der tatbestandsmässigen und rechtlichen Haltbarkeit der Urteilssprüche aufgeworfen. Diese Urteile machen die Anerkennung der steuerlichen Wirksamkeit von Versorgungszusagen von dem Nachweis der Ernsthaftigkeit abhängig; hinter dieser tritt die Rechtsverbindlichkeit zurück.

6. Dr. Walter Judeich und Dr. Gunther Felix: *Steueranpassungsgesetz.* Loseblattausgabe. 132 Seiten, Leinenordner, DM 30.—

7. *WP-Verzeichnis 1960.* Verzeichnis der Wirtschaftsprüfer und Wirtschaftsprüfungsgesellschaften in der Bundesrepublik Deutschland einschliesslich West-Berlin, 408 Seiten, DM 12.—

8. *Steueränderungsgesetz 1960.* 84 Seiten.

Um den Lesern ein anschauliches Bild des Ausmasses und Inhaltes der besonders wichtigen Änderungen des Einkommensteuergesetzes zu geben und gleichzeitig einen Vergleich mit dem bisherigen Recht zu ermöglichen, wurde dieses Gesetz in vollem Wortlaut zum Abdruck gebracht. Dabei wurden die alte und die neue Fassung der einzelnen geänderten Vorschriften einander gegenüber gestellt. Da die Änderungen des Körperschaftsteuergesetzes, des Gewerbesteuergesetzes und des Wohnungsbau-Prämiengesetzes nur wenige Paragraphen betreffen, wurden nur diese, gleichfalls unter Gegenüberstellung von alter und neuer Fassung, abgedruckt.

Dr. Rodolf Mueller and Dr. Ernest Steefel: *Doing business in Germany*. A legal manual. Fritz Knapp Verlag, Berliner Strasse 44, Frankfurt am Main, 1960, 158 pp.

Business Executives who wish to incorporate or to set up branch establishments or to do business generally in Germany will find in this book, in English, the legal background for such operations. In particular the book informs them on legal questions pertaining to contracts, powers of attorney, cartels, combines and companies, competition, labour relations, stock markets, foreign exchange and taxes, including agreements concerning double taxation. A detailed table of contents, which at the same time serves as a German-English and English-German glossary, enhances the value of the book.

Besteuerung ausländischer Wertpapiererträge. Commerzbank, Hamburg, 1959, 31 S.

Diese Ausführungen geben in knapper Form einen Überblick über die nationalen und zwischenstaatlichen steuerrechtlichen Vorschriften, die für jeden Käufer von Wertpapieren von Interesse sind. Die Grundzüge der betreffenden einkommensteuerrechtlichen Bestimmungen und der einzelnen Abkommen zur Vermeidung der Doppelbesteuerung sind dargestellt worden.

Dr. Dr. Ernst Heissmann: *Die betriebliche Altersversorgung*. Dargestellt an einem praktischen Fall mit Musterverträgen. Reihe: Steuer und Recht, herausgegeben vom Institut für Steuerrecht der Rechtsanwaltschaft, Heft 6. Industria Verlagsbuchhandlung, Herne, 1960, 67 S.

An Hand eines Falles, wie er in der Praxis täglich vorkommt, führt die Schrift auf leicht lesbare und fassliche Weise in das Fachgebiet ein. Es wird das Für und Wider der betrieblichen Altersversorgung und ihrer einzelnen Formen dargestellt und mit zahlreichen praktischen Hinweisen und Ratschlägen der Weg zu einer sinnvollen, wirtschaftlich tragbaren und sozial befriedigenden Versorgungseinrichtung aufgezeigt. Alle aktuellen Probleme (Selbstfinanzierung, Mindestzinsfuss, Anlagezwang, Widerrufsvorbehalte, Verhältnis zur Sozialrente u. v. a.) werden hierbei behandelt. Der zweite Teil ist vor allem den steuerlichen und versicherungsmathematischen Fragen gewidmet, die] mit der Bildung von Ruhegeldrückstellungen zusammenhängen. Besonders berücksichtigt sind hierbei die Neufassung des § 6 a EStG, die Behandlung der Ruhegeldanwartschaften bei der Einheitsbewertung und die speziellen Probleme bei Ruhegeldansprüchen von Gesellschafter-Geschäftsführern von Kapitalgesellschaften. Muster für eine Ruhegeldordnung und eine Einzelzusage schliessen die Schrift ab, die, ohne wesentliche Einzelheiten zu übergehen, einen Überblick über die schwierige Materie verschafft, in der sich arbeitsrechtliche, steuerliche, betriebswirtschaftliche und versicherungsmathematische Probleme begegnen.

Dr. jur. Alfred Karger: *Steuerlich zweckmässige Testamente und Schenkungen*. Anleitung zur praktischen Auswertung des Erbschaftsteuergesetzes. 6. neubearbeitete und erweiterte Auflage. Industrieverlag Carlheinz Gehlsen, Postfach 448, Heidelberg, 1960, 305 S. Ganzleinen DM 25,50.

Dieses Buch gehört seit seinem ersten Erscheinen zu den Standardwerken der juristischen Praxis. Es will die Aufmerksamkeit aller Erblasser darauf lenken bei ihren letztwilligen Verfügungen in gleicher Weise wie im Wirtschaftsleben steuerrechtliche Erwägungen anzustellen. Das Buch wendet sich an jeden, der in Deutschland Vermögen freiwillig zu Lebzeiten oder von Todes wegen zuwenden will. Dem Verfasser kommt zugute, dass er seit dem ersten Reichserbschaftsteuergesetz von 1919 auf diesem Gebiet nicht nur literarisch tätig war, sondern auch in einer umfangreichen Beratungspraxis neue Vorschläge für steuerlich zweckmässige Testamente und Schenkungen

fand. Die Neuauflage berücksichtigt die durch die Zugewinngemeinschaft entstandenen neuen Probleme. Besonders möchten wir auf die am Schluss des Werkes angefügte Schnellübersicht hinweisen, die dem Benutzer des Buches durch Fragen hilft, bei Testamentsaufstellungen wichtige Punkte nicht zu übersehen und eventuelle Regressansprüche zu vermeiden. Das Buch behandelt auch eingehend die steuerlichen Vergünstigungen bei Schenkungen, die in jedem Falle jetzt anwendbar sind und nicht durch spätere Beschränkungen der Steuervergünstigungen rückgängig gemacht werden können. Unentbehrlich ist das Buch für die Rechtsberater, weil sie die Folgen der neuen gesetzlichen Zugewinngemeinschaft ersehen können. Aus dem Inhalt: Die Erbschaftsteuer als Bereicherungsteuer; Steuervergünstigungen für die Erbschaftsteuerberechnung; Die einzelnen Testamentsarten; Vor- und Nachteile der Schenkungen gegenüber letztwilligen Verfügungen; Die Errichtung letztwilliger Verfügungen; Beispiele einzelner Testamentsarten; Zur Abfassung von Schenkungen.

Steuergesetze. Textsammlung mit Verweisungen und Sachverzeichnis. 9. *Ergänzungslieferung* zur Neuausgabe (14. Auflage). Verlag C. H. Beck, Wilhelmstrasse 9, München.

Die Ergänzungslieferung August 1960 bringt in erster Linie das Steueränderungsgesetz 1960, durch das das Einkommensteuergesetz, das Wohnungsbau-Prämiengesetz, das Körperschaftsteuergesetz und das Gewerbesteuergesetz betroffen sind. Zugleich ist den durch Mietrechtsnovelle und Bundesbaugesetz bewirkten Änderungen des Grundsteuergesetzes und des 1. und 2. Wohnungsbaugesetzes sowie der Änderung des Kapitalverkehrsteuergesetzes und des Investmentgesetzes Rechnung getragen.

MEXICO

JOHN MORRIS RYAN: *Mexican tax exemptions for business.* 1960 edition. John Morris Ryan, Apdo. Postal 2179, Mexico 1, D.F., 71 pp.

Two types of industry are entitled to federal tax exemptions: new industries producing important goods or services never before produced in Mexico; and essential industries engaging in the production of goods or services which are still not produced in sufficient quantity to satisfy Mexican requirements.

This book contains the first state-by-state digest of special privileges for new and needed industries in Mexico which has been published in English. It will therefore be of much use to industrialists and professional consultants faced with problems of industrial location.

MOROCCO

ANDRÉ THRIOREAU: *Code Fiscal.* Edité par Fidutec (Fiduciaire Marocaine d'Editions Techniques), 81, rue Colbert, Casablanca. *Feuillets de mise à jour 1959, nr. 4.*

Un compte rendu de ce livre sur le système fiscal au Maroc a été publié dans le *Bulletin* XI, p. 37. Le *Supplément de décembre 1959* contient des nouveaux Décrets pour les parties Taxe Urbaine, Impôts des Patentes et Droits de Douane.

NETHERLANDS

J. SPAANSTRA: *Vruchtgebruik en inkomstenbelasting* (Niessbrauch und Einkommensteuer). Fiscale monografieën, Geschrift no. 17. Uitg. Mij Æ. E. Kluwer, Deventer, 1960, 121 pp. Preis f 6,10.

Das Recht des Niessbrauchs ist ein juristischer Begriff, der im bürgerlichen

Recht sowie im Steuerrecht zu vielen Fragen Anlass gibt. Der Autor dieser Monographie befasst sich hauptsächlich mit der steuerrechtlichen Seite des Niessbrauchs. Er hat sich beschränkt auf das Verhältnis zwischen dem Niessbrauch und der Einkommensteuer und er hat dabei eine gewisse Vollständigkeit nachgestrebt. In dieser Arbeit sind somit die gesamte niederländische Literatur und Rechtsprechung auf diesem speziellen Gebiet behandelt worden.

Dr. J. H. CHRISTIAANSE: *De inkomstenbelastingvrijstelling voor de internationale ambtenaren*. Uitg. Mij Æ. E. Kluwer, Deventer, 1960, 168 pp. Preis f 9,75.

Herr Christiaanse hat mit dieser Dissertation über die Befreiung von Einkommensteuer für internationale Beamten eine sehr nützliche Arbeit geleistet. Er hat einen Unterschied gemacht zwischen der Position eines diplomatischen Vertreters und einer solchen eines Beamten, der einer internationalen Organisation angehört, wie beispielsweise dem Sekretariat der Vereinten Nationen. Im ersten Teil wird der Begriff internationaler Beamte definiert und werden die Immunitäten, die Gehälter und die Einkommensteuer behandelt. Im zweiten Teil werden die Vereinten Nationen, die europäischen Organisationen und die jetzt bei den Vereinten Nationen gebrauchte „Staff Assessment" besprochen. Der dritte Teil ist der Analyse der Probleme gewidmet. Der Verfasser zieht die Schlussfolgerung, dass eine „Staff Assessment" juristisch verantwortet ist und dass kein Anlass besteht, die Gehälter internationaler Beamten von der Einkommensteuer zu befreien. Bei der Wahl zwischen einer nationalen oder einer internationalen Erhebung wird die Schlussfolgerung gezogen, dass einer internationalen Erhebung den Vorzug zu geben ist.

F. KUIPERS, G. A. KIEFT and D. DE BAAN: *Belastingrechtspraak*. (Judicial procedure for tax courts.) F. Kuipers, Fiskale uitgaven, St. Annastraat 112, Nijmegen, loose-leaf.

The number of tax cases shows a steady increase. It is therefore important, now that there exists a new Act for the regulation of judicial procedure in tax cases, that this book has been published. The publication is in loose-leaf form in view of the regulations and case law to be expected. The material has been treated systematically. However, also examples with explanatory notes will be added. Extensive indexes will increase the usefulness of the book. After the text of the Act, a survey of the judicial organization has been included. This will enable the reader to have an idea of this organization as a whole.

J. P. SCHELTENS: *De algemene wet inzake Rijksbelastingen*. F. Kuipers, Fiskale uitgaven, St. Annastraat 112, Nijmegen, loose-leaf.

In the new General Act on State Taxes in the Netherlands material that was spread over a number of separate Acts has been brought together and, where necessary, revised. The General Act is not in force yet. It is important that in spite of this fact this book has been published as it gives an orientation on things to come to those who will have to work with this Act later on. To a great extent the General Act contains codification and not renovation. For that part therefore this commentary is a treatment of already existing law. Partly for this reason the publisher has chosen the loose-leaf form of publication as it will enable the author to adapt the book to new developments in science and case law. The aim of this work is to give a critical treatment of the Act, not to add another documentary publication to the already existing ones. Also the practical application of the Act will receive attention, as theory and practice have to go together.

A. G. F. L. LINDEIJER: *Enkele facetten der Successiewet.* (Das Erbschaftsteuergesetz.) FED, Roemer Visscherstraat 29, Amsterdam-W 1, 1960, 139 S. Fiscale Studieserie nr. 13.

In dieser Ausgabe werden besonders die Aspekte des niederländischen Erbschaftsteuergesetzes behandelt die für Unternehmer und Steuerberater wichtig sind. Abgesehen von diesen Bestimmungen wird der Leser aber auch über den Aufbau des Erbschaftsteuergesetzes orientiert. Die Auseinandersetzungen sich möglichst einfach gehalten und es ist versucht worden einen Einblick in das „Warum" der gesetzlichen Bestimmungen zu geben.

Vademecum voor in- en uitvoer.

Samengesteld door de Economische Voorlichtingsdienst. N. Samsom, Alphen aan den Rijn.

In dieser Ausgabe ist in einfacher Weise auseinandergesetzt worden welche niederländischen und ausländischen Bestimmungen bei Einfuhr und Ausfuhr zu beachten sind, welche Zölle verschuldet sind, welche Befreiungen möglich sind und welche Anforderungen angesichts der Qualität der einzuführenden oder auszuführenden Waren gestellt werden können. Der Inhalt ist über zwei Bände verteilt und wie folgendermassen eingeteilt: *1. Einfuhr:* Formalitäten und Dokumente, Zölle, Steuern und Abgaben, Verbrauchsteuern, Gesundheitsvorschriften, Einfuhrverbote und -regelungen, besondere Sendungen, Reiseverkehr. *2. Ausfuhr:* Niederlassung als Spediteur, Formalitäten und Dokumente, Konsense und andere Abgaben, Qualitäts- und Gesundheitsvorschriften, besondere Ausfuhrregelungen, besondere Sendungen, Reiseverkehr. *3. Länderübersichten:* Vorschriften, welche für die Einfuhr nach den meisten Ländern womit Handelsbeziehungen unterhalten werden, gelten: Handels- und Bezahlungsverkehr, Devisenverkehr, Dokumente u.s.w. Eine ausführliche Inhaltsangabe und ein alphabetisches Register erhöhen die Nützlichkeit des Werkes.

G. LAEIJENDECKER: *Successiewet 1956.* 3rd edition. Supplement 3, September 1960. De Belastingwetgeving Serie R. & D. No. 1. J. Noorduijn en Zoon N.V. — Gorinchem — Netherlands.

P. KARMELK: *Loonbelasting.* (Wage Tax) Edited by P. BOGAARDS. 5th edition. *Supplement 6.* October 17th, 1960. De Belastingwetgeving Serie D.B. No. 11. J. Noorduijn en Zoon N.V. — Gorinchem — Netherlands.

P. KARMELK: *Inkomstenbelasting* (Income Tax). 8th edition. *Supplement 13.* Sept. 28th, 1960. De Belastingwetgeving Serie B.D. No. 2. J. Noorduijn en Zoon N.V. — Publishers — Gorinchem.

NORWAY

JACOB JARØY: *Skattelov Samling.* Baugeidsgt. 16, Skien, Norway. *Ajourføring nr. 12.*

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 *Supplement no. 12* has been published containing a number of pages for replacement. This Supplement contains the text of the double taxation agreement between Norway and India.

Kryssløpsanalyse av produksjon og innsats i Norske naeringer 1954. (Input - output analysis of Norwegian industries 1954). Statistisk Sentralbyrå, Oslo, 1960, 614 pp.

The Central Bureau of Statistics has been engaged in interindustry analysis

since 1952. One purpose of this work has been to bring forth the data required for the application of input - output analysis to problems in the Norwegian economy. Another purpose has been to investigate empirically and theoretically the validity of the basic assumptions in this analysis. The Bureau expects to publish later on results of the research into the foundations of input - output analysis, and to give examples of applications to particular problems.

PUERTO RICO

MOHINDER S. BHATIA: *Redistribution of income through the fiscal system of Puerto Rico*. Puerto Rico Planning Board, P.O. Box 11007, Santurce, Puerto Rico, 1960, 49 pp.

This study determining the effects of the fiscal system upon distribution of personal income is divided into three parts. The first part spells out in quantitative terms the incidence of taxation; the second part determines the effects of the government expenditures on the various income brackets; and the third part integrates the first two parts and highlights the overall effects of the fiscal system on consumer unit income brackets. Because this study discusses certain conceptual and methodological problems it should be of interest to students of fiscal economics.

SPAIN

Manual de la Administración. T-A-L-E-, Hortaleza 20, Madrid.

In *Bulletin* XIV p. 43 and 108 reviews were published of this useful loose-leaf book which contains a systematic survey of Spanish taxation. *Supplement 22* of September 1960 contains new pages for the parts on legislation and case law, studies and commentaries, and a number of pages to be exchanged.

SWEDEN

ERLAND GEIJER, ERIC ROSENQVIST and HARRY STERNER: *Skattehandbok*. Volume I, Författningstexter mid kommentar; 4th edition. Volume II, Regeringsrättsutslag och Riksskattenämndsmeddelanden jämte register, 4th edition. P.A. Norstedt & Söners Förlag, Stockholm, 1957 and 1959, 813 and 1022 pp.

This is a comprehensive survey of Swedish income tax law. *Volume I* contains the full texts of the national and local income tax laws and of related laws, including those governing the net wealth tax, the investment reserves for economic stabilization, the coupon tax, the tax on undistributed profits, the tax on corporations reducing share capital, and other taxes. Statutory regulations are also included. Under each section there is a detailed commentary summarizing the legislative history of the section, the important cases and rulings relating to it, and how it is applied in practice. There is a summary of Sweden's tax treaties.

Volume II contains more than four thousand legal cases from the "Regeringsrätten" (Supreme Administrative Court) during the years 1949-1958 and rulings from the "Riksskattenämnden" (National Tax Board) during the years 1952-June 1959 as well as registers thereto. The National Tax Board has two chief functions: First it is authorized to give advance rulings to taxpayers on the tax consequences of proposed transactions. These rulings are available not only to residents but also to nonresident corporations and individuals contemplating business or other operations in Sweden. The rulings are issued by the National Tax Board, on the taxpayer's application, after formal adversary proceedings in which both the taxpayer and the govern-

ment are represented before the Board. These rulings are not binding on the taxpayer but they are binding on the government if and to the extent the taxpayer so requests. In addition to these special rulings issued on the request of particular taxpayers, the Board also issues general tax rulings for the guidance of local tax authorities and of taxpayers generally.

MARTIN NORR and CLAES SANDELS: *The corporate income tax in Sweden.* Stockholms Enskilda Bank, Stockholm 16, 1960, 59 pp.

This pamphlet has been compiled for the guidance of those who contemplate doing business in Sweden or with Sweden. It consists of the following chapters: Summary of the income tax structure; Basic principles of the corporate income tax; Ordinary deductions; Other deductions; Other tax rules of importance to business; Taxes other than income taxes; International aspects of the Swedish corporate income tax. Copies of this booklet may be obtained without charge by request to Stockholms Enskilda Bank, Stockholm 16, Sweden.

SWITZERLAND

Dr. SILVIO BIANCHI and Dr. OTTO L. WALTER: *Swiss tax shelter opportunities for U.S. business.* Schulthess & Co. AG, Zürich, 1960, 50 pp.

This summary intends to give the American businessman and adviser a view of the most important Swiss taxes and some of the problems related to the establishment of a U.S. business organization in Switzerland. The booklet contains i.a. chapters on the following subjects: Legality of base companies; general structure of taxation; international double taxation; United States taxation of income of Swiss subsidiaries; establishment of corporations in Switzerland.

Dr. P. LÄUBIN: *Die steuerrechtliche Behandlung der Lebensversicherungen in der Schweiz.* Cosmos-Verlag, Aarbergergasse 46, Bern, 1960, 48 S.

In einer Aufsatzfolge, die vom März 1960 an in der Steuer-Revue erschienen ist, hat der Verfasser einen Überblick über die derzeitige steuerrechtliche Behandlung der Lebensversicherung nach den Steuergesetzen des Bundes und der Kantone gegeben. Nach einer kurzen Skizzierung der hauptsächlichsten Lebensversicherungsformen und -arten zeigte er in einem 1. Teil die Besteuerung der Einzellebensversicherung ohne Zusammenhang mit einem Dienstverhältnis auf. Der 2. Teil befasst sich mit der steuerlichen Behandlung derjenigen Einzellebensversicherungen, die im Zusammenhang mit einem Dienstverhältnis begründet werden. Ein 3. Teil umschreibt die Besteuerung der Kollektivversicherung, die den Beteiligten in verschiedener Hinsicht zu grösseren Steuerprivilegien verhilft als die Einzellebensversicherung. Der 4. Teil enthält die Grundsätze für die Erhebung der Stempelabgabe auf Quittungen für Versicherungsprämien, wobei die Kollektivversicherung wiederum weniger belastet wird als die Einzelversicherung. Der 5. Teil schildert die Vorkehren des Bundes zur Sicherung der Steueransprüche des Fiskus bei Versicherungen (Verrechnungssteuer bzw. Meldeverfahren). Das Neuartige an der Abhandlung von Läubin sind die klare Systematik, die dem Praktiker die Bearbeitung von Lebensversicherungs-Steuerproblemen ganz wesentlich erleichtert, sowie sieben Tabellen, welche die Steuerlösungen von Bund und Kantonen anschaulich wiedergeben. Die Arbeit von Läubin, die nun vom Cosmos-Verlag zusammengefasst in einem praktischen und gediegen aufgemachten Büchlein herausgegeben worden ist, entspricht einem grossen Bedürfnis. Sie orientiert auf zuverlässige und leicht fassliche Weise alle Kreise, die sich mit Steuerproblemen der Lebensversicherung befassen.

UNION OF SOUTH AFRICA

B. E. J. BLANN: *Principles of South African Income Tax. 1960 Cumulative Supplement.* Butterworth & Co (Africa), 33-35 Beach Grove, Durban, 1960, 76 pp.

Important changes in the Income Tax Law have necessitated the preparation of this supplement to *Principles of South African Income Tax* and the opportunity has been taken to bring the references to decided cases up to date. The Income Tax Act, 1955, introduced two new taxes — an undistributed profits tax charged on certain companies and a donations tax charged on individuals ordinarily resident in the Union and companies registered, managed or controlled in the Union. The Income Tax Act, 1956, introduced provisions codifying the practice relating to trading stock and amending the law dealing with pension and provident funds. The Income Tax Act, 1957, reintroduced the compulsory savings or loan levy. Other important amendments to the law were the extension of the tax to dividends derived from non-Union sources and the provision for relief in respect of certain medical and similar expenditure. The Income Tax Act, 1958, provided for the exemption of certain bonus or capitalisation shares. The Income Tax Act, 1959, extended the tax to permanent building societies and mutual insurance societies and tightened up the provisions dealing with legal avoidance. The Income Tax Act, 1960, abolished super tax and altered the rate basis, introduced investment allowances, restricted the Commissioner's power to make additional assessments and provided relief in respect of contributions made to retirement annuity funds.

A review of the main work was published in Bulletin XI p. 233.

A. S. SILKE: *The 1960 Income Tax Legislation.* Juta & Co., Ltd. P.O. Box 30, Cape Town, 1960, 201 pp.

Dr. Silke's annual *Income Tax Legislation* is meant as a supplement to *Silke on South African Income Tax* (review in Bulletin X p. 112). *The 1960 Income Tax Legislation* is particularly welcome since the many amendments of the 1960 Income Tax Act call for a reliable guide. Super tax has now been abolished, public companies are no longer subject to the undistributed profits tax, the system of taxation is now one of block rates, the number of allowable deductions has been appreciably increased, to mention only the deduction of contributions by self-employed persons to pension schemes. The book gives all the information required and, in addition to the whole legislation of 1960, including Double Taxation Agreements, contains the consolidated Income Tax Act, no. 31 of 1941, as amended. There is also a chapter on the South-West African income tax.

Butterworths Taxation Statutes Service. Service Issue No. 28, July 1960. Butterworth & Co (Africa), 33-35 Beach Grove, Durban.

A review of Butterworths Taxation Statutes Service appeared in *Bulletin* XI, p. 233 *Service Issue No. 28* consists of the Union of South Africa Income Tax Act, 1941 the Income Tax Act, 1959 and 1960, the double taxation convention Union — Kenya, Tanganyika, Uganda and Zanzibar, the Technological Training Advancement Act, 1960. This supplement contains further the text of an Ordinance to levy a territorial surcharge in the Federation of Rhodesia and Nyasaland.

UNITED KINGDOM

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 1960/61 (45th Edition) Price 18/6d.

This edition incorporates all the provisions of the Finance Act 1960, and all High Court decisions, changes in practice, concessions, etc. up to July 1960. (Over 1,600 cases are quoted.) The important new legislation regarding anti-evasion, the new penalty provisions, post-cessation receipts and compensation payments are 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 (24th Edition) Price 6/-d.

Both the current law and practice and the whole of the past legislation are dealth with in detail, with examples, together with numerous High Court decisions.

Tolley's Synopsis of Estate Duty (11th Edition) Price 6/-d.

The provisions of this year's Act giving relaxation of the law re intervivos gifts, and of the basis of valuation of assets in certain cases of "controlled" companies, are dealt with, and all concessions, changes in practice and High Court decisions up to July 1960 are included. The work constitutes a completely up to date reference on every aspect of Estate Duty, amply supported by quoted authority.

Patents and income tax. Explanatory Notes. Issued by the Board of Inland Revenue, Somerset House, London W.C.2, 1959, 8 pp.

These Notes explain the main features of the Income Tax law and practice with regard to: (a) allowances in respect of expenditure on patent rights; (b) the taxation of sums received in respect of such rights.

Current Law Income Tax Acts Service. Sweet & Maxwell, 11 New Fetter Lane, London, E.C. 4.

Release 60, August 15, 1960. This Release brings to subscribers the text of the Finance Act, 1960, fully annotated.

UNITED NATIONS

International Tax Agreements. Volume IX. *Supplement 1.* United Nations, New York.

This supplement consists of a new table of contents and the texts of new agreements: Canada-Federation of Rhodesia and Nyasaland, Belgium-Canada, Finland - Sweden (additional agreement), Denmark - Sweden, Sweden - United Arab Republic, India - Sweden, Federal Republic of Germany - Netherlands, Pakistan - Sweden, Japan - Pakistan, Japan - Norway, Denmark - Japan, Canada - Finland, Egypt - Netherlands (Air Transport Companies), Sweden - United Arab Republic (Air Transport), Canton de Vaud (Switzerland) - United Kingdom (death duties), Belgium - Sweden (death duties).

UNITED STATES OF AMERICA

WOLFGANG G. FRIEDMANN and RICHARD C. PUGH: *Legal aspects of foreign investment.* Little, Brown and Company, 34 Beacon Street, Boston 6, 1959, 812 pp.

Individuals concerned with international trade and investment will welcome this symposium on the legal conditions governing foreign investment in forty selected countries. The country studies have been written

by distinguished authorities with a background of vast practical experience—the great majority of whom are nationals or residents of the countries concerned. This survey is followed by a study of the principles and methods of protection afforded by contemporary international law to the foreign investor. The book is concluded by a comparative analysis of the material presented, written by the editor and assistant editor. Major emphasis is placed on the forms of business organization available to the foreign investor and on the relative merits of each with regard to capitalization, managerial control, governmental supervision, income withdrawal, and the like. Attention is given to the effect, on the profits from investment of foreign capital, of special investment laws, foreign currency restrictions, import and export regulations, and *taxation*. The result is an authoritative guide both to an over-all evaluation of the investment climate in a given country and to the selection of the most favorable form of business organization. The choice of the nations dealt with is based on their actual or potential importance as areas of investment, and is broad enough to afford representative examples of the wide variety of laws, policies, and regulations currently in effect.
As a guide to the individual investor or to corporate officials, LEGAL ASPECTS OF FOREIGN INVESTMENT is indispensable, for it provides both a comparison of the attitude toward foreign investment of the forty countries studied, and a careful analysis of the advantages and disadvantages of the forms of business enterprise available in each to them. Since the legal developments and changes in the field of foreign investment are subject to modification as a result of government policies, provision has been made for the issuance, from time to time, of supplements noting major changes.

LEWIS H. KIMMEL: *Federal budget and fiscal policy 1789-1958*. The Brookings Institution, 722 Jackson Place, N.W., Washington 6, D.C., 1959, 337 pp.

This monograph is a carefully documented examination into the evolution of budgetary ideas and philosophies, both academic and politic, in the United States since its founding. Particular emphasis is given over the period of the thirties and subsequently when attitudes changed drastically towards fiscal policy. The Roosevelt era was one where two goals, perhaps not compatible, were being aimed at—reform and recovery. Recovery was the aim of everyone, but the "new economics" had begun to win out and reform of the whole fiscal policy of the nation was simultaneously deemed necessary by the administration. The contribution of modern economic and fiscal theory is that public expenditures and government activities have attained a new dignity. In summary, Kimmel states: the modern conception is that the only sound fiscal policy is a flexible one. This is a logical extension of the idea that a free society is a flexible society—one willing to experiment and "seeking to adjust its conditions to its changing needs".

Tax guide for U.S. citizens abroad. 1960 edition. U.S. Treasury Department, Internal Revenue Service, Publication No. 54. U.S. Government Printing Office, Washington 25, D.C., 26 pp.

This booklet is for the use of the United States citizen who resides or works abroad. It explains the exemption from tax of income earned abroad for such citizens who meet the requirements of section 911 of the Internal Revenue Code.

GLENN W. FISHER: *Financing Illinois Government*. University of Illinois Press, Urbana, Illinois, 1960, 202 pp.

This study is a survey and analysis of the finances of the Illinois state government over a seventeen-year period, followed by projections for the coming decade. It is not directed toward a solution of particular financial

problems. More attention has been given to expenditure than is usually the case, and an attempt has been made to indicate that expenditure is only the other side of the public service coin.The portion of the study devoted to state revenue emphasizes the overall tax structure rather than very detailed description of each tax.

STANLEY S. SURREY and WILLIAM C. WARREN: *Federal Income Taxation,* The Foundation Press, Inc., 268 Flatbush Ave, Ext., Brooklyn, 1960, 1712 pp.

This 1960 Edition continues the general arrangement and pattern established in the earlier editions. The major changes, apart from revisions generally necessary because of the passage of time, involve Chapters 5, 8 and 9. Chapter 5, relating to Gains and Losses from the Disposition of Property, has been reorganized to consider first the aspect of computation of gain or loss for assets in general and then to consider and discuss capital gain versus ordinary income aspects. In the capital gain area, the material has been reorganized to underline the difficult problems relating to the classification of assets and transactions, which are inherent in the present treatment of capital gains and losses. Chapter 8, relating to Corporations and Security Holders, and Chapter 9, relating to Corporate Reorganization and Readjustments, have been expanded to reflect the growing experience under the 1954 Code, as respects both operational aspects and policy issues, and also the subsequent changes under the Technical Amendments Act of 1958. Material relating to the policy issues inherent in the gross income and deduction preferences and their effect upon the rates of tax has been added to Chapters 2 and 3 relating to Gross Income and Deductions. The material in Chapters 6 and 7 reflects to statutory changes which it is anticipated will be adopted in the Trust and Partnership Income Tax Revision Act of 1960. This book is intended to be used in conjunction with the Internal Revenue Code of 1954 and the Treasury Department Regulations.

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. XIV,* p. 302 *Supplements* 33-34 have been published.

Federal Taxes. Published by Prentice-Hall, Englewood Cliffs, New Jersey.

A review of the 1960 edition of this standard work on Federal Taxes was published in *Bulletin XIV,* p. 302 *Report Bulletins Vol. XLI,* no. 27-45 which keep these volumes up to date have been published.

Prentice-Hall, Englewood Cliffs, New Jersey has published in its series Federal Tax Report Bulletin, Section 2, the brochure:
1960 Year-End Tax Tactics.

VENEZUELA

CARL S. SHOUP a.o.: *The fiscal system of Venezuela.* A report. The Johns Hopkins Press, Homewood, Baltimore 18, Maryland, 1959, 491 pp.

At the request of the Minister of Finance of the Republic of Venezuela, a Commission to study the fiscal system of Venezuela was formed by Prof. Carl S. Shoup in 1958 consisting of Prof. John F. Due, Lyle C. Fitch, Sir Donald MacDonald, Prof. Oliver S. Oldman, Prof. Carl S. Shoup, Prof. Stanley S. Surrey. The Commission produced a study unusual in breadth and depth. The study is focused on the tax system of Venezuela in the comprehensive sense of including national, state, and local taxes. The Report not only analyzes each revenue source in detail, including economic, administrative, and legal aspects, but also presents for the first time a comprehensive view

of size distribution of income in Venezuela, and sources and uses of capital. Both tax policy and tax administration are covered. In the first two chapters, the Venezuelan economy is described and analyzed with respect to characteristics important for tax policy: distribution of income, rate of investment, and sources of its finance, and optimum uses of capital. Estimates of costs for certain goals are given for education and public health. The Government accounting system is analyzed with a view to changes that would provide data for national income accounts. Because of its thoroughness, this book forms a model and base of comparison, for the evaluation of the tax system of any country. It is thus a basic reference work of value to economists.

V

BELGIQUE - REFORME FISCALE

Dans un rapport de la Commission des finances du Sénat [1]), il a déjà été dit que la réforme fiscale doit s'inspirer du principe de la justice distributive alors que beaucoup trop de personnes et de groupes ne songent qu'à en retirer des avantages particuliers.

Ci-après encore quelques citations dans ce sens.

En 1953, Fr. Schaeffer, ministre des finances de la République fédérale allemande, écrivait: «Une simplification de la législation fiscale présuppose que les différents groupes économiques renoncent au grand nombre de réglementations spéciales contenues actuellement dans la loi. Ce n'est qu'alors qu'une réforme fiscale organique pourra répondre aux espérances» [2]).

M. Lauré insiste d'autre part sur le fait que «la vraie réforme fiscale est loin d'être un problème technique [3]): elle est un problème de psychologie collective. Les meilleures solutions techniques sont impuissantes à procurer la simplicité, tant que les contribuables n'acceptent pas de renoncer à la recherche de privilèges. On ne peut aboutir à une réforme fiscale que par la restauration du civisme et en se livrant à une préparation psychologique. A ce titre, l'information des contribuables et l'amélioration des contacts humains entre eux et le fisc sont particulièrement importants . . .» [4]).

Et plus tard, Maxime Chrétien allait plus loin encore et écrivait: «La réforme fiscale est un problème politique beaucoup plus qu'un problème technique. Voilà qui explique pourquoi (en France) elle est toujours promise et n'est jamais réalisée» [5]).

D'ailleurs, que représente pour le contribuable cette expression «réforme fiscale»?

«Cette expression», écrivait P. Mendès-France, «recouvre, par une sorte de malentendu, des notions très diverses, parfois même inconciliables. En fait, lorsque les Français réclament la réforme fiscale ils demandent au moins quatre choses différentes:

1° une diminution du poids des impôts;

2° un système plus juste, plus équitable, tenant mieux compte de la situation sociale des contribuables;

3° un système qui soit mieux en rapport avec les besoins de la vie économique, plus stimulant pour l'activité générale, la production, le progrès:

4° un système enfin dans lequel il y aurait moins de contrôles, moins d'occasions de conflits entre le fisc et les contribuables, moins de contacts irritants avec l'administration et, par voie de conséquence, moins de contestations et de marchandages.

Or, ces demandes sont incompatibles; on ne peut les satisfaire en même

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[1]) Voir Bulletin des contributions, avil 1960, n° 363, p. 603.

[2]) Rheinischer Merkur, septembre 1953.

[3]) Ce qui n'implique nullement que la réalisation technique d'une réforme fiscale soit nécessairement une chose particulièrement aisée.

[4]) Maurice Lauré, Traité de politique fiscale, p. 357.

[5]) Maxime Chrétien, Chronique annuelle de jurisprudence fiscale, Revue de Science financière, 1958, n° 2, p. 392.

temps. De nouveau, il faut choisir, sinon on ne fait rien. Et c'est bien ce qui s'est passé (en France) depuis des années »[1]).

La nécessité de ce choix a été confirmée par le rapport du groupe d'études institué le 9 février 1959 par le Gouvernement français en vue de l'élaboration d'une réforme fiscale: «. . . il convient de ne pas oublier que les critères d'une bonne fiscalité présentent des exigences contradictoires: la simplicité est souvent ennemie de la justice. Le groupe d'études a pu constater que, si les bases du système fiscal français étaient faussées depuis quelques années, si la complexité s'était aggravée, c'était toujours sous la pression des contribuables ou de leurs représentants, au nom d'un idéal de justice. Tout régime fiscal traduit donc un état d'équilibre entre la justice et la simplicité, toute réforme fiscale, un choix entre ces objectifs »[2]).

A cela s'ajoute encore le choix entre ces objectifs d'une part, et les objectifs économiques d'autre part, ces derniers étant généralement aussi en contradiction tant avec les exigences de la justice qu'avec celles de la simplicité.

Fr. L.

Source: *Bulletin des Contributions,* juin 1960.

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[1]) Pierre Mendès-France, Réforme fiscale, dans l'Express, n° 275, 28 septembre 1956.

[2]) Rapport général du groupe d'études fiscales, publié dans Statistiques et études financières, mai 1859, p. 674.

COMMUNAUTÉ EUROPÉENNE DU CHARBON ET DE L'ACIER

QUESTION ÉCRITE No 5
de M. Philipp

(7 avril 1960)

Objet: Taxes de dédouanement pour les transports internationaux de charbon.

1. Bien qu'il existe pour les produits miniers un marché commun dans lequel n'est prélevé aucun droit de douane à l'importation et à l'exportation et aucune taxe d'effet équivalent, les formalités de dédouanement subsistent pour les transports internationaux de charbon par chemin de fer, route et eau.

2. Pour les *transports par chemin de fer,* les prestations de service que nécessite le transfert de la marchandise à la société ferroviaire du pays voisin figurent parmi les charges qui entrent dans le calcul des différents tarifs de transport qui comprennent aussi l'établissement et la mise à jour des lettres de voiture internationales préparées par les sociétés minières ainsi que la déclaration en douane. Les formalités en douane ne donnent lieu à aucune prestation spéciale de la part des chemins de fer; néanmoins, l'administration des chemins de fer perçoit des taxes pour la présentation des wagons au contrôle de la douane, taxes dont le montant varie sensiblement selon les différentes sociétés de chemins de fer (jusqu'à environ 4, — DM par wagon) et qui sont perçues par les sociétés de chemins de fer lors même que la présentation de la marchandise à la douane est effectuée par un transporteur mandaté par l'expéditeur. Pour les *transports par voies fluviales* sont perçues des taxes pour le contrôle de la douane lors du chargement à bord, ainsi qu'une taxe pour l'octroi d'une franchise en faveur des armateurs. Pour les *transports par route,* aucun droit n'est officiellement perçu au passage de la frontière.

3. La Haute Autorité a ouvert une enquête sur le prélèvement de ces taxes à la suite de laquelle celles-ci ont été publiées. N'est-elle pas d'avis, vu que le traité de la C.E.C.A. prescrit la suppression des droits de douane et des taxes d'effet équivalent, que le prélèvement de taxes de dédouanement est contraire au traité? La Haute Autorité n'estime-t-elle pas que le traitement discriminatoire dont les consommateurs font l'objet du fait que certains d'entre eux doivent supporter la charge de pareilles taxes est en contradiction avec les principes du traité? Quelles conclusions la Haute Autorité tire-t-elle du fait que, dans certains cas, les taxes prélevées ne sont manifestement pas en rapport avec les prestations de service, notamment lorsque le transporteur mandaté par l'expéditeur se charge de la présentation au contrôle de la douane?

RÉPONSE

La perception d'une rémunération spéciale par les transporteurs pour couvrir les prestations fournies ou l'augmentation du coût d'exploitation à l'occasion de l'accomplissement des formalités en douane n'est pas en principe incompatible avec le traité.

1. L'interdiction contenue dans l'article 4, alinéa a, du traité, de percevoir sur les produits du traité C.E.C.A. des droits de douane ou taxes d'effet équivalent, n'empêche par les États membres, en vertu de compétences que le traité leur a laissées entières, de soumettre ces marchandises à un contrôle douanier ou à d'autres formalités administratives (identification, le cas échéant contrôle de l'origine, de la provenance et de la destination des mar-

chandises présentées, relevés statistiques, perception de taxes fiscales, de taxes compensatoires, etc.) Depuis l'ouverture du marché commun, la Haute Autorité s'est efforcée, de concert avec les gouvernements des États membres, de réduire ces formalités administratives au minimum indispensable.

2. Pour les envois de produits C.E.C.A. transportés par chemin de fer, les formalités exigées par les administrations des douanes sont réglementairement assumées en cours de route par le chemin de fer lui-même. De cette situation ainsi que des mesures de contrôle effectuées par les autorités douanières résultent pour les transporteurs des dépenses d'exploitation supplémentaires qui n'apparaissent pas dans le trafic à l'intérieur d'un État. C'est pourquoi la perception par un transporteur, et en particulier par les chemins de fer, en dehors du tarif de transport proprement dit, d'une somme destinée à couvrir les prestations fournies ou l'augmentation des frais d'exploitation ne peut ni être considérée comme discriminatoire ni être assimilée à la perception d'un droit de douane interdit par le traité. Il est exact que ces prestations et frais supplémentaires peuvent être très différents dans les cas particuliers. Toutefois, la pratique des chemins de fer, qui consiste à couvrir ces prestations ou coûts par la perception de taxes pour l'accomplissement des formalités douanières, perçues d'une manière uniforme, ne peut pas donner lieu à critiques. Les enquêtes auxquelles la Haute Autorité a procédé ces dernières années en ce qui concerne ces pratiques ont abouti, le 1er décembre 1959, à la reprise des frais pour formalités en douane sous une forme simplifiée dans le tarif international C.E.C.A. no 1001. La recherche d'un alignement des montants perçus dans les différents États membres pour l'accomplissement des formalités en douane relève d'autre part des travaux d'harmonisation dont la reprise a été proposée récemment par la Haute Autorité.

Pour les transports effectués par la navigation intérieure et par la route, il n'existe pratiquement pas de règles uniformes concernant la formation des prix de transport en trafic international et donc de la rémunération des différentes prestations afférentes à ces transports. Dans l'établissement du prix, il est cependant normalement tenu compte des prestations fournies pour le passage aux frontières.

Source: *Journal Officiel des Communautés Européennes,* 10 juin 1960.

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