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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 in 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 cooperators in a great number of countries, the Bureau tries to collect all possible data in the sphere of national and international fiscal law. In this way the Bureau will be able to supply detailed information concerning special subjects (no advice is given) for which a fee is due, which is necessary for the maintenance and extension of the Bureau.

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

LE BUREAU INTERNATIONAL DE DOCUMENTATION FISCALE fut fondé en 1939. Pour des raisons de caractère organisatoire, ce Bureau est établi comme une fondation séparée conformément au droit civil néerlandais. Le Bureau est une institution scientifique, indépendante, sans but lucratif en sans objet politique, dont le but est défini dans les statuts comme suit:
(art. 2) le but du Bureau International de Documentation Fiscale est d'établir et de maintenir un bureau international de documentation tendant à fournir des informations concernant la législation fiscale et l'application du droit fiscal, ainsi qu'à stimuler l'étude de la science fiscale.
(art. 3) C'est par les moyens suivants que le Bureau se propose d'atteindre ce but:
a) en établissant une bibliothèque contenant un grand nombre d'ouvrages, revues et d'autres publications dans le domaine fiscal;
b) en fournissant des informations;
c) en procurant à tous ceux qui s'y intéressent l'occasion de consulter les ouvrages qui se trouvent dans la bibliothèque;
d) en publiant un périodique;
e) en recourant à tous les autres moyens dont on peut disposer.
Le Bureau veut, par une coopération avec l'IFA et avec l'aide d'experts d'un grand nombre de pays, rassembler toutes les données possibles dans le domaine du droit fiscal national et international. De cette façon, le Bureau est à même de fournir de renseignements détaillés concernant des problèmes spéciaux mais sans donner d'avis. Pour ces renseignements on demande des honoraires nécessaires pour le maintien et l'extension du Bureau. Sur des sujets généraux, le Bureau publie des études de caractère documentaire dans la série: Publications du Bureau International de Documentation Fiscale.

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THE INTERNATIONAL BUREAU
OF FISCAL DOCUMENTATION

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INTRODUCTION

This is the first issue of our "Bulletin" in its new form, reflecting changes in outlook, presentation and frequency of publication. Only the contents will remain basically the same.

This 18th volume of the "Bulletin" will continue to supply factual materials. Facts about tax law and its application – in regulations, court decisions, etc. – throughout the world. Facts in the form of texts of tax treaties, budget speeches and short bibliographies. Facts extracted from the increasing documentation that the Bureau has available, supplemented by up-to-date information supplied by a growing network of correspondents, and, it is hoped, by contributions from subscribers and readers.

Although European taxes are comprehensively dealt with in our other, fortnightly, review, "European Taxation", they will not be excluded from the "Bulletin". Greater emphasis will, however, be placed on taxation in non-European countries, both those considered to be developed and those developing.

By supplying this information, the International Bureau of Fiscal Documentation and the editors of the "Bulletin" hope to meet the requirements of the readers and to fulfil one of the Bureau's main tasks: the dissemination of basic knowledge on foreign taxation.

J. VAN HOORN JR.
Managing Director

INTRODUCTION

Voici le premier fascicule du «Bulletin» sous sa nouvelle forme. Non seulement sa forme a subi un changement, mais aussi sa périodicité et l'organisation de son contenu. Seul le contenu reste en principe le même.

Le Bulletin, dans sa dixhuitième année, publié par le Bureau de Documentation Fiscale continuera à fournir une documentation de faits. Faits concernant les lois fiscales et leur application – par les administrations et les tribunaux – dans tous les pays du monde. Faits sous la forme de textes de traités fiscaux, de discours des ministres des finances, de bibliographies succinctes. Faits émanant de la riche documentation dont le Bureau dispose, et complétés par les données fournies par une large groupe de correspondants dans le monde entier, et, espérons-le, par nos lecteurs mêmes.

Bien que la fiscalité en Europe fasse l'objet, d'une façon très détaillée, de notre revue «European Taxation» qui paraît deux fois par mois, elle ne sera pas négligée dans le «Bulletin». Plus d'accent sera mis sur la fiscalité des pays non-européens, développés ou en voie de développement.

En fournissant ces renseignements, le Bureau International de Documentation Fiscale et le comité de rédaction du Bulletin espèrent répondre aux exigences des lecteurs et en même temps à une de ses taches principales, à savoir: la diffusion de connaissances fondamentales sur la fiscalité étrangère et comparée.

J. VAN HOORN JR.
Directeur

GELEITWORT

Der 18. Jahrgang des „Bulletin for International Fiscal Documentation" erscheint in einem neuen Kleid. Aber nicht nur äusserlich hat sich das „Bulletin" geändert, es wird auch häufiger erscheinen. Ab 1. Januar 1964 wird das „Bulletin" statt wie bisher einmal in zwei Monaten, monatlich herausgegeben.

Der Inhalt wird grundsätzlich derselbe bleiben. Das vor 25 Jahren gegründete Internationale Steuerdokumentationsbüro wird im „Bulletin" auch weiterhin Steuerkurzinformationen, Bibliographien, Gesetze von internationaler Bedeutung, Texte von Doppelbesteuerungsabkommen, die Rechtsprechung - soweit sie für die zwischenstaatlichen Verhältnisse von Bedeutung ist - und andere Dokumentationen auf steuerrechtlichem Gebiet aus allen Ländern der Welt veröffentlichen. Die dazu benötigten Informationen bezieht es aus dem reichen Bestand an Unterlagen und Nachrichten, die täglich beim Internationalen Steuerdokumentationsbüro eingehen. Diese Informationen werden durch die unmittelbar von Berichterstattern des „Bulletin" aus aller Welt bezogenen Mitteilungen ergänzt. Der im Aufbau begriffene Korrespondentenstab wird ständig erweitert. Die Schriftleitung hofft darüber hinaus, dass ihr auch aus ihrem international orientierten Leserkreis Berichte und Nachrichten über neue Massnahmen zugehen werden, die im „Bulletin" veröffentlicht werden können.

Auch die anderen Veröffentlichungen des Internationalen Steuerdokumentationsbüros, wie die in englischer Sprache 14 tägig erscheinende Zeitschrift „European Taxation", enthalten zahlreiche Informationen auf steuerlichem Gebiet. Diese Informationen werden zwar nicht von der Veröffentlichung im „Bulletin" ausgenommen, jedoch haben sie im „Bulletin" einen etwas anderen Charakter. Während in den anderen Veröffentlichungen von den Mitarbeitern des Büros verfasste Uebersichten über die Steuerprobleme und -systeme aufgenommen werden, wird im „Bulletin" grösserer Wert auf die schnelle Nachrichtenübermittlung gelegt.

Ausserdem wird der Unterrichtung über steuerrechtliche Verhältnisse in den ausereuropäischen bereits voll entwickelten oder noch in Entwicklung begriffenen Gebieten im „Bulletin" mehr Aufmerksamkeit gewidmet werden als bisher.

Die Schriftleitung des „Bulletins" hofft, durch die neue Gestaltung und Organisation der Berichterstattung den Erfordernissen eines up-to-date Steuernachrichtendienstes und den Ansprüchen seines Leserkreises im Rahmen des möglichen gerecht zu werden und damit einer der wichtigsten Aufgaben des Internationalen Steuerdokumentationsbüros zu entsprechen: die Verbreitung der Kenntnisse des Steuerrechts der Länder der Welt unter den Steuerrechtlern zu erleichtern.

J. VAN HOORN JR.
Direktor

I

THE INTEREST-EQUALIZATION TAX IN THE U.S.A.

TO IMPROVE UNITED STATES BALANCE OF PAYMENTS: A PROPOSED TAX ON THE PURCHASE BY AMERICANS OF FOREIGN SECURITIES

by

P. L. TRACHTENBERG

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The House Ways and Means Committee's recent emphatic approval of H.R. 8000, the proposed interest equalization tax, is a strong indication of eventual congressional approval of the Bill. The congressional schedule is such, however, that it appears unlikely that passage could come before late winter or early spring. The tax, even if passed in 1964, would generally be retroactive to July 18, 1963, the date of the late President Kennedy's Special Message on Balance of Payments. In the case of purchases of stock on listed exchanges, the effective date would be August 16, 1963.

The Committee approved virtually intact the Administration's proposed tax. The only amendments were of a technical nature and were accepted by the Treasury. They stem primarily from a desire to avoid individual hardship and to clarify the operation of the Bill. The basic applicability of the tax to foreign stocks and bonds, whether existing issues or new flotations, was unaffected.

Purpose of the Tax

According to a statement before the Ways and Means Committee on August 20, 1963 by Douglas Dillon, Secretary of the Treasury, the purpose of the proposed interest equalization tax is to bring the cost of capital raised by foreigners in the United States market into closer alignment with the costs prevailing in the markets of most other industrialized countries. The desire for "interest equalization" springs from an attempt to achieve prompt and lasting improvement in the United States balance of payments by stemming that country's growing outflow of long-term portfolio capital. To illustrate the problem which gave rise to the proposed tax, in the first half of 1963 foreign borrowers floated bonds in the New York

market in the amount of approximately $ 1 billion. It should be noted that the interest equalization tax is only part of a larger program whose goal is to improve every major sector of the United States' international accounts.

As a result of its retroactive effect and the uncertainty surrounding its final contents, the proposal has caused a complete halt in new foreign issues. The felicitous effect which this halt has already had upon the balance of payment picture has been noted with approval in Congress. It is expected that as soon as final legislation is approved some foreign issues will again be floated in the United States; the tax does not seek to bar such flotations but will rather raise the cost of borrowing American capital by 1%.

Nature and Coverage of the Tax

As explained by Secretary Dillon, the tax will be a temporary excise tax, expiring December 31, 1965, imposed on the acquisition of foreign securities from non-resident foreigners by United States persons, regardless of the place where the transactions are actually completed. Since the tax is levied upon the American lenders or purchasers, it is expected that they will demand of the foreign issuers terms sufficiently favorable to compensate for the impact of the tax. With regard to bonds, the tax has been graduated by maturity in a manner that will introduce a differential of approximately 1% in the effective interest rate; the tax on equities would be the same as for bonds of the longest maturity.

Although new debt issues accounted for more than four-fifths of the outflow from all portfolio transactions in foreign securities over the first half of this year, the Treasury believes the effectiveness of the tax would be substantially reduced if it were applied only to such issues. It is anticipated that were the tax so limited, American investors would trade much more heavily in outstanding foreign debt issues. Likewise, since the issuance of equities is an alternative to debt financing in raising capital, with the choice generally dictated by relative cost, it would be self-defeating and inconsistent to tax foreign access only to the bond market.

Exemptions from Tax

Exclusions and exemptions from tax are considered justifiable when clearly required to further national goals, to meet the needs of the inter-

national financial system, or to allow efficient, non-discriminatory administration. Thus, the following transactions will not be subject to the tax:

1) *Short-term securities*: the acquisition of securities with a maturity of less than three years is excluded from tax because shifts of short-term funds in response to temporary needs are essential to the orderly and expeditious clearing of international payments that underlies the flow of trade.

2) *Commercial bank loans*: since there has not been, and presumably will not be, a large volume of foreign loans maturing in more than five years, and since, further, those made are usually related to specific U.S. exports, such loans will not be subject to tax.

3) *Export credit*: export credit extended by American producers directly to their foreign customers, as well as Export-Import Bank financing, will also be excluded.

4) *Direct investments*: direct investment (acquisition of debt or equity interests in a foreign corporation by a United States person owning at least 10% control after the transaction) is not subject to tax because it implies active participation in the management of a foreign corporation; in which case, questions of long-range profitability and market position outweigh any concern over interest-rate differentials.

5) *Less developed countries*: the tax will not apply to acquisitions of securities issued by less developed countries (as defined by Executive Order), or by less developed country corporations, whether or not these latter securities are guaranteed by a developed country.

6) *International monetary stability*: by Executive Order, the President can exempt those new issues whose taxation might disrupt the stability of the international monetary system. Secretary Dillon indicated that the exercise of this executive authority is to be limited to a "highly unusual set of circumstances". The Administration has already announced that there will be a partial exemption for Canadian issues.

7) *Foreign companies at least 50% U.S.-owned*: purchases of outstanding securities of foreign-chartered companies that are at least 50 percent United States-owned and depend on the American capital market for financing will be exempted.

8) *Insurance company investments*: investments by insurance companies that need to maintain reserves abroad against possible liabilities will not be subject to the tax.

The last two exemptions were added to the Bill by the House Ways and Means Committee.

Application of the Tax

Although the provisions of the Bill are sufficiently detailed to require a reading of the Bill itself, a brief summary of the main provisions may be helpful. Secretary Dillon's statement will be the basis of this summarization.

Rate schedule: the tax on debt obligations will be assessed at a percentage of their actual value, according to a schedule graduated by maturity, with the rates ranging from 2.75 per cent for an obligation maturing in 3 to 3½ years to 15 per cent for an obligation maturing in 28½ years or more. In the case of stock, the tax would be 15 per cent, the same as for bonds of the longest maturity.

Liability for tax: the tax would be imposed only on U.S. persons who acquire foreign securities from non-resident foreigners. In cases of acquisitions from other Americans, a certificate of American ownership executed by the seller will serve as proof that the transaction is exempt from tax. To facilitate and encourage the placement of new foreign issues abroad, American underwriters participating in the distribution of such issues would receive a credit or refund of the tax on any sales directly to foreigners. Similarly, dealers maintaining markets in foreign bonds denominated in U.S. dollars will be given a refund from tax on any such securities purchased from foreigners and resold to foreigners within a reasonable time.

Returns: the tax will be paid on the basis of returns due by the last day of the month following each calendar quarter. These returns will require a listing of all taxable, and certain exempt, acquisitions during the calendar quarter.

Effective date and expiration: the tax, with certain limited exceptions, would be applicable to acquisitions made after July 18, 1963 and through December 31, 1965. An exemption is provided for issues in registration on July 18, 1963 (if the acquisition was made on or before September 15, 1963) or for which there were unconditional or partly performed purchase commitments. Similarly, an exemption exists for stock exchange transactions prior to August 16, 1963.

II

WORLD TAX REVIEW

AUSTRALIA

TAX NEWS

Budget Proposals

The Australian Treasurer, Mr. Holt, has proposed in his Budget speech, *inter alia*, the following changes for the year 1963-64:

Income Tax

1. The minimum taxable income, an amount applicable only to individual tax payers, is to be increased from A £ 105.— to A £ 209.—. For incomes exceeding A £ 209.—, the entire income is subject to tax.

2. The deduction for education expenses for the children of a resident tax payer is to be increased from A £ 100.— to A £ 150.— for each child per annum.

3. The deductibility of medical expenses, also granted only to resident individuals, will no longer be restricted to A £ 150.— per person.

4. The "retention allowances", i.e. the percentages of distributable income of private companies which may be put in reserve without creating liability to the undistributed profit tax of 50%, are to be increased. The proposed percentages are as follows:

for the first A £ 5000.— of distributable profits: 50%
for the next A £ 5000.— of distributable profits: 45%
for the distributable profits exceeding A £ 10,000.—: 40%

Sales Tax

Almost all foodstuffs will be exempted from sales tax, in so far as they were still subject to this tax, with the exception of chocolate, confections and some beverages.

Estate Duty

The present exemption from Estate Duty where the estate passed to the widow, children and grandchildren of the deceased shall be doubled to A £ 10,000.—, and where the estate passes to other persons to A £ 5,000.—.

Both exemptions will be reduced by one £ for each four £ by which the dutiable value of the estate exceeds the exemption limit of A £ 10,000.— and A £ 6,000.— respectively.

Source: *The Taxpayers' Bulletin,* August 17, 1963.

AUSTRIA

TAX NEWS

New List of exemptions from the turnover equalization tax.

A new list (Freiliste 1) of articles exempt from turnover-equalization tax on import has been published in the official Gazette of the Federal Republic of Austria - BGBl. 35 St. No. 133.

BELGIUM

BIBLIOGRAPHY

Le secret professionnel banquier, ROBERT HENRION, Series: Etudes d'économie politique, Université Libre de Bruxelles, 1963, pp. 124.

This book considers the legal implications of the banker's professional secret.

The author concludes that secrecy is a necessary part of the banker's activities, although in a number of cases he is entitled to, or may be forced to, divulge confidential facts about his clients.

The book includes those Belgian legal provisions which have a bearing on the revelation of banker's secrets.

De fiscale hervorming voor de bedienden, H. DE MEYER, Antwerpen, L.B.C., 1963, pp. 86.

This booklet contains a discussion of the new Belgian income tax, particularly with respect to employed persons. A number of other subjects, including the taxation of real estate (annual rental value of a dwelling owned by the employee) and of dividends and interest, have been treated in more summary fashion.

Handboek van Belgisch Handelsrecht, Baron LOUIS FREDERICQ, Bruxelles, Etablissements Emile Bruylant, 1963, pp. 1180. Brfs. 3.400,—.

This is the second volume of a treatise on Belgian commercial law. The two volumes together give a concise but complete survey of existing statute and case law. Particular emphasis is placed on those aspects which are of practical significance for business men. The following subjects are covered by the second volume: the limited liability company; cooperative societies; companies created abroad; commercial organizations not having juridical personality; cheques, including postal cheques; insurance; transport contracts; bankruptcy legislation; moratorium and creditor's settlements.

TAX NEWS

Taxe de transmission

On envisage d'apporter en Belgique une importante modification à la législation en matière de taxe de transmission. On se propose en effet de généraliser le système de la taxe forfaitaire, mais avec cette particularité que, en principe, ce sera toujours la vente au consommateur qui sera soumise à la taxe, alors que les transmissions antérieures seront taxées à raison de 6% (taxe de facture). Cependant, si le consommateur est un particulier, la taxe forfaitaire sera perçue au stade de la vente au détaillant.

Le premier secteur où sera appliqué ce système sera celui des fabrications métalliques. Le taux de la taxe forfaitaire sera de 13%. Comme date d'entrée en vigueur, on cite le 1er janvier 1964.

Cette mesure doit être vue dans le cadre de l'harmonisation des taxes sur le chiffre d'affaires dans les pays de la C.E.E. Ainsi qu'on le sait, la Commission de la C.E.E. estime que le système commun fiscal possible et préférable devrait être celui d'une taxe sur la valeur ajoutée s'arrêtant au stade du commerce de gros inclus, combiné le cas échéant, selon les

besoins et les habitudes des pays, avec une taxe autonome complémentaire perçue au stade du commerce de détail.

De son coté, le Comité Economique et Social de la C.E.E. a adopté, en sa séance du 2 juillet 1963, un avis recommandant la suppression des systèmes de taxation «en cascade» et l'adoption, par les Etats membres, d'un régime non cumulatif applicable sur une valeur du produit aussi proche que possible de la valeur finale.

D'autres modifications en matière de taxe de transmission font l'objet d'un projet de loi que les ministres des Finances et de l'Intérieur ont déposé le 23 août dernier sur le bureau de la Chambre des Représentants. La principale modification se rapporte aux fournitures effectuées à l'Etat, aux provinces, aux communes et aux établissements publics. Ces livraisons sont actuellement exemptes de la taxe. Cette exemption n'est toutefois pas applicable à l'importation. Il en résulte une discrimination au détriment des produits étrangers qui est contraire à l'article 95, alinéa 1, du Traité instituant la Communauté Economique Européenne.

Afin de mettre fin à cette discrimination, le projet de loi propose de supprimer l'exonération dont bénéficient actuellement les organismes publics. En même temps sera supprimée l'exemption de la taxe sur les entreprises d'ouvrages dont bénéficient les travaux effectués pour le compte des organismes publics.

Ainsi qu'on le sait, les fournitures effectuées directement par des fabricants néerlandais à des organismes publics belges sont actuellement exonérées de la taxe de transmission en application du Traité Benelux, à condition qu'on ait obtenu préalablement une autorisation du Ministère des Finances à Bruxelles.

Il va de soi que cette exemption sera également supprimée, lorsque le projet de loi en question aura acquis force de loi. Pour les fournisseurs hollandais, cette mesure se traduira donc par la perte de l'avantage qu'ils possèdent actuellement par rapport à d'autres fournisseurs étrangers.

Source: *Revue Commerciale,* 1963, No. 10.

BURMA

TAX NEWS

Income taxes in sharp step-up under Burma law

Ascending rates imposed by consolidating moves.

Steeply progressive tax rates are imposed on the incomes of individuals and business firms in Burma under an income-tax amending law which took effect on October 1.

The new law replaces individual income, super-, and business-profits taxes with a single, composite tax schedule applicable to individuals, partnerships, and companies alike.

Incomes of over $882 are reportable, with the tax rate rising sharply from 7% in the lowest bracket ($315-1050) to 85% in the $10,500-12,600 bracket, 95% in the $12,600-21,000 bracket, 98% in the $21,000-63,000 bracket, and 99% on all income over $63,000.

The burden on business firms is increased further by a requirement that salaries, expenses, etc., paid to directors

or partners be added back into taxable income. The law seems certain to further limit activities in the private sector of the economy, since larger firms may find it impractical to continue operations under the new tax schedule.

Source: *International Commerce*, Volume 69, No. 48.

CANADA

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National Finances; an Analysis of the Revenues and Expenditures of the Government of Canada, Toronto, Canadian Tax Foundation, 1963, pp. 194, $ 2.—.

This book outlines the revenue and expenditure structure of the Canadian government. In addition, it gives a survey of the various taxes, such as the personal and corporate income taxes (both levied under federal and provincial legislation), estate tax, gift tax, non-resident withholding tax, and commodity taxes. Finally, the principal tax changes and the current tax policy are discussed.

Royal Commission on taxation, summaries of Spring Hearings, 1963, Montreal, CCH Canadian Limited, 1963, pp. 136, C $ 3,—.

This book contains summaries of briefs submitted to the Royal Commission; the full text of a special Committee report, submitted in 1961 to the Minister of Finance; the full text of statements made by Mr. J. van Hoorn, executive director of the International Bureau of Fiscal Documentation, and Professor Carl Shoup of Columbia University, the U.S. Member of the E.E.C. Committee for the Harmonization of Taxes.

COMMON MARKET

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Handboek voor de Europese Gemeenschappen, Verdragsteksten EEG, Euratom, EGKS, M. F. F. A. DE NEREE TOT BABBERICH, Deventer, N.V. Uitg. Mij. AE. E. Kluwer, Alphen a.d. Rijn, N. Samsom N.V. 1963.

This loose leaf handbook contains the texts of the Common Market, Euratom and Coal and Steel Community treaties and ancillary material such as national laws and regulations.

Europees Mededingings- en Kartelrecht, J. J. A. ELLES en H. VAN DEN HEUVEL, Deventer, N.V. Uitg. Mij. AE. E. Kluwer, Alphen a.d. Rijn, N. Samsom N.V. 1963.

This is a loose leaf handbook dealing with Common Market anti-trust legislation. It offers not only a documentation and commentary but also an explanation of the European Anti Trust Decree. Attention will be focused on decisions of the European Court of Appeal.

Tableaux Comparatifs des Impôts et taxes, applicables aux Sociétés Commerciales dans les Pays du Marché Commun, PIERRE CHEYNET, docteur en droit, Paris, Sociétés Juridique et Fiscale de France, 1963, pp. 27. NF 12,—.

Dans ce livre pratique on trouve juxtaposées les règles fiscales portant sur les sociétés commerciales, comme la taxe sur le chiffre d'affaires, les impôts sur les bénéfices, le capital, ainsi qu'un tableau concernant les impôts sur les personnes physiques, dans les six pays du Marché Commun. Les tableaux comparatifs sont précédés d'un chapitre, avec des observations préliminaires et suivis d'un précis des conventions pour éviter la double imposition, conclues par les Etats membres.

This useful booklet gives a comparison of the taxes that apply to commercial companies in the countries of the European Common Market, preceded by 5 pages with preliminary observations. A chart of the tax treaties concluded by the Common Market Countries is also included.

ETHIOPIA

TAX NEWS

Encouragement of Capital Investment

The Government of Ethiopia has issued a decree, with effect from September 16, 1963, providing certain incentives for private capital investment in Ethiopia.

This decree replaces all previous measures of this kind, with the exception of specific agreements existing with individual enterprises. The principal provisions of the new decree are the following: (1) Incomes of a new enterprise will be exempt from taxes for five years provided that the amount of the initial investment is not less than Eth$200,000 (US$80,000). (2) Income derived from expansion of an enterprise will be exempt from taxes provided that the cost of this expansion is not less than Eth$400,000. (3) Imports of agricultural and industrial machines, implements, appliances, and parts, as well as of building materials for industrial plants not produced locally, will be exempt from customs duties, transaction taxes, municipal taxes, and all other taxes and duties levied on imports. (4) Manufactured goods destined for export may be exempted from export duties and transaction taxes for a reasonable time if such exemption is found necessary to assure the competitiveness of these goods in foreign markets. (5) The National Bank of Ethiopia will make available foreign exchange for the remittance of profits of foreign investors, repatriation of capital, servicing of foreign loans, remittances of foreign personnel employed, and the purchase of replacement parts and materials for operations authorized in this decree.

Source: *Negarit Gazeta*, No. 20, Addis Abeba, Ethiopia, September 16, 1963.

EUROPE

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Taxation in Western Europe 1963, *a guide for industrialists*. Federation of British Industries, London, 1963, pp. 277, 30 shillings.

This is the fifth editon of a book which gives a brief description of the major taxes in the European countries. Although the book is intended only as a simple reference

work, it contains many valuable data which may otherwise be difficult to obtain. This is particularly true in the area of tax incentives. Consequently, this book is highly recommended for all who have to deal with international tax problems.

FINLAND

TAX NEWS

New Turnover Tax

On November 19, 1963, the Finnish parliament approved by a 104-83 vote, the government proposals for a new turnover tax, which will replace the present tax as of January 1, 1964.

The new tax will be levied at the retail stage only, at a rate of 10%, which may be reduced to 7% as of January 1, 1965. Unlike the present tax, levied at a much higher rate on many enumerated types of goods, the new tax will be due with respect to sales of goods of *all* kinds, including foodstuffs and other basic, consumer's goods, which are now exempt.

Source: *Nieuwe Rotterdamse Courant*, November 23, 1963.

Editor's note:
In the next issue we may have to inform you that the proposals have been amended.

INDIA

TAX CASES

Non-resident—Royalty fixed at a certain percentage on sales—Payments to be made without deduction of taxes payable in India—Assessable income of non-resident—Whether net royalty plus *tax thereon, or such amount as would, after deducting tax thereon leave the stipulated net royalty—Grossing up of income—Validity.*

An agreement between A, a non-resident company, and B, a resident company, provided that in consideration of the licence granted by A to B to manufacture certain articles and services to be rendered by A, B shall pay to A royalty at three per cent. on the net sales of articles manufactured and sold by B and further that "all payments to be made shall be made without deductions for taxes or other charges assessed in India, which shall be assumed by B" (the resident company). The department contended that the real income of A under the agreement upon which B could be assessed as the agent of A was not the amount of royalty payable in fact to A *plus* the tax payable in India in respect of the said sum as claimed by the assessee, but such an amount as would, if the tax payable in India thereon was deducted, leave to A the stipulated three per cent. of the sale proceeds. The net royalty payable to A under the agreement for the years 1953-54 to 1957-58 was Rs. 10,702, Rs. 43, 963, Rs. 77,001, Rs 96,353 and Rs. 1,15,077 respectively. The Tribunal upheld the contention of the department and assessed the royalties received by A for the years 1953-54 to 1957-58 at the grossed up sums of Rs. 27,271, Rs 87,379, Rs. 1,63,180, Rs. 2,54,827 and Rs. 2,98,901 respectively.

Held (agreeing with the Tribunal), that the real income by way of royalty received

by A under the agreement was such an amount as would, if the tax thereon had been deducted, have left a royalty of 3 per cent. of the proceeds to A, and not the net royalty payable *plus* the tax thereon and accordingly the assessment made by the Tribunal was valid.

Income-tax Referred Case No. 6 of 1961. Case Referred under section 66(1) of the Income-tax Act, 1922.

Source: *The Income Tax Reports,* Nov. 11, 1963.

ISRAEL

TAX NEWS

Travel tax doubling

Treasury officials are studying proposals to raise the tax on foreign travel to nearly double the present rates, it is learned from authoritative sources.

The present taxes are a flat sum of I£ 120 for boat tickets and I£ 140 for plane tickets plus five per cent of the price of the ticket. The proposed increases would double all rates. The new rates would go into effect on April 1, just before the beginning of the effective tourist season.

The original impetus for raising the foreign travel tax came from local hoteliers and resort pension operators who protested against the effect mass Israeli tourism to Cyprus had on their own business. This pressure for the adoption of measures to discourage wholesale tourism to Cyprus however, has resulted in reconsideration of the entire question of the travel tax rates.

It is understood that the Treasury economists believe that the thousands of Israelis planning a visit to the New York World Fair next year will not be deterred by an additional tax of I£200-250 on such a trip, so that the additional revenue will not necessarily be offset by a fall off in the number of travellers.

Source: *Jerusalem Post Weekly*, November 22, 1963.

Turnover Tax thoughts

The Ministry of Finance examines the possibility to impose a general turnover tax instead of the present stamp duties on receipts and invoices. Present duties cause a great trouble and substantial expenses to all larger firms.

Source: *Business Diary*, November 21, 1963.

Land Betterment Tax 1963

A new law, imposing a land betterment tax on the sale of a right in immovable property, came into force on August 22, 1963. The following kinds of transactions are considered to be "sales of rights" within the meaning of this law:

1. sales of the property itself;
2. transfers of control in a company controlled by not more than five persons;
3. sales of leases.

In order to prevent evasion of this tax different phases of the transfer of a right in a land company and of a right in land are treated as one transaction. Moreover, certain relevant legal terms have been broadly defined. A company is assumed to be "controlled" if a person, individually or with relatives, has direct or indirect control over its affairs or if such person can acquire control as by being entitled to acquire the majority of outstanding voting shares. Qualifying as "relatives" are the

person's spouse, parents, grandparents, and descendants, as well as descendants of his spouse, spouses of all descendants, brothers and sisters and their spouses, and a company which is controlled by that person. In case such relatives divide a lease of realty into contiguous periods or if intervals between lease periods do not exceed six months the lessors are treated as one person.

Because a considerable, and perhaps the greater, part of all land transactions during the past few years have not been recorded in the Land Registry, a special provision imposes an additional tax on unregistered sales.

The land betterment tax reflects the difference between the purchase and sales prices (or, if the acquisition of the right was gratuitous or in an exchange, between the value at the time of acquisition and the sales price). If the sale is of land which is encumbered by a lease of more than ten years duration, the value of the leasehold is deducted. In case a building is to be erected after the transfer of ownership of land, the value of the realty for purposes of subsequent disposition is increased by the building costs, less all expenses incurred by the seller including taxes and legal fees.

The tax rates are as follows

1. if the improvement does not exceed 200% of the value of the acquisition: 20% of the improvement
2. if the improvement exceeds 200% but not 400%: 30% of the improvement
3. if the improvement exceeds 400%: 40% of the improvement.

These rates are reduced in proportion to the time elapsed since the acquisition, viz. by a rate of ½% every month after the first two years for 13 years and thereafter by 1% each additional year.

More favorable rates are provided for sales of residential flats occupied by the owners, by the use of a tax credit which amounts to:

1. 100 % on the first I£ 1000 of the tax;
2. 75 % on the next I£ 1000;
3. 66⅔% on the next I£ 1000; and
4. 50 % on any additional amount.

Furthermore, if the betterment tax would not exceed I£.1500, the assessee is exempted from tax, and if the tax would be between I£ 1500 and I£ 2000, the rate is only half the usual percentage.

Conflict between income tax and land betterment tax

In order to avoid double taxation, no land betterment tax is imposed if the same transaction is liable to income tax. This exemption, however, does not apply if the value of the improvement exceeds the amount resulting from the multiplication of 4% of the value of acquisition by the number of months between the date of acquisition and the date of sale. Any transfer of rights in land without consideration to the State of Israel or any local authority or the Jewish National Fund or the Keren Hayessod or the Jewish Bond Drive is exempt from the betterment tax. The same applies to any transfer of such rights without consideration to public institutions.

The transfer of lands in the course of winding-up a company is exempt from tax.

Declarations

Under the law, a number of declarations have to be made to the Director of Land Betterment Tax. The vendor has to supply information within seven days of the sale, and the same duty applies to the land company in which a change of control is taking place. Additionally, the purchaser

must inform the Director within seven days, as must the broker who has been active in the transaction and any person registering any transaction in a land company or who holds in his name for another rights in land or rights in a land company. The Notary Public has to inform the Director of every Power of Attorney legalised by him with regard to lands and land companies, and every holder of such Power of Attorney has likewise to inform the Director of Land Betterment Tax of his Power of Attorney and every change made in the conditions or instructions connected with such power. In general, every person who holds in his name, but for another, land or rights in a land company must, within 30 days from the acquisition of such rights, inform the Director.

Reported by: Dr. E. Klimowsky, Tel-Aviv.

ITALY

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Investitionsförderung und Besteuerung des gewerblichen Gewinns in Italien, Deutsch-italienische Handelskammer, Milano – Piazza del Duomo, 31, 1963, pp. 36.

This booklet contains practical information on the taxation of industrial enterprises in Italy, and about tax incentives and other incentives to further industrial development in the Southern part of Italy, Sicily and Sardinia and in some other parts of Italy.

Le Imposte in Italia, Prof. Avv. Emanuele Morselli, Cedam – Casa Editrice Dott. Antonio Milani, Padova, 1962, pp. 433, Lire 4000,—.

This is the seventh edition of Prof. Morselli's well known summary of Italian taxes. The book discusses briefly all major taxes, levied in Italy while some attention is paid to the historic development.

Il Prontuario del Contribuente Italiano – Enciclopedia tributaria Pratica, Andrea Gloria, Gregoriana Editrice – Padova, 1961, and supplements 5 and 6 (releäsed up to January 1, 1963), 1st edition 1961-1962, pp. 1653, Lire 6000,—.

This book gives a survey on Italian taxes. The great value of this book is, that it gives a comprehensive indication of all laws, decrees and Ministerial circulars which are applicable with respect to the various taxes.

Moreover this book contains an encyclopaedia of fiscal terminology.

A Guide for Foreign investors in Italy, Banca Nazionale Del Lavoro, Roma, Via Veneto, 119, Stabilimento Aristide Staderini S.p.A. Roma, 1962, Second Edition, pp. 107.

This book contains various practical information for foreign investors, who want to invest in Italy. It gives a brief outline of the rules governing foreign investment in Italy, the concessions for private industrial investment, especially tax concessions to further regional development, export incentive measures, and a survey of Italian company tax.

JAMAICA

TAX NEWS

The Government is to present the following proposals to Parliament as means of encouraging industrial investment.

1. The Industrial Incentives Law and the Export Industries (Encouragement) Law would be amalgamated and simplified.
2. The Pioneer Industries Law would be allowed to lapse and no further application for pioneer status would be considered after 31st December 1963. Pioneer industries would in future benefit from the Industrial Incentives Law.
3. The seven-year tax concessions allowed under the present Industrial Incentives and Export Industries Laws would be extended to 10 years.
4. Tax relief for industries in rural areas would be granted for periods up to 15 years.
5. The export tax payable between 1964 and 1969 would be progressively reduced so as to encourage increased exports.
6. The Industrial Companies Law would be amended by lowering the existing tax rate of 7/6d. in the £ on dividends. The position of businesses technically resident in Jamaica would be reviewed.
7. The estate (death) duty would be abolished.
8. The withholding tax of 2/6d. in the £ on interest paid on foreign loans for financing heavy industry and public utilities would be abolished.

Source: *The Foreign Tax Law Weekly Bulletin*, Vol. XIV, No. 20.

NEPAL

TAX NEWS

Nepal's Budget for 1963-64

The Nepalese Government has announced its budget for the fiscal year 1963-64, which began in mid-July. Income is estimated at NRs 282.3 million (about $37 million), which includes revenue of NRs 143.9 million and foreign grants and loans equivalent to NRs 138.4 million. Total expenditure is estimated at Nrs 295.4 million, consisting of NRs 114.5 million for regular expenditure and NRs 180.9 million for development expenditure. The over-all deficit will thus be NRs 13.1 million, and this is expected to be financed by domestic loans.

Revenue receipts expected will include NRs 7 million to be raised through certain adjustments in the tax structure, undertaken primarily in the interests of equity and simplicity and affecting the land, income, and entertainment taxes, irrigation levies and registration fees, and certain excise taxes (including those on sugar, liquor, matches, and cigarettes). Hereafter, all land taxes are to be collected in cash rather than in kind. No new taxes have been introduced.

Source: *The Times of India, Bombay*, July 13, 1963.

NETHERLANDS

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Belastingaftrek door autokosten, H. N. J. KUIJER, Leiden, Ned. Uitg. Mij. N.V., 1963, pp. 88. Dfl. 3,25.

This is a practical booklet which discusses the income and motor vehicles tax implications of possessing a motorcar. The author treats various topics, including the use of a motorcar for private or business purposes, depreciation, accelerated depreciation and deductibility of insurance premiums.

Recht rondom huis en gezin, P. L. DIJK, Amsterdam, N.V. Uitg. FED, 2nd. ed., 1963, pp. 122. Dfl. 5,40.

This is a practical book which presents a layman-oriented discussion of Dutch civil law. Its purpose is to show persons who have no legal training what basic legal problems may be connected with minority, betrothal, marriage, divorce, real estate, mortgage, employment, borrowing money, insurance, death and inheritance.

Het invorderingsrecht van de fiscus, W. P. ERASMUS, Gorinchem, J. Noorduyn en Zn, Deventer, N.V. Uitg. Mij. AE. E. Kluwer, 1963, pp. 190.

This loose leaf handbook is devoted to Dutch tax administration. It discusses, *inter alia,* the way in which assessments are imposed, tax liability, payment, forgiveness of tax debts, and collection for other countries under tax treaty provisions.

Discipline et indiscipline fiscales, HERMAN SCHUTTEVAER, Deventer, N.V. Uitg. Mij AE. E. Kluwer, 1963, pp. 19.

A brochure containing a speech in French by Professor Schuttevaer in which he discusses the just imposition of tax and tax evasion.

Delegatie in het Nederlandse Belastingrecht, Buyten & Schipperheyn · 1963 – Amsterdam, pp. 154.

This thesis discusses the possibility of the legislature of delegate part of its power to levy taxes to lower public institutions.

PARAGUAY

TAX NEWS

Under Law No. 349, the Government has instituted some changes in the existing tax laws. The main changes affect Income tax Law No. 9240 of 1949 and the tax on capital in the following ways:

1. Article 4: A fine of 1 per cent is established for each months' delay in settling income tax due.
2. Article 6: Agents or representatives of foreign firms must withhold a minimum of 8 per cent on net taxable income from imports into Paraguay of articles

produced or sold by the foreign firms that they represent.

3. Article 8: Another income tax category, F. is established for the taxing of income accruing to executors (of wills), receivers, liquidators, and chairmen of limited liability companies if they are not already contributing under other income tax categories.
4. Articles 9 and 10: Individuals and companies operating in the building and allied industries must withhold 10 per cent of net receipts for completed work.
5. Articles 14 and 15: A tax of 8 per cent is established on the aforo valuation of exports of timber and timber products, coffee, mate, oil seeds, industrial oils, and tobacco, in place of the former tax on the incomes of exporting companies.
6. Article 17: A tax of 5 per cent is imposed on the paid-up capital of limited companies. Capital that is taxed under other headings including capital and capital goods from abroad, is exempt.

Source: *The Foreign Tax Law Weekly Bulletin,* Vol. XIV, No. 20.

PHILIPPINES

TAX NEWS

In the near future there will be a meeting between representatives of the United States and of the Philippine government in order to discuss the possible conclusion of an income tax treaty to avoid double taxation of income and to facilitate mutual trade and investment.

Source: *Prentice-Hall Report Bulletin,* October 24, 1963.

PORTUGAL

TAX NEWS

Revised Taxes on Income in Four Fields.

System is now based on actual, rather than probable earnings.

The Portuguese Government has reformed income taxes imposed on trade and industry, as well as on real estate and farm profits.

The legislation, issued on July 1 and effective August 1, is designed to tax actual earnings rather than the assumed or probable profits, the method used previously.

The first of these measures (Decree-Law No. 45, 103), approves a new so-called "industrial tax code." At the same time, it abolishes, as of January 1, 1964, certain special procedures for assessment of the industrial tax, the stamp tax relative to the designated licenses, the "proportional" tax on mining operations and other specified taxes.

It also permits foreign mining companies which operate in Portugal to deduct from their profits the taxes which they pay in the countries where their head offices are located.

The rate of the industrial tax is set at 15% of profits. However, the Government is authorized to increase the rate to 20% in

1964, if, on applying the 15% rate, the total receipts are less than those collected in 1963.

The tax on corporative organizations is fixed at 5%.

Exemptions Listed

The new code also lists the entities to be exempted, both permanently and temporarily, from payment of the "industrial tax".

Decree-Law No. 45, 104, issued at the same time, approves a new code on the taxation of real estate and farm production profits. It went into effect August 1. Rates of the real estate tax are 10% on incomes from rural property and 12% on incomes from urban property.

The tax on farm production earnings, which includes livestock and forestry production, is 10% of profits. This new tax results from a breakdown of the previous legislation which lumped together both rents and profits.

Source: *The Foreign Tax Law Weekly Bulletin,* Vol. XIV, No. 20.

SAUDI-ARABIA

TAX NEWS

Royal Decree No. 27, dated 25.6.1382 H., amending Articles 5 and 6 of the Saudi Arabian Income Tax Law, was published in Umm Al-Qura newspaper No. 1975 dated Muharram 29, 1383, corresponding to June 21, 1963.

The following are the amendments:

Article 1. - Article 5 of the Income Tax Law, amended by Royal Decree No. 17/2/28/576, dated 14/3/1376, shall be amended as follows:

"The first 6000 Riyals of an individual's total personal income or capital investment profits, shall be exempted from the tax.

The assessee shall not be entitled to a full annual exemption unless he has resided in the Kingdom for one complete year, or has been regarded as resident for one year. If the residence period is less than one year, the exemption shall be in proportion on the period during which he resided or has been regarded as resident in the Kingdom".

Article 2. — Article 6 shall be amended as follows:

"The rate of tax on the total personal income or capital investment profits, shall be as follows:

1. Five percent on that part of the total income not exceeding 20,000 Riyals per year, after deducting the exemption mentioned in Article 5.
2. Ten per cent on that part of the total income over 20,000 Riyals and not exceeding 50,000 Riyals per year.
3. Twenty per cent on that part of the total income exceeding 50,000 Riyals per year.

The income acquired by an individual from the investment of his capital in a company, shall not be taxable if such an income had been subjected to the tax levied on companies' profits in accordance with this Law."

Article 3. — The Prime Minister and the Minister of Finance and National Economy are charged with the implementation of this Decree.

Source: *The Foreign Tax Law Weekly Bulletin,* Vol. XIV, No. 21.

SUDAN

DOCUMENTS

The traders licence and taxation of business profits ordinance (Amendment of schedule 11) *order*, 1963 (1963 *L.R.O. No.* 12)

In exercise of the powers conferred upon it by Article 44 of the Traders Licence and Taxation of Business Profits Ordinance, the Council of Ministers hereby makes the following Order:

1. This Order may be cited as the Traders Licence and Taxation of Business Profits Ordinance (Amendment of Schedule 11) Order, 1963.
2. Part one of Schedule two of the Traders Licence and Taxation of Business Profits Ordinance shall be repealed and the following substituted therefore:

Part I
Tax payable by companies

Profits	*Rate of Tax*
On the first £.S.2,000	20 per cent
On the remainder	40 per cent

(Published in Supplement No. 1 of the Sudanese Official Gazette No. 983, dated May 15, 1963).

Source: *Management and Accountancy Bulletin*, No. 83.

SWEDEN

TAX NEWS

Investment Funds Improved. Tax Effect

The Riksdag has passed a Bill on certain changes in the legislation governing the investment funds as from the 1st July, 1963. The primary aim of these amendments is to make the investment funds a more effective instrument in controlling the business cycle, and to make it possible to use the funds for furthering industrial growth in depressed areas.

According to the new legislation investment funds may, by special permission, be used for financing the manufacture of goods for stock. The funds used for this purpose are to be subject to a taxation after four years unless the company then makes a corresponding allocation to a new investment fund.

In addition to the tax credit, the company gets a special investment allowance corresponding to 10% of the increase in stock financed through investment funds. The utilization of investment funds does not curtail the right of the company to write down their stocks in accordance with ordinary tax regulations.

Investment funds have been criticized by the representatives of small business because they may be used only by joint-stock companies and economic associations. Many small firms work in other legal forms and have therefore not been able to make use of the advantages offered by the funds. The same applies to most farmers. The new legislation introduces a general investment-promoting measure

without stipulating any allocation to investment funds. During a recession all firms (including farmers) who make investments in machinery are to be allowed to make an extra initial write-off amounting to 30% of the total cost. Together with the ordinary write-off this means that new machinery may be written down during the first year to 49% of its procurement value. The initial allowance may be effected as soon as the new machinery has been ordered. In addition, firms may make an investment allowance amounting to 10% of the cost. This investment allowance does not affect the scope of normal writing-off, which means that the total amount that may be written off works out at 110% of the costs of procurement.

Source: *Index Svenska Handelsbanken Economic Review*, No. 1, 1963.

SWITZERLAND

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Steuerliche Probleme im zwischenstaatlichen Warenverkehr und im Gemeinsamen Markt, Dr. HANS GERBER, Cosmos-Verlag AG, Bern, 1963, pp. 78.

This booklet, which is a reprint from the Steuer-Revue no. 5,6-1963, contains a comparative study on the different turnover tax systems, the problems arising for the international trade with respect to the turnover tax, the custom duties and other indirect taxes, the tax problems for the Common Market and the position of Switzerland.

Bedeutung und Grenzen der wirtschaftlichen Betrachtungsweise im Einkommens- und Vermögenssteuerrecht, Dissertation der Hochschule St. Gallen, (Nr 177), ACKERMANN, Achilles, Verlag P. G. Keller, Winterthur (1963), pp. xxi + 155.

This thesis has as its subject the interpretation of legal provisions on income tax and net worth tax and especially an interpretation on the economic reality.

TAX NEWS

Federal Defense Tax

On December 8, 1963 the Swiss decided in a referendum that the federal income and net worth tax (Wehrsteuer), which would otherwise have expired in 1964, will be prolonged, after some changes have been made, for another ten years. This tax was first introduced in 1941 for a limited period, and has been prolonged several times.

It appears that there will be a 10% reduction of the tax rates, from the present 8% maximum rate for the individual and corporate income tax to 7,2%, and for the corporate net worth tax from 0.075% to 0.0675%. This reduction will be effective for the years 1963/1964 and following. For individuals a further reduction will become effective in 1965, when the personal deductions of Sw. frs. 1,500 for a married person and Sw.frs.500 per minor child will be increased to Sw.frs.2,000 and Sw.frs.1,000 respectively. Moreover, the progressiveness of the individual income tax rate will be slowed down, so that the maximum rate of income tax will be reached at an income of Sw.frs. 132,000 in stead of an income of S.frs. 120,000.

UNITED KINGDOM

BIBLIOGRAPHY

Short Term Capital Gains Tax, T. J. SOPHIAN, Butterworth and Co. (Publishers) Ltd., London, 1962, XIV and 219 pp.

The taxation of short term capital gains, introduced in the United Kingdom by the Finance Act, 1962 is the subject of this book which was issued a few months after the passing of the act. The autor's aim has been to explain the relevant statutory provisions as fully as possible with the aid of examples, giving reasons, wherever necessary, for the views expressed by him, there being neither authority nor precedent to serve as a guide at the moment.

The book will undoubtedly act as a useful guide in understanding the complicated provisions of the Act.

Taxation Key to Income Tax and Surtax, Edited by PERCY F. HUGHES, 56th edition (Finance Act, 1963), Taxation Publishing Company Ltd., 98 Park Street, London W1, 247 pp.

The new edition of this well-known reference book gives a highly practical survey of law and practice surrounding the United Kingdom Income Tax and Surtax, up to and including the Finance Act 1963. An "automatic thumb-index" increases its usefulness for quick reference.

UNITED STATES OF AMERICA

BIBLIOGRAPHY

Taxation of U.S. private investment in Canada, J. PETER WILLIAMSON, Toronto, Canadian Tax Foundation, 1963, Canadian Tax Papers no 36, pp. 93, C $ 2.50.

This tax paper deals with the manner in which various forms of American private investment in Canada are taxed in both Canada and the United States. Its purpose is to provide a basis for a clearer understanding of each nation's tax laws in this vital area.

TAX NEWS

The Senate Finance Committee voted on January 16, 1964 an extra $ 40 million in taxes on foreign operations of United States oil and gas companies. This $ 40 million tax increase came through the adoption of an amendment offered by Senator John J. Williams, Republican of Delaware. The Williams amendment would affect only operations of giant United States oil companies with extensive operations abroad.

It states that to the extent the foreign tax on foreign mineral operations of such concerns exceeds the United States tax on the same operations and this excess results from the allocation of percentage depletion in the United States, the excess from the foreign tax paid will not be permitted to offset United States taxes otherwise due on income from non-mineral operations. Congressional experts explained that many of these companies had marketing operations overseas, for example, and had used excess tax

credits to cut or wipe out their taxes on these operations.

The Committee also accepted a House provision, putting new limits on the right of these operators to aggregate their properties for the purpose of computing the benefits of percentage depletion. As it is now, they can combine widely scattered properties, lumping high-cost properties with low-cost holdings to increase the tax benefits. The new provision, in general, would limit the privilege to properties falling within a single tract of land or a single lease. Under present law, the oil and gas operator may subtract 27,5% of his gross income in figuring his tax up to 50% of his net income, which often is the more meaningful limitation.

Source: *New York Times*, Vol. CXIII, No. 38.

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III

TREATIES

GERMANY - PAKISTAN

A protocol, modifying the tax treaty of August 7, 1963 between the Federal Republic of Germany and Pakistan, was signed on August 27, 1963. Its purpose is to foster renewed economic relations between the signatory countries and especially to encourage German private investment in Pakistan. One of the means adopted to accomplish this end was a tax-sparing system, by which dividends flowing from Pakistan to Germany are, under certain conditions, tax-free in Germany. Additionally, in the case of certain forms of interest from Pakistan, a credit for Pakistan taxes is allowed against the German tax, even if Pakistan does not exercise its right to tax this interest.

Source: *Bundes Anzeiger* 1963, No. 162; 3 Eur. Tax. 178 (1963).

INDIA

TAX TREATIES CONCLUDED

India has concluded tax treaties with Ceylon, Denmark, the Federal Republic of Germany, Japan, Norway and Sweden. Tax treaties with the U.S.A., Austria, and Finland are signed but not yet ratified. More limited agreements on the avoidance of double taxation exist with Kenya, Tanganyika, Uganda and Zanzibar.

Source: *Internationale Wirtschaftsbriefe*, No. 15/1963.

U.S.-BELGIUM

The United States Treasury has announced that discussions are to be held in the near future between Belgium and the United States on possible modification in the existing income tax treaty between the two countries. The principal purpose of the discussions will be to consider revisions which may have been rendered necessary by the recent reform in Belgian tax (Law of November 20, 1962).

Source: *PH special release*, november 12, 1963.

U.S. - NETHERLANDS ANTILLEN

NEUES PROTOKOL ZU AMERIKANISCH-NIEDERLÄNDISCHEM ABKOMMEN FÜR HOLDINGGESELLSCHAFTEN DER ANTILLEN

Am 23. Oktober 1963 wurde ein Protokol zusätzlich zum Doppelbesteuerungsabkommen zwischen dem Königreich der Niederlande und den USA unterzeichnet.

Dieses Protokol enthält eine Änderung und Ergänzung dieses Abkommens im Hinblick auf die Geltung dieses Vertrages für die Niederländischen Antillen. Die neue Regelung will die Inanspruchnahme des Doppelbesteuerungsabkom-

mens von in den Antillen domizilierten Holdinggesellschaften in gewissen Fällen unmöglich machen. Auf Holdinggesellschaften (Körperschaften, Kommanditgesellschaften oder derartige Gesellschaften), fur die die Körperschaftsteuer bis auf ein Zehntel herabgesetzt ist, finden die Artikel VII, VIII, und IX des Abkommens in Zukunft keine Anwendung mehr. Diese Artikel betreffen die amerikanische Quellensteuer auf Dividenden, Zinsen und Lizenzgebühren, die von amerikanischen natürlichen Personen und Gesellschaften an in den Antillen domizilierten Personen bezahlt werden. Holdinggesellschaften der niederländischen Antillen werden also für diese Einkommensarten mit den normalen amerikanischen Quellensteuer von 30% besteuert. Nur falls eine Holdinggesellschaft Dividenden, Zinsen und Lizenzgebühren von einer amerikanischen Gesellschaft empfängt, an der sie wesentlich beteiligt ist (eine wesentliche Beteiligung liegt bei einer Beteiligung von 25 % oder mehr vor) *und* das Einkommen der amerikanischen Gesellschaft weniger als 60% an Dividenden, Zinsen, Lizenzgebühren und derartigen Vergütungen, Mieten von Immobilien und Verkaufsgewinnen aus Aktien, Wertpapieren und Immobilien besteht, kann die Holdinggesellschaft der Antillen die Steuervergünstigungen des Doppelbesteuerungsabkommen weiter beanspruchen.

Auch wenn die Aktien der Holdinggesellschaft alle Eigentum natürlicher Personen sind, welche in den Antillen wohnen und die Aktien für eigene Rechnung besitzen, hat die Holdinggesellschaft nach wie vor das Recht, die Artikel VII, VIII und IX anzuwenden. Dasselbe gilt, wenn alle Aktien der Holdinggesellschaft Eigentum von natürliche Personen oder Rechtspersonen sind, welche in den Niederlanden domiziliert sind.

Für Holdinggesellschaften, welche vor dem 15. Mai 1963 gegründet worden sind, ist eine Übergangsregelung gemacht worden.

1. *Dividenden* aus den USA werden in den Jahren 1964 und 1965 nach wie vor unter Berücksichtigung des Artikels VII des Abkommens besteuert (das heisst, dass in den meisten fällen die amerikanische Quellensteuer von 30% bis auf 15% herabgesetzt wird) und sie dürfen im Jahre 1966 mit nicht mehr als mit einer 20%igen Quellensteuer besteuert werden.
2. Auf *Zinsen* welche in den Jahren 1964, 1965 und 1966 empfangen werden bleibt Artikel VIII anwendbar, d.h. die U.S.A. erhebt keine Quellensteuer.

Ab Anfang 1967 haben diese Holdinggesellschaften die normalen amerikanischen Quellensteuern auf Dividenden und Zinsen zu entrichten, als wäre kein Abkommen vorhanden. Für Lizenzgebühren sind schon die normalen amerikanischen Quellensteuern von den Tag an, dem dieses Protokol in Kraft tritt, zu entrichten.

Das neue Protokol tritt am 1. Januar des Jahres, das auf dem Jahre, in dem die Ratifikationsurkunden ausgetauscht worden sind, folgt, in Kraft.

ABKOMMEN ZWISCHEN DER REPUBLIK OESTERREICH UND DER REPUBLIK INDIEN ZUR VERMEIDUNG DER DOPPELBESTEUERUNG AUF DEM GEBIETE DER STEUERN VOM EINKOMMEN

REGIERUNGSVORLAGE

Die Republik Oesterreich und die Republik Indien, von dem Wunsche geleitet, ein Abkommen zur Vermeidung der Doppelbesteuerung auf dem Gebiete der Steuern vom Einkommen abzuschliessen, sind übereingekommen wie folgt:

ARTIKEL I

(1) Gegenstand dieses Abkommens sind folgende Steuern:

a) In Oesterreich:

(i) die Einkommensteuer,

(ii) die Körperschaftsteuer,

(iii) der Beitrag vom Einkommen zur Förderung des Wohnbaues und für Zwecke des Familienlastenausgleiches,

(im folgenden „österreichische Steuer" genannt).

b) In Indien:

(i) die Einkommensteuer (income-tax),

(ii) die Uebersteuer (super-tax), und

(iii) die Zusatzsteuer (surcharge), die nach dem Einkommensteuergesetz 1961 (43-1961) erhoben werden, (im folgenden „indische Steuer" genannt).

(2) Dieses Abkommen ist auch auf jede andere ihrem Wesen nach ähnliche Steuer anzuwenden, die in Oesterreich oder in Indien nach dem Tag der Unterzeichnung dieses Abkommens eingeführt wird.

ARTIKEL II

(1) Soweit sich in diesem Abkommen aus dem Zusammenhang nichts anderes ergibt:

a) bedeuten die Begriffe „eines der Gebiete" und „das andere Gebiet" Oesterreich oder Indien, wie es der Zusammenhang erfordert;

b) umfasst der Begriff „Person" natürliche Personen, Gesellschaften und andere Rechtsträger, die nach den in den betreffenden Gebieten in Kraft stehenden Steuergesetzen als Steuersubjekte behandelt werden;

c) bedeutet der Begriff „Gesellschaft" alle Rechtsträger, die für steuerliche

Zwecke nach österreichischem Recht wie eine juristische Person oder nach indischem Recht wie Gesellschaften behandelt werden;

d) bedeutet der Begriff „Steuer" die österreichische Steuer oder die indische Steuer, wie es der Zusammenhang erfordert;

e) bedeuten die Begriffe „in Oesterreich ansässige Person" und „in Indien ansässige Person" eine Person, die im Sinn der österreichischen Steuergesetze ihren Wohnsitz oder gewöhnlichen Aufenthalt in Oesterreich hat und nicht in Indien im Sinn der indischen Steuergesetze ansässig („resident") ist, und eine Person, die im Sinn der indischen Steuergesetze in Indien ansässig („resident") ist und nicht ihren Wohnsitz oder gewöhnlichen Aufenthalt im Sinn der österreichischen Steuergesetze in Oesterreich hat. Eine Gesellschaft gilt als eine in Oesterreich ansässige Person, wenn sie ihren Sitz oder ihre Geschäftsleitung in Oesterreich hat; eine Gesellschaft gilt als eine in Indien ansässige Person, wenn sie ihren Sitz oder ihre Geschäftsleitung in Indien hat;

f) bedeuten die Begriffe „österreichisches Unternehmen" und „indisches Unternehmen" ein gewerbliches Unternehmen, das von einer in Oesterreich ansässigen Person betrieben wird, und ein gewerbliches Unternehmen, das von einer in Indien ansässigen Person betrieben wird, und die Begriffe „Unternehmen eines der Gebiete" und Unternehmen des anderen Gebietes" ein österreichisches oder ein indisches Unternehmen, wie es der Zusammenhang erfordert;

g) bedeutet der Begriff „Betriebsstätte" eine feste Geschäftseinrichtung, in der die Tätigkeit des Unternehmens ganz oder teilweise ausgeübt wird.

(aa) Der Begriff „Betriebsstätte" umfasst eine Geschäftsleitung, eine Zweigniederlassung, ein Büro, eine Fabrikationsstätte, eine Werkstätte, ein Lagerhaus, ein Bergwerk, einen Steinbruch oder eine andere Stätte der Ausbeutung von Bodenschätzen und eine dauernde Verkaufsausstellung.

(bb) Für ein Unternehmen eines der Gebiete wird in dem anderen Gebiet eine Betriebsstätte angenommen, wenn es in diesem anderen Gebiet eine Bauausführung, Montage oder dergleichen durchführt.

(cc) Die Benutzung von bloss zur Lagerung bestimmten Einrichtungen oder das Unterhalten einer Geschäftseinrichtung ausschliesslich zum Einkauf von Gütern oder Waren und nicht zur Be- oder Verarbeitung dieser Güter oder Waren in dem Gebiet, in dem der Einkauf erfolgt, begründet keine Betriebsstätte.

(dd) Eine Person, die in einem der Gebiete für ein Unternehmen des anderen Gebietes tätig ist, wird als eine in dem erstgenannten Gebiet gelegene Betriebsstätte behandelt, wenn

1 sie eine allgemeine Vollmacht besitzt, im Namen oder für Rechnung des Unternehmens in diesem erstgenannten Gebiet Verträge zu verhandeln und abzuschliessen, und diese Vollmacht dort gewöhnlich ausübt, es sei denn, dass sich die Tätigkeit der Person ausschliesslich auf den Einkauf von Gütern

oder Waren für das Unternehmen beschränkt, oder

2 sie im erstgenannten Gebiet gewöhnlich ein Lager von dem Unternehmen gehörenden Gütern oder Waren unterhält, von dem die Person regelmässig Güter oder Waren für das Unternehmen ausliefert, oder

3 sie in dem erstgenannten Gebiet gewöhnlich Aufträge ausschliesslich oder fast ausschliesslich für das Unternehmen selbst oder für dieses Unternehmen und andere Unternehmen, die von ihm beherrscht werden oder die es beherrschen, einholt.

(ee) Ein unabhängiger Makler, der lediglich als Vermittler zwischen einem Unternehmen eines der Gebiete und einem etwaigen Kunden des anderen Gebietes tätig ist, wird nicht als eine in dem anderen Gebiet gelegene Betriebsstätte behandelt.

(ff) Die Tatsache, dass eine Gesellschaft, die in einem der Gebiete ansässig ist, eine Tochtergesellschaft besitzt, die entweder in dem anderen Gebiet ansässig ist oder die in dem anderen Gebiet (gleichgültig, ob durch eine Betriebsstätte oder in anderer Weise) Geschäftsbeziehungen unterhält, macht für sich allein diese Tochtergesellschaft noch nicht zur Betriebsstätte ihrer Muttergesellschaft.

h) bedeutet der Begriff „zuständige Behörde" im Fall Oesterreichs das Bundesministerium für Finanzen und im Fall Indiens the Central Government in the Ministry of Finance, Department of Revenue.

(2) Bei Anwendung dieses Abkommens in einem der Gebiete ist, sofern sich aus dem Zusammenhang nichts anderes ergibt, jedem in diesem Abkommen nich tanders umschriebenen Begriff der Sinn beizulegen, der ihm nach den Gesetzen zukommt, die in diesem Gebiet für die Steuern gelten, die den Gegenstand dieses Abkommens bilden.

ARTIKEL III

(1) Vorbehaltlich des Absatzes 3 darf in einem der Gebiete keine Steuer von den gewerblichen Gewinnen eines Unternehmens des anderen Gebietes erhoben werden, es sei denn, dass die Gewinne durch eine im erstgenannten Gebiet gelegene Betriebsstätte dieses Unternehmens erzielt werden. Werden Gewinne auf diese Weise erzielt, so dürfen die Gewinne, die dieser Betriebsstätte zuzurechnen sind, in dem erstgenannten Gebiet besteuert werden.

(2) Der im anderen Gebiet gelegenen Betriebsstätte eines Unternehmens eines der Gebiete sind die gewerblichen Gewinne zuzurechnen, die sie in dem anderen Gebiet erzielt hätte, wenn sie sich als selbständiges Unternehmen mit gleichen oder ähnlichen Geschäften under gleichen oder ähnlichen Bedingungen befasst und mit dem Unternehmen, dessen Betriebsstätte sie ist, Geschäfte wie ein unabhängiges Unternehmen getätigt hätte. Falls die Ermittlung des genauen

Betrages der Gewinne, die der Betriebsstätte zuzurechnen sind, ausserordentliche Schwierigkeiten bereitet, können die der Betriebsstätte zurechenbaren Gewinne in angemessener Weise geschätzt werden.

(3) Absatz 1 ist nicht so auszulegen, dass in einem der Gebiete die in Anwendung dieses Abkommens gemäss den Gesetzen dieses Gebietes erfolgende Besteuerung von Einkünften (zum Beispiel von Dividenden, Zinsen, Gewinnen aus der Veräusserung von Vermögenswerten, Entgelten für technische Leistungen, Einkünften aus dem Betrieb von Luftfahrzeugen, Mieten oder Lizenzgebühren oder Einkünften aus unbeweglichem Vermögen) verhindert wird, die aus Quellen in diesem Gebiet von einer im anderen Gebiet ansässigen Person bezogen werden, auch wenn diese Einkünfte keiner im erstgenannten Gebiet gelegenen Betriebsstätte zuzurechnen sind.

ARTIKEL IV

Wenn

a) ein Unternehmen eines der Gebiete unmittelbar oder mittelbar an der Geschäftsführung, der Kontrolle oder am Kapital eines Unternehmens des anderen Gebietes beteiligt ist oder

b) dieselben Personen unmittelbar oder mittelbar an der Geschäftsführung, der Kontrolle oder am Kapital eines Unternehmens des anderen Gebietes beteiligt sind,

und in diesen Fällen zwischen den beiden Unternehmen hinsichtlich ihrer kaufmännischen oder finanziellen Beziehungen Bedingungen vereinbart oder auferlegt werden, die von denen abweichen, die zwischen unabhängigen Unternehmen vereinbart würden, so dürfen Gewinne, die eines der Unternehmen hätte erzielen können, wegen dieser Bedingungen aber nicht erzielt hat, den Gewinnen dieses Unternehmens zugerechnet und entsprechend besteuert werden.

ARTIKEL V

(1) Einkünfte eines Unternehmens eines der Gebiete aus dem Betrieb von Luftfahrzeugen dürfen in dem anderen Gebiet nicht besteuert werden, es sei denn, dass die Luftfahrzeuge ausschliesslich oder vorwiegend zwischen Orten innerhalb dieses anderen Gebietes betrieben werden.

(2) Absatz 1 gilt auch für Beteiligungen von Unternehmen der Luftfahrt an Pools jeder Art.

(3) Einkünfte eines indischen Unternehmens aus dem Betrieb von Luftfahrzeugen unterliegen überdies in Oesterreich nicht der Gewerbesteuer.

ARTIKEL VI

(1) Lizenzgebühren, die eine in einem der Gebiete ansässige Person aus Quellen

innerhalb des anderen Gebietes bezieht, dürfen nur in diesem anderen Gebiet besteuert werden.

(2) In diesem Artikel bedeutet der Ausdruck „Lizenzgebühren" Lizenzgebühren oder andere gleichartige Beträge, die als Entgelt für das Recht auf Nutzung eines Urheberrechtes, künstlerischen oder wissenschaftlichen Werkes, Filmes, Patentes, Modelles, Gebrauchsmusters, Planes, geheimen Herstellungsverfahrens oder -rezeptes, einer Schutzmarke oder eines anderen gleichartigen Rechtes zufliessen.

ARTIKEL VII

Beträge, die von einem Unternehmen eines der Gebiete für technische Leistungen bezahlt werden, die von einem Unternehmen des anderen Gebietes erbracht werden, unterliegen der Besteuerung im erstgenannten Gebiet nur insoweit, als diese Beträge einer tatsächlich im erstgenannten Gebiet ausgeübten Tätigkeit zuzurechnen sind. Bei Ermittlung der so der Besteuerung unterliegenden Einkünfte sind die Ausgaben als Abzugspost zuzulassen, die im erstgenannten Gebiet im Zusammenhang mit den in diesem Gebiet erbrachten Tätigkeiten angefallen sind.

ARTIKEL VIII

Dividenden, die von einer in einem der Gebiete ansässigen Gesellschaft an eine im anderen Gebiet ansässige Person gezahlt werden, dürfen nur im erstgenannten Gebiet besteuert werden.

ARTIKEL IX

Zinsen für Schuldverschreibungen, Wertpapiere, Schuldscheine, Obligationen oder irgendwelche andere Schuldverpflichtungen, die von einer in einem der Gebiete ansässigen Person aus Quellen innerhalb des anderen Gebietes bezogen werden, dürfen nur in diesem anderen Gebiet besteuert werden.

ARTIKEL X

Einkünfte aus unbeweglichem Vermögen dürfen nur in dem Gebiet besteuert werden, in dem das Vermögen liegt. In diesem Zusammenhang gelten Mieten, Lizenzgebühren oder andere Einkünfte, die aus dem Betrieb eines Bergwerkes, Steinbruchs oder irgendeiner anderen Stätte der Ausbeutung von Bodenschätzen bezogen werden, als Einkünfte aus unbeweglichem Vermögen.

ARTIKEL XI

(1) Gewinne aus dem Verkauf, dem Tausch oder der Uebertragung von beweglichen oder unbeweglichen Vermögenswerten dürfen nur in dem Gebiet besteuert

werden, in dem sich der Vermögenswert zum Zeitpunkt des Verkaufes, des Tausches oder der Uebertragung befindet. In diesem Zusammenhang gelten Anteile an Gesellschaften als in dem Gebiet befindlich, in dem die Gesellschaft ihren Sitz hat.

(2) In diesem Artikel umfasst der Begriff „Vermögenswerte" nicht das bewegliche Vermögen im Sinn von persönlicher Habe (zum Beispiel Kleidung, Schmuck und Einrichtungsgegenstände), das für den persönlichen Gebrauch des Steuerpflichtigen oder eines von ihm abhängigen Familienmitgliedes bestimmt ist.

ARTIKEL XII

(1) Entgelte (ausser Pensionen und Renten) für Dienstleistungen, die von öffentlichen Kassen Oesterreichs bezahlt werden, dürfen in Indien nicht besteuert werden, es sei denn, dass die Zahlung an einen indischen Staatsbürger für dort erbrachte Dienste erfolgt.

(2) Entgelte (ausser Pensionen und Renten) für Dienstleistungen, die von öffentlichen Kassen Indiens bezahlt werden, dürfen in Oesterreich nicht besteuert werden, es sei denn, dass die Zahlung an einen österreichischen Staatsbürger für dort erbrachte Dienste erfolgt.

(3) Die Absätze 1 und 2 sind nicht auf Zahlungen für Dienstleistungen anzuwenden, die im Zusammenhang mit einer in Gewinnerzielungsabsicht durchgeführten gewerblichen Tätigkeit eines der beiden vertragschliessenden Teile oder dessen Gebietskörperschaften erbracht werden.

(4) Die Absätze 1 und 2 sind auch auf Vergütungen (ausser Pensionen und Renten) anzuwenden, die von der Oesterreichischen Nationalbank, den Oesterreichischen Bundesbahnen oder der Oesterreichischen Post- und Telegraphenverwaltung oder von der Reserve-Bank in Indien, den Staatsbahnbehörden und der Postverwaltung Indiens gezahlt werden.

ARTIKEL XIII

(1) Pensionen oder Renten, die eine in einem der Gebiete ansässige Person aus Quellen innerhalb des anderen Gebietes bezieht, dürfen nur in diesem anderen Gebiet besteuert werden.

(2) In diesem Artikel bedeutet der Begriff „Pensionen" regelmässig wiederkehrende Zahlungen, die für erbrachte Dienstleistungen oder zum Ausgleich für erlittene Nachteile gewährt werden. Der Begriff „Renten" bedeutet bestimmte Beträge, die regelmässig an festen Terminen auf Lebenszeit oder während eines bestimmten oder bestimmbaren Zeitabschnittes zahlbar sind.

ARTIKEL XIV

(1) Vorbehaltlich des Artikels XII dürfen Gewinne aus freiberuflicher Tätigkeit

oder Entgelte für nichtselbständige Arbeit, die von einer in einem der Gebiete ansässigen natürlichen Person bezogen werden, in dem anderen Gebiet nur besteuert werden, wenn die Tätigkeit in diesem anderen Gebiet ausgeübt wird.

(2) Eine in Oesterreich ansässige natürliche Person darf in Indien von den Gewinnen oder Entgelten im Sinn des Absatzes 1 nicht besteuert werden, wenn

a) sie sich in Indien in dem in Betracht kommenden „vorhergehenden Jahr" vorübergehend, insgesamt nicht länger als 183 Tage aufhält,

b) die Tätigkeiten für oder im Auftrag einer in Oesterreich ansässigen Person geleistet werden,

c) die Gewinne oder die Entgelte der österreichischen Steuer unterliegen, und

d) die Gewinne oder Entgelte bei Ermittlung der Gewinne eines Unternehmens, das der indischen Steuer unterliegt, nicht abgezogen werden.

(3) Eine in Indien ansässige natürliche Person darf in Oesterreich von den Gewinnen oder Entgelten im Sinn des Absatzes 1 nicht besteuert werden, wenn

a) sie sich in Oesterreich in einem Steuerjahr vorübergehend, insgesamt nicht länger als 183 Tage aufhält,

b) die Tätigkeiten für oder im Auftrag einer in Indien ansässigen Person geleistet werden,

c) die Gewinne oder Entgelte der indischen Steuer unterliegen,

d) die Gewinne oder Entgelte bei Ermittlung der Gewinne eines Unternehmens, das der österreichischen Steuer unterliegt, nicht abgezogen werden.

(4) Dienste, die eine natürliche Person ständig oder vorwiegend an Bord von Schiffen oder Luftfahrzeugen leistet, die von einem Unternehmen eines der Gebiete betrieben werden, gelten als in diesem Gebiet geleistet.

ARTIKEL XV

Hochschullehrer oder Lehrer aus einem der Gebiete, die Vergütungen für eine Lehrtätigkeit während eines vorübergehenden, zwei Jahre nicht übersteigenden Aufenthaltes an einer Universität, sonstigen Hochschule, Schule oder anderen Lehranstalt im anderen Gebiet erhalten, dürfen in diesem anderen Gebiet hinsichtlich dieser Vergütungen nicht besteuert werden.

ARTIKEL XVI

(1) Eine natürliche Person aus einem der Gebiete, die sich vorübergehend in dem anderen Gebiet lediglich

a) als Student an einer Universität, einer sonstigen Hochschule oder Schule dieses anderen Gebietes,

b) als Lehrling oder

c) als Empfänger eines in erster Linie für das Studium oder für Forschungszwecke bestimmten Zuschusses, Unterhaltsbeitrages oder Preises einer religiösen,

mildtätigen, wissenschaftlichen oder erzieherischen Organisation aufhält, darf in dem anderen Gebiet von den für ihren Lebensunterhalt, ihr Studium oder ihre Ausbildung bestimmten Ueberweisungen aus dem Ausland, von einem Stipendium und von Beträgen, die eine Vergütung für eine im anderen Gebiet zu Ausbildungszwecken geleistete Arbeit darstellen, nicht besteuert werden.

(2) Eine natürliche Person aus einem der Gebiete, die sich im anderen Gebiet vorübergehend nicht länger als ein Jahr als Angestellter eines Unternehmens oder im Vertragsverhältnis mit einem Unternehmen des ersteren Gebietes oder einer der im Absatz (1) lit. c) genannten Organisationen nur deshalb aufhält, um technische, berufliche oder geschäftliche Erfahrungen von einer Person zu erwerben, die nicht dieses Unternehmen oder diese Organisation ist, darf von den Vergütungen für diesen Zeitraum in dem anderen Gebiet nicht besteuert werden, es sei denn, der Betrag übersteigt 50.000 S oder den Gegenwert in indischer Währung.

(3) Eine natürliche Person aus einem der Gebiete, die sich im anderen Gebiet auf Grund von Vereinbarungen mit der Regierung dieses anderen Gebietes nur zum Zweck der Ausbildung, der Forschung oder der Studien vorübergehend aufhält, darf in dem anderen Gebiet von den Vergütungen, die sie im Hinblick auf diese Ausbildung, Forschung oder Studien erhält, nicht besteuert werden, es sei denn, der Betrag übersteigt 80.000 S oder den Gegenwert in indischer Währung.

ARTIKEL XVII

(1) Die in beiden Gebieten geltenden Gesetze bleiben weiterhin für die Veranlagung und die Besteuerung des Einkommens in den beiden Gebieten massgebend, soweit nicht dieses Abkommen ausdrücklich gegenteilige Vorschriften enthält.

(2) Einkünfte aus Quellen in Oesterreich, die nach diesem Abkommen der Besteuerung in Oesterreich entweder unmittelbar oder im Abzugsweg unterworfen werden dürfen, sind von der indischen Steuer ausgenommen.

(3) Einkünfte aus Quellen in Indien, die nach diesem Abkommen der Besteuerung in Indien unmittelbar oder im Abzugsweg unterworfen werden dürfen, sind von der österreichischen Steuer ausgenommen.

(4) Ungeachtet der Absätze 2 und 3 dürfen jene Einkünfte, die nach den Gesetzen der beiden Gebiete bei Ermittlung des anzuwendenden Steuersatzes einzubeziehen wären, weiterhin so einbezogen werden.

ARTIKEL XVIII

Die zuständigen Behörden werden die ihnen auf Grund ihrer Steuergesetze im normalen Verwaltungsablauf zur Verfügung stehenden Auskünfte austauschen, die zur Durchführung dieses Abkommens erforderlich sind. Alle so ausgetauschten Auskünfte sind geheim zu behandeln und dürfen nur solchen Personen zugänglich gemacht werden, die mit der Veranlagung oder Einhebung der Steuern

im Sinn dieses Abkommens befasst sind. Von der zuständigen Behörde eines der Gebiete dürfen der Behörde des anderen Gebietes Auskünfte, die ein Handels-, Geschäfts-, Gewerbe- oder Berufsgeheimnis oder ein Herstellungsverfahren offenbaren würden, nicht erteilt werden.

ARTIKEL XIX

(1) Weist eine in einem der Gebiete ansässige Person nach, dass Massnahmen der Steuerbehörden des anderen Gebietes die Wirkung einer den Bestimmungen dieses Abkommens widersprechenden Doppelbesteuerung haben oder haben werden, so kann sie ihren Fall der zuständigen Behörde des Gebietes unterbreiten, in dem sie ansässig ist. Erscheinen die Einwendungen als beachtenswert, so wird die angerufene zuständige Behörde versuchen, sich mit der zuständigen Behörde des anderen Gebietes zum Zweck der Vermeidung der Doppelbesteuerung zu verständigen.
(2) Schwierigkeiten oder Zweifel, die sich bei der Anwendung oder Auslegung dieses Abkommens ergeben, können von den zuständigen Behörden der beiden Gebiete im Einvernehmen geregelt werden.

ARTIKEL XX

Die Bestimmungen dieses Abkommens dürfen nicht so ausgelegt werden, dass sie in irgendeiner Weise Befreiungen, Abzüge, Anrechnungen und andere Begünstigungen einschränken, die derzeit oder künftig durch die Gesetze eines der Vertragstaaten bei Ermittlung der Steuer dieses Vertragstaates gewährt werden.

ARTIKEL XXI

(1) Dieses Abkommen soll ratifiziert werden.
(2) Die Ratifikationsurkunden sollen so bald wie möglich in Wien ausgetauscht werden.
(3) Dieses Abkommen tritt mit dem Austausch der Ratifikationsurkunden in Kraft und wird daraufhin wirksam:

a) hinsichtlich der österreichischen Steuer für Steuern, die für das Kalenderjahr 1962 und für die folgenden Kalenderjahre erhoben werden,

b) hinsichtlich der indischen Steuer für die Einkünfte der „vorhergehenden Jahre", die für die Veranlagungsjahre massgeblich sind, die am oder nach dem 1. April 1963 beginnen.

ARTIKEL XXII

Dieses Abkommen bleibt auf unbestimmte Zeit in Kraft; jedoch kann jeder der vertragschliessenden Teile am oder vor dem 30. Juni eines jeden Kalenderjahres

nach dem Jahre 1965 das Abkommen dem anderen Vertragsteil gegenüber kündigen; in diesem Fall verliert das Abkommen seine Wirksamkeit:

a) hinsichtlich der österreichischen Steuer für Steuern, die für die Kalenderjahre erhoben werden, die dem Jahr folgen, in dem die Kündigung erfolgt ist, und

b) hinsichtlich der indischen Steuer für die Einkünfte, die am oder nach dem 1. Jänner des auf die Kündigung folgenden Jahres entstanden sind.

ZU URKUND DESSEN haben die unterfertigten Bevollmächtigten dieses Abkommen unterzeichnet.

GESCHEHEN zu New Delhi am 24. September 1963 in zweifacher Ausfertigung in englischer Sprache.

Für die Republik Oesterreich:	Für die Republik Indien:
Schlumberger eh.	**Tarkeshwari Sinha eh.**
(Dr. Georg Schlumberger)	(Shrimati Tarkeshwari Sinha)
Botschafter der Republik Oesterreich in Indien	Stellvertretender Finanzminister, Regierung von Indien

(Uebersetzung)

New Delhi, am 24. September 1963

Sehr geehrter Herr Botschafter!

Aus Anlass der heute stattfindenden Unterzeichnung des Abkommens zwischen der Republik Indien und der Republik Oesterreich zur Vermeidung der Doppelbesteuerung auf dem Gebiete der Steuern vom Einkommen beehre ich mich, Ihnen im Namen der indischen Regierung mitzuteilen, dass bei Erfüllung eines Vertrages über den Verkauf von Maschinen durch eine in einem der Gebiete ansässige Person an eine im anderen Gebiet ansässige Person, bei dem mit dem Verkauf der Maschinen die Verpflichtung verbunden ist, dass ein oder mehrere Angestellte der im erstgenannten Gebiet ansässigen Person sich in das andere Gebiet zu begeben haben, um dort bei der Aufstellung der Maschinen Hilfe zu leisten, in dieser Tätigkeit keine Betriebsstätte erblickt werden wird, es sei denn, dass die Tätigkeit länger als einen Monat ausgeführt wird oder dass die mit der Tätigkeit zusammenhängenden Ausgaben mehr als zehn Prozent des Gesamtverkaufspreises dieses Auftrages betragen.

Ich wäre Ihnen sehr verbunden, wenn Sie mir Ihre Zustimmung zur obigen Auslegung der Bestimmungen des Artikels II Absatz (1) lit. (g) (bb) des genannten

Abkommens bestätigen würden. In diesem Fall wird diese Note und Ihre Antwort darauf als Teil des Abkommens angesehen werden.

Empfangen Sie, sehr geehrter Herr Botschafter, den Ausdruck meiner ausgezeichneten Hochachtung

Tarkeshwari Sinha eh.
(Shrimati Tarkeshwari Sinha)

An Seine Exzellenz
Dr. Georg Schlumberger,
Botschafter der Republik Oesterreich
in Indien,
New Delhi.

(Uebersetzung)

New Delhi, am 24. September 1963

Sehr geehrte Frau Minister!

Unter Bezugnahme auf das heute unterzeichnete Abkommen zwischen der Republik Oesterreich und der Republik Indien zur Vermeidung der Doppelbesteuerung auf dem Gebiete der Steuern von Einkommen haben Sie mir folgendes mitgeteilt:

„Aus Anlass der heute stattfindenden Unterzeichnung des Abkommens zwischen der Republik Indien und der Republik Oesterreich zur Vermeidung der Doppelbesteuerung auf dem Gebiete der Steuern vom Einkommen beehre ich mich, Ihnen im Namen der indischen Regierung mitzuteilen, dass bei Erfüllung eines Vertrages über den Verkauf von Maschinen durch eine in einem der Gebiete ansässige Person an eine im anderen Gebiet ansässige Person, bei dem mit dem Verkauf der Maschinen die Verpflichtung verbunden ist, dass ein oder mehrere Angestellte der im erstgenannten Gebiet ansässigen Person sich in das andere Gebiet zu begeben haben, um dort bei der Aufstellung der Maschinen Hilfe zu leisten, in dieser Tätigkeit keine Betriebstätte erblickt werden wird, es sei denn, dass die Tätigkeit länger als einen Monat ausgeführt wird oder dass die mit der Tätigkeit zusammenhängenden Ausgaben mehr als zehn Prozent des Gesamtverkaufspreises dieses Auftrages betragen.

Ich wäre Ihnen sehr verbunden, wenn Sie mir Ihre Zustimmung zur obigen Auslegung der Bestimmungen des Artikels II Absatz (1) lit. g) bb) des genannten Abkommens bestätigen würden. In diesem Fall wird diese Note und Ihre Antwort darauf als Teil des Abkommens angesehen werden."

Ich beehre mich, Ihnen mitzuteilen, dass ich diesem Vorschlag zustimme. Ihre Note vom heutigen Tag und meine Antwort darauf sollen daher einen Teil des Abkommens bilden.

Empfangen Sie, sehr geehrte Frau Minister, den Ausdruck meiner ausgezeichneten Hochachtung.

Schlumberger eh.
(Dr. Georg Schlumberger)

An Frau
Shrimati Tarkeshwari Sinha,
Stellvertretender Finanzminister,
Regierung von Indien,
New Delhi.

ERLÄUTERNDE BEMERKUNGEN

Allgemeiner Teil.

Zwischen Oesterreich und Indien bestehen bisher keine zwischenstaatlichen Vereinbarungen zur Regelung der steuerlichen Beziehungen. Die fortschreitende wirtschaftliche Entwicklung und die Notwendigkeit der Förderung österreichischer Exportinteressen liessen es geboten erscheinen, im Verhältnis zu Indien eine doppelte Besteuerung durch ein zwischenstaatliches Abkommen auszuschalten. Zu diesem Zweck haben in Wien Verhandlungen über den Abschluss eines solchen Abkommens stattgefunden und am 12. Oktober 1962 zur Paraphierung eines Abkommens zur Vermeidung der Doppelbesteuerung auf dem Gebiete der Steuern vom Einkommen geführt. Das Abkommen wurde am 24. September 1963 in New Delhi unterzeichnet.

Im vorliegenden Abkommen soll die Doppelbesteuerung durch Zuteilung der einzelnen Einkommensquellen an je einen der beiden Vertragstaaten zur jeweils ausschliesslichen Besteuerung ausgeschaltet werden. Indien ist als wirtschaftlich noch in Entwicklung befindlicher Staat einerseits bestrebt, auf steuerlichem Gebiet durch Begünstigungen einen Anreiz für ausländische Kapitalinvestitionen zu geben, es verfolgt aber anderseits beim Abschluss von Abkommen zur Vermeidung der Doppelbesteuerung den Grundsatz, dasz diese vom Quellenstaat gewährten Begünstigungen dem Steuerpflichtigen selbst zugute kommen müssen und nicht durch eine Besteuerung im Wohnsitzstaat in Frage gestellt werden dürfen. Indien besteht daher in allen Doppelbesteuerungsabkommen

darauf, dass das Besteuerungsrecht an den einzelnen Einkunftsarten in erster Linie dem Staat zur ausschliesslichen Besteuerung zugeteilt werden muss, in dem die Einkommensquelle gelegen ist. Darüber hinaus ist Indien jedoch hinsichtlich der Besteuerung gewerblicher Einkünfte bereit, durch eine genaue Umschreibung des Begriffes „Betriebsstätte" ausländischen Firmen eine klare Abgrenzung der innerstaatlichen – in Indien besonders weitreichenden – Besteuerungsansprüche zuzusichern.

Oesterreichischerseits war es nicht möglich, sich diesen Argumenten zu verschliessen, zumal österreichischerseits an der Abgrenzung des Betriebsstättenbegriffes besonderes Interesse besteht. Es finden sich daher in diesem Abkommen vielfach Zuteilungsnormen, die sonst in österreichischen Doppelbesteuerungsabkommen nicht enthalten sind. Es handelt sich dabei jedoch durchwegs um Regelungen, die auch schon von anderen europäischen Ländern, wie der Bundesrepublik Deutschland und den skandinavischen Staaten, dem indischen Vertragspartner in Doppelbesteuerungsabkommen zugestanden worden sind.

Das Abkommen, das gewisse Einschränkungen des innerstaatlichen Besteuerungsrechtes zur Folge hat, ist gesetzändernd und bedarf daher für seine innerstaatliche Rechtswirksamkeit gemäss Artikel 50 B.-VG., in der Fassung von 1929, der Genehmigung durch den Nationalrat.

Besonderer Teil.

Zu Artikel I:

Das Abkommen soll in beiden Staaten nur auf die Steuern vom Einkommen anwendbar sein.

Zu Artikel II:

Dieser Artikel enthält einige für die Anwendung des Abkommens wichtige Begriffsumschreibungen, so insbesondere die Umschreibung der Begriffe „Ansässigkeit" und „Betriebsstätte".

Ueber indisches Verlangen soll sich die Begriffsumschreibung der „Ansässigkeit" der Steuerpflichtigen für beide Staaten – wie dies insbesondere auch im britisch-amerikanischen Rechtskreis üblich ist – grundsätzlich auf die in beiden Staaten bestehenden innerstaatlichen Vorschriften über den Eintritt unbeschränkter Steuerpflicht stützen. In Oesterreich umfasst dieser Begriff daher sowohl den Wohnsitz als auch den gewöhnlichen Aufenthalt des Steuerpflichtigen.

Die in lit. g enthaltene Umschreibung des Begriffes „Betriebsstätte" im Sinne des Abkommens ist von Bedeutung für die Frage der Zuteilung des Besteuerungsrechtes an gewerblichen Einkünften (Artikel III). Die hier getroffene Umschrei-

bung stimmt im wesentlichen mit den Grundsätzen überein, die hierzu im Fiskalkomitee der OEEC ausgearbeitet wurden.

Von diesen im Fiskalkomitee der OEEC ausgearbeiteteten Grundsätzen weicht die vorliegende Definition insbesondere in folgenden beiden Punkten ab:

1. Bauausführungen, Montagen oder dergleichen gelten auf jeden Fall als Betriebsstätte im Sinn des Abkommens (lit. bb). Zur Sicherung, dass nicht auch bei Montagetätigkeiten untergeordneter Natur eine Betriebsstätte in Indien angenommen und damit ein Besteuerungsrecht in Anspruch genommen werden darf, wurde eine weitere Einschränkung des Begriffes „Betriebsstätte" in diesem Punkt in einem eigenen Briefwechsel niedergelegt, der einen integrierenden Bestandteil des Abkommens bildet.

2. Vermittlungsagenten, die ausschliesslich oder fast ausschliesslich für ein einziges Unternehmen im Quellenstaat tätig sind, werden als Betriebsstätten behandelt (lit. dd Z. 3).

Zu Artikel III:

Dieser Artikel enthält die international übliche Berechtigung des Quellenstaates, in seinem Gebiet entstandene gewerbliche Gewinne nur insoweit besteuern zu dürfen, als sie einer dort gelegenen Betriebsstätte im Sinne des Abkommens zuzurechnen sind. Für Zwecke der Gewinnaufteilung ist dabei die Betriebsstätte so zu behandeln, wie wenn sie als selbständiges, unabhängiges Unternehmen mit der Hauptniederlassung in Geschäftsbeziehungen getreten wäre. Durch diese Bestimmung erhalten die indischen innerstaatlich bestehenden Besteuerungsansprüche eine den üblichen internationalen Grundsätzen entsprechende Abgrenzung.

Zu Artikel IV:

Diese Bestimmung entspricht der vom Fiskalkomitee der OEEC ausgearbeiteten Modellfassung.

Zu Artikel V:

Dieser Artikel enthält die in Doppelbesteuerungsabkommen übliche Regelung, dass Gewinne aus dem Betrieb der Luftfahrt nur im Sitzstaat des Unternehmens besteuert werden. Die sonst in Doppelbesteuerungsabkommen übliche gleichartige Regelung für Gewinne aus dem Betrieb von Schiffahrtsunternehmen ist im österreichisch-indischen Verhältnis entbehrlich.

Zu den Artikeln VI, VII und IX:

Ueber besonderes Verlangen Indiens musste das Besteuerungsrecht für Einkünfte aus Lizenzen, Dividenden und Zinsen abweichend von den sonst in

Doppelbesteuerungsabkommen üblichen Regelungen dem Quellenstaat überlassen werden.

Zu Artikel VII:

Hinsichtlich der Besteuerung von Entgelten für technische Leistungen wurde dem Quellenstaat über indisches Verlangen ein Besteuerungsrecht insoweit zugestanden, als die Entgelte für eine in Indien ausgeübte Tätigkeit bezahlt werden.

Zu Artikel X:

Der Staat, in dem ein Grundstück gelegen ist, bleibt berechtigt, die Einkünfte aus diesem Grundstück zu besteuern.

Zu Artikel XI:

Dieser Artikel behandelt die Besteuerungsrechte an Gewinnen aus der Veräusserung von Kapitalvermögenswerten (sogenannten „capital gains"). Oesterreichischerseits wird hiezu im Vertragsrecht normalerweise, sofern es sich nicht um die Veräusserung von Betriebsvermögen oder unbeweglichem Vermögen handelt, ein Besteuerungsrecht nur für den Wohnsitzstaat des Steuerpflichtigen zugebilligt. Die indischen Doppelbesteuerungsabkommen sichern an solchen Einkünften jedoch in erster Linie dem Quellenstaat ein Besteuerungsrecht zu. Die vorliegende Fassung teilt das Besteuerungsrecht zwar diesem Grundsatz entsprechend dem Quellenstaat zu, enthält aber dadurch, dass Aktien als in dem Staat belegen anzusehen sind, in dem die betreffende Gesellschaft ihren Sitz hat, und dass die Veräusserung persönlicher Gebrauchsgegenstände von der Regelung ausgeschlossen ist, eine wesentliche Milderung für europäische Steuerpflichtige.

Zu Artikel XII:

Dieser Artikel enthält die in Doppelbesteuerungsabkommen übliche ausschliessliche Zuteilung des Besteuerungsrechtes an Einkünften aus öffentlichen Kassen an den Quellenstaat.

Zu Artikel XIII:

Ueber ausdrückliches indisches Verlangen wurde auch das Besteuerungsrecht an privaten Ruhebezügen dem Quellenstaat zugeteilt.

Zu Artikel XIV:

Dieser Artikel enthält die international üblichen Zuteilungsregeln für Einkünfte aus selbständiger und nichtselbständiger Arbeit. Bei beiden Einkunftsarten hat der Quellenstaat nur dann ein Besteuerungsrecht, wenn die Tätigkeit in seinem Gebiet ausgeübt wird. Ausgenommen hievon ist die Besteuerung von

Personen, die in den Quellenstaat zu nur kurzfristiger Tätigkeit entsendet werden.

Zu den Artikeln XV und XVI:

Diese Artikel enthalten weitgehende Begünstigungs- und Befreiungsvorschriften für Gastprofessoren und Gaststudenten im Empfangsstaat. Diese Bestimmung ist geeignet, die Vertiefung der kulturellen Beziehungen zwischen den beiden Staaten wesentlich zu fördern.

Zu Artikel XVII:

Die in beiden Staaten innerstaatlich bestehenden Besteuerungsrechte bleiben unberührt, soweit nicht die Bestimmungen des Abkommens das Besteuerungsrecht an bestimmten Einkunftsarten ausdrücklich dem anderen Staat zuteilt. Jeder der beiden Staaten bleibt jedoch berechtigt, auf jene Einkünfte, die ihm nach den Abkommensbestimmungen zur Besteuerung verbleiben, den Steuersatz anzuwenden, der sich ergäbe, wenn die dem anderen Staat zur Besteuerung zugeteilten Einkünfte weiterhin steuerpflichtig wären.

Zu den Artikeln XVIII bis XXII:

Die restlichen Artikel des Abkommens beinhalten die üblichen Regelungen über den Nachrichtenaustausch zwischen den Finanzbehörden der beiden Vertragstaaten und über das in Zweifelsfällen durchzuführende Verständigungsverfahren. Das Abkommen ist nur in englischer Sprache abgefasst. Der deutsche Text wird daher nur als Uebersetzung des authentischen englischen Textes gelten. Ein Abschluss des Abkommens auch in deutscher Sprache würde notwendigerweise erfordern, dass auch ein Text in einer der indischen Sprachen für authentisch erklärt werden müszte. Die Ueberprüfung eines solchen als authentisch geltenden indischen Textes wäre jedoch in Oesterreich auf unüberwindliche Schwierigkeiten gestossen.

Swiss Measures against abuse of Tax-Conventions

The International Bureau of Fiscal Documentation has published the 19th Supplement to the Bulletin.

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INTERNATIONAL BUREAU OF FISCAL DOCUMENTATION

HISTORY

Since its establishment in 1938, the International Bureau of Fiscal Documentation has served as an independent source of tax information and advice. After World War II its functions were broadened beyond mere simple fiscal documentation and assumed the character of supplying factual data on the tax systems of countries around the world in response to requests from various governmental and business organisations. This welding of practical and scientific functions has been the keystone of the Bureau's development.

In 1946, the Bureau began publication of the Bulletin for International Fiscal Documentation, the official organ of the International Fiscal Association. This publication, which exemplifies the blending of practical with scientific data, has been supplemented by nineteen special publications. In 1961, the Bureau published the first issue of European Taxation, a fortnightly English language review of tax developments on the European Continent, in the United Kingdom and in Ireland. During that time span the Bureau also published a well-received book in German by Dr. Albert J. Rädler about taxation in the common market countries. The Bureau continuously assisted in translating and preparing tax materials for other publications. Additionally, its library was greatly expanded and now contains well over 7000 volumes on national and international tax matters, as well as more than 250 selected periodicals; many visiting researchers have made use of these library facilities.

In August, 1963, the Bureau moved to the "Muiderpoort", an old City Gate which is one of Amsterdam's historical landmarks. These new quarters, made possible through the generosity of the City and the University of Amsterdam, will provide the potential for future expansion.

GOALS

The overriding goal of the Bureau is to serve the International community by collecting, evaluating and disseminating tax data in a manner which combines scientific objectivity with practical realism.

ORGANIZATION

The Bureau is a public foundation established under Dutch law. Its policies are determined by a "Curatorium", or board of trustees, composed of outstanding representatives of the government, business and academic communities in various countries. A managing director is responsible for carrying out the goals articulated by the Curatorium.

The Bureau is separated into four divisions: Library and Documentation, which is

responsible for acquisition and maintenance of tax materials; International Tax Service, which prepares reports for governmental, business and scholarly purposes; Publications Department, which is responsible for the whole gamma of the Bureau's publications; and the Administrative arm, which plans and coördinates Bureau activities.

PERSONNEL

The Bureau employs eight Associates, one Librarian and sixteen Staff. Of these, the majority are Dutch; but English, Spanish and United States nationals are also working in the Bureau.

CORRESPONDENTS

Apart from its own Associates, the Bureau avails itself of the cooperative services of a large number of expert correspondents throughout the world.

THE PROGRAM

The Bureau's removal to new quarters, which ended six years of overcrowding, has been an appropriate occasion for the formulation of a program of activities. The program consists of five points, all of which will be carried on concurrently. Emphasis during the next years will, however, be placed on training of personnel and assisting in research projects.

1. *Training*
The Bureau seeks to prepare young lawyers and economists to meet the growing demand for international tax experts. By doing so, the Bureau also seeks to broaden its own experience and viewpoint, in a sense it serves as a melting pot for tax oriented ideas to persons from a large number of countri

2. *Research*
The Bureau is focusing its research efforts upon a significant contemporary problem – the relationship between capital exporting nations and developing countries. To aid in the accomplishment of this end, the Bureau is offering to young post-graduates from developing countries the opportunity to work with the Bureau. Other important research projects include studies of the tax aspects of economic integration and of the influence of tax incentives on economic growth.

3. *Education*
The Bureau seeks to stimulate, and participate in, seminars and discussion groups, lectures and publications.

4. *Library and Documentation*
The Bureau's program of cataloguing and completing its set of materials will be continued in the framework of its new library facilities.

5. *Reports*
The Bureau prepares reports containing factual data and legal appraisals relating to countries other than the country of residence of the organization or individual who requests a report.

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RE: LIMITED TAXABILITY OF AMERICAN LAWYERS IN THE FEDERAL REPUBLIC OF GERMANY

In connection with this subject, we published in the issue of Sept./Oct. 1963, as a matter of general interest a protest which Dr. Walter, New York, had in June 1963 submitted to the German Ministry of Finance on behalf of the American Association of Former European Jurists.*

Unfortunately, the form of the publication failed to point out that Dr. Walter's statement was conceived as a pleading rather than a scientific treatment of the subject. We were asked by Dr. Walter to clarify this point in justice to the public officials whose dissenting viewpoints did not get the deserved equal emphasis.

At the same time we were informed that the problem has found an intermediate practical solution by the joint consent of the Finanzministers (Finance Senators) of the German States to waive as a matter of equity the taxation of professional services rendered abroad for clients and customers not residing in Germany even where such services might be regarded as utilized in Germany.

The—originally planned—change of the German Regulations to the U.S.-German Double Taxation Agreement was dispensed with because the impending reform of the Agreement will necessitate a revision of the Regulations in any case.

ZUR FRAGE DER BESCHRÄNKTEN STEUERPFLICHT AMERIKANISCHER RECHTSVERTRETER IN DER BUNDESREPUBLIK

Zu diesem Thema veröffentlichten wir in No. 5 (Sep/Okt.) 1963, die von Dr. Walter (New York) für die American Association of Former European Jurists verfasste Eingabe an das Deutsche Finanzministerium in der Annahme, dass das aufgeworfene Thema in den beteiligten Kreisen auf grosses Interesse stösst.*

Leider ist bei der Form der Veröffentlichung nicht klar genug zum Ausdruck gekommen, dass es sich hier nicht um einen wissenschaftlichen Artikel sondern um eine Parteierklärung handelte; da die Veröffentlichung des einseitigen Standpunkts der abweichenden Meinung der beteiligten Behörden kaum gerecht wird, hat Dr. Walter uns ersucht, diese Umstände klarzustellen.

Gleichzeitig wurde uns mitgeteilt, dass das Problem inzwischen seine praktische Lösung dadurch gefunden hat, dass die Finanzministers (Finanzsenatoren) der Länder „im Wege der Billigkeit" einer Regelung zugestimmt haben, wonach freiberufliche Tätigkeit im Ausland dann *nicht* zur Verwertungsbesteuerung herangezogen wird, wenn sie für einen Auftraggeber ausserhalb der Bundesrepublik erfolgt.

Von einer Änderung der Deutschen Richtlinien zum Deutsch-Amerikanischen Doppelbesteuerungsabkommen (die ursprünglich geplant war) wurde abgesehen, weil diese nach Beendigung der Revisionsverhandlungen ohnehin einer Änderung unterzogen werden müssen.

* Another critical comment of the Berlin Administrative Court decision of April 25, 1962 appeared subsequently in Int. Wirtschaftsbriefe Nr. 11, '63 pages 9 and 10 (Deutschland Gruppe 3, S. 175).

I

MODERN TRENDS IN TAXATION

TEXT OF A LECTURE, HELD AT A MEETING ON THE OCCASION OF THE TWENTY-FIFTH ANNIVERSARY OF THE INTERNATIONAL BUREAU OF FISCAL DOCUMENTATION AND OF THE OFFICIAL OPENING OF THE BUREAU'S NEW PREMISES IN THE "MUIDERPOORT".

BY

PROFESSOR G. S. A. WHEATCROFT,

Solicitor of the Supreme Court, Professor of English Law, University of London.

Your Excellencies, Mr. Chairman, Ladies and Gentlemen:

It is a very great honour and a great pleasure for me to address this meeting today. On such an occasion I feel it is a special honour for an ordinary tax professor like myself to have the opportunity of seeing what wonderful work the International Bureau of Fiscal Documentation has done in its twenty-five years. When you consider that it was unable to do anything for at least five of those years, for reasons outside its control, I think it is a marvellous achievement to have built up in such a short time such a magnificent library, such a magnificent centre for research and such a magnificent centre for education. I have very great pleasure indeed in offering my small congratulations to the Bureau and to those who have built it up.

I have been asked to talk today on modern trends in taxation, and with this audience I would naturally like to deal with the subject from an international aspect. Obviously a discussion of the trends in taxation of one country or another would be of little value by itself. But I can only speak with limited knowledge as I have not the great experience of Mr. van Hoorn about other systems of taxation than my own. Even my own I find rather difficult, as I gather some of you do too. I have a little knowledge of some countries such as the United States, Canada, Australia and other countries which have developed from the British system, although perhaps my colleagues in the United States would not perhaps accept that parentage. But I fear my knowledge of systems on the con-

tinent is very scanty indeed and I am afraid that what I have to say is bound to be slightly coloured from the view-point of someone from outside. I hope you will forgive me if I ignorantly make remarks which in your view are quite incorrect.

Now, when we talk about a „trend" we are looking at some movement in the past which we think is likely to persist. We use the past to view the future. Therefore, when we are talking about "trends" in taxation, we want to look at what has happened in the past to see what is likely to happen in the future.

Now when you look at any tax system, there is no difficulty at all in seeing movement. Taxes are always on the move; they are always changing. You only have to look at the library of the International Bureau of Fiscal Documentation and see how much time they have to spend in bringing their loose-leaf publications up-to-date. I am unfortunately one of those that adds to their task by publishing a loose-leaf publication and I can only tell you from my own experience what an enormous amount of change there is every three months or so in my own tax system. But the difficulty lies in seeing whether the movements are significant, whether they really indicate some definite trend, or whether they are merely small technical changes of no ultimate importance. A tax system is rather like an ant-heap. You go and look at it and you will see a great many ants all running about and they are obviously moving in one direction or another, but it is very difficult to see where they are going to or what they are really doing. A modern tax system is rather like that; it is obviously on the move, but where it is going to and why it is going are very difficult questions to answer. I am doubtful whether a close technical study of alterations and changes in tax law will help you a great deal to find out the way that the tax system is going. Usually when you are busy noticing and noting up the alterations to a tax system, it is difficult to see the wood for the trees. The alterations are in general so small that it is not easy to see whether they are really significant. So I would like to approach the problem in rather a different way by analysing the underlying forces which cause a tax system to change. And here, perhaps, we may find some greater measure of agreement between us in looking at different systems, because I suspect that the forces which lead to changes in tax systems can be parallelled in many countries. Of course they will be different according to the country in question, but you will generally find that the type of

force that is working in one country will probably be present in another country, although not perhaps quite so strongly. Here I may draw a little simile from mechanical engineering. When you are trying to find out whether some body will move, and in what direction it moves, you look to see what are the forces working on that body. Applying the same method to taxes, I would suggest that one can group and examine the forces that work on a tax system under five main heads.

First of all there is the force of government expenditure. In every system there is inevitably a requirement to raise so much money because the government spends it.

Secondly there is a force which I can best call the attitude of the administration, which, I am sure, gives a significant character to any tax system.

Thirdly we have a number of forces which I would call economic pressures. They are pressures to use the tax system for various economic purposes.

Fourthly we have what I would call social pressures. They are pressures to use the tax system for the purpose of social reforms of one kind or another.

Finally we have what I would call political pressures. All the four other kinds of pressures meet in the political arena where they find themselves subjected to special forces peculiar to the politics of the country concerned.

I would hope that if we look in each country at these groups of forces and see how strong they are and in what way they are working, it may be possible to foretell, perhaps not very accurately, the way in which that particular tax system is likely to move. Here again, if I can go back to my illustration of engineering, where you have a system which is stable and which is not moving, you can assume that the forces in every direction are equal and opposite. As one force gets a little stronger the body moves until again equilibrium is restored. And if we bear in mind that most of these forces work in opposite directions, so that in many cases they *are* equal and opposite, but that sometimes one is a little stronger than the other, we may be able to obtain some idea as to how the system will move.

Now let me take my first force, the force of government expenditure. The main function of taxation is to raise the money to meet the government expenditure. It is not of course essential to meet it all by taxation in any given year. We have seen a number of countries which have managed

to borrow large sums and apply countercyclical budgetary methods. There are various ways of keeping your actual cash balance straight without necessarily raising by taxation the amount of money you spend. But over a period, except possibly in times of war, it is inevitable that some form of balance must be maintained between expenditure and tax. So you have a force which is inevitably behind your taxes, a force which requires you every year to raise a given amount of money. This force is always growing stronger; there appears to be no question that over the years since the war the amount of money that governments spend is increasing. It is certainly increasing in money terms, and in many countries it is increasing in real terms.

First may I take my own country. I had a look at the figures over the last twelve years, during which period we have had a conservative government—a government that you would not probably expect to be particularly extravagant. In 1950/51 the taxes collected were 3,730 millions. In 1962/63 (I apologise for using these double years, but we make a little extra difficulty by using the 5th April as the end of our tax year) the figure was 6,572 millions, that is an increase of 76% in twelve years. In only one year in those twelve was there any decrease in the taxes over the year before. Every other year there was a substantial increase. That is the record in a country which has been comparatively stable during those twelve years. Now the main causes for this increase are probably three. There is inflation: over the years there has been a gradual inflation and a fall in the value of money. There are the high costs of modern defence; the technological improvements in armaments are extremely expensive. And there is an ever-increasing pressure for more and better social services in health, education, pensions and other fields. In real terms, or in terms of percentage of gross national produce, the increase has not been enormous, but even in these terms there is a significant increase. But one interesting feature emerges. Although we have increased our tax collections by a very large amount over these twelve years, this has been done with some reductions in the rates. If you look at our tax laws of twelve years ago and the laws now, you would think we were being taxed more heavily twelve years ago than we are now. Of course many of these reductions are only apparent, not real; when you have a progressive income tax, inflation and rise in costs makes the impact of that tax gradually more heavy without the rates being changed at all. If I may give a brief example, we have a tax

called surtax. It applies to people whose income is more than £2000 a year. Now in the four years from 1951 to 1955 the number of surtax payers rose from 259,000 to 341,000 although the rates were the same. At the end of those years there was an alteration in the tax provisions and certain reliefs were given, so that the figure went back to 331,000 in the next year but four years later it had risen again to 471,000. Hence over those 8 or 9 years, although the actual impact of the tax was theoretically less severe, there was an increase in the number of taxpayers of 82 per cent. So if you have a tax system which, like ours, depends to a substantial extent on progressive income taxes, inflation works in favour of the tax system because not only do you get increased revenue on a proportional basis, but it increases the sharpness of the progressive curve on the income taxes. Countries vary in their dependence on progressive income taxes; we do not have as high a proportion of personal income taxation as they have in the United States but we have a considerably higher proportion than in France or in Ireland. But if you have this reliance on personal income taxation, it has a buoyant effect on your tax revenues as inflation comes about; as money values fall, your tax yield increases more than proportionately with the fall in the value of money.

I have been talking so far of fairly well developed systems. In the developing countries, you have a very insistent demand for more money for government spending, a tremendous urge to spend money on health, on education and on capital projects of various kinds; here there is a great urge to increase tax collections as far as they possible can.

So I suggest that the first force, the force of government expenditure, is likely in the well-established countries to continue to maintain itself in real terms at least at the present level, and is more likely to go up than go down. In the newly developing countries, I am sure that tax revenues will go considerably higher because of the tremendous urge for current expenditure on social services. So we start with one force which I would think was against any changes involving reductions in taxes.

And now may I say a little about the next group of forces which I call the forces of administration. Certainly in my country and probably in most other countries the administration is *against* rather than *for* change. The motto, I am sure, which is written over their doors is: "An old tax is a good tax". Whilst they naturally are looking for changes which will simplify their technical problems and they are always making minor

changes to try and defeat particular tax avoidance devices, they are reluctant to embark on major changes. Most tax administrations are understaffed and their staffs are not trained to the degree that they would like them to be; they also depend to an enormous extent on some co-operation from the taxpayers. If you had a strike of taxpayers, it would be very difficult for even a well established administration to cope with it. In England at any rate we remember that our great revolution of the 17th century was precipitated by Sir John Hampden refusing to pay his ship-money. Now taxpayers are rather like sheep; they will do what they have been accustomed to do in the past but are extremely obstinate when told to do something new. So I would suggest that on the major issues the administration is generally against change. Here perhaps I am speaking too much from my own country's experience and some of you may say that you have tax administrations which are eager and anxious for change; if so I should very much like to come and study them and to introduce them to ours. But there is a large amount of small technical movement, partly, as I said before, to try and defeat particular tax avoidance schemes, partly, also in the desire to make the tax system more fair and more accurate; they may desire to help *this* particular hard case or *that* particular hard case. But this constant technical movement undoubtedly ends in more and more complicated systems; we all of us hope and pray for a nice simplified system but I think that this is a forlorn hope. If you just consider the tremendous complication of the economic and social life of the countries in which we live, it is not surprising that a tax system which attempts to apply taxes fairly and with administrative practicability over so many different types of industries and of people becomes very complicated. I am afraid that the hope that many of us have, that we might sometime have a tax system which really could be understood by an ordinary person, and would put all the professors of tax law and consultants out of business, is a forlorn hope.

My conclusion about the second group of forces is that these encourage much minor technical change but take a fairly positive stand against major change.

I must next talk about the economic forces. If we go back to Adam Smith, it was the accepted doctrine that a tax system should be neutral. It should not encourage or discourage any particular activity. There was one general exception to this doctrine in that it was not usually very

neutral towards the foreigner. He was in a separate category and you could be as unneutral as you liked to him and keep him out or only let him in on terms. But it was the general accepted doctrine of the political economists of the last century, that as far as possible the tax system within a country should be neutral. In addition many of our political economists went further and said that you should include the foreigner and have completely free trade. But now that is all changed. There are very few economists today who have not got some pet scheme of their own to use the tax system to promote some economic benefit so that there is a very wide field in which economic pressures operate.

Economic tax pressures can be divided into two main groups: (1) tax measures affecting the country as a whole and (2) tax measures affecting particular industries or individuals. In dealing with those which affect the country as a whole, one might mention counter-cyclical budgeting and the use of taxes to reduce or increase private purchasing power as part of a general policy to try to stop inflation. Another group of pressures stems from the argument that high personal taxation is a disincentive to work and that high company taxation is a disincentive to development. In the case of personal taxation there are also pressures arising from the different international levels of taxation; those countries which apply rather higher rates than other countries may find that their more skilled citizens will emigrate. I believe that in this field there is a force working towards some international harmonisation of personal tax rates as I doubt if a country which depends on world trade can maintain personal tax rates which are clearly out of line with those of many other countries with which it trades. In the business tax field there are many pressures for tax provisions which encourage investment, such as special allowances for capital expenditure or extra taxes on distributed profits. There are also pressures to use taxation to encourage exporters. Some of the arguments in favour of the introduction of an added value tax in Great Britain have been based on its alleged advantage to an exporter. There are also the old arguments for discouraging importers by protective duties.

The other class of pressures are usually based on the desire to favour some particular group of businesses. Most countries give favourable tax treatment to farmers; we also give special tax treatment to ship owners and life insurance. Some countries, of which the United States is a good example, give favourable treatment to the extractive industries. From

the point of view of the particular group which is favoured, there is a lot to be said for obtaining favourable tax treatment rather than a subsidy as the amount they receive by favourable tax treatment never appears as a special item in the national accounts, whereas a subsidy inevitably does so and is bound to lead to public criticism.

From the general point of view, however, I would myself urge that the subsidy is preferable in most cases and that concealed advantages to one section of the community by reason of special tax treatment is undesirable. To some extent these economic forces cancel out, but whilst there are usually strong pressures which can be applied by particular industries or groups of industries, there is not usually another equally strong pressure on behalf of the average taxpayer. With some regret I feel bound to predict that these particular economic pressures are likely to increase and that tax systems generally will tend to move in the direction of having particular exceptions and allowances which are designed to help those sections of the community which the government for various reasons wishes to encourage.

We now have to consider the social forces. These, again, can be divided into two groups (1) the general pressures coming from those who think that the tax system should be used to promote equality of wealth, and (2) particular pressures to use taxes to discourage some habit which is thought to be anti-social. It is generally accepted that the rich should pay more than the poor, but no clear principles have yet been established in any country to decide how much more the rich should pay and how far it is possible or desirable to use taxation as a means to equalise wealth. These questions affect the balance between direct and indirect taxation and this balance differs very greatly between country and country. Similarly, there are considerable differences between countries in the base which is taken for the direct taxes; in the U.K. we have high rates on a somewhat narrow base, as in general capital gains are exempt from tax, whereas other countries have lower rates but a somewhat wider base.

The second group of social pressures comes from people who wish high taxes to be imposed on particular social habits which they deplore but which they cannot abolish altogether. There are a number of these in my country, such as taxes on alcoholic drinks, tobacco and betting. These latter pressures vary enormously from country to country, but where they exist they have considerable force.

The more general social pressure depend largely on the extent to which the government in power has socialist views, although any country which has a large private sector dependent on free enterprise principles cannot go too far in using taxation as a means of confiscation of wealth. It is difficult to form any very clear conclusion as to the way in which these social pressures are likely to move as they are largely dictated by emotional considerations. There is no doubt, however, that they must be taken into account when forecasting the way in which a particular tax system is likely to change.

Finally we come to the political pressures. The politician must take note of all the forces that have been already discussed, but in any political system where politicians are competing for votes, there are special tax pressures which can be labelled political. A politician will want to do two conflicting things; he will want to please the voters by reducing taxes and at the same time to please them by providing better economic and social benefits. These latter will cost more money and hence give rise to increased taxes. As I indicated at the outset, it would appear that the pressures to provide more benefits with consequent increased taxes appear to be stronger than the pressures for reducing taxes. The politician in power is also particularly subject to economic pressures. He wishes to be able to direct and control the economy but his means of doing so, except in a communist or totalitarian state, are somewhat limited. Monetary measures, such as changes in the bank rate, have only very limited effect and in most democratic countries there is considerable resistance to too many legislative controls on industry. Hence the politician may be driven to use fiscal measures as part of his general direction of the economy although these measures are not really adequate or well designed for that purpose.

Finally there are special pressures on a politician in a year of a General Election. We are anticipating one next year and I have little doubt that this will have a considerable effect on the fiscal legislation to be enacted in that year.

Having examined these various forces, I must try and formulate some general conclusions. Although they differ considerably from country to country, I would suggest that in the main free enterprise developed countries the forces at work are likely to be substantially similar and that to some extent the tax system of one of these countries has repercussions on another. We have all seen the serious attempts made by the European

Economic Community to harmonise their tax systems. We can also see considerable similarity between the systems of the Scandinavian countries. A study of the history of the taxes of the United States, the United Kingdom and Canada shows that there has been a gradual tendency towards harmonisation in the sense that many of the main differences which originally existed between the systems are gradually being modified or abolished. The history of taxation of capital gains in the United States and in Great Britain is an interesting example as the two countries started from entirely opposite methods and have gradually modified their systems over the years, with the result that although they are still different, there are nothing like the same differences in substance that there were originally. If President Kennedy's proposals to modify the top rates of personal taxation in the United States are accepted, it would not surprise me if this had some effect on the top rates in the U.K.

My conclusion therefore is that over the future years we may expect that the tax systems of the Western World will gradually become more similar to each other. There is, of course, little likelihood that the laws will be framed in the same terms, but I would suggest that where there is a great disparity of treatment of some particular person or industry between one country and another, this disparity is likely to be modified over the years to come. But whether this process of harmonisation will go quickly or slowly is impossible to say. I am sure that all of us who are interested in the subject of international taxation will hope that it goes quickly.

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Impuestos Nacionales—Leyes y Reglamentos—Textos Actualizados, Buenos Aires, Ediciones Contabilidad Moderna, 1963.

This book contains all national tax laws and regulations in force on September 10, 1963.

periodicals:

"Revista de Derecho Financiero y de Hacienda Pública, Septiembre 1963" containing inter alia articles of

A. Atchabahian "*Vicisitudes de la Legislación argentina en* 1962" and

Francisco Candela Más "*Defraudación en las importaciones de automóviles bajo régimen temporal*",

dealing respectively with changes in the Argentine legislation during 1962 and fraudulent activities involving the importation of automobiles for a temporary period.

TAX NEWS

Income Tax

Income tax rates were changed on January 1, 1964, to eliminate the basic rate of 8% and to introduce a wholly progressive rate structure. Illustratively, incomes of less than 100,000 m$s are now exempt from tax and incomes between 100,000 and 200,000 m$n are taxed at 8% on the first 100,000 m$n and 13% on the excess. At the upper end of the scale, incomes exceeding 9,000,000 m$n are taxed in the amount of 4,072,000 m$n on the first 9,000,000 m$n (sum of the progressive slice rates) plus 60% of the excess. In 1964, a surcharge of 50% of the income tax must be paid. In 1965, the surtax will be reduced to 25%. In no case, however, may the income tax and surtax exceed 60% of the taxable income.

Source: *Revista Fiscal (and supplements de Derecho Fiscal* 6/IX/63).

AUSTRALIA

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Forty-second report of the Commissioner of Taxation 1962-1963, Commonwealth of Australia Canberra, A. J. Arthur, Commonwealth Government Printer, 1963, pp. 100.

This annual report gives a summary of the general organisation and management of the Australian Taxation Office and contains, *inter alia,* information about rates and revenue of the various taxes administered by the Taxation Office, including the Income Tax and Social Services Contribution, Sales Tax, Pay-roll Tax, Estate and Gift Duties, Wool Tax and a number of charges on certain industries.

Taxation Statistics 1961-1962, Supplement to the forty-second report to parliament of the Commissioner of Taxation, Commonwealth of Australia, Canberra, A. J. Arthur, Commonwealth Government Printer, 1963, pp. 198.

This supplement to the forty-second report of the Commissioner of Taxation contains a large amount of statistical data in respect of the taxes administered by the Taxation Office.

AUSTRIA

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Einführung in die Finanzwissenschaft, RICHARD KERSCHAGL, Wien, Wilhelm Braumüller, Universitäts-Verlagsbuchhandlung GmbH, 1963, 192 S.

The first part of this book deals with the relation between public finance and taxation. The second part gives a survey of the different forms of state revenues. The final segment describes both public finance and taxation practices in the USA, the USSR, and in the EEC and the EFTA countries.

Tabelle für Einkommensteuer, Wien, Oesterreichische Staatsdruckerei, 1963, 81 S., AS 20.

Brochure containing Austrian individual income tax schedules for 1963 and business tax schedules for 1954-63.

Tabellen für Lohnsteuer, Oesterreichische Staatsdruckerei, Wien, 1962, 202 S., AS 50.

Brochure containing Austrian wage tax schedules.

BELGIUM

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Le régime fiscal des sociétés belges par actions, JOHN KIRKPATRICK, Maison Ferdinand Larcier S.A., Bruxelles, 1963, pp. 118.

The author concisely discusses the new Belgian corporation income tax as it applies to resident companies. There is no consideration of non-resident companies.

TAX NEWS

Some changes in the turnover tax legislation

The Law of December 24, 1963 introduced some changes in the existing turnover tax legislation.

Continuation of the increased rate

The rate of the turnover tax was increased by the so-called "Loi Unique" of 14 February 1961, by 20%. See for a discussion of the "Loi Unique" 1 Eur. Tax. 6, p. 5 (1961). This increase was only meant as a temporary measure and should have been discontinued as of January 1, 1963. Since the Belgian Government did not think this discontinuation advisable, the increase in tax rate was continued for another year by the Law of December 21, 1962. See 3 Eur. Tax. 10 (1963). The Belgian Government is of the opinion that the higher rate has not harmed the Belgian economy. Therefore it now has made the increase definite. This means that the general rate of turnover tax in Belgium will remain 6%.

Discontinuation of the exemption of turnover tax for certain services

The exemption of turnover tax for engineers, architects, surveyors, chemists and patent attorneys has been withdrawn. At the same time the exemption for transport by taxi is also discontinued.

Introduction of a new exemption

Insurance contracts pertaining to the insurance of oceangoing vessels and aircraft are exempted from the annual tax on insurance contracts (general rate 3.5% of the insured amount). Under the former system the above tax was levied on contracts

—concluded by insurance companies which are either established in Belgium or have a branch office in that country *or*

—concluded by persons or companies having their residence in Belgium *or*

—concluded with respect to personal property or real property situated in Belgium

The Belgian Government considered this tax detrimental both for the Belgian insurance and for the transport business.

Source: *Moniteur Belge*, December 26, 27 and 28, 1963.

Stockdividends

The Belgian Minister of Finance has made a statement in the Belgian Senate to the effect that if a Belgian corporation capitalizes its reserves which have been subject to income tax, no further income tax is due by the corporation and neither by the stockholder receiving the stockdividend.

Source: *Questions et Réponses, Sénat de Belgique, Session Ordinaire* 1963-1964, *January* 14, 1964.

BRAZIL

TAX NEWS

Compulsory loan

A new compulsory loan has been established by Law 4.242 of July 17, 1963 and implemented by Decree 52.314 of July 31, 1963. This loan, unlike the former one, focuses on the income of individuals and on company income withheld at source. The amount of the compulsory loan is 10% of the income taxable under the tax on profits of foreign companies withheld at source. It will be repaid in the form of 6% bonds, which pay half of their value with accumulated interest after three years and the other half after the fourth year.

Source: *Impôsto Fiscal,* September 1963.

CHANNEL ISLANDS AND ISLE OF MAN

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Tolley's Income Taxes in the Channel Islands and Isle of Man, MINES, KENNETH, F.A.I.A., F.T.I.I. AND FEAVER, L.E., F.C.I.S., Croydon, Surrey, Chas. H. Tolley & Co., 1963, pp. 22, 6 shillings.

This summary contains the income tax laws of Jersey, Guernsey (including Alderney and Herm) and the Isle of Man. It incorporates all changes made by the 1963 Laws and Resolutions.

FRANCE

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Code Général des impôts, Ministère des Finances et des Affaires Economiques, Direction Générale des Impôts, Paris, Imprimerie Nationale, 1963.

Par la présente mise-à-jour de l'édition officielle à feuillets mobiles du Code Général des Impôts les modifications et additions apportées par des lois diverses jusqu'au 1 mai 1963 sont incorporées dans le texte intégral.

This supplement to the official loose-leaf edition of the Code Général des Impôts incorporates in the text the modifications and additions contained in various separate laws up to May 1, 1963.

La T.V.A. Française (L'imposta sul valore aggiunto in Francia), Quaderni dell 'Associazione fra le societá italiane per Azioni No. XXXI, G. EGRET, Roma, Tipografica Armellini, 1963, pp. 373, L. 3.000.

M. Egret nous donne dans son livre une description complète du système français de la taxe sur la valeur ajoutée (T.V.A.) et y a traité ce sujet difficile d'une telle manière que non seulement les practiciens sauront apprécier cet ouvrage. C'était une bonne idée de completer ce livre par trois annexes qui contiennent des extraits du Code Général des Impôts et un tableau des biens déductibles et non déductibles.

This book provides a general, but complete, description of the French turnover tax on value added. Its practical value is enhanced by the inclusion of three "Annexes" which contain extracts from the Code Général des Impôts (Tax Code) and a list of deductible items.

GERMANY

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Die Vermögensteuer-Hauptveranlagung 1963, Düsseldorf, Verlagsbuchhandlung des Instituts der Wirtschaftsprüfer GmbH, 1963, 384. S.

Book containing the text of the Valuation Law and its implementing regulations; the Property Tax Law and its regulations and 1963 directives. In addition, the Inheritance Tax Law, with regulations, is included, as are several relevant addenda.

Einkommenbesteuerung der Land- und Forstwirte, WILLI FELSMANN, Bonn, Verlag „Pflug und Feder" GmbH, 1963, 590 S., DM 48,—.

Survey of specialized income tax problems in the area of agricultural or forestry enterprises.

Die Steuerliche Gewinnverteilung bei Familienpersonengesellschaften, Schriftenreihe des Instituts für Steuerrecht der Universität zu Köln, Band 34, HEINZ KRAUSE, Düsseldorf, Verlagsbuchhandlung des Instituts der Wirstschaftsprüfer GmbH, 1963, 100 S., DM 17.-.

Discussion of the tax problems arising out of the division and distribution of profits of a family partnership in such a manner as to create the most favourable tax situation.

Die Aussetzung der Vollziehung eines angefochtenen Steuerbescheids, Schriftenreihe des Instituts für Steuerrecht der Universität zu Köln, Band 35, ERIKA FEIT, Düsseldorf, Verlagsbuchhandlung des Instituts der Wirtschaftsprüfer GmbH, 1963, 96 S., DM 15.-

Discussion of whether a taxpayer who has objected to the tax authorities about the amount of his tax liability can delay the payment of this liability until a decision is made.

Die typisierende Betrachtungsweise im Steuerrecht, Schriftenreihe des Instituts für Steuerrecht der Universität zu Köln, Band 36, Dr. EBERHARD WENNRICH, Düsseldorf, Verlagsbuchhandlung des Instituts der Wirtschaftsprüfer GmbH, 1963, 130 S., DM 20.-.

Analysis of an approach used by tax courts and authorities ("typisierende Betrachtungsweise") which allows them to apply to a particular case a general rule created for a group of similar tax cases. Under this approach, there is no need to consider special circumstances surrounding an individual case.

Uebertragung stiller Reserven auf Ersatzwirtschaftsgüter, Schriftenreihe des Instituts für Steuerrecht der Universität zu Köln, Band 37, PAULUS BURKERT, Düsseldorf, Verlagsbuchhandlung des Instituts der Wirtschaftsprüfer GmbH, 1963, 91 S.

Book dealing with whether undisclosed reserves will be disclosed and subject to tax when the assets, connected with the reserves are replaced by other assets.

ABC-Kommentar zu § 131 AO (Billigkeitsmassnahmen im Steuerrecht), BRIGITTE GAST, Köln, Verlag Dr. Otto Schmidt KG, 1963, 194 S.

Commentary about problems involving section 131 of the Impost Ordinance which covers total or partial reduction of tax liability in certain special circumstances.

Die GmbH & Co KG, MAX HENZE, Stuttgart, Muth'sche Verlagsbuchhandlung, 1964, 100 S.

Sixth edition of a book which concisely explains the mechanics and commercial and tax advantages of a limited partnership, in which the active managing partner is a corporation (GmbH) and in which the silent partners are individuals, whether or not they are at the same time shareholders of the corporation.

Handbuch der GmbH & Co, Dr. MALTE HESSELMAN, Köln, Verlag Dr. Otto Schmidt KG, 1963, 231 S.

Sixth edition of an authoritative handbook that explains the meaning and construction, for commercial and tax purposes, of the GmbH & Co. This is a popular form of partnership in which a limited liability corporation acts as manager of the partnership, and in which individuals act as partners who merely supply capital to the amount of which their liability is limited.

Steuerseufzer mit Dekor, ALFONS PAUSCH, Köln, Verlag Dr. Otto Schmidt KG, 1963, 72 S., DM 9,80.

Amusing booklet with illustrated proverbs and quotations about the popular attitude to taxation.

Deutsche Gesetze (Textsammlung), SCHÖNFELDER, Dr. HEINRICH, München, Verlag C. H. Beck, 1963, loose leaf.

Loose leaf handbook of more than 3000 pages containing the texts of all German civil, commercial, criminal and administrative laws, except tax laws, labour laws, social security laws, laws about the Constitution and its administration, and the law about the equalization of burdens.

Juristen-Jahrbuch, 4. Band — 1963/64, Prof. Dr. GERHARD ERDSIEK, Köln, Verlag Dr. Otto Schmidt KG, 1963, 336 S., DM 32,-.

Annual publication of German jurist organizations which contains several interesting articles and some practical information for jurists.

Handbuch für den Praktikern des Vertragsrechts und des Steuerrechts, Schriftenreihe Rosenau-Kuhlberg, Band 10, ROSENAU, H. und FR. KUHLBERG, Celle, Pohl-Druckerei und Verlagsanstalt, 1962, 229 S.

Volume consolidating former volumes 6, 7 and 9 of this series. Volume 6 dealt with tax aspects of the establishment, transformation and liquidation of partnerships and corporations. Volume 7 covered commercial and tax aspects of contracts arranging for such establishment, transformation and liquidation. Volume 9 treated tax aspects of other common business contracts.

Probleme neuzeitlicher Unternehmersführung, Bericht über den Vierten Kongress der "Union Européenne des Experts Comptables Economiques et Financiers" in Zürich, SCHWEIZERISCHE KAMMER FÜR REVISIONSWEZEN, Düsseldorf, Verlagsbuchhandlung des Instituts der Wirtschaftsprüfer GmbH, 1963, 424 S.

Report of the Union of European Accountants' Congres 1961 which dealt with the accounting and tax problems of enterprise management.

TAX NEWS

Distributions from foreign investment companies

The Provisions of the Law of April 16, 1957 (BGBl I S. 378) governing capital investment companies do not apply to distributions by foreign capital investment companies. Since these companies are not established under German internal law there is no legal basis for treating their distributions the same as those of German companies, even by analogy.

Consequently, the amounts distributed on shares of foreign capital investment companies are to be treated as dividends in the hands of unlimited liable German taxpayers, irrespective of the legal form which the company has in its country. Foreign taxes levied at source on distributions to German shareholders are, however, credited against the German income tax by virtue of either Article 34 (c) of the German Income Tax Act or a relevant tax treaty.

Foreign taxes levied on the distribution of profits to the foreign investment company may not be credited against the German income tax payable by West German holders of shares or certificates.

Source: *Ordinance of the Hessen Ministry of Finance,* August 21, 1963. S 2180-7-II/21.

Deductibility of losses incurred by foreign permanent establishment

If a tax treaty has been concluded between Germany and a foreign country in which a German company has a permanent establishment, losses incurred by that permanent establishment cannot generally be set-off against profits earned in Germany. The ratio for this result is that losses, as well as profits, of such an establishment are allocated to the foreign country.

If the tax treaty applies retroactively, no set-off is allowed for prior years either.

In order to limit the disadvantage accruing to a German taxpayer, the Finance Minister of Hessen has ruled that with regard to years before the treaty came into force the losses of a foreign branch may be deducted from the profits of the German company.

Source: *Ordinance of the Hessen Ministry of Finance* August 7, 1963. S. 1301-73-II/11.

Credit for foreign inheritance tax

A German resident who receives a foreign legacy may credit against the German inheritance tax the amount of any foreign inheritance tax paid even if the foreign tax has been paid out of other parts of the inheritance. The amount of the credit is equal to the full amount paid in foreign taxes even if that foreign tax is computed in a different manner than the German inheritance tax.

Decision of the Federal Upper Tax Court (BFH), 26/6/1963 - II 1906/61 published in the BSt Bl. 1963 III S. 402.

Deductibility of life insurance premiums

Employees of foreign nationality are allowed to deduct the premiums they pay to foreign life insurance companies from their income in the year of immigration and in the next two years on the condition that their incomes do not reach DM 24.000 a year. In all other cases, deduction is generally not allowed but any applications for deduction must be reported to the Ministry of Finance of the State.

Source: *Decision of the Minister of Finance of the State of Hamburg,* February 15, 1963.

GUATEMALA

TAX NEWS

Income Tax Schedules

"El Guatemalteco", the country's official newspaper, published new schedules for the withholding tax on individual income in its July 5, 1963 issue. Of the four schedules, two apply to weekly incomes and two to monthly incomes.

Source: *El Guatemalteco,* July 5, 1963.

INDIA

TAX NEWS

Super profits tax and compulsory savings program introduced.

As part of a program to spur both national economic development and national defense, the Indian government has recently begun to levy a super profits tax and has instituted a compulsory savings program for certain persons.

Super Profits Tax

By virtue of the Super Profits Tax Act of 1963 (No. 14 of 1963), a tax will be levied in the Financial year 1963/64 on profits exceeding 6% of a company's capital and reserve or fifty thousand rupees, whichever is greater. Computations will be made according to the provisions of the Act, which allow deduction of, *inter alia,* the income and super profits taxes payable. A deduction of 10% of the total income is also sanctioned provided that at least this percentage of a company's income has been used to repay loans, to purchase capital assets, or to pay dividends.

Compulsory Savings

The Compulsory Deposit Scheme Act of 1963 (No. 21 of 1963) provides for the creation of compulsory savings programs for various categories of individuals. The Government chose to apply the Act to all employees who met certain conditions (July 1, 1963 to September 23, 1963) and to all persons subject to tax under the Income Tax Act of 1961 (July 1, 1963 to the present).

Source: Reports of Company Cases, June, 1963.

IRELAND

BIBLIOGRAPHY

Tolley's 1963-64 *Synopsis of Taxation in the Republic of Ireland,* MINES, KENNETH, F.A.I.A., F.T.I.I. and FEAVER, L. E., F.C.I.S., Croydon, Surrey, Chas. H. Tolley & Co., 39th edition, pp. 14, 2 s. 6 d.

This short survey covers the Irish Income Tax, Sur-Tax and Corporation Profits Tax as well as provisions for Relief from Double Taxation when the same income is also taxed in the United Kingdom. It incorporates the changes made by legislation up to and including the 1963 Finance Act.

ISRAEL

TAX NEWS

Unilateral relief

Section 214 of the Income Tax Ordinance (new version) empowers the Minister of Finance to grant unilateral relief from double taxation with regard to the income of a resident of Israel if such income is derived from sources abroad and has in the country of origin been subjected to income tax or any other similar tax, by exempting his income from payment of tax either wholly or partially.

By an Order dated the 24th of October, 1963, published in the Collection of Regulations (Kovets Hatakanoth) No. 1504 of the 31st of October, 1963, p. 152, the Minister of Finance has ruled that an Israeli resident who has been taxed both abroad and in Israel on foreign source income, and who is not entitled to relief under a double taxation agreement or related ruling, shall be liable to Israeli income tax at a rate computed on the basis of his highest bracket of chargeable income but not exceeding 25%. In no case shall the total taxes imposed by the two countries exceed 50% of the income in case of an individual or 46% in case of a body of persons.

Source: *Reported by Dr. E. Klimowsky*, Tel Aviv.

JAPAN

BIBLIOGRAPHY

An Outline of Japanese Tax, Tokyo, Tax Bureau of the Ministry of Finance of the Japanese Government, 1963, pp. 253.

Helpful book, designed as an aid to foreign investors and businessmen which outlines the entire Japanese tax system, including a description of national and local taxes, taxation of non-residents and foreign corporations, organization of the national tax administration and settlement of tax disputes.

Computation of Income in Japanese Income Taxation, Harvard Law School's International Program in Taxation, MORIO UEMATSU and REX COLEMAN, Cambridge, The Law School of Harvard University, 1963, pp. 80.

Study of the adjustment of theory (Prof. Shoup was the promotor of modern Japanese taxation) to reality (how modern taxation methods are utilized by the Japanese Government): the law and the economy.

LIBERIA

BIBLIOGRAPHY

Liberia, Merkblätter für den deutschen Aussenhandel, BUNDESSTELLE FÜR AUSSENHANDELSINFORMATION ZU KÖLN, München, Erich Schmidt Verlag, 1962, 31 S., DM 7,60.

Brochure surveying the economic and legal climates in Liberia for those considering the initiation of business activities there.

NIGERIA

BIBLIOGRAPHY

Nigeria, Merkblätter für den deutschen Aussenhandel, BUNDESSTELLE FÜR AUSSENHANDELSINFORMATION ZU KÖLN, München, Erich Schmidt Verlag, 1962, 38S., DM 8,40.

Brochure surveying the economic and legal climates in Nigeria for those considering the initiation of business activities there.

NORTHERN-RHODESIA

DOCUMENTS

An Ordinance to amend the Estate Duty Ordinance

No. 31 of 1963 16th August, 1963

ENACTED by the Legislature of Northern Rhodesia.

1. This Ordinance may be cited as the Estate Duty (Amendment) Ordinance, 1963, and shall be read as one with the Estate Duty Ordinance hereinafter called the principal Ordinance.

2. Section *five* of the principal Ordinance is hereby repealed and the following section is substituted therefor:

5. (1) In the case of every person dying, whether within or outside the Territory, after the commencement of this Ordinance, there shall, save as hereinafter provided, be levied and paid to the Government a duty, hereinafter called estate duty, upon such part of the estate of the deceased as comprises—

(*a*) all property of the deceased situated within the Territory; and

(*b*) all personal property of the deceased situated outside the Territory, if the deceased was ordinarily resident within the Territory at the time of his death.

(2) The rate of estate duty shall be determined in accordance with the provisions of section *eleven* and the Schedule to this Ordinance.

3. Section *eleven* of the principal Ordinance is hereby repealed and the following section is substituted therefor:

11. (1) For determining the rate of estate duty all property forming the estate of the deceased, whether situated within or outside the Territory and whether or not subject to estate duty, shall be aggregated so as to form one estate, and subject to the provisions of subsections (2) and (3) of this section, estate duty shall be payable, at the rate set out in the Schedule to this Ordinance, which is applicable to the principal value of such estate.

(2) The amount of estate duty payable at the rate determined under subsection (1) of this section shall, where necessary, be reduced so as not to exceed the highest amount of duty which would be payable at the next lower rate with the addition of one-third of the amount by which the principal value of the estate exceeds the value of the estate on which the highest amount of duty would be payable at such lower rate.

(3) The amount of estate duty payable at the rate determined under subsection (1) of this section shall, where necessary, be reduced so as not to exceed one-third of the amount by which the principal value of the estate exceeds fifteen thousand pounds.

NYASALAND

TAX NEWS

Company tax

Mr. Henry Phillips, the Finance Minister presenting Nyasaland's Budget in the Assembly to-day, said the British Government had agreed to provide grant-in-aid to meet the expected 1964 deficit of £4,260,000.

Proposed expenditure was £13.360,000, and revenue £9.100.000.

Announcing a reduction of company tax from 8s in the £ to 7s 6d for both private and public companies, Mr. Phillips added: "We open our doors to private enterprise."

The proportion "of the Central African Federal debt allocated to Nyasaland was £12,080,000. The Government had "no qualms about assuming the additional burden, and every intention of honouring its obligations."—Reuter.

Source: *Financial Times*, January 7, 1964.

PARAGUAY

BIBLIOGRAPHY

Periodicals:

Hacienda Pública, July ,1963 contains the provision that agents and representatives of foreign companies must withold a tax of 8% on profits from imported goods.

Hacienda Pública, September, 1963 contains a list of existing harbour fees.

PORTUGAL

BIBLIOGRAPHY

Periodicals:

Boletim da Direçao-Geral das Contribuiçoes e Impostos

contains in March, 1963 an article by P. Soares Barbosa, about:

A obrigaçao tributaria

(A theoretical study of the concept, nature and cause of the fiscal obligation, and related matters);

contains in April, 1963 an article by A. C. Mouteira Guerreiro, about:

A relaçao jurídica do imposto e as tesourarias da Fazenda Publica

(A survey over the entire spectrum of tax payments: who is liable to pay taxes; who is the recipient and, in which place and at what moment payment must be made);

contains in June, 1963 an article by E. L. Luop about:

A incidencia da sisa e as sociedades comerciais.

(Problems of the transfer tax regarding corporations.)

TAX NEWS

Problems Concerning the Taxation of Royalties, Interest and Dividends from Portuguese Sources under the New Tax on Business Income

The enactment of a new business income tax ("contribuicão industrial"), contained in Decree-law number 45.103, creates some problems regarding the taxation of royalties, dividends and interests from Portuguese sources.

Article 2 of the new act states that every individual or juridical person, national or foreigner, is subject to the business income tax on profits it derives from the mainland or adjacent islands[1] from activities referred to in the preceding article[2]. Article 1 lists, as activities subject to the business income tax, those of an industrial or commercial nature. It adds that those activities not reached by the earned income tax are always considered to be of an industrial or commercial character.[3]

Furthermore, Article 23 provides that profits or gains realized by the taxpayer from his normal or occasional transactions or operations, especially the following: profits or gains from financial operations, such as dividends and interest; and those representing yields from industrial property[4], are included in the taxable base for the business income tax.

This last Article indicates that royalties, dividends and interest from a Portuguese source are subject to the business income tax when received by a Class A enterprise doing business in Portugal. It does not specifically answer the question of whether a foreign enterprise which does not have an establishment or other type of organization or representative in Portugal is considered to be doing business there to the extent it receives royalties, dividends and interest from Portuguese sources.

It appears that the tax authorities will take the position that the receipt of such forms of income is taxable under the business income tax even if the foreign recipients perform no commercial or industrial activities in Portugal. Some strong arguments support this view. First, since a foreign enterprise, even if it does not have a permanent establishment or representative in Portugal, is just as much enriched by the receipt of royalties, dividends and interest from Portuguese sources as is a domestic corporation (which, except in the case of a holding company, is subject to the business income tax), the foreign company schould logically be subject to this tax. Second, since dividends received by an investment company, although it carries on no commercial or industrial activity, are subject to the Portuguese taxes both on movable capital and on business income (dividends distributed by the investment company are generally exempt from the tax on movable capital) other types of foreign companies should not be considered beyond the reach of the business income tax simply because they conduct no commercial or industrial activity in Portugal. Third, since royalties from Portuguese sources, when received by individuals, whether residents or non-residents, are generally subject to the Portuguese tax on earned income, a tax, presumably the business income tax, should be levied on royalties received by foreign companies. Because the business income tax accords similar treatment to royalties, interest and dividends, it must be assumed that the latter forms of income are also subject to the tax on business income. Finally, the principle of broadened territorial coverage adopted by the Portuguese tax authorities

argues for the application of Portuguese taxes to royalties, dividends and interest from Portuguese sources, regardless of the residence and nationality of the recipient. The enlarged definition of income under the business income tax makes that tax an apt vehicle for reaching such payments.

This result has been endorsed by the International Bureau of Fiscal Documentation in its publication, TAXATION OF ROYALTIES, DIVIDENDS, AND INTEREST IN EUROPE, and by Dr. Duarte Faveiro, one of the most important Portuguese tax experts. It is possible, however, to make some plausible arguments for the opposite result. First, although the business income tax does not specifically require a permanent establishment, it is a little difficult to extend its application to the mere possession of stocks and bonds. Articles 45, 111 and 114, of the Business Tax Code in fact, seem to require the existence of a Portuguese representative; and Articles 50 *et seq.* require an accounting, which is somewhat incompatible with the mere ownership of securities. Second, the receipt of royalties, dividends and interest is deemed to be related to a Portuguese commercial or industrial activity, as is indicated by the taxation forms. A foreign recipient arguably has no such connection.

As a result of these competing arguments, the incidence of Portuguese tax is not certain. Further compounding the situation is the fact that the identity, for tax purposes, between royalties, dividends and interest is not complete. Although they receive the same treatment under the business income tax, only dividends and interest are subject to the tax on movable capital. Thus, no completely unequivocal answer can be given to the main inquiry although the more persuasive arguments appear to favor imposition of the business income tax.

Notes:

(1) This expression of "mainland or adjacent islands" has reference to Portugal and islands considered to be Portuguese metropolitan territory: Madeira and Azores.

(2) "art. 2 Ficam sujeitas a contribuição industrial pelos lucros realizados no continente ou ilhas adjacentes as pessoas singulares ou colectivas, nacionais ou estrangeiras, que aí exerçam as actividades referidas no artigo anterior"

(3) unico. O exercício, por conta própia, de actividades não sujeitas a imposto profissional é considerado sempre de naturaleza comercial ou industrial ...

(4) art. 23 "Consideram-se proveitos ou ganhos realizados no exercício os provenientes de quaisquer transaçoes ou operaçoes efetuadas pelos contribuintes em consequencia de uma acção normal ou ocasional, básica ou meramente acessória, e dessignadamente os derivados: ....

4° De operaçoes de natureza financeira, tais como juros, dividendos, ...

6° De rendimentos da propiedade industrial ou otros análogos

A. Rodriguez Sainz

SOUTHERN-RHODESIA

TAX CASES

Income tax—Income—Appellant company holder under licence of rights to use patented process

in certain area—Grant under sublicensing agreement of exclusive rights to use process in portion of area—Terms of agreement—To be construed as constituting sub-letting of rights, not outright disposal—Consideration received for grant of right and supply of technical information—Proceeds of operation of business in scheme of profit-making—Not receipt of capital nature—Section 8 (1), *Act* 16 *of* 1954 (*Fed.*).

High Court, Southern Rhodesia—15th and 22nd March, 1963

Appeal against an assessment made by the respondent Commissioner.

Appellant company, which was registered and carried on business in Southern Rhodesia, had entered into a contract with an English company for the use of a certain process, in the Territories of Southern and Northern Rhodesia under an agreement dated 25th June, 1952.

The process in question was an American patented process for relugging and repairing tyres, treads and tracks of tractors and the material used for the process was manufactured under a registered trade mark.

The English company was the representative and sales agent of the American company for sale of rights of use of the process outside the continent of North and South America and possessed the technical knowledge for operating the process.

Under the agreement the appellant company was granted the sole rights as regards the use of the process in the Territories for a period of fourteen years and thereafter until terminated by six months' notice by either party to the agreement, and the English company further contracted to communicate to the appellant company the knowledge and technical information necessary to operate the process and to sell or let on hire to the company the equipment necessary to operate it, and also to procure and cause to be delivered to the company adequate supplies of the patented stock and other materials required.

It was further agreed between the parties that the appellant company should be registered in the Territories as a licensed user of the trade mark under which the patented stock was sold.

In consideration for these services the appellant company agreed to pay:
for the technical knowledge required to operate the process, the sum of 7,500 American dollars;
for the plant supplied, at the price and rentals set out in detail in the agreement;
for the patented stock supplied, the cost, plus a service fee of two pence sterling for each pound avoirdupois supplied, subject to minimum payment in respect of 10,000 pounds weight per annum.

By an agreement made on 18th December, 1956, called a Sub-licensing Agreement, the appellant company as licensee under its agreement with the English company, in association with and with the approval of that company, granted to the C.T.S. company the right to operate the process in the Territory of Northern Rhodesia for a period of twenty years, thereafter terminable on six months notice.

Under the terms of this agreement the appellant company and the English company undertook to communicate to the C.T.S. company the knowledge and technical information necessary to operate the process.

For the right to use the process and for the supply of the required knowledge and information the C.T.S. company agreed to pay a consideration to the appellant company of £5,000.

It was further provided in the agreement that the C.T.S with the approval and assistance of the appellant company and the English company, should be registered as a licensed user of the trade mark of the patented stock used in the process, and that in respect of the patented stock supplied to C.T.S. company, that company should pay to the appellant company a service fee of sixpence for each pound avoirdupois of stock supplied, subject to a minimum payment in respect of 35,000 pounds per annum.

In his asssessment of the appellant company for the year ending 31st March, 1957, the Commissioner included in the company's income the sum of £5,000 received by it from the C.T.S. company. To this assessment appellant company objected on the ground that the receipt was of a capital nature and not part of its gross income.

The Commissioner having disallowed the company's objection, on appeal:

Held, dismissing the appeal and confirming the assessment made, that in view of the terms of the agreement its effect was not that of an outright cession of rights but of a sub-letting of such rights and as such an operation of business in carrying out a scheme of profit making, the proceeds of which were income and not of a capital nature.

Source: *South African Tax Cases Reports,* 15.6.1963.

SPAIN

BIBLIOGRAPHY

Hacienda y Derecho, F. SAINZ DE BUJANDA, Madrid, Instituto de Estudios Políticos, 1963, pp. 691, 300 pts.

This book deals with various aspects of the Spanish financial and fiscal system, including the principles and goals of the fiscal structure, tax exemptions, revaluation of assets and mergers. The approach of the author combines theory and practicality in a helpful manner.

Periodicals:

Boletín Informatívo de Legislación Fiscal, November 1963, contains an article by M. Rodriguez García, about

Hacia un nuevo sistema tributario en España.

In this article, the official news about the changes in the Spanish fiscal system is analysed, with comments about the scope and form of the reform.

TAX NEWS

Spanish Tax Reform

A far-reaching reform of the Spanish tax system is under study. As indicated below, the first concrete step has already been taken. The Spanish government recently published a memorandum explaining the necessity for a fiscal reform. The memorandum dispelled the common notion

that the reform was motivated by a disproportion between indirect taxes (accounting for 65% of the revenue according to the memorandum) and direct taxes (35%). It was indicated that this ratio was not a valid criterion for evaluating the tax system since most of the direct taxes can be shifted to indirect, thereby changing the ratio. But this ratio must be changed as much as possible through its internal mechanism. Moreover, direct taxes must be applied in an improved fashion.

In order to successfully reform the fiscal structure, a new General Code of Taxes, containing general principles of taxation, must be introduced. As the first step in this direction the Government has already submitted to the Chamber ("Cortes") a proposed law dealing with these general principles. It is expected that this law will be enacted in 1964. Subsequent regulations will have to reflect the principles established by this General Code.

The schedule of Spanish taxes will be as follows:

Direct Taxes on Individuals
Impuesto General sobre la renta
de las personas físicas (General income tax on individual persons)
Being levied as previous taxes:
Contribución territorial (Land Tax), Impuesto Industrial (Business tax), Impuesto sobre los rendimientos del trabajo personal (Tax on individual earned income), impuesto sobre las rentas del capital (Tax on movable capital)

Direct Taxes on Companies
Impuesto general sobre la renta de las sociedades y entidades jurídicas
(Companies and entities income tax)
Being levied as previous taxes:
Contribución territorial
Impuesto industrial
Impuesto sobre las rentas del capital

Indirect Taxes
General Transfer Tax
Turnover Tax
Luxury tax
Custom tax
and special taxes.

The question of whether the Spanish schedular system can effectively be changed to a personal system depends largely on the formulation of regulations governing the relationship between the new "general" income tax and the remaining schedular taxes. If the amounts of schedular taxes are credited against the amount of an income tax based on total income, the taxpayer will, in effect, be paying only one tax. Thus, the personal income tax may set a ceiling for total taxes and it is even possible that previously paid schedular taxes will be refunded if in excess of the amount due under the personal tax. On the other hand, if the kinds of income subject to the remaining schedular taxes are merely eliminated from the taxable base of the "general" income tax, the tax system will still, in fact, be a schedular one. It is not completely clear which view the tax authorities will adopt but it is expected that the concept of a general tax will prevail.

Indirect taxation, it appears, has not been simplified by the reform; more likely it has been made more complicated. The prior excise taxes, which were levied at a single stage and on only a limited number of goods, have been replaced by a turnover tax, which will be levied at multiple stages and will apply to virtually all goods.

A. Rodriguez Sainz

SWAZILAND

DOCUMENTS

Proclamation
by his Excellency the High Commissioner.
Entitled the Income Tax (Rates) Proclamation, 1963.
No. 26 of 1963
(Promulgated 26th. July, 1963)

WHEREAS it is expedient to fix the rates of normal tax to be levied in Swaziland in respect of the year of assessment ended on the thirtieth day of June, 1963;

NOW, THEREFORE, under and by virtue of the powers in me vested I do hereby declare, proclaim and make known as follows:—

Short Title and Commencement.

1. This Proclamation may be cited as the Income Tax (Rates) Proclamation, 1963, and shall come into operation in respect of assessments for the year of assessment ended on the thirtieth day of June, 1963.

Rates of Normal Tax for the year 1962/1963.

2. In terms of sub-section (2) of section six of the Income Tax (Consolidation) Proclamation, 1959 (Chapter 105), hereinafter referred to as the principal law, the rates of normal tax to be levied for the year of assessment ended on the thirtieth day of June, 1963, shall be as follows—

In so far as normal tax is concerned–

(a) in the case of companies the sole or principal business of which in Swaziland is that of mining, for each rand of taxable income not exceeding twenty thousand rand, twenty-five cents, and for each rand of taxable income over and above twenty thousand rand, thirty-four cents;

(b) in the case of all other companies, for each rand of taxable income, twenty-eight cents;

(c) in the case of persons other than companies, as prescribed in the Schedule hereto:

Provided that there shall be added to the amount of tax calculated in accordance with the said Schedule a sum equal to thirty per cent of the net amount arrived at after deducting the rebates provided for in section eight of the principal law from the amount of tax so calculated.

Schedule

TAXABLE INCOME	Rates of tax in respect of PERSONS WHO ARE NOT MARRIED
Where the taxable income—	
does not exceed R600	7½ per cent of each R1 of taxable income;
exceeds R600, but does not exceed R1,000	R45 plus 9 per cent of the amount by which the taxable income exceeds R600;
exceeds R1,000, but does not exceed R1,200	R81 plus 9 per cent of the amount by which the taxable income exceeds R1,000;
exceeds R1,200, but does not exceed R2,400	R99 plus 9 per cent of the amount by which the taxable income exceeds R1,200;

exceeds R2,400, but does not exceed R3,000	R207 plus 10 per cent of the amount by which the taxable income exceeds R2,400;
exceeds R3,000, but does not exceed R4,600	R267 plus 11 per cent of the amount by which the taxable income exceeds R3,000;
exceeds R4,600, but does not exceed R5,000	R443 plus 18 per cent of the amount by which the taxable income exceeds R4,600;
exceeds R5,000, but does not exceed R6,000	R515 plus 26 per cent of the amount by which the taxable income exceeds R5,000;
exceeds R6,000, but does not exceeds R8,000	R775 plus 30 per cent of the amount by which the taxable income exceeds R6,000;
exceeds R8,000, but does not exceed R10,000	R1,375 plus 36 per cent of the amount by which the taxable income exceeds R8,000;
exceeds R10,000, but does not exceed R12,000	R2,095 plus 41 per cent of the amount by which the taxable income exceeds R10,000;
exceeds R12,000, but does not exceed R14,000	R2.915 plus 42 per cent of the amount by which the taxable income exceeds R12,000;
exceeds R14,000, but does not exceed R16,000	R3,755 plus 45 per cent of the amount by which the taxable income exceeds R14,000;
exceeds R16,000, but does not exceed R18,000	R4,655 plus 48 per cent of the amount by which the taxable income exceeds R16,000;
exceeds R18,000	R5,615 plus 50 per cent of the amount by which the taxable income exceeds R18,000;

Schedule

TAXABLE INCOME:	Rates of tax in respect of MARRIED PERSONS
Where the taxable income— does not exceed R600	6 per cent of each R1 of taxable income;
exceeds R600, but does not exceed R1,000	R36 plus 7 per cent of the amount by which the taxable income exceeds R600;

exceeds R1,000, but does not exceed R1,200	R64 plus 8 per cent of the amount by which the taxable income exceeds R1,000;
exceeds R1,200, but does not exceed R2,400	R80 plus 8 per cent of the amount by which the taxable income exceeds R1,200;
exceeds R2,400, but does not exceed R3,000	R176 plus 8 percent of the amount by which the taxable income exceeds R2,400;
exceeds R3,000, but does not exceed R4,600	R224 plus 9 per cent of the amount by which the taxable income exceeds R3,000;
exceeds R4,600, but does not exceed R5,000	R368 plus 16 per cent of the amount by which the taxable income exceeds R4,600;
exceeds R5,000, but does not exceed R6,000	R432 plus 25 per cent of the amount by which the taxable income exceeds R5,000;
exceeds R6,000, but does not exceed R8,000	R682 plus 29 per cent of the amount by which the taxable income exceeds R6,000;
exceeds R8,000, but does not exceed R10,000	R1,262 plus 35 per cert of the amount by which the taxable income exceeds R8,000;
exceeds R10,000, but does not exceed R12,000	R1,962 plus 39 per cent of the amount by which the taxable income exceeds R10,000;
exceeds R12,000, but does not exceed R14,000	R2,742 plus 40 per cent of the amount by which the taxable income exceeds R12,000;
exceeds R14,000, but does not exceed R16,000	R3,542 plus 44 per cent of the amount by which the taxable income exceeds R14,000;
exceeds R16,000, but does not exceed R18,000	R4,422 plus 47 per cent of the amount by which the taxable income exceeds R16,000;
exceeds R18,000	R5,362 plus 50 per cent of the amount by which the taxable income exceeds R18,000.

UNITED KINGDOM

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Tolleys's Income Tax Chart-Manual 1963-64, MINES KENNETH, F.A.I.A., F.T.I.I. and FEAVER, L. E., F.C.I.S., Croydon, Surrey, Chas. H. Tolley & Co., 48th edition (1963-64) pp. VIII and 133, £ 1.-.

The new edition of this manual contains basic information regarding the United Kingdom income tax and surtax, with comprehensive reference to statutory provisions, court decisions etc. It is up-to-date to July, 1963. An index and many cross-references add to the usefulness of this manual.

Tolley's Synopsis of Profits Tax, MINES KENNETH, F.A.I.A., F.T.I.I. and FEAVER, L. E., F.C.I.S.; Croydon, Surrey, Chas. H. Tolley & Co., 27th edition, 1963-64, pp. 25, 6 shillings.

This synopsis incorporates the whole of the statutory provisions and is revised to date, including the alterations made by the Finance Act, 1963, notes of Extra-Statutory Concessions and decisions in the Courts to July, 1963.

Tolley's Synopsis of Estate Duty, MINES KENNETH, F.A.I.A., F.T.I.I. and FEAVER, L. E., F.C.I.S., Croydon, Surrey, Chas. H. Tolley & Co., 1963 edition, pp. 45, 6 shillings.

This synopsis covers in concise but comprehensive form every aspect of estate duties, with references to leading High Court decisions up to July, 1963.

UNITED STATES

BIBLIOGRAPHY

Taxation in the United States, World Tax Series, HARVARD LAW SCHOOL; INTERNATIONAL PROGRAM IN TAXATION, Chicago, Commerce Clearing House, 1963, pp. 144, $27.50.

This valuable and comprehensive study of the United States tax structure is designed, in large part, to provide technical information for foreing advisers whose clients' interests require an understanding of American taxes. As a result, Chapter 11 considers in detail the special federal tax rules applicable to nonresidents and foreign corporations. Moreover, because of its unusual complexity, the tax treatment of corporate distributions, organizations, reorganizations and liquidations has been explored in detail in Chapter 9A. With respect to American readers, the objective of the volume is to furnish to non-experts, whether businessmen, students or lawyers, a description of the principal technical problems in taxation, the legislative or administrative solutions, and their success. For all readers, the volume presents a moderately detailed picture of federal tax law, with particular emphasis on the income tax, and a more general survey of state and local taxation.

TAX NEWS

Nonresident aliens

Under present law, nonresident aliens receiving periodical income not in excess of $ 15,400 per year from U.S. sources, such as dividends, interest, rents, salaries and certain capital gains, are taxed at a 30% rate unless a tax treaty provides a lower rate or exempts the income. If more than $ 15.400 is received by the nonresident alien, the entire income from U.S. sources is subject to tax at the normal progressive rates. The theory behind the treatment is that at $ 15.400 the normal progressive tax approximates the 30% flat rate tax. According to certain new proposals, which have already been passed by the House of Representatives and are now before the Senate Finance Committee for public hearings beginning on October 15, the progressive rates as a whole, would be decreased. As a consequence, the point at which the 30% flat tax rate approximates the resular income tax rate is no longer $ 15.400. Thus the cut-off point will be raised to $ 19.000 for the taxable year beginning in 1964 and $ 21.200, for taxable years beginning after 1964. The 30% flat rate whould then apply up to these new limits.

Regulations on controlled foreign corporations according to the Revenue Act of 1962

The U.S. Treasury has published the first final regulations concerning the taxation of controlled foreign corporations under the Revenue Act of 1962. These regulations, which are to be published in one of the next numbers of this Bulletin, refer to sections 955 and 957 (c) I.R.C. and deal mainly with the tax treatment of qualified investments and with termination of investments in less developed countries.

Final regulations have also been issued by the Treasury for sec. 18 of the Revenue Act of 1962, which included foreign realty in the gross estate of a resident or citizen.

Source: *Prentice Hall Report Bulletin,* November 7, 1963.

Public Finance / Finances Publiques

INTERNATIONAL QUARTERLY JOURNAL

founded by J. A. Monod de Froideville,
Publisher/Editeur

FOUNDATION JOURNAL PUBLIC FINANCE
FONDATION REVUE FINANCES PUBLIQUES

(Stichting Tijdschrift voor Openbare Financiën)
Committee of Directors:
M. Masoin, Alan T. Peacock, B. Schendstok, P. Senf

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M. ORHAN DIKMEN Finanzierungsprobleme der im fünfjährigen Aufbauplan der Türkei vorgesehenen Investitionen

CHARLES J. GOETZ A Variable-tax Model of Intersectoral Allocation

IRVING J. GOFFMAN Incidence of Taxation in Canada

HARLEY H. HINRICHS Dynamic-regressive Effects of the Treatment of Capital Gains on the American Tax System during 1957-1959.

BOOK REVIEWS / COMPTES RENDUS

Contributions in French or German are followed by an English summary.

Correspondence should be addressed to Prof. Dr. P. Senf, Universität des Saarlandes, Saarbrücken 15, Germany. Orders may be placed with the Administration, 122 Gradaland, The Hague, Netherlands. Subscription rate for 1 year: $10.90.

III

TREATIES

AUSTRIA - U.A.R.

On October 16, 1962 a treaty in English was concluded between Austria and the United Arab Republic, to avoid double taxation of income and property.
On May 9, 1963 the treaty was ratified by the Austrian Parliament and in the same year it was ratified by the UAR. Ratification notes were exchanged on October 28, 1963 so that the treaty came into force on that date.

BENELUX

Conseil Interparlementaire Consultatif de Benelux

PROJET DE CONVENTION

d'assistance mutuelle entre la Belgique, le Grand-Duché de Luxembourg et les Pays-Bas, en matière de perception des impôts sur le chiffre d'affaires, de la taxe de transmission et des impôts analogues.

9 septembre 1963

Exposé des motifs

Le projet de convention contient des dispositions relatives à l'assistance mutuelle en matière de perception des impôts sur le chiffre d'affaires, de la taxe de transmission et des impôts analogues.

La conclusion de la convention est nécessaire en vue de pouvoir instaurer un régime qui, en ce qui concerne les marchandises franchissant les frontières communes des trois pays, ne se fonde plus sur un système de contrôle physique du mouvement des marchandises franchissant la frontière d'une part, et des marchandises elles-mêmes d'autre part, mais sur un système où le contrôle en matière de perception s'effectue sur le plan administratif.

Jusqu'à présent il n'a pas paru possible de réaliser l'harmonisation desdits impôts comme l'a préconisé le régime prévu à l'article 79 du Traité d'Union. Provisoirement une telle harmonisation continue à se heurter à différentes objections. On note parmi les objections les plus importantes qu'une harmonisation entrave sérieusement la poursuite d'une politique nationale propre en matière économique, financière, sociale et culturelle.

C'est pourquoi le Benelux a examiné la possibilité de recourir à des mesures spéciales en matière de régimes de perception qui permettraient la suppression, dans ces pays, du contrôle physique effectué aux frontières intra-Benelux sur l'impôt sur le chiffre d'affaires et sur les impôts analogues.

On a songé à substituer la perception à la frontière, de l'impôt sur le chiffre d'affaires, frappant les marchandises importées d'un pays partenaire par une perception, à l'intérieur du pays, dans le chef de l'importateur des marchandises qui sera tenu de payer spontanément cet impôt. D'autre part, le contrôle relatif à la perception serait effectué par voie administrative. Dès lors, l'impôt sur le chiffre d'affaires ne sera plus controlé par les services de douane aux frontières communes.

Pour que, dans le nouveau système, l'on dispose de moyens efficaces de contrôle dans le domaine des transactions Benelux ayant trait à la circulation des marchandises qui franchissent les frontières communes, il est nécessaire que les pays du Benelux se communiquent des renseignements au sujet de ces transactions.

La présente convention tend précisément à rendre possible l'échange de ces données.

Une fois la convention en application, on se propose de procéder à une expérience limitant l'application du nouveau système à des marchandises et importateurs déterminés. Se basant sur l'expérience acquise à cette occasion, le système pourrait progressivement être appliqué sur un terrain plus large.

ARTICLES 1 ET 2

Contiennent quelques définitions préliminaires.

ARTICLE 3

Cet article vise l'échange spontané des données parvenues dans chaque pays à la connaissance de l'administration à l'occasion du contrôle sur l'application de la législation nationale, d'une part, et pouvant être utiles en vue de la perception des impôts dans un des autres pays partenaires, d'autre part. Il s'agit, en général, de données recueillies dans les documents des contribuables, dont les fonctionnaires prennent connaissance lors du contrôle, tels que les factures, facturiers, bons de commande, ordres de paiement etc., qui permettent de constater une livraison dans un autre pays partenaire. Afin d'éviter un travail administratif inutile, il est stipulé que les administrations peuvent déterminer les données à échanger spontanément.

ARTICLE 4

En vertu de cet article, l'administration d'un pays est tenue de procéder à des investigations en vue de recueillir les renseignements que lui demande un pays partenaire et dont elle ne dispose pas. Ces investigations se font dans les limites

que la législation nationale autorise pour des cas similaires. Toutefois, afin de garantir autant que possible le caractère de réciprocité de ces prestations, il est stipulé que cette obligation n'existe que pour autant que la législation du pays requérant autorise de telles investigations sur son propre territoire.

ARTICLE 5

Afin de rendre aussi efficace que possible le contrôle effectué pour le compte d'un pays partenaire, il est prévu que les fonctionnaires de ce pays peuvent assister et collaborer audit contrôle. Les fonctionnaires du pays où s'effectue le contrôle sont tenus d'autoriser les investigations des fonctionnaires de l'autre pays et ils doivent également toujours conserver la direction des opérations.

Des dipositions analogues figurent à l'article 4 de la Convention Benelux du 5 septembre 1952, relative à la coopération en matière de douanes et d'accises, à l'article 13 de la Convention Benelux du 16 mars 1961, relative à la coopération en matière de réglementation des importations, des exportations et du transit, et à l'article 26 du projet de Traité Benelux d'extradition et d'entraide judiciaire en matière pénale.

ARTICLE 6

Les renseignements recueillis pouvant soulever des problèmes délicats surtout lorsqu'ils concernent des particuliers, il est stipulé que les données recueillies dans un autre pays et ayant trait à une personne déterminée ne peuvent être utilisées que dans le cadre de la perception des impôts que cette personne doit à l'Etat. Exception à cette règle est faite en ce qui concerne les éléments destinés au ministère public en vue de poursuites pénales.

ARTICLE 7

Le nouveau système entraîne la suppression du contrôle physique des marchandises lors du passage des frontières communes; le contrôle de l'exacte perception de l'impôt exigible en ce qui concerne ces marchandises est alors basé sur les données qui peuvent être obtenues, dans les différents pays, uniquement de l'administration dont dépendent les parties intéressées (importateur et exportateur).

Dans une pareille organisation, les données que l'on peut recueillir chez le fournisseur (exportateur) revêtent une grande importance pour assurer l'exacte perception de l'impôt dû par l'acquéreur (importateur) des marchandises. Il convient, dès lors, de créer une responsabilité solidaire dans le chef du fournisseur, dans les cas où l'impôt ne peut être recouvré à charge du véritable débiteur et où un reproche peut être fait au fournisseur.

Il est cependant malaisé dès maintenant de déterminer ces cas avec précision; pour ce faire, il faut, en effet, tenir compte du régime que les pays intéressés

mettront sur pied en ce qui concerne la perception en matière de commerce international. C'est pour cette raison que le présent article prévoit que le règlement final et complet de la responsabilité solidaire sera arrêté par un échange de notes ultérieur.

L'intention est de réaliser un système selon lequel il ne sera fait usage de la responsabilité solidaire que si l'impôt ne peut être recouvré chez l'acquéreur (importateur) des marchandises et si, de plus, des griefs suffisants peuvent être formulés à l'égard du fournisseur (exportateur) pour que le recouvrement à sa charge apparaisse comme raisonnable.

ARTICLE 8

Cet article présente une analogie avec l'article 11 de la Convention précitée relative à la coopération en matière de douanes et d'accises et avec l'article 19 de la Convention précitée relative à la coopération en matière de réglementation des importations, des exportations et du transit. En vue de l'assistance mutuelle, il peut y avoir intérêt à ce que les fonctionnaires d'un pays soient autorisés à témoigner dans un autre pays. Afin d'éviter des difficultés relatives au secret professionnel éventuellement imposé par la législation nationale, il est stipulé, tout comme dans les articles susmentionnés, que les fonctionnaires doivent être dûment autorisés par l'administration à laquelle ils appartiennent.

ARTICLE 9

Le présent article reprend, en ce qui concerne la force probatoire des procès-verbaux et autres écrits, le principe sur lequel se base l'article 3 de la Convention relative à la coopération en matière de douanes et d'accises ainsi que l'article 12, premier paragraphe, de la Convention relative à la coopération en matière de réglementation des importations, des exportations et du transit.

ARTICLE 10

Cet article règle les droits et devoirs des fonctionnaires exerçant, en application de la Convention, leur fonction dans un autre pays. Mutatis mutandis, ces dispositions sont les mêmes que celles de l'article 16, premier et second paragraphes, de la Convention en matière de douanes et d'accises et de l'article 22, premier et second paragraphes, de la Convention en matière de réglementation des importations, des exportations et du transit.

ARTICLE 11

Le nouveau système de perception des impôts sur le chiffre d'affaires, de la taxe de transmission et des impôts analogues frappant la circulation des marchandises qui franchissent les frontières communes, exige entre les administrations des

pays partenaires une coopération intensive, afin de pouvoir réaliser de la façon la plus efficace l'échange de renseignements présentant un intérêt en vue du contrôle de l'application des dispositions y afférentes des législations nationales distinctes. Les contrôles normaux auxquels un pays partenaire procède en vue du contrôle de l'application de la législation nationale peuvent en outre également servir au contrôle d'un pays partenaire concernant l'application de la législation nationale qui y est en vigueur. Dans des cas spéciaux, un commentaire peut être joint à la demande d'un pays partenaire, en vue de procéder à des investigations de caractère particulier.

C'est pourquoi il peut être fort utile de concentrer l'échange de renseignements auprès de services communs où, en même temps que des fonctionnaires du pays d'établissement, travaillent également des fonctionnaires des deux autres pays, qui assurent en ce qui concerne les renseignements à échanger, la liaison entre les administrations intéressées et qui pourront donner des renseignements. Les fonctionnaires des pays partenaires travaillant auprès du service commun pourraient, en vertu de l'article 5 de la Convention, assister au contrôle exercé par les fonctionnaires nationaux.

A cette fin, le présent article permet aux Ministres des Finances des trois pays de constituer des services communs prévus ci-dessus. Ils peuvent en déterminer les conditions d'organisation et de fonctionnement. Ces questions se situent sur le plan administratif. Les services communs n'occuperont pas une position autonome et ne pourront pas agir en cette qualité vis-à-vis du public. Les fonctionnaires faisant partie de ces services agiront toujours en tant que fonctionnaires de l'administration de leur pays et dans le cadre des atrributions fixées par la Convention en ce qui concerne leur intervention dans un autre pays.

ARTICLE 12

L'immunisation en matière d'impôts pour les moyens de transport employés par des fonctionnaires d'un autre pays dans l'exercice de leurs fonctions est celle qui est prévue par les conventions de coopération déjà conclues.

ARTICLE 13

En vue d'éviter des décomptes fastidieux en matière d'assistance mutuelle, cet article stipule que chaque pays supporte lui-même les frais qui lui sont occasionnés pour satisfaire à une demande ou à une réquisition d'un autre pays.

PROJET

de convention d'assistance mutuelle entre la Belgique, le Grand-Duché de Luxembourg et les Pays-Bas, en matière de perception des impôts sur le chiffre d'affaires, de la taxe de transmission et des impôts analogues

Sa Majesté le Roi des Belges,
Son Altesse Royale la Grande-Duchesse de Luxembourg,
Sa Majesté la Reine des Pays-Bas,

Vu le Traité instituant l'Union économique Benelux, signé à La Haye, le 3 février 1958, notamment les articles 3, 79 et 83, ainsi que la Convention transitoire y annexée, signée également à La Haye, le 3 février 1958, notamment l'article 32;

Considérant qu'en vertu de l'article 83 du Traité précité, les Hautes Parties Contractantes se prêtent mutuellement assistance pour tout ce qui concerne la perception des impôts sur le chiffre d'affaires, de la taxe de transmission et des impôts analogues;

Ont décidé à cet effet de conclure une convention et ont désigné comme Plénipotentiaires:

.....

lesquels, après avoir communiqué leurs pleins pouvoirs trouvés en bonne et due forme, sont convenus des dispositions suivantes:

ARTICLE PREMIER

Par «administrations compétentes» on entend, dans la présente Convention, les administrations qui, dans les pays des Hautes Parties Contractantes, sont chargées d'assurer la perception de l'impôt sur le chiffre d'affaires, de la taxe de transmission ou des impôts analogues.

Par «agents compétents» on entend les fonctionnaires et agents qui, dans les pays des Hautes Parties Contractantes, sont compétents pour assurer la perception de l'un des impôts visés à l'alinéa 1er.

ARTICLE 2

Les administrations compétentes des pays des Hautes Parties Contractantes se prêtent mutuellement assistance, conformément aux dispositions de la présente Convention, afin d'assurer l'application des dispositions légales et réglementaires en matière d'impôt sur le chiffre d'affaires, de taxe de transmission et d'impôts analogues, pour réaliser l'exacte perception des impôts.

ARTICLE 3

L'administration compétente de chaque pays communique spontanément à

l'administration compétente du pays intéressé, les renseignements parvenus régulièrement à sa connaissance, qui sont utiles à cette administration pour assurer l'exacte perception de l'impôt sur le chiffre d'affaires, de la taxe de transmission ou d'un impôt analogue.

Les administrations intéressées déterminent de commun accord les renseignements à échanger spontanément conformément à l'alinéa 1er.

ARTICLE 4

L'administration compétente de chaque pays procède aux investigations nécessaires à l'effet de recueillir les renseignements qui lui sont demandés par l'administration compétente d'un autre pays en vue de contrôler l'exacte perception de l'impôt sur le chiffre d'affaires, de la taxe de transmission ou d'un impôt analogue.

L'administration requise fait usage à cet effet des pouvoirs que lui confère la législation de son pays; elle n'est pas tenue de procéder à des investigations permises par cette législation si des investigations similaires ne sont pas autorisées par la législation du pays requérant.

ARTICLE 5

Les agents compétents d'un pays peuvent assister les agents compétents d'un autre pays dans les contrôles chez des redevables de ce dernier pays, si l'administration compétente de ce pays y consent. Ils agissent dans les mêmes conditions, avec les mêmes pouvoirs et avec les mêmes effets que les agents auxquels ils prêtent assistance.

ARTICLE 6

Les renseignements qui, en exécution de la présente Convention, sont échangés entre les administrations compétentes, ou sont recueillis dans un pays par un agent compétent d'un autre pays, peuvent être utilisés, dans les pays des Hautes Parties Contractantes, pour assurer l'exacte perception de tout impôt dû à l'Etat par les personnes que ces renseignements concernent. Ils ne peuvent, pour servir à d'autres fins, être communiqués à des administrations ou à des tiers, sauf au ministère public en vue de poursuites pénales.

ARTICLE 7

Celui qui, étant établi dans l'un des pays, livre des marchandises à une personne de l'un des autres pays est, sous les conditions et dans les limites déterminées par échange de lettres entre les Gouvernements des Hautes Parties Contractantes, solidairement responsable de l'impôt sur le chiffre d'affaires, de la taxe de transmission ou des impôts analogues dus par ladite personne pour cette opération.

ARTICLE 8

Les agents compétents d'un pays peuvent, lorsqu'ils sont dûment autorisés par leur administration, témoigner, au sujet de constatations faites dans l'exercice de leurs fonctions, devant les tribunaux d'un autre pays saisis de litiges en matière d'impôt sur le chiffre d'affaires, de taxe de transmission ou d'impôts analogues.

ARTICLE 9

Les procès-verbaux et autres déclarations écrites des agents compétents qui constatent, dans la forme et les conditions déterminées par la législation de leur pays, des faits qui établissent l'existence de contraventions ou d'infractions en matière d'impôt sur le chiffre d'affaires, de taxe de transmission ou d'impôts analogues, punissables dans un autre pays, ont, dans cet autre pays, la même force probante que celle qu'ils auraient s'il s'agissait de procès-verbaux régulièrement dressés par des agents compétents de ce pays.

ARTICLE 10

Les agents compétents d'un pays qui, en exécution de la présente Convention, accomplissent des prestations dans un autre pays, jouissent dans celui-ci de la protection et de l'assistance accordées aux agents compétents de ce pays. Ils sont assimilés à ces derniers pour les infractions dont ils seraient victimes et pour celles qu'ils commettraient.

Ils doivent être en mesure de justifier à tout moment de leur qualité officielle par la production de la commission ou d'un autre document de légitimation dont leur administration les a pourvus.

ARTICLE 11

Afin de faciliter l'exécution de la présente Convention, les Ministres des Finances des Hautes Parties Contractantes peuvent instituer des services communs, composés d'agents compétents des trois pays, et déterminer les conditions d'organisation et de fonctionnement de ces services.

ARTICLE 12

Les véhicules à moteur, les bicyclettes et autres moyens de transport que les agents d'un pays utilisent pour leur service dans un autre pays, sont exempts des impôts et des taxes quelconques qui pourraient être dus en raison d'un pareil usage dans ce dernier pays.

ARTICLE 13

Chaque pays supporte les frais qui lui sont occasionnés pour satisfaire à une demande ou à une réquisition d'un autre pays.

Dispositions finales

ARTICLE 14

La présente Convention sera ratifiée et les instruments de ratification seront déposés auprès du Secrétariat général de l'Union économique Benelux.

Elle entrera en vigueur le premier jour du deuxième mois qui suivra le dépôt du troisième instrument de ratification.

ARTICLE 15

La présente Convention pourra à tout moment être dénoncée par chaque Haute Partie Contractante, moyennant un préavis écrit d'au moins douze mois notifié par la voie diplomatique aux deux autres Hautes Parties Contractantes; dans ce cas elle cessera ses effets, à l'égard de la première Haute Partie Contractante, à la date d'expiration dudit délai, sauf en ce qui concerne les demandes d'assistance introduites ou reçues par cette Haute Partie Contractante avant cette date.

En foi de quoi les Plénipotentiaires susmentionnés ont signé la présente Convention et l'ont revêtue de leur sceau.

Fait en triple exemplaire à ..... le ..... en langue française et en langue néerlandaise, les deux textes faisant également foi.

RHODESIA and NYASSALAND

Décret no 63-1231 *du* 12 *décembre* 1963 *portant publication d'un échange de lettres du* 5 *novembre* 1963 *entre la France et la Grande-Bretagne étendant à la Fédération de Rhodésie et du Nyassaland les dispositions de la convention franco-britannique du* 14 *décembre* 1950 *en vue d'éviter la double imposition et de prévenir l'évasion fiscale en matière d'impôts sur le revenu.*

Le Président de la République Française.

Sur le rapport du Premier ministre et du ministre des affaires étrangères.

Vu les articles 52 à 55 de la Constitution;

Vu le décret no. 53-192 du 14 mars 1953 relatif à la ratification et à la publication des engagements internationaux souscrits par la France,

Décrète:

Art. 1er. – L'échange de lettres du 5 novembre 1963 entre la France et la Grande-Bretagne étendant à la Fédération de Rhodésie et du Nyassaland les dispositions de la convention franco-britannique du 14 décembre 1950 en vue d'éviter la double imposition et de prévenir l'évasion fiscale en matière d'impôts sur le revenu sera publié au *Journal officiel* de la République française.

Art. 2. – Le Premier ministre et le ministre des affaires étrangères sont chargés de l'application du présent décret.

Fait à Paris, le 12 décembre 1963.

Par le Président de la République:
C. DE GAULLE

Le Premier ministre,
GEORGES POMPIDOU.

Le ministre des affaires étrangères,
MAURICE COUVE DE MURVILLE.

AMBASSADE
DE GRANDE-BRETAGNE

Paris, le 5 novembre 1963.

A Son Excellence Monsieur Maurice Couve de Murville,
ministre des affaires étrangères, Paris.

Monsieur le ministre,

Me référant à la convention entre le Royaume-Uni de Grande-Bretagne et d'Irlande du Nord et la France tendant à éviter la double imposition et à prévenir l'évasion fiscale en matière d'impôt sur le revenu, signée à Paris le 14 décembre 1950, j'ai l'honneur, au nom du Gouvernement du Royaume-Uni, de proposer, conformément aux dispositions de son article XXIII, que les dispositions en soient étendues à la Fédération de Rhodésie et du Nyassaland, conformément à l'annexe à la présente lettre et sous réserve des modifications et à compter des dates qui y sont indiquées.

Pour le cas où cette proposition agréérait au Gouvernement français, je suggère que la présente lettre accompagnée de son annexe et la réponse de Votre Excellence soient réputées constituer l'Accord intervenu entre les deux gouvernements en cette matière.

Je saisis cette occasion pour renouveler à Votre Excellence l'assurance de ma très haute considération.

PIERSON DIXON.

ANNEXE

I. – Application

1. La Convention du 14 décembre 1950, telle qu'elle est modifiée par la présente annexe, sera applicable:

a) Comme si les Parties contractantes étaient le Gouvernement français et le Gouvernement de la Fédération de Rhodésie et du Nyassaland;

b) Comme si le terme «Royaume-Uni», à moins que le contexte ne l'exige autrement, désignait la Fédération de Rhodésie et du Nyassaland;

c) Comme si les impôts visés dans la Fédération de Rhodésie et du Nyassaland

étaient l'impôt sur le revenu, la supertaxe et l'impôt sur les bénéfices non distribués.

2. Lorsque toutes les mesures nécessaires pour donner à la présente extension force de loi en France et dans la Fédération auront été prises en France et dans la Fédération de Rhodésie et du Nyassaland, la présente extension produira ses effets:

a) En France, pour l'établissement des impôts exigibles au titre de l'année 1962 et des années subséquentes, et

b) Dans la Fédération de Rhodésie et du Nyassaland:

En ce qui concerne l'établissement des impôts frappant les bénéfices provenant de l'exploitation de navires ou d'aéronefs, pour l'année d'imposition commençant le 1er avril 1953 ainsi que pour les années d'imposition subséquentes;

En ce qui concerne l'établissement des impôts frappant tous les autres revenus, pour l'année d'imposition commençant le 1er avril 1962 ainsi que pour les années d'imposition subséquentes.

3. Le Gouvernement français informera par écrit le Gouvernement du Royaume-Uni lorsque toutes les mesures nécessaires visées au paragraphe 2 auront été prises en France. Le Gouvernement du Royaume-Uni informera par écrit le Gouvernement français lorsque toutes les mesures nécessaires visées au paragraphe 2 auront été prises dans la Fédération de Rhodésie et du Nyassaland.

4. La présente extension demeurera en vigueur sans limitation de durée, mais l'une ou l'autre des Parties contractantes pourra, à partir de 1966 et au plus tard le 30 juin de chaque année civile, notifier par écrit à l'autre Partie contractante, par la voie diplomatique, qu'elle y met fin. Dans ce cas, la présente extension cessera d'avoir effet:

a) En France, pour l'établissement des impôts afférents aux années postérieures à l'année civile au cours de laquelle la notification sera intervenue;

b) Dans la Fédération de Rhodésie et du Nyassaland, pour l'établissement de l'impôt afférent aux années d'imposition commençant le 1er avril ou après le 1er avril de l'année civile suivant immédiatement la date d'une telle notification.

II. – Modifications

La Convention du 14 décembre 1950 s'appliquera avec les modifications suivantes:

1. Les termes «sont exempts de la surtaxe du Royaume-Uni» figurant à l'article IX de la Convention seront interprétés comme signifiant «ne sont pas passibles de l'impôt dans la Fédération de Rhodésie et du Nyassaland à un taux supérieur à celui qui est applicable à une société», et

2. L'article XIII sera applicable aux rémunérations, y compris les pensions, versées par le Gouvernement de chacun des territoires constituant la Fédération ou sur des fonds créés par le Gouvernement de chacun desdits territoires, à toute personne en contrepartie de services rendus audit Gouvernement dans l'exercice

de fonctions officielles, de même qu'il s'applique aux paiements similaires effectués par le Gouvernement de la Fédération ou sur des fonds créés par ledit Gouvernement.

MINISTÈRE
DES
AFFAIRES ÉTRANGÈRES

Paris, le 5 novembre 1963

A Son Excellence Sir Pierson Dixon,
ambassadeur de Grande-Bretagne en France.

Monsieur l'ambassadeur,

Par lettre en date de ce jour accompagnée de son annexe dont la traduction figure ci-après, vous avez bien voulu me faire savoir ce qui suit:

«Me référant .....».

«Annexe .....».

J'ai l'honneur de porter à la connaissance de Votre Excellence que les termes de la lettre qui précède et de son annexe rencontrent l'agrément du Gouvernement français. Celle-ci et la présente réponse constituent l'accord recherché par nos deux gouvernements.

Veuillez agréer, Monsieur l'ambassadeur, les assurances de ma très haute considération.

F. LEDUC

Source: *Journal Officiel de la République Française,* le 15 décembre 1963.

New double taxation agreements

Both Southern and Northern Rhodesia will have to negotiate new double taxation agreements to replace the present agreements concluded by the Federation. Prior to the establishment of the Federation, there were in force double taxation agreements between the three Territories and these were never repealed. It can, therefore, be expected that these agreements will continue to apply unless any of the three Governments desires to terminate them or unless new agreements are negotiated. It is understood that the Treasury of Southern Rhodesia will, wherever possible, endeavour to negotiate double taxation agreements to take the place of the Federal agreements and, pending such negotiations it is likely that it will accord to taxpayers the same relief to which they are entitled to under Federal agreements.

Source: *The Rhodesian Income Tax Service Bulletin* Nr. 16 of 31st December 1963.

INTERNATIONAL BUREAU OF FISCAL DOCUMENTATION

HISTORY

Since its establishment in 1938, the International Bureau of Fiscal Documentation has served as an independent source of tax information and advice. After World War II its functions were broadened beyond mere simple fiscal documentation and assumed the character of supplying factual data on the tax systems of countries around the world in response to requests from various governmental and business organisations. This welding of practical and scientific functions has been the keystone of the Bureau's development.

In 1946, the Bureau began publication of the Bulletin for International Fiscal Documentation, the official organ of the International Fiscal Association. This publication, which exemplifies the blending of practical with scientific data, has been supplemented by nineteen special publications. In 1961, the Bureau published the first issue of European Taxation, a fortnightly English language review of tax developments on the European Continent, in the United Kingdom and in Ireland. During that time span the Bureau also published a well-received book in German by Dr. Albert J. Rädler about taxation in the common market countries. The Bureau continuously assisted in translating and preparing tax materials for other publications. Additionally, its library was greatly expanded and now contains well over 7000 volumes on national and international tax matters, as well as more than 250 selected periodicals; many visiting researchers have made use of these library facilities.

In August, 1963, the Bureau moved to the "Muiderpoort", an old City Gate which is one of Amsterdam's historical landmarks. These new quarters, made possible through the generosity of the City and the University of Amsterdam, will provide the potential for future expansion.

GOALS

The overriding goal of the Bureau is to serve the International community by collecting, evaluating and disseminating tax data in a manner which combines scientific objectivity with practical realism.

ORGANIZATION

The Bureau is a public foundation established under Dutch law. Its policies are determined by a "Curatorium", or board of trustees, composed of outstanding representatives of the government, business and academic communities in various countries. A managing director is responsible for carrying out the goals articulated by the Curatorium.

The Bureau is separated into four divisions: Library and Documentation, which is

responsible for acquisition and maintenance of tax materials; International Tax Service, which prepares reports for governmental, business and scholarly purposes; Publications Department, which is responsible for the whole gamma of the Bureau's publications; and the Administrative arm, which plans and coordinates Bureau activities.

PERSONNEL

The Bureau employs eight Associates, one Librarian and sixteen Staff. Of these, the majority are Dutch; but English, Spanish and United States nationals are also working in the Bureau.

CORRESPONDENTS

Apart from its own Associates, the Bureau avails itself of the cooperative services of a large number of expert correspondents throughout the world.

THE PROGRAM

The Bureau's removal to new quarters, which ended six years of overcrowding, has been an appropriate occasion for the formulation of a program of activities. The program consists of five points, all of which will be carried on concurrently. Emphasis during the next years will, however, be placed on training of personnel and assisting in research projects.

1. *Training*

The Bureau seeks to prepare young lawyers and economists to meet the growing demand for international tax experts. By doing so, the Bureau also seeks to broaden its own experience and viewpoint, in a sense it serves as a melting pot for tax oriented ideas to persons from a large number of countries.

2. *Research*

The Bureau is focusing its research efforts upon a significant contemporary problem – the relationship between capital exporting nations and developing countries. To aid in the accomplishment of this end, the Bureau is offering to young post-graduates from developing countries the opportunity to work with the Bureau. Other important research projects include studies of the tax aspects of economic integration and of the influence of tax incentives on economic growth.

3. *Education*

The Bureau seeks to stimulate, and participate in, seminars and discussion groups, lectures and publications.

4. *Library and Documentation*

The Bureau's program of cataloguing and completing its set of materials will be continued in the framework of its new library facilities.

5. *Reports*

The Bureau prepares reports containing factual data and legal appraisals relating to countries other than the country of residence of the organization or individual who requests a report.

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THE TAXATION OF PATENT ROYALTIES, DIVIDENDS, INTEREST IN EUROPE

This new publication is a looseleaf service which gives every tax (with basis and rates) levied on patent royalties, dividends and interest as each type of income flows from one European country to another and to the United States and Canada.
It is divided into chapters by country and each chapter describes the tax structure of one country in 5 sections as follows:

Section A: Taxation of Resident Companies
All taxes are summarized as they apply to patent royalties, dividends and interest.

Section B: Taxation of Foreign Source Income
The general rule as applied to patent royalties, dividends and interest received by resident companies from abroad is discussed, and then the specific rule as regards each two-country transaction is set out.

Section C: Taxation of Non-Resident Companies
Liability, basis and rate of income taxes, withholding taxes, business tax, net worth tax, turnover tax, stamp tax, local tax as applied to patent royalties, dividends and interest.

Section D: Taxation of Patent Royalties, Dividends Interest Received by Non-Resident Companies
Taxes applied to each type of income as it flows to a non-resident company in Europe, the US and Canada.

Section E: Holding Companies,
Taxation of international holding companies in each of the 18 European countries.

Monthly supplements (by airmail) immediately report all changes in basis, liability and rates and ensure that this work is a valuable source of up-to-date, reliable information, and an essential feature in the library of all those concerned with international tax problems.

PRICE (INCLUDING BINDER) US $ 30
SUPPLEMENT SERVICE FOR YEAR US $ 10

THE INTERNATIONAL BUREAU
OF FISCAL DOCUMENTATION

MUIDERPOORT – SARPHATISTRAAT 124 – AMSTERDAM-C
THE NETHERLANDS

I

TAXATION IN CANADA

(PREPARED BY THE TAXATION DIVISION,
DEPARTMENT OF FINANCE, OTTAWA)

INTRODUCTION

Canada is a federal state with a central government and ten provincial governments. In 1867 the principal colonies of the British Crown in North America united to form the nucleus of a new nation and the British North America Act of that year became its written constitution. This statute created a central government with certain powers, while continuing the existence of political subdivisions called provinces with powers of their own.

Under the British North America Act, the Parliament of Canada has the right to raise "money by any mode or system of taxation", while the provincial legislatures are restricted to "direct taxation within the province in order to the raising of a revenue for provincial purposes". Thus, the provinces have a right to share only in the field of direct taxation, while the Federal Government is not restricted in any way in matters of taxation. The British North America Act also empowered the provincial legislatures to make laws regarding "municipal institutions in the province". This means that the municipalities derive their incorporation, with its associated powers, fiscal and otherwise, from the provincial governments concerned. Thus, from a practical standpoint, municipalities are also limited to direct taxation.

A direct tax is generally recognized as one "which is demanded from the very person who it is intended or desired should pay it". In essence, this conception has limited the provincial governments to the imposition of income tax, retail sales tax, succession duties and an assortment of other direct levies. In turn, municipalities, acting under the guidance of provincial legislation, tax real estate, water consumption, places of business and, in some cases, retail sales. The Federal Government levies direct taxes on income, on gifts, and on the estates of deceased persons, and indirect taxes such as excise taxes, excise and customs duties, and a sales tax.

The increasing use by both the Federal and the provincial governments of their rights in the field of direct taxation in the 1930's resulted in uneconomic duplication and some severe tax levies. Starting in 1941, a series of tax agreements was concluded between the Federal and the provincial governments to promote the orderly imposition of direct taxes. The duration of each agreement was normally five years. Under these agreements, the participating provinces undertook in

return for compensation not to use, or permit their municipalities to use, certain of the direct taxes. Under the last two agreements the federal income tax and death tax otherwise payable in non-participating provinces were abated by a fixed percentage to make room for provincial levies.

The current agreement became operative on April 1, 1962, and will run until March 31, 1967. Basically, it entails a partial federal withdrawal from the field of direct taxation and the re-entry of all provinces in the vacated area. The Federal Government reduces its personal income tax otherwise payable on income earned in a province, and on income received by a resident of a province, by the following percentages:

16% in 1962
17% in 1963
18% in 1964
19% in 1965
20% in 1966

Also, the Federal Government reduces its rate of corporation income tax on taxable income of corporations earned in the provinces. The reduction is 9 per cent of taxable income earned in any province except Quebec and 10 per cent of taxable income earned in Quebec. The additional 1 per cent reduction in respect of taxable income earned in the Province of Quebec is to compensate for the additional tax levied by the Province on corporation income to provide grants to universities. These provincial grants replace federal grants, which in other provinces are paid to the universities by the Federal Government through the Canadian Universities Foundation. Finally, the Federal Government abates the federal estate tax otherwise payable by 50 per cent in respect of property situated in a province which levies its own death tax. Only Ontario, Quebec and British Columbia at present levy death taxes in the form of succession duties.

These reductions in federal income tax and estate tax under the terms of the 1962-67 fiscal arrangements do not apply to the Yukon or the Northwest Territories or to income earned outside Canada. The Yukon and Northwest Territories do not impose income taxes or death taxes.

The provincial tax rates are not restricted to the extent of the federal withdrawal. The constitutional position of the provinces permits them unlimited use of direct taxes for the raising of revenue for provincial purposes. However, in all but four provinces (Ontario, Quebec, Manitoba and Saskatchewan) the provincial rates of income tax coincide with the amount of the federal abatement.

As part of the 1962-67 fiscal arrangements, the Federal Government has entered into tax-collection agreements under which it collects the provincial personal income taxes for all provinces except Quebec and the provincial corporation income taxes for all provinces except Ontario and Quebec.

FEDERAL TAXES

Individual Income Tax

Every individual who is resident in Canada at any time during a year is liable for the payment of income tax for that year. Every non-resident individual who is employed or carries on business in Canada during a year is required to pay tax on the part of his income earned in Canada. Canadian taxation practice is based on a large extent on the British experience. This is reflected particularly in the fact that taxation is on the basis of residence rather than citizenship, and in the tax freedom for capital gains. The term "residence" is difficult to define simply but, generally speaking, it is taken to be the place where a person resides or where he maintains a dwelling ready at all times for his use. There are also extensions of the meaning of "Canadian resident" to include a person who has sojourned in Canada for an aggregate period of 183 days in a taxation year, or a person who was during the year a member of the armed forces of Canada, or an ambassador, a high commissioner, or an officer or servant of Canada or of any one of its provinces, or the spouse or dependent child of any such person.

The Canadian tax law uses the conceptions "income" and "taxable income". The income of a resident of Canada for a taxation year comprises his revenues from all sources inside or outside Canada and includes income for the year from all businesses, property, offices and employments. It does not include capital gains unless they arise out of the conduct of a business or as a result of an adventure in the nature of trade.

In computing his income for a taxation year, an individual must include all dividends, fees, annuities, pension benefits, allowances, interest, alimony, maintenance payments and other miscellaneous sources of income. On the other hand, war-service disability pensions paid by Canada or an ally of Her Majesty at the time of the war service, unemployment insurance benefits, compensation in respect of an injury or death paid under a Workmen's Compensation Act of a province and Family Allowances[1]) do not have to be included in the computation of income.

In computing his income, an individual who is carrying on business may deduct business expenses including depreciation (called capital-cost allowances), interest on borrowed money, reserves for doubtful debts, contributions to pension plans or deferred profit-sharing plans for his employees, bad debts, and expenses incurred for scientific research. In general, no deductions are allowed in computing

---

1) Family Allowances are monthly welfare payments by the Federal Government to the parents or guardians of children under 16 years of age. The allowance is $6 for each child under 10 years of age and $8 for each child between the ages of 10 and 16. These allowances are not subject to income tax.

income from salary and wages, although there are exceptions. These exceptions include travelling expenses of employees who have to travel as they perform their work (such as employees on trains), union dues, alimony payments, and contributions to registered pension plans. Individuals may deduct, within limits, amounts set aside to provide a future income under registered retirement savings plans. Students in full-time attendance at a university or other educational institution in a course at a postsecondary-school level may deduct their tuition fees in computing their income.

Having computed his income, the individual calculates his taxable income by deducting certain exemptions and deductions. These exemptions and deductions are as follows:

For single status, an exemption of	$1,000
For married status, an exemption of	$2,000
For dependent children eligible to receive Family Allowance	$ 300 a child
For other dependants (as defined in the law)	$ 550 a dependant
Where taxpayer is over 65 years of age	additional $500
Where taxpayer is blind or confined for the whole of the taxation year to a bed or a wheelchair	additional $500
Charitable donations	up to 10 per cent of income
Medical expenses	in excess of 3 per cent of income

In lieu of claiming deductions for charitable donations, medical expenses and membership dues in trade unions or professional societies, an individual may claim a standard deduction of $100.

As already stated, an individual who is resident in Canada for the whole year is taxed on his income from both inside and outside Canada. An individual who is not resident in Canada at any time during the year but who carries on business in Canada or who earns salary or wages in Canada is taxed only on the income earned in Canada. In computing taxable income earned in Canada such a non-resident individual is allowed to deduct that part of the exemptions and deductions that may reasonably be attributed to the income earned in Canada. (A non-resident who derives investment income from Canada is taxed in a different way described under a separate heading.) An individual who ceases to be a resident of Canada during the year or who becomes a resident during the year so that he is resident for only part of the year will be subject to income tax in Canada on only that part of his income for the year received while he is resident in Canada. Under these circumstances, the deductions from income permitted for determining taxable

income will be the amount which may reasonably be considered as applicable to the period during which he is resident in Canada.

A progressive schedule of rates is applied to taxable income. These rates begin at 11 per cent on the first $1,000 of taxable income and increases to 80 per cent on taxable income in excess of $400,000. In addition, an old-age security tax is levied on taxable income at the rate of 3 per cent, with a maximum of $90 reached at the level of $3,000.

In calculating the amount of his income tax, an individual is allowed tax credits under three main headings:

a) *Dividend tax credit:*

In order partially to eliminate the double taxation of corporate profits and to encourage participation in the ownership of Canadian companies, Canadian resident individuals are allowed to deduct from their tax an amount equal to 20 per cent of the net dividends they receive from Canadian taxable companies.

b) *Foreign tax credit:*

Foreign taxes paid on income from foreign sources may be credited against Canadian income tax, but the credit may not exceed the proportion of Canadian tax relative to such income.

c) *Abatement under federal-provincial arrangements:*

In 1963 the federal personal income tax otherwise payable on income of a resident of a province and on income earned in a province was reduced by 17 per cent. This abatement will increase by one percentage point a year until it becomes 20 per cent in 1966.

To a very large extent individual income tax is payable as the income is earned. Taxpayers in receipt of salary or wages have tax deducted from their pay by their employer and in this way pay nearly 100 per cent of their tax liability during the calendar year. The balance of the tax, if any, is payable at the time of filing the tax return before April 30, in the following year. People with more than 25 per cent of their income from sources other than salary or wages must pay tax by quarterly instalments throughout the year. Here again returns must be filed before April 30, in the following calendar year.

The following table shows what taxpayers pay at various levels of income:

TABLE A

	Income	*Income Tax*	*O.A.S. Tax*
Single taxpayer — no dependants	$ 1,200	11	3
	1,500	44	12
	2,000	99	27
	2,500	166	42
	3,000	236	57

	Income	*Income Tax*	*O.A.S. Tax*
	5,000	591	90
	10,000	1,840	90
	20,000	5,825	90
	50,000	20,965	90
	100,000	50,855	90
Married taxpayer — no dependants			
	2,200	11	3
	2,500	44	12
	3,000	99	27
	5,000	403	87
	10,000	1,544	90
	20,000	5,375	90
	50,000	20,415	90
	100,000	50,205	90
Married taxpayer — two children eligible for family allowances			
	2,800	11	3
	3,000	33	9
	5,000	301	69
	10,000	1,388	90
	20,000	5,105	90
	50,000	20,085	90
	100,000	49,815	90

In calculating these taxes, it has been assumed that all taxpayers take the standard deduction of $100. No allowance has been made for the 20 per cent dividend tax credit.

In calculating the taxes shown for a married taxpayer with two children eligible for Family Allowances, a deduction of $300 has been allowed for each child.

The income taxes shown above are abated by 17 per cent in all provinces. In all provinces except Quebec, Manitoba and Saskatchewan, the provincial tax is the same as the federal abatement. Therefore, in these provinces, the taxes shown above are the combined federal and provincial taxes. In Quebee the provincial tax does not coincide with the federal abatement. In Manitoba and Saskatchewan the provincial tax exceeds the abatement by 6 percentage points.

It was announced in the 1963 Budget Speech that taxpayers who established a manufacturing or processing business in a designated area of slower growth during a two-year period commencing on the date of enactment of the 1963 Income Tax Act Amending Bill would be eligible for a three-year exemption from income tax. As of July 1963, this proposed change had not been brought into force by legislation nor had any area been designated.

Corporation Income Tax

The Income Tax Act levies a tax upon the income from anywhere in the world of corporations resident in Canada and upon the income attributable to operations in Canada of non-resident corporations carrying on business in Canada.

In computing their income, corporations may deduct operating expenses, including municipal real-estate taxes, reserves for doubtful debts, bad debts, and interest on borrowed money. They may not deduct provincial income taxes other than provincial taxes on income derived from mining operations. (For this purpose "income from mining operations" is specially defined).

Regulations covering capital-cost allowances (depreciation) permit taxpayers to deduct over a period of years the actual cost of all depreciable property. The yearly deductions of capital-cost allowances are computed on the diminishing-balance principle. (Taxpayers engaged in farming and fishing may choose between this and the straight-line method.) Published regulations establish a number of classes of property and maximum rates. There is provision for recapture of any amount allowed in excess of the ultimate net capital-cost of any asset.

Certain accelerated depreciation provisions are available to taxpayers in certain circumstances and for a limited period. Businesses established in surplus-manpower areas (specific areas officially designed as such) which produce goods new to these areas or businesses engaged in the production of goods that are new to Canada are allowed to claim capital-cost allowances at double the normal rates for one year in respect of depreciable property acquired for the purpose of producing these new goods. This special incentive is available until January 1, 1964. A modernization allowance in the form of a 50 per cent increase in the first year in the rates of capital-cost allowance can also be claimed by a business in respect of expenditures on new capital assets that exceed its expenditures on capital assets in the previous year or its average expenditures on capital assets in the three previous years. This special allowance is available in respect of all depreciable assets eligible for depreciation by the diminishing-balance principle which are acquired before April 1, 1964. The 1963 Budget introduced a new incentive measure, which, as of July 1963, had not yet been brought into force by legislation. Straight-line depreciation at a rate not exceeding 50 per cent will be granted in respect of certain new depreciable assets (machinery and equipment that would otherwise fall in Class 8 of the Income Tax Regulations) acquired in a 24-month period commencing on June 14, 1963, for use in manufacturing or processing businesses by individuals resident in Canada or by companies resident in Canada that have a degree of Canadian ownership and control. To have a degree of Canadian ownership and control, a company must (a) be a resident of Canada, (b) have 25 per cent of its voting shares beneficially owned by one or more individuals resident in Canada, one or more corporations controlled in Canada, or a combination thereof *or* have

its voting shares listed on a stock exchange in Canada and have no more than 75 per cent of its voting shares beneficially owned by a non-resident person alone or with associated persons, (c) ensure that at least 25 per cent of its directors are resident in Canada (this requirement will not apply until 1965). For manufacturing or processing businesses in designated areas of slower growth, there is no requirement that they have a degree of Canadian ownership and control to qualify for this 50 per cent straight-line depreciation rate. Capital-cost allowances at the accelerated rate of 20 per cent on a straight-line basis are also proposed in respect of new buildings acquired in designated areas of slower growth in the period of 24 months commencing on the date the legislation proposed in the 1963 Budget is enacted.

Expenditures on scientific research by corporations qualify for special tax treatment. Generally speaking, all expenditures on scientific research in Canada may be written off for tax purposes in the year when incurred. In addition, corporations are permitted to deduct in computing income for tax purposes 150 per cent of their increased expenditures on scientific research.

Taxpayers operating mines, oil wells and gas wells are allowed a depletion allowance, usually computed as a percentage of profits derived from mineral, oil or gas production, which continues as long as the mine or well is in operation. This allowance is in addition to capital-cost allowances on buildings, machinery and similar depreciable assets used by the taxpayer. Taxpayers operating timber limits receive an annual allowance sometimes called a depletion allowance. This is a rateable proportion of the amount invested in the limit and is based on the amount of timber cut in the year. When the amount invested in the limit has been recovered, no further allowance is given.

In computing taxable income, corporations may deduct dividends received from other Canadian taxpaying corporations and also from foreign corporations in which the Canadian corporation has at least 25 per cent stock ownership. Business losses may be carried back one year or forward five years and deducted in computing taxable income. Corporations may also deduct donations to charitable organizations up to a maximum of 10 per cent of their income.

The general rates of tax on corporate taxable income are 18 per cent on the first $35,000 of taxable income plus 47 per cent on taxable income in excess of $35,000. Corporations deriving more than half their gross revenue from the sale of electrical energy, gas or steam pay tax on their taxable income from such sources at the rate of 18 per cent on the first $35,000 of taxable income plus 45 per cent on taxable income in excess of $35,000. Corporations that qualify as investment companies pay a tax of 18 per cent on their taxable income. In addition to these rates, all corporations pay an old-age security tax of 3 per cent of taxable income, bringing their rates up to 21 per cent and 50 per cent (21 per cent and 48 per cent

for the public utility companies and 21 per cent for investment companies).

In calculating the amount of their income tax, corporations are allowed tax credits under three headings:

(1) *Foreign tax credit*—foreign taxes paid on income from foreign sources may be credited against Canadian income tax, but the credit may not exceed the proportion of Canadian tax relative to such income.

(2) *Abatement under federal-provincial fiscal arrangements*—corporations may deduct from their federal tax otherwise payable a tax abatement equal to a fixed percentage of their taxable income attributable to operations in a Canadian province: This abatement is to make room for the provincial income tax levied by each Canadian province. The amount of the abatement is 9 per cent of taxable income attributable to operations in any province except Quebec and 10 per cent of taxable income attributable to operations in Quebec.

(3) *Provincial logging tax*—corporations may deduct from their federal tax otherwise payable an account equal to 2/3 of a provincial tax on income from logging operations not exceeding 2/3 of 10 per cent of the corporation's income from logging operations in the province (at present only Ontario and British Columbia impose logging taxes).

A special tax incentive based on increased sales is available to corporations engaged in manufacturing or processing. This concession consists of cancellation of 50 per cent of the federal income tax on the first $50,000 of taxable income arising from increased sales and cancellation of 25 per cent of the tax on any additional taxable income arising from increased sales. It was announced in the 1963 budget that this incentive would not be available for the 1964 and subsequent taxation years.

It was announced in the 1963 Budget Speech that new manufacturing and processing businesses established in designated areas of slower growth during a two-year period commencing from the date of enactment of the 1963 Income Tax Act Amending Bill would be eligible for a three-year exemption from income tax. As of July 1963, this proposed change had not been brought into force by legislation nor had any area been designated.

Corporations are required to pay their tax (combined income and old-age security tax) in monthly instalments but the period during which they pay tax for a taxation year does not coincide exactly with that taxation year. Until 1963, corporations did not start to pay taxes for a taxation year before the seventh month of that taxation year. In each of the last six months of their taxation year and the following three, they paid a twelfth of their estimated tax for the year (such estimate being based either on the taxable income of the previous year or the estimated taxable income of the year in progress). In each of the following two months they paid a third of the estimated balance of the tax computed by reference

to the income of the taxation year. In the sixth month following the end of their taxation year, the final return had to be filed and the remainder of the tax paid for the year. The 1963 Budget introduced a new set of rules for the payment of corporation income tax which will not become fully operative until early 1966. These rules will require that corporations begin to pay their tax for a taxation year in the fifth month rather than in the seventh month of that taxation year. In each of the last eight months of their taxation year and the following two, they will pay a twelfth of their estimated tax for the year (such estimate will continue to be based on the taxable income of the previous year or the estimated taxable income of the year in progress). In each of the following two months they will pay half the estimated balance of the tax computed by reference to the income of the taxation year. In the sixth month following the end of their taxation year, the final return will have to be filed. In order to move on to the new pattern, it will be necessary for corporations to pay their tax for each of two taxation years within a payment period of 11 months. The first taxation year to be so compressed within 11 months for the purpose of moving forward the payment period of corporation income tax will be the first one to end after November 30, 1963. The second will be the immediately succeeding one. As of July 1963, this proposed change had not been brought into force by legislation.

Taxation of Non-Residents

A non-resident is liable for payment of income tax if he was employed or was carrying on business in Canada during a taxation year. The expression "carrying on business in Canada" includes: (1) maintaining a permanent establishment in Canada; (2) processing goods even partially in Canada; and (3) entering into contracts in Canada.

The taxable income of a non-resident individual derived from carrying on business in Canada or from employment in Canada is taxed under the same schedule of rates as Canadian resident individuals, and non-resident corporations deriving income from carrying on business in Canada are taxed on their taxable income attributable to operations in Canada at the same rates as Canadian resident corporations. (Tax treaties with some countries provide certain exemptions from tax for remuneration for services performed in Canada by residents or employees of these countries).

Furthermore, the Income Tax Act provides for a tax at the rate of 15 per cent on certain forms of income going from Canada to non-resident persons. It applies to interest, dividends, rentals, royalties, income from a trust or estate and alimony. This tax applies whether the income goes to non-resident individuals or corporations. The rate of royalties on motion-picture films is only 10 per cent. The 1963 Budget announced that the 15 per cent rate on dividends paid by companies

resident in Canada to non-resident persons would be reduced from 15 per cent to 10 per cent. When paid by a company that has a degree of Canadian ownership and control (for definition of "degree of Canadian ownership and control", see the previous section on corporation income tax). This change would be effective for dividends paid after June 13, 1963. At the same time, the 1963 Budget announced that the 15 per cent rate on dividends paid by companies resident in Canada to non-resident persons would be increased to 20 per cent effective from January 1, 1965, when paid by a company that has not a degree of Canadian ownership and control. As of July 1963, these proposed changes had not been translated into legislation.

The non-resident tax is withheld at the source by the Canadian payer. It is an impersonal tax levied without regard to the status or other income of the non-resident recipient. Non-residents who receive only this kind of income from Canada do not file returns in Canada.

Special Tax on Branch Businesses

Profits earned in Canada by a non-resident corporation carrying on business through a branch or permanent establishment in Canada are subject to an additional tax of 15 per cent. This tax is imposed on profits attributable to the branch after deducting therefrom Canadian federal and provincial income taxes and an allowance in respect of the net increase in capital investment in property in Canada. The 1963 Budget announced that the rate of this tax would be increased to 20 per cent effective from January 1, 1965. As of July 1963, this proposed change had not been translated into legislation.

Gift Tax

The Income Tax Act levies a tax upon gifts. The rates range from 10 per cent on an aggregate taxable value of $5,000 or under to 28 per cent on an aggregate taxable value of over $1 million. Exemptions include complete exemption of gifts of $1,000 or less and a general deduction of $4,000 from aggregate taxable value of gifts in the year.

Estate Tax

This tax applies to property passing, or deemed to pass, at death. All the property of persons who were domiciled in Canada before their death must be taken into consideration no matter where that property is situated; for persons dying domiciled outside Canada, only their property situated in Canada is subject to tax.

In computing the tax of a Canadian domiciliary, the value of the whole estate is first determined. Once the aggregate value of the estate has been determined, estate debts and certain expenses may be deducted. From the resulting "aggregate net value", there may be deducted the amount of a basic exemption, which is in-

creased where the decedent leaves a widow or dependent child, and also the amount of any charitable bequests to charitable organizations in Canada. After these deductions, the amount left is the "aggregate taxable value", to which is applied the tax rates. From the tax so calculated may be deducted (1) a tax abatement in respect of property situated in a province that levies a succession duty, (2) a credit for gift tax paid on gifts made within three years of death (the value of which must be included in the aggregate net value of the estate), and (3) a credit for foreign taxes.

No estate valued at less than $50,000 is subject to estate tax. This $50,000 is not an exemption but the starting point for tax. The estate tax must not reduce the value of an estate after tax to less than $50,000. The basic deductible exemption which applies to all estates of Canadian domiciliaries is $40,000. This basic exemption of $40,000 is increased to $60,000 in respect of a deceased male survived by a spouse, or in respect of a deceased female survived by an incapacitated spouse and a dependent child. In both cases, there is an additional exemption of $10,000 for each surviving dependent child (i.e., under 21). Finally, the basic exemption of $40,000 is increased by $15,000 for every surviving dependent child made an orphan by the death of the deceased.

The tax on the estate of Canadian domiciliaries is calculated by applying a graduated scale of rates. For an aggregate taxable value of $5,000, or less, the rate is 10 per cent. For an aggregate taxable value of $100,000, the tax is $19,000 and anything between $100,000 and $150,000 is taxed at 24 per cent. At $2 million of taxable value, the tax is $816,500 and the excess over $2 million is chargeable at the highest rate —54 per cent. (For the complete rate schedule, see Section 8 of the Act).

As stated above, there is an abatement from federal estate taxes otherwise payable in respect of provincial succession duties. The abatement is generally a deduction of 50 per cent from the federal tax otherwise payable in respect of property situated in a province that levies succession duties.

The property situated in Canada of a decedent not domiciled in Canada is subject to estate tax at a flat rate of 15 per cent. No deduction is allowed against the assessed value of such property except for debts specifically chargeable to it. However, there is a special provision that exempts all such property of less than $5,000 value and also provides that the tax must not reduce the value of the property to less than $5,000. (The Estate Tax Convention between Canada and the United States increases this figure to $15,000). Where property is subject to provincial duties the 15 per cent tax is abated by 50 per cent.

Excise Taxes

The Excise Tax Act levies a general sales tax and special excise taxes. Both the

sales tax and the special excise taxes are levied on goods imported into Canada and on goods produced in Canada. They are not levied on goods exported.

General Sales Tax—The sales tax, which is at the rate of 8 per cent, is levied on the manufacturer's sale price of goods produced or manufactured in Canada or on the duty-paid value of goods imported into Canada. For alcoholic beverages and tobacco products, the sale price for purposes of the sales tax includes excise duties levied under the Excise Act referred to below. An old-age security tax of 3 per cent is levied on the same basis as the 8 per cent tax, bringing the total sales tax to 11 per cent.

Many classes of goods are exempt from sales tax. Foodstuffs and fuels for lighting or heating are generally exempt from the tax, as well as articles and materials used by public hospitals. The products of farms, forests, mines and fisheries are, to a large extent, exempt, as well as most equipment used in farming and fishing. Finally, a variety of items are exempt from sales tax when purchased by municipalities. These and other exemptions are set forth in schedules to the Excise Tax Act.

It was announced in the 1963 Budget that the application of the federal sales tax would be extended to building materials and production machinery which had previously been exempt. The proposed change will take place by stages, and the rate applicable between June 14, 1963, and April 1, 1964, will be only 4 per cent. It will rise to 8 per cent on April 1, 1964, and to the full 11 per cent (the 3 per cent old-age security rate being the last one to be added) on January 1, 1965.

Special Excise Taxes—The Excise Tax Act also provides for a number of special excise taxes, which are in addition to the sales tax. Where there are *ad valorem* taxes, these are levied on exactly the same price or duty-paid value as the general sales tax. Articles subject to special excise taxes include jewellery, cosmetics, toilet articles, radios, record players and television sets. Tobacco products and wines are also taxed under the Excise Tac Act.

The special excise taxes levied at present are as follows:

Cigarettes	2½ cents for 5 cigs.
Cigars	15% *ad valorem*
Jewellery including clocks, watches, jewellery, articles of ivory, amber, shell, precious or semi-previous stones, goldsmiths' and silversmiths' products except gold-plated or silver-plated ware for the preparation or serving of food or drink	10% *ad valorem*
Lighters	the greater of 10 cents a lighter or 10% *ad valorem*
Playing cards	20 cents a pack

Radios	the greater of $2 a radio or 15 % *ad valorem*
Phonographs and television sets	15 % *ad valorem*
Tubes for radios, phonographs and television sets, not including television picture tubes, prices under $5 per tube	the greater of 10 cents a tube or 15 % *ad valorem*
Television set picture tubes	15 % *ad valorem*
Slot machines—coin, disc or token-operated games or amusement devices	10 % *ad valorem*
Matches	10 % *ad valorem*
Tobacco—pipe tobacco, cut tobacco and snuff	80 cents a lb.
Tobacco pipes, cigar and cigarette holders and cigarette rolling devices	10 % *ad valorem*
Toilet articles, including cosmetics, perfumes, shaving creams, antiseptics, etc.	10 % *ad valorem*
Wines—[1])	
Wines of all kinds containing not more than 7 per cent absolute alcohol by volume	25 cents a gallon
Non-sparkling wines containing more than 7 per cent absolute alcohol by volume but not more than 40 per cent proof spirit	50 cents a gallon
Sparkling wines	$2.50 a gallon
Insurance premiums paid to British or foreign companies not authorized to transact business in Canada or to non-resident agents of authorized British or foreigncompanies	10 % of net premium for property surety, fidelity and liability insurance. (Most other kinds of insurance are exempt.)

All the foregoing items, except the last one, are also subject to the general sales tax of 8 per cent and the old-age security tax of 3 per cent. Cigarettes, cigars and tobacco are subject to further taxes under the Excise Act (referred to as excise duties).

[1]) These taxes apply only to wines manufactured in Canada. The customs tariff on wines includes a levy to correspond to these taxes on domestic production.

Excise Duties

The Excise Act levies taxes (referred to as excise duties) on alcohol, alcoholic beverages and tobacco products produced in Canada. These duties are not levied on imported goods but the customs tariff on these products includes a levy to correspond to the duties levied on domestic production. These duties are not levied on goods exported.

1. *Spirits*—The duties are on a gallon basis, in proportion to the strength of proof of the spirits. These duties do not apply to denatured alcohol intended for use in the arts and industries, or for fuel, light or power, or any mechanical purpose. The various duties are as follows:

(A) on every gallon of the strength of proof distilled in Canada, $13.00;
(B) on every gallon of the strength of proof used in the manufacture of
(a) medicines, extracts, pharmaceutical preparations, etc., $1.50 a gallon,
(b) approved chemical compositions, 15c a gallon,
(c) spirits sold to a druggist and used in the preparation of prescriptions, $1.50 a gallon,
(d) imported spirits when taken into a bonded manufactory in addition to other duties, 30c a gallon.

2. *Canadian Brandy*—Canadian brandy is a spirit distilled exclusively from juices of native fruits without the addition of sweetening materials. It is subject to a duty of $11.00 a gallon.

3. *Beer*—All beer or other malt liquor is subject to a duty of 38c a gallon.

4. *Tobacco, Cigars and Cigarettes*—The excise duties make up nearly as large a part of the total tax on tobacco products as the special excise taxes which have already been described. The rates of duty are as follows:

(A) on manufactured tobacco of all descriptions, except cigarettes, 35c a pound;
(B) cigarettes weighing not more than three pounds per thousand, $4 a thousand (nearly all the cigarettes used in Canada are of this type);
(C) cigarettes weighing more than three pounds a thousand, $5 a thousand;
(D) cigars, $2.00 a thousand;
(E) Canadian raw leaf tobacco when sold for consumption, 10c a pound.

Combined Effect of Excise Taxes and Excise Duties on Tobacco Products

Bringing together the taxes imposed on tobacco products under the Excise Tax Act and the duties imposed under the Excise Act gives the following total taxes:

Cigarettes —$9.00 a thousand (or 18c a pack of 20 cigarettes) plus the 11 per cent sales tax on the manufacturer's sale price.

Manufactured Tobacco—$1.15 a pound plus the 11 per cent sales tax on the manufacturer's sale price.

Cigars —$2.00 a 1000 plus the 15 per cent special excise tax and the 11 per cent sales tax on the manufacturer's sale price.

Customs Duties

Most goods imported into Canada are subject to customs duties at various rates as provided by tariff schedules. Customs duties, which once were the chief source of revenue for the country have declined in importance as a source of revenue to the point where they now provide less than 10 per cent of the total. Quite apart from its revenue aspects, however, the Tariff still occupies an important place as instrument of economic policy.

The Canadian Tariff consists mainly of three sets of rates, namely, British preferential, most-favoured-nation and general. The British preferential rates are, with some exceptions, the lowest rates. They are applied to imported dutiable commodities shipped directly to Canada from countries within the Commonwealth. Special rates lower than the ordinary preferential duty are applied on certain goods imported from designated Commonwealth countries.

The most-favoured-nation rates apply to goods from countries that have been accorded tariff treatment more favourable than the general tariff, but which are not entitled to the British preferential rate. Canada has most-favoured-nation arrangements with almost every country outside the Commonwealth. The most important agreement providing for the exchange of most-favoured-nation treatment is the General Agreement on Tariffs and Trade.

The General Tariff applies to imports from countries not entitled to either the preferential or most-favoured-nation treatment. Few countries are in this category and, in terms of trade coverage, are negligible.

In all cases where the tariff applies, there are provisions for drawbacks of duty on imports of materials used in the manufacture of products later exported. The purpose of these drawbacks is to assist Canadian manufacturers to compete with foreign manufacturers of similar goods. There is a second class of drawbacks known as "home consumption" drawbacks. These apply to imported materials used in the production of specified classes of goods manufactured for home consumption.

The tariff schedules are too lengthy and complicated to be summarized here, but the rates which apply on any particular item may be obtained from the Department of National Revenue, which is responsible for administering the Customs Tariff.

PROVINCIAL TAXES

All Canada's ten provinces impose a wide variety of taxes to raise the revenue necessary for provincial purposes. All provinces at present levy a tax on the income of individuals and corporations resident within their boundaries or deriving income from activities or operations carried out therein. Only Ontario and Quebec impose special taxes on corporations and only British Columbia, Ontario and Quebec impose a tax on property passing at death. Under the terms of the existing federal-provincial fiscal arrangement, the Federal Government makes payments called "equalization payments" to some provinces in recognition of the fact that the potential tax revenue from the fields of income tax, death duties and natural-resource revenue in those provinces, measured on a *per capita* basis, is lower than an agreed-upon level. For some provinces, these payments constitute a very important source of revenue.

Some of the more important provincial levies are reviewed briefly below:

Individual Income Tax

All provinces levy a tax on the income of individuals who reside within their boundaries or who earn income therein. In nine of the ten provinces, these taxes are computed as a percentage of federal income tax otherwise payable at full federal rates and are collected by the Federal Government on behalf of these provinces. In Quebec, provincial income tax is levied at graduated rates that progress from 2.5 per cent on the first $1,000 of taxable income to a maximum of 13.2 per cent on the excess over $400.000. The determination of taxable income for Quebec tax is based on exemptions and deductions similar to those for federal tax. Quebec collects its own tax.

The following table shows the percentage that provincial income-tax liability is of federal income-tax liability computed at full federal rates for 1963:

Province	*Percentage of full federal liability*
Newfoundland	17%
Prince Edward Island	17%
Nova Scotia	17%
New Brunswick	17%
Quebec	approximately 18%
Ontario	17%
Manitoba	23%
Saskatchewan	23%
Alberta	17%
British Columbia	17%

Corporate Income Tax

All provinces levy a tax on the profits of corporations derived from activities carried out within their boundaries. In all provinces except Ontario and Quebec, the provincial tax is imposed on taxable income in the province determined on the same basis as for federal income tax. In Ontario and Quebec the determination of taxable profits for purposes of provincial tax follows closely the federal rules. The rates of tax levied by the various provinces are as follows:

Province	*Rate of tax on taxable profits*
Newfoundland	9%
Prince Edward Island	9%
Nova Scotia	9%
New Brunswick	9%
Quebec	12%
Ontario	11%
Manitoba	10%
Saskatchewan	10%
Alberta	9%
British Columbia	9%

Note: All provinces except Ontario and Quebec have signed agreements for the collection of their income taxes by the Federal Government. Four of the ten provinces levy corporate income taxes at rates in excess of the abatement allowed by the Federal Government. This abatement is equal to 9 per cent of corporate profits, except in Quebec where the abatement is 10 per cent.

Alcoholic Beverages

Generally speaking, the sale of spirits in all provinces is made through provincial agencies operating as boards or commissions, which exercise monopolistic control over this commodity. The provincial mark-up over the manufacturers' price is the effective means of taxation. Beer and wine may be sold by retailers of government stores, depending on the province, but in all cases they contribute to provincial revenues.

Retail Sales Taxes

Retail sales taxes are levied on the final purchaser or user and are collected by the retailer. Eight provinces now levy this type of tax at rates varying between 3 and 5 per cent. These are Newfoundland, Prince Edward Island, Nova Scotia, New Brunswick, Quebec, Ontario, Saskatchewan and British Columbia. In Quebec, the general rate is 4 per cent, but the province allows its municipalities to levy an additional 2 per cent for municipal purposes.

Amusement Taxes

Each of the provinces, with the exception of Alberta and Saskatchewan, has a tax on admission to places of entertainment. In addition, there is generally a license fee imposed on the operator or owner of these amusement places. The tax on admissions is within the range of 5 per cent to 13 per cent.

Gasoline and Diesel Fuel Oil Taxes

Each of the provinces imposes a tax on the purchase of gasoline by motorists and truckers. The rates vary from 12c a gallon in Alberta to 19c in Nova Scotia and Newfoundland. The amount of tax borne by one gallon of motor-vehicle fuel in each province is as follows:

	Gasoline	*Diesel Fuel*
Newfoundland	19c	19c
Prince Edward Island	18c	19c
Nova Scotia	19c	27c
New Brunswick	18c	23c
Quebec	15c	21c
Ontario	13c	18.5c
Manitoba	14c	17c
Saskatchewan	14c	17c
Alberta	12c	14c
British Columbia	13c	15c

Motor-Vehicle Licences and Fees

Each province also levies a fee on the annual registration of motor vehicles. This registration is compulsory and each vehicle is issued with licence plates for the year. The rates of this licence fee vary from province to province. The amount to be paid may be assessed in relation to the weight of the car, the number of cylinders of the engine, or at a flat rate. The operator or the driver of a motor vehicle must also register annually and pay a fee for a new driver's licence; in Alberta and British Columbia, drivers' licences must be renewed every five years at a cost of $5; in Quebec, they must be renewed every two years also at a cost of $5.

Taxes on Mining Operations

All provinces except Prince Edward Island levy taxes of various kinds on mining operations. All provinces except Prince Edward Island and Alberta impose a tax on the income of firms engaged in mining operations in general or in specific kinds of mining operations. British Columbia, Alberta, Saskatchewan, Manitoba and Ontario impose a tax on assessed value of minerals or a flat rate per acre of mining property.

Tax on Logging Operations

British Columbia and Ontario levy a tax on the income from logging operations of individuals, partnerships, associations or corporations engaged in this activity. In British Columbia, the tax is 10 per cent on income in excess of $25,000. In Ontario, the rate is 9 per cent on income in excess of $10,000.

Capital Taxes

Quebec imposes a tax of 1/10 of 1 per cent on paid-up capital of corporations, while Ontario levies a similar tax at the rate of 1/20 of 1 per cent.

Place-of-Business Taxes

Quebec and Ontario have a place-of-business tax. In Quebec the tax ranges from $20 to $50 for each place of business, with the higher amounts being levied in the cities of Montreal and Quebec. In Ontario, the tax for each permanent establishment is the lesser of $50 or 1/20th of 1 per cent of paid-up capital of the corporation involved, but the total of the capital tax and the place-of-business tax cannot be less than $20. Ontario also imposes an office tax of $50 on every corporation that does not maintain a permanent establishment in the province, but merely maintains a buying office or holds certain provincial licences, or merely holds assets, or is represented by a resident employee or agent who is not deemed to operate a permanent establishment of the corporation.

Both provinces levy special taxes on certain kinds of companies such as banks, railway companies, express companies, trust companies and sleeping-car, parlour-car and dining-car companies. In Ontario, these special taxes and the capital and place-of-business taxes mentioned above are payable only to the extent that they exceed the corporate income tax otherwise payable.

Land Transfer Taxes

Alberta and Ontario levy a tax based on the price at which ownership to land is transferred. In Alberta the rate is 1/5th of 1 per cent up to $5,000 and 1/10th of 1 per cent over $5,000; in Ontario a straight 1/5th of 1 per cent tax is imposed. In Alberta, the tax is in the form of a registration fee and, in addition, an assurance fee of 25 cents a $1,000 is charged. In Quebec a tax of 2½ per cent of the purchase price is imposed only when property is transferred under the Bankruptcy or Winding- Up Acts.

British Columbia, Saskatchewan and Manitoba do not have a land-transfer tax but have an equivalent in the land-title fees, which are based on land values.

Tax on Security Transfers

Ontario and Quebec levy a tax on the sale price of securities transferred, the rates in both provinces are:

Shares sold, transferred or assigned valued at:—

Under $	1		— 1/10 of 1 % of value		
at	1	to 5	— 1/4 c	a	share
„	5	to 25	— 1 c	„	„
„	25	to 50	— 2 c	„	„
„	50	to 75	— 3 c	„	„
„	75	to 150	— 4 c	„	„
over	150		— 4 c	„	„
			plus 1/10 of 1 % of value in excess of $150		

Bonds and debentures, 3 c for every $100 or fraction thereof of par value.

Premium Income of Insurance Companies

All ten provinces impose a tax of 2 per cent on the premium income of insurance companies relative to risks incurred in the province.

Succession Duties

Only British Columbia, Ontario and Quebec levy succession duties. These are a tax on the right to succeed to property and are assessed upon the interest of benefit passing at death to an heir on beneficiary.

The three provinces impose succession duties on all property situated in the province belonging to the deceased and passing at his death whether the deceased was domiciled in the province or elsewhere. Personal property wherever situated of a person dying domiciled within the province is also liable if passing to a successor resident or domiciled in the province.

The rates of succession duty are governed by the value of the estate, the relation of the beneficiary to the deceased and the amount going to any one person. The rate of tax will increase as the degree of relationship between the decedent and his successor becomes more remote.

Provincial Property Taxes

In unorganized (non-municipal) areas, British Columbia levies property taxes, at varying rates according to class, for provincial revenue. Improved, forest and tree-farm lands are taxed at 1 per cent of assessed value; farm land at ½ of 1 per cent; wild land at 3 per cent; coal land at 2 per cent (non-operating) or 7 per cent (operating); and timber land at 1½ per cent.

MUNICIPAL TAXATION

The municipalities in Canada levy taxes on the owners of property situated within their jurisdiction according to the assessed value of such property. Methods

of determining assessed value vary widely, but for taxation purposes it is generally considered to be a percentage of the actual value. The revenues from such taxes are used to pay for street maintenance, schools, police and fire protection and other community services. Special levies are sometimes made on the basis of street frontage, to pay for local improvements to the property such as sidewalks, roads, and sewers. Not only is there a widespread difference in the bases used for property tax, but there is also a wide variety of rates applied, depending on the municipality.

In addition to the taxes described above, municipalities usually impose a charge for the water consumption of each property holder or a water tax based on the rental value of the property occupied. There are no municipal income taxes, though certain localities have retained the use of a poll tax. In Newfoundland, Quebec and Saskatchewan, municipalities are empowered to levy an amusement tax on the admission of persons to places of amusement. This practice differs from that of the other provinces, where the amusement tax is generally a provincial preserve. Electricity and gas are taxed at the consumer level in some Western municipalities, while coal and fuel-oil for heating purposes are chargeable in urban areas of Newfoundland. Telephone subscribers are subject to a special levy in Montreal, while certain Ontario municipalities impose a tax on the gross receipts of telephone companies.

In most municipalities, a tax is levied directly on the tenant or the operator of a business. In general, business tax rates are lower than those applying to property. Three bases of assessment are in use: a fraction of the property assessment, the annual rental value of the premises, or the area of the premises. Certain municipalities may charge a licence fee instead of a business tax, while others will charge both a licence fee and business tax. In Nova Scotia, all but one of the municipalities tax personal property (stocks in trade, equipment, etc.) the same as real property.

MISCELLANEOUS LEVIES

These are not generally referred to as taxes, but they are similar to taxes in many ways.

Unemployment Insurance

For the last 23 years, a national programme of unemployment insurance has been in operation in Canada. Essentially, it provides relief to those qualified persons who temporarily find themselves without work. It is administered by a federal commission appointed for this purpose and financed by equal contributions from employers and employees plus a contribution from the Federal Government. The amount paid into the fund by employee and employer is directly

proportional to the weekly wages of the employee. The rates of contributions are as follows:

Range of earnings	*Weekly contributions*	
	Employer's	*Employee's*
less than $ 9.00	10c	10c
$ 9.00 to $15.00	20c	20c
$15.00 to $21.00	30c	30c
$21.00 to $27.00	38c	38c
$27.00 to $33.00	46c	46c
$33.00 to $39.00	54c	54c
$39.00 to $45.00	60c	60c
$45.00 to $51.00	66c	66c
$51.00 to $57.00	72c	72c
$57.00 to $63.00	78c	78c
$63.00 to $69.00	86c	86c
$69.00 and over	94c	94c

The wage ceiling for insurability is $5,460 a year.

Workmen's Compensation

Legislation in force in all provinces provides compensation for personal injury suffered by workmen as a result of industrial accidents. In general, these provincial statutes establish an accident fund administered by a board to which employers are required to contribute at a rate proportional with the hazards of the industry.

Hospital Insurance

A federal-provincial hospital insurance plan has now been adopted by each of the ten provinces. Under this arrangement, the Federal Government pays approximately half the cost of hospitalization for patients who are participants under the plan. The provinces meet the rest of the cost. Provincial revenues for this purpose are raised by various means. Quebec has increased its personal and corporation income tax. Certain provinces require the deduction of a monthly premium from the wages of their residents as a contribution or premium for the plan. In such provinces non-salaried people must also pay the premium directly if they wish to be covered by the plan. In some other provinces the proceeds of a retail sales tax are earmarked in whole or in part for the support of the hospital plan.

The administration of federal taxing statutes is the responsibility of the Minister of National Revenue. The provincial and municipal taxes are administered by provincial and municipal government departments. This explanatory paper is not an official interpretation of any of the taxing statutes. It has been reproduced by kind permission of the Department of Finance, Ottawa.

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- ☐ SBIC
- ☐ Social Security
- ☐ State taxes
- ☐ Stock rights
- ☐ Stock transfer taxes
- ☐ Taft-Hartley Act
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II

WORLD TAX REVIEW

AUSTRIA

BIBLIOGRAPHY

Die Reform der Umsatzsteuer – eine wirtschaftspolitische Notwendigkeit, Betriebswirtschaftliche Schriftenreihe des Instituts für industrielle Betriebslehre an der Hochschule für Welthandel, Wien, Heft 7, ZECHNER, Dr. A., Wien, Manz'sche Verlags- und Universitätsbuchhandlung, 1963, pp. 461, AS 176,40.

Seventh volume of a series edited by Prof. Dr. W. Bouffier which deals with the principles, possibilities and purposes of a turnover tax reform. This book discusses generally the Common Market turnover tax harmonization but focuses on the situation in Austria. In 1938, Austria adopted the multiple stage turnover tax system to replace its single stage system. The author discusses both systems and, in addition, the turnover tax on added value.

Der Verkehr mit den Finanzbehörden, Der Steuerzahler, SCHILLING-SCHLETTER, Dr. ALEXANDER und Dr. OSKAR SCHILLING, Wien, Verlag E. WEISS, pp. 120.

By aid of alphabetical catchwords, this booklet gives examples of petitions, requests and other communications to tax authorities.

CEYLON

BIBLIOGRAPHY

Report of Ceylon Tax Cases, 1st volume and 2nd volume, Department of Inland Revenue, SABAPATHILLAI, S., 1960 and 1962, 578 and 455 pp.

These first two volumes contain reports of all cases which have been decided by the Supreme Court in connection with Income Tax, Excess Profits Duty, Profits Tax, Stamp duty and Estate duty appeals during the previous decades.

TAX NEWS

The Budget proposals for the year 1963/1964 have now been implemented by the Finance Act No. 11 of 1963.

(1) *Business turnover tax*

This tax has been introduced for the first time and is imposed on every person who carries on, in Ceylon, the business of a manufacturer or any other business. The tax is payable in instalments on the turnover for every quarter commencing 1st January 1964.

The rate of tax has been fixed at—

(a) 3% for the business of a manufacturer, and

(b) ½% for any other business.

The rate may be varied by the Order of the Minister of Finance. The approval of the House of Representatives has to be obtained within 3 months of such order.

The total turnover tax shall not exceed 80% of the net income from that business. The tax will only be charged if the turnover for the preceding year was not less than Rs 100,000/–.

"Business" includes a vocation but not –

(a) a profession;

(b) an agricultural undertaking (including animal husbandry);

(c) an undertaking for the export of a manufactured or processed article;

(d) the business of banker, financier, moneylender, pawnbroker, commission agent or broker;

(e) an insurance business;

(f) the business of carrying on an educational establishment; and

(g) any other business exempted from the tax by Order of the Minister of Finance with the approval of the House of Representatives.

The Minister may specify any article as exempt from the tax. The following articles have been specified:

(a) Agricultural produce of Ceylon including any manufactured or processed agricultural produce of Ceylon;

(b) Agricultural and industrial machinery; (c) Animal foods;

(d) Arrack sold in taverns;

(e) Articles manufactured in Ceylon and exported; (f) Bread;

(g) Cigarettes; (h) Books;

(i) Magazines and periodicals;

(j) Newspapers; (k) Rice (uncooked);

(l) Safety matches; (m) Sugar;

(n) Wheat Flour;

(o) Toddy sold in taverns.

The tax will be administered by the Commissioner of Inland Revenue, P.O. Box 515, Colombo. No time limit is fixed for the making of assessments or additional assessments. Appeals are to the Commissioner and thereafter to the Board of Review under the Inland Revenue Act No. 4 of 1963. No provision has been made for appeals from the Board of Review to the Courts.

(2) *Foreign exchange tax*

On and after 10th January 1964 every sale of foreign currency by a competent authority to any person for any taxable purpose shall be liable to exchange tax. The tax may be at different rates for different taxable purposes and may be varied from time to time by the Minister. The House of Representatives must approve the rates within 2 months. The tax is payable by the person to whom the sale is effected and shall be collected by the competent authority before the sale is made.

"Competent Authority" means any dealer authorised to sell foreign currency under the Exchange Control Act.

"Taxable purpose", in relation to the sale of foreign currency, means any purpose other than the importation of goods.

The rate of Exchange Tax is 10 or 20 per cent depending on the taxable purpose.

(3) *Estate duty*

The following new rates of duty have been fixed in respect of deaths occurring on or after 1st August 1963:

Value of the estate	Rate per cent
On the first Rs 20,000	Nil
On the next Rs 30,000	5

On the next	Rs 30,000	7½
„	Rs 30,000	10
„	Rs 40,000	13
„	Rs 50,000	14
„	Rs 100,000	16
„	Rs 100,000	18
„	Rs 100,000	24
„	Rs 100,000	30
„	Rs 125,000	32
„	Rs 125,000	36
„	Rs 200,000	42
„	Rs 350,000	48
„	Rs 500,000	55
„	Rs 600,000	60
On the balance		70

(4) *Gift Tax*

The following new rates of tax have been fixed in respect of gifts made on or after 1st August 1963.

Value of all taxable gifts			Rate per cent
On the first	Rs	50,000	5
On the next	Rs	25,000	10
„	Rs	25,000	12
„	Rs	40,000	15
„	Rs	40,000	16
„	Rs	80,000	22
„	Rs	80,000	24
„	Rs	80,000	30
„	Rs	80,000	36
„	Rs	80,000	42
„	Rs	80,000	54
„	Rs	80,000	60
„	Rs	250,000	72
„	Rs	450,000	96
On the balance			100

(5) *Stamp duty*

Certain increases in the rates of duty are to be made to take effect from an appointed date.

(The appointed date will be notified)

The above provisions are estimated to provide additional revenue as follows:

(1) Business Turnover Tax	Rs 40 Million
(2) Foreign Exchange Tax	Rs 10 Million
(3) Stamp Duties (additional)	Rs 4 Million
(4) Estate Duty & Gift Tax (additional)	Rs 2 Million

(6) Two other provisions in the Finance Act are considered as deterrents to certain transactions and not as revenue raising provisions:

(a) *A tax on transfers of property to non-citizens*

A tax of 100% of the value of the property is levied from the non-citizen transferee.

"Property" means (a) any land or (b) any shares in a Company.

Exempt from the tax are transfers arising

(a) on intestacy,

(b) by gift or testamentary disposition to a spouse, child, parent, brother or sister and their issue,

(c) on succession as trustee to a trustee.

Foreign citizens will now find it quite prohibitive to purchase land or shares in Ceylon unless the Minister makes an order of exemption.

These provisions affect all transfers made on or after 1st August 1963.

(b) *A tax on the sale of certain motor-cars*

The car must be one registered on or after 26th January 1961 or one imported free of customs duty.

Such a car may be sold only with the approval of the Registrar of Motor Vehicles, if sold within a period of 7 years from its first registration or the date of importation.

A sum at 80% of the profit on sale, calculated by the difference between (a) the sale price and (b) the purchase price plus Rs 250/– must be retained and paid to the Registrar of Motor Vehicles.

Restrictions on import led to abuse on the sale of cars. These measures provide against such abuse, and apply to all sales from and after 2nd August 1963.

Reported by: S. Ambalavaner. B. Sc. LL. B.

COMMON MARKET

BIBLIOGRAPHY

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International Business Techniques, legal and financial aspects, McCormick Crosswell, Carol, Dobbs Ferry, New York, Oceana Publications, Inc., 1963, pp. 361.

Addressed to the business man as well as the lawyer, this book covers the basic problems of corporations engaged in direct foreign investment. U.S. corporate law and the laws of various foreign countries are contrasted, and there is a discussion of possible corporate vehicles for use in public and private operations abroad. Moreover the basic structure of the EEC, a comparison of the tax schemes of its member countries and a discussion of anti-trust law in the Common Market are included. Incentive programs offered by foreign governments and means of doing corporate business in the Common Market, Switzerland, Ireland, India and Japan are also treated. Finally appendices contain, *inter alia,* a chart of general income tax agreements and a bibliography on doing business abroad, prepared by the Harvard Law School Library.

Steuern und Zölle im Gemeinsamen Markt, Megow, Dr. Heinrich, Baden-Baden, Verlag August Lutzeyer, 1962, loose leaf.

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Book dealing with the provisions in the EEC Treaty and in other multilateral treaties about the establishment of enterprises in EEC countries; with the practical problems connected with such establishment; and with a comparison of the climates for establishing an enterprise in each of the EEC countries.

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A book giving practical information about the Common Market for enterprises which want to do business in a Member Nation.

GERMANY

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Kommentar zur Einkommensteuer und Körperschaftsteuer, HERRMANN, C. und Dr. G. HEUER, Köln, Verlag Dr. Otto Schmidt KG, 1963, about 4500 pp., DM 174,– plus DM 24,– for binders for the 6 volumes.

The 10th edition of this authorative loose-leaf handbook on German income taxes appeared in fall 1963. Supplements 51, 52 53 and 54 to the 9th edition and supplements 55, 56, 57 and 58 to the current edition, have up-dated the material to January 1, 1964. Dr. Heuer and Herrmann are assisted by Dr. A. Heining and O. von Schilling.

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Handbook, in pocket-size, dealing with the second part of the Impost Ordinance. The first part of the Impost Ordinance, the German tax law which supplies rules for the administration and collection of taxes and which defines terms, has been dealt with in the first part of this handbook, reviewed in the Bulletin for International Fiscal Documentation Volume XVI page 41. In this second part, acts related to the Impost Ordinance are discussed, the most important of which is the Tax Adaptation Law giving definitions of taxability, residence, permanent establishment, etc.

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Text of lectures given in Winter 1962/63 for the German IFA group by:

Dr. H. Debatin, about Finance and Tax Policy from the American point of view;

Dr. E. Kolbeck, about some problems of double taxation for which provisions of tax treaties do not give a solution;

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Prof. A. Spitaler, about the principles of "domicile" and "source" in double taxation agreements; and
Prof. A. Tiberghien, about setting up a permanent establishment or a subsidiary in Belgium.

INDIA

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The author describes the basic scheme of the Super Profits Tax Act, 1963 (No. 14 of 1963), its administration and the method for computing tax liability.

The usefulness of this book is enhanced by the illustrations it offers for calculating the standard deduction. The full text of the Act, as well as extracts from the budget speech, statements by the Minister of Finance and published articles by the author on this subject, are added. This book also deals with assessments and appellate procedure.

ITALY

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Moreover, English translations of the following are included:

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—Presidential Decree No. 758 of July 6, 1956 (Regulations for the Implementation of the Law on Investments of Foreign Capital in Italy);
—Law no. 428 of May 3, 1955 (Provisions concerning the Issurance of Stocks and Bonds by Companies);
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LEBANON

DOCUMENTS

Le Projet de Loi Remplaçant l'Impôt sur le Revenu par Certaines Taxes

Un projet de loi a été élaboré par les Kataëb remplaçant l'impôt sur le revenu par certaines taxes.

Nous donnons ci-après à titre documentaire, l'exposé des motifs et le texte intégral de ce projet qui a été soumis au Conseil des Ministres libanais, pour étude et approbation.

EXPOSÉ DES MOTIFS

Le présent projet de loi vise au remplacement de l'impôt sur le revenu par certaines taxes.

I — *Suppression de l'impôt sur le revenu, sur les bénéfices commerciaux et industriels*

Une expérience de 17 ans a prouvé que l'impôt sur le revenu, sur les bénéfices commerciaux et industriels – (admis généralement dans les pays économiquement développés) – doit être supprimé au Liban, ne fusse que pour une période de 10 ans, pour les motifs suivants:

1 Le Liban traverse actuellement une période de développement économique qui nécessite d'encourager l'investissement des capitaux et le développement des entreprises et ce, en adoptant un système d'impôt réduit et en évitant l'impôt direct sur les bénéfices, dans la mesure du possible.

On sait que l'impôt sur le revenu frappe les bénéfices dans des proportions très élevées – notamment les bénéfices des sociétés anonymes – qui ne pouvaient être réduites car l'administration refusait toujours une pareille initiative qui pouvait provoquer une forte diminution dans les revenus provenant de l'impôt.

Dans les circonstances ainsi que dans la situation économique actuelles, l'impôt sur le revenu est en contraste avec l'économie libanaise.

2 L'impôt sur le revenu est inique vu que les abattements à la base n'ont pu être relevés pour le motif qui précède.

Le relèvement de l'abattement de L.L. 1.500, 2.400 et 3.600 à L.L. 2.400, 3.600 et 4.800 par exemple mène à une perte estimée à 2 millions de livres au moins.

3 L'impôt sur le revenu est également inique et immoral tant que l'Administration est incapable de freiner certaines fraudes dont la proportion actuelle est flagrante (comme le prouve l'expert américain Higgins dans son rapport).

4 Ce qui relève encore l'iniquité de l'impôt sur le revenu c'est le fait que les contribuables honnêtes sont convaincus de l'entente qui existe entre certains fonctionnaires et les fraudeurs (voir le rapport précité).

5 L'impôt sur le revenu est extrêmement gênant, car il est basé sur la déclaration qui tracasse le contribuable et ouvre la porte à certains abus de la part de certains fonctionnaires.

6 L'application de l'impôt sur le revenu d'une façon saine nécessite un grand nombre de fonctionnaires et des appointements élevés qui grèvent le Trésor.

Les arguments en notre possession pour supprimer provisoirement l'impôt sur le revenu se trouvent résumés dans le rapport de l'expert précité dont voici quelques extraits:

Cependant, je voudrais émettre ici mon impression que la mise en application rigoureuse d'un système d'impôt progressif sur les revenus personnels au Liban, exigerait des mesures qu'aucun Gouvernement ne pourrait introduire durant les quelques prochaines années. De source bien informée on évalue, en effet, la fraude fiscale actuellement aux environs de 66% ou 2/3...

En outre, et dans la mesure où l'auteur a pu s'en rendre compte, il lui semble que l'application d'un système vigoureux et rigoureux d'impôt progressif sur le revenu, requiert l'abandon du secret bancaire, dans la mesure où la force d'inspection fiscale du Gouvernement est engagée. De nombreux hommes d'affaires m'ont exposé la maniére dont le secret bancaire est utilisé pour servir à l'évasion fiscale. Par exemple, quel qu'un porterait dans ses livres des frais de consultation de L.L. 50.000 payés au compte secret numéro tant et tant. Quand l'inspecteur lui demandera à qui appartient ce compte, notre homme se cachera derrière le secret bancaire. En fait le compte est le sien. Evidemment là où des pratiques pareilles existent, l'application équitable d'un régime fiscal est virtuellement impossible.

Malgré cet argument il nous semble qu'on ne peut échapper à la conclusion suivante: l'application équitable d'un impôt progressif sur le revenu est impossible quand le secret bancaire est opposable même aux inspecteurs du fisc.

Quand les difficultés ressortant de l'administration et de l'application du système de l'impôt sur le revenu dans les conditions présentes, seront suffisamment approfondies, la conclusion à laquelle on ne peut échapper est que le Gouvernement Libanais serait bien avisé de penser à une réforme fiscale en deux phases:

a) En premier lieu, le Gouvernement devrait introduire des «révisions du système», qui pourraient être facilement administrées et exécutées dans les circonstances présentes; en même temps, il lui sera possible de réaliser ses objectifs tels qu'établis précédemment.

b) Dès lors que les conditions administratives, légales, sociales et politiques d'un système plus moderne sont remplies, y compris un sens plus poussé de la «morale fiscale» et un degré plus élevé de la conscience du développement, sur le plan national, le Gouvernement pourrait se pencher vers l'application d'un régime fiscal plus moderne, dans lequel l'élément de base serait l'impôt sur le revenu personnel.

Souvent les «experts» sont surpris par les différences dans la structure générale des taxes existant dans les pays avancés et les pays moins développés. En règle générale, les pays sous-développés se basent bien plus lourdement sur les taxes indirectes (la taxe de

vente, les tarifs douaniers et autres) et bien moins sur les impôts directs (l'impôts sur le revenu, ou sur les successions) que les pays plus avancés.

Comme politique à long terme, un appui plus poussé sur l'impôt sur le revenu, dès que l'administration et l'exécution seront améliorées, sera sans aucun doute le but de la plupart des pays sous-développés. «Entre-temps, cependant, un usage plus astucieux des taxes indirectes est à recommander».

II — *Remplacement de l'impôt sur le revenu par certaines taxes*

Le projet de loi vise la supression de l'impôt sur le revenu et son remplacement par certaines taxes forfaitaires ou proportionnelles sur les professions commerciales et industrielles ainsi que sur les revenus des professions liberales.

Quant aux autres impôts figurant dans les chapitres 2 et 3 du décret – loi N°. 144, ils constituent en fait des taxes dont le plus grand nombre a été maintenu, après modification de leur pourcentage.

Le projet de loi crée à la place de l'impôt supprimé:

1 une taxe sur les marchandises importées et exportées.
2 une taxe sur la profession.
3 une taxe progressive sur la vente des biens fonciers.
4 une taxe supplémentaire sur les voitures privées.
5 une taxe sur les opérations effectuées à la Bourse de Beyrouth.

Toutes ces taxes n'affectent en rien les couches laborieuses et ne touchent les classes moyennes que dans de faibles proportions.

Ce sont des taxes directes, sauf la première.

a) Taxe sur les marchandises importées et exportées.

Le taux de la taxe sur les exportations est infime (1/2 pour cent sur la valeur de la marchandise).

Le but de ceci est de ne pas entraver les opérations d'exportation et il est à espérer de la part du gouvernement que cette taxe qui rapporterait environ 1 million de livres sera utilisée au profit du commerce d'exportation et ce, en trouvant de nouveaux débouchés à l'étranger pour les produits de l'industrie nationale.

Quant à la taxe sur les marchandises importées, elle ne vise ni les matières premières nécessaires à l'industrie et à l'agriculture ni – en principe – les produits alimentaires consommés par les couches laborieuses, en grandes quantités.

Les taux de cette taxe qui varient entre 3 et 10%, varient en fait entre 2 et 7% car la taxe est perçue sur la valeur douanière des marchandises et l'on sait que la différence entre la valeur douanière et la valeur réelle est d'environ 41% (provenant de la tarification officielle des devises étrangères).

La variation du pourcentage de cette taxe entre 3 et 10% est motivée par le fait qu'il a été nécessaire d'imposer un taux élevé sur les produits de luxe, un taux moyen sur les produits de demi-luxe et un taux réduit sur les produits ordinaires, tout en tenant compte des articles qui laissent un bénéfice appréciable ou infime au commerçant.

Le project de loi laisse au Conseil Supérieur des douanes et au Conseil des Ministres le droit de fixer ces taux sur les diverses marchandises importées.

La taxe sur les marchandises importées se heurte à deux objections: la première c'est que cette taxe pourrait influencer les prix des produits de première nécessité. La réponse à cette première objection est que les prix ne peuvent qu'être maintenus à leurs niveaux tant que les importateurs ne paient pas un impôt sur le revenu mais une taxe inférieure à l'impôt. Et si l'on considère qu'un changement puisse intervenir dans les prix, ce changement serait infime et provisoire en attendant qu'apparaisse le jeu de la concurrence. La deuxième objection est que la nouvelle taxe constitue un impôt et par suite inéquitable, contrairement à l'impôt direct qui est l'impôt sur le revenu.

Cet argument est réfutable par les économistes qui réclament actuellement le retour à l'impôt indirect (voir l'étude de Me. Vedel sur la législation financière, année 1954-1955, pages 472 à 480; basée sur l'avis de Me. Duverjer émis dans la revue de la science et de la législation financière, année 1954, page 310).

Le sens général de ces deux articles, écrit le professeur Vedel, est le suivant: l'impôt direct, est sans doute idéalement supérieur à l'impôt indirect, mais il ne réussit que dans les pays où le civisme est assez développé pour que la fraude, soit individuelle, soit nationale – par l'intermédiaire d'exceptions arrachées au législateur – ne fausse pas le système. C'est un impôt qui donne de bons résultats en Angleterre, aux Etats-Unis et en Allemagne; dans les (sic! – Ed. du Bull.) autres pays du monde, où le civisme est beaucoup moins développé, «l'impôt direct est altéré à un tel point par ce manque de civisme que finalement l'impôt indirect devient plus équitable».

En fait, l'équité ne constitue pas un point important dans ce domaine pour les deux motifs suivants:

a) les contribuables ajoutent à leur prix de revient les impôts et taxes directs et indirects qu'ils font supporter aux consommateurs.

b) les dépenses personnelles sont équilibrées par les bénéfices qu'ils réalisent et l'on sait que les impôts indirects (douanes, taxes sur les carburants, taxes sur les cigarettes, taxes sur le sucre, etc...) sont inclus dans le prix des marchandises que nous achetons.

Si nous prenons en considération que le taux de la taxe perçue par le Trésor et les municipalités représente 18% du budget de chaque famille, nous constatons qu'une famille dont les dépenses s'élèvent à 30.000 L.L. par an supporte des taxes estimées à 5.400 L.L. et qu'une famille dont les dépenses ne s'élèvent qu'à L.L. 3.000, ne supporte que des taxes estimées à L.L. 540.

Mais si nous approfondissons le sujet, nous trouvons que la famille aisée supporte en réalité plus de 5.400 livres car elle règle une partie de ses dépenses en contrevaleur de produits de luxe ou demi-luxe, dont les taxes douanières sont élevées, contrairement aux taxes imposées sur les produits de première nécessité consommés par les familles laborieuses.

Pour ce motif il convient d'admettre que la première famille supporte des taxes s'élevant à 7.500 livres par an, alors que la seconde ne supporte que 300 livres.

De toute façon le projet de loi exempte les petits contribuable, aide les employés les fonctionnaires et les ouvriers et rend l'application de cette loi plus équitable.

b) Taxe sur les professions

Cette taxe est imposée sur toute personne exerçant une profession libérale ou une

profession commerciale ou une profession commerciale ou industrielle.

Pour les professions libérales une taxe forfaitaire variant entre 100 et 200 livres par an est prévue.

Les autres contribuables (commerçants, industriels, entrepreneurs, sociétés, etc...) s'acquitteront de la taxe professionnelle calculée sur la base du loyer où leur profession est exercée.

Le choix de cette base est fondé sur le fait suivant (le législateur ayant voulu éviter les déclarations annuelles):

Les bénéfices sont généralement en rapport avec le loyer en ce sens que ceux qui réalisent de gros bénéfices occupent des locaux dont les loyers sont élevés et vice-versa.

Il est certes vrai qu'il existe des établissements qui réalisent d'importants bénéfices dans de petits locaux et vice-versa, mais ces établissements ne sont que de rares exceptions, dont on peut ne pas tenir compte.

Le projet ne tient compte que du loyer, laissant de côté le nombre des employés, la superficie des locaux, etc... car, si ces éléments devaient être pris en considération, ils rendraient difficile l'application de la nouvelle loi.

On sait que les lois doivent être simplifiées et cette simplification a des avantages plus nombreux que les inconvénients.

Ces inconvénients deviennent insignifiants lorsqu'on se rend compte que les petits contribuables sont exonérés de la taxe, que le pourcentage de celle-ci est réduit, et que surtout la taxe est imposée sur un grand nombre de personnes qui jusqu'ici, n'étaient frappées d'aucun impôt de la part des services financiers.

Des loyers

De nombreuses modifications ont été apportées aux loyers des locaux commerciaux et industriels, dans les deux sens de la hausse et de la baisse.

D'une façon générale, les loyers ont progressivement augmenté depuis l'année 1943 et il était devenu nécessaire de procéder à la classification de ces loyers en 3 catégories:

—Première catégorie: les nouveaux loyers, ceux conclus après le 31-12-1953.
—Seconde catégorie: les loyers conclus avant le 1er Juillet 1943.
—Troisième catégorie: les loyers conclus entre ces deux dates, soit entre le 1er juillet 1943 et le 31-12-1953.

Le projet prend comme taxe de base les loyers actuellement en vigueur, s'ils sont de la première catégorie.

Quant aux loyers de la seconde catégorie la base est le loyer actuel majoré de 50%. Ceux de la troisième catégorie, la base est le loyer actuel majoré de 25 pour cent.

De cette façon, une répartition des taxes entre tous les contribuables est assurée.

De la catégorie des contribuables

Certaines professions rapportent des bénéfices plus élevés que d'autres et il est naturel de prendre en considération le cas de certaines catégories de profession étant donné qu'il n'existe aucun abattement à la base, comme c'est le cas dans l'impôt sur le revenu.

Pour ces motifs, le projet de loi tient à adopter les pourcentages suivants:

1 Pour les artisans et les petits commerçants ainsi que pour les commerçants visés par l'article 10 du Code de Commerce: 0,25 pour cent.
2 Pour les autres commerçants et industriels, les banquiers, les entrepreneurs et autres personnes physiques ou sociétés de personnes: 0,50 pour cent.
3 Pour les sociétés anonymes, en commandite ou autres: 1 pour cent.
4 Pour les banques, les compagnies d'assurances, les compagnies pétrolières: 1,5 pour cent.

Le projet tient compte par ailleurs des cas exceptionnels qui sont traités par des dispositions spéciales et exempte les contribuables qui s'acquittent d'un loyer de 1.000 livres au moins ainsi que les compagnies de navigation maritime et aérienne, les sociétés concessionnaires exonérées de l'impôt sur le revenu.

Calcul de la taxe

La taxe pour chacune des 4 catégories des contribuables est constituée par la valeur du loyer soumis à la taxe, multipliée par les pourcentages sus-mentionnés, majorée de 10% pour les municipalités et 5% pour la Reconstruction.

c) Taxe sur la vente des biens fonciers

La valeur de tous les terrains au Liban a sensiblement augmenté et il est tout naturel d'imposer une taxe progressive sur les ventes et donations.

Les pourcentages de cette taxe sont les suivants:
—Pour une valeur déclarée ne dépassant pas L.L. 50.000, 4%.
—Entre L.L. 50.000 et L.L. 100.000, 6%.
—Entre L.L. 100.000 et L.L. 250.000, 8%.
—Au-dessus de L.L. 250 000, 10%.

Cette taxe est réduite de 50% si un transfert a lieu 2 ans avant un transfert précédent ou si ce transfert a lieu entre époux ou entre les époux et leurs enfants.

d) Taxe sur les voitures privées.

Les taxes actuelles sur les voitures privées sont insuffisantes car elles n'atteignent que L.L. 7 par HP par an, dont L.L. 4 pour le Trésor, L.L. 1 pour les municipalités et L.L. 2 pour la Reconstruction. En outre une taxe de L.L. 150 par tonne est perçue sur les camions et les voitures de transport ainsi qu'une taxe de 1% sur la valeur des voitures, lors d'un transfert.

Le projet prévoit une nouvelle taxe qui n'affecte que les voitures privées.

e) Taxe sur les transactions boursières

Une taxe infime a été prévue sur les transactions boursières effectuées en Bourse de Beyrouth. Cette taxe est de 1 pour 1.000 durant les 2 premières années et de 2 pour 1.000 à partir de la 3ème année.

f) Taxe sur les traitements et salaires

Cette taxe est perçue sur tout montant dépassant annuellement L.L. 2.400 pour les célibataires, L.L. 3.600 pour les mariés, L.L. 4.800 pour les mariés ayant un enfant et L.L. 6.000 pour les mariés ayant plus de deux enfants.

Les pourcentages de cette taxe sont les suivants:
—2% pour les montants ne dépassant pas L.L. 6.000 par an
—3% pour les montants variant entre L.L. 6.001 et 9.000 par an
—4% pour les montants variant entre L.L. 9.001 et 12.000 par an
—5% pour les montants variant entre L.L. 12.001 et 18.000 par an
—7% pour les montants variant entre L.L. 18.001 et 30.000 par an
—10% pour les montants variant entre L.L. 30.001 et 48.000 par an
—13% pour les montants variant entre L.L. 48.001 et 72.000 par an
—17% pour les montants dépassant L.L. 72.000 par an.

g) Taxe sur les jetons de présence

15% au lieu de 10% tel que prévu par la loi actuelle.

h) Taxe sur les dividendes des titres étrangers. Maintenu à 10%.

i) Taxe sur les intérêts des dettes

8% au lieu de 10% dans le but d'encourager l'investissement des capitaux et leur dépôt dans les banques.

Les intérêts payés par les banques en sont exemptés lorsqu'il ne dépassent pas L.L. 1.500 par an au lieu de L.L. 1.000, comme il est d'usage actuellement et ce dans le but d'encourager l'épargne privée.

III — *Recettes provenant des taxes proposées*

Les recettes provenant de l'impôt sur le revenu à partir de l'année 1954 se présentent comme suit:

Années	*Montants en L.L.*
1954	17.494.611
1955	16.302.360
1956	20.065.616
1957	22.212.333
1958	22.039.231
1959	20.883.700
1960	23.086.924
1961	27.480.956
1962	31.682.268

Quant aux recettes provenant des taxes proposées elles sont estimées comme suit:

	L.L.
—sur les marchandises importées	6 millions
—sur les marchandises exportées	1 million
—sur les professions	18 millions
—sur les ventes de biens fonciers	4 millions
—sur les voitures privées	15 millions
—sur les transactions boursières	— —
—sur les salaires et traitementt	4 millions
—sur les dividendes des titres étrangers et les intérêts des dettes	3 millions
TOTAL	51 millions

IV — *Les avantages du projet de loi*

Les avantages découlant de ce projet de loi sont considérables pour l'économie nationale.

Le Liban sera l'un des rares pays à ignorer l'impôt sur le revenu.

Après l'annonce de cette mesure dans les milieux financiers européens et américains où les impôts sont lourds et génants, on assistera à un afflux de capitaux au Liban dont les avantages directs et indirects se répercuteront sur les différentes couches sociales ainsi que sur le Trésor libanais.

D'autre part, le Trésor libanais profitera d'une augmentation sensible des recettes provenant de ces taxes par rapport à celles provenant de l'impôt actuel sur le revenu.

Source: *La vie économique et financière de la R.A.S. et des Pays Arabes,* Vol. X. No 116/52.

NEW ZEALAND

BIBLIOGRAPHY

Taxation tables 1963-64, Wellington, Sweet & Maxwell (N.Z.) Ltd., 20th Edition, 158 pp.

This latest edition of Taxation Tables contains a great number of useful data for the computation of personal and corporate Income Tax, Land Tax, Estate and Gift Duties and the Amusement Tax. Rates of depreciation are also included, as well as a separate section dealing with hire purchase and credit sales.

PORTUGAL

BIBLIOGRAPHY

The foreign investor in Portugal, Porto, Banco Portugués do Atlântico, 1963, pp. 86.

This book contains a survey of geographical data, economic factors, banking considerations, exchange and commercial systems, taxation and labour laws and the estimated cost of establishing a business.

SWEDEN

BIBLIOGRAPHY

Schweden, Wirtschaft und Finanzen im Ausland, Heft 66, Band 3, Bonn am Rhein, Institut "Finanzen und Steuern", 1963, pp. 106.

This booklet gives a brief outline of the economic structure and background in Sweden. It follows similar treatises on the United Kingdom (issued September, 1962) and Norway (June, 1963).

The four parts deal with principles of Sweden's economic structure, public finance, the tax system, and the national budget and business cycle policy; 15 charts are given as an addendum.

Although in a necessarily condensed form, this book contains very useful information on the Swedish economy in its major aspects.

UNITED STATES

BIBLIOGRAPHY

Income Tax, Volumes 1, 2, 3 *and* 4, Englewood Cliffs N. J., Prentice-Hall, Inc., 1964, loose-leaf.

Prentice-Hall's complete Federal Taxes contains 5 permanent loose-leaf volumes and 4 loose-leaf volumes in the field of income taxation which are renewed annually. Paragraphs 1.000 to 9.000 give a clear survey of tax rates, accounting provisions, income exclusions and capital gain taxation; paragraphs 9.000 to 15.000 deal with dividends, deductions, the basis for gain or loss, and reorganizations and exchanges; paragraphs 15.000 to 23.000 provide information about estates, trusts, and partnerships and deal with refunds, withholding, returns and assessments; finally, paragraphs 28.000 to 33.000 are devoted to indices and the weekly report bulletin.

Federal Tax Handbook, Englewood Cliffs, N. J., Prentice-Hall, Inc., 1964, pp. 598.

Whoever wants quick answers, in digest form, to specific tax problems will find the Prentice-Hall Federal Tax Handbook a valuable time saver and a help in filing annual returns.

Hearings before the Committee on Finance, US Senate, 88 *Congress, first session, on H.R.*8363, Washington, US Government Printing Office, 1963, pp. 1567.

Text of the hearings before the Senate Committee on Finance on the act to amend the Internal Revenue Code of 1954 to reduce individual and corporate income taxes, to make certain structural changes with respect to the income tax, and for other purposes.

Hearings before the Committee on Ways and Means, House of Representatives, 88 *Congress, first session, on H.R.* 8000, Washington, US Government Printing Office, 1963, pp. 540.

Text of the hearings before the House Committee on Ways and Means on the bill to amend the Internal Revenue Code of 1954 to impose a tax on acquisitions by Americans of certain foreign securities in order to equalize costs of long-term financing in the USA and in markets abroad, and for other purposes.

Die Steuerreform in den Vereinigten Staaten, "Finanzen und Steuern", Heft 71, Bonn am Rhein, Institut "Finanzen und Steuern", 1963, pp. 77.

Supplement to volume 40 of this series, giving a survey of taxation in the USA. This supplement deals with the 1962 Revenue Act and the changes in American tax law since 1954.

INTERNATIONAL BUREAU OF FISCAL
DOCUMENTATION'S FORTNIGHTLY REVIEW

European Taxation

Analytical surveys of the tax laws of 18 European countries, with special emphasis on important problems and examples to illustrate the systems.

This publication, now in its fourth year, is used by tax executives of major international corporations. Law schools all over the world subscribe, as well as prominent legal and accounting firms. Businessmen use *European Taxation's* "Tax News in Brief" to keep posted on changes and pending changes in the tax laws in Europe.

Since indexes are issued quarterly, and are cumulative, lawyers and accountants having European tax problems use this review as a basic reference book and to better understand their local tax advisor in a foreign country.

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Back issues are available at a discount.
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Supplementary Service

to

EUROPEAN TAXATION

A monthly loose-leaf service started in January 1963 to provide basic reference material under five main sections.

SECTION A: corporate tax rates for European countries
SECTION B: individual tax rates for European countries
SECTION C: tax-treaties between European countries and other European and non-European countries
SECTION D: abstracts from official reports
SECTION E: a world-wide bibliographical service.

The Supplementary Service is clearly indexed and masterpages show the validity of the material in each section.
Binders are provided for filing the issues.
Annual subscription: to European Taxation subscribers: Dfl. 85 (non-Europe $ 25)
separately: Dfl. 100 (non-Europe $ 35)

Both publications are totally in English.

III

TREATIES

FRANCE - JAPON

PROJET DE LOI

tendant à la ratification du décret *n°* 63-413 *du* 9 avril 1963 *exonérant des* impôts sur les revenus, *par réciprocité, les* entreprises japonaises de navigation *maritime ou aérienne,*

Exposé des motifs

Mesdames, Messieurs,

L'article 246 du Code général des impôts dispose que les bénéfices réalisés par les entreprises de navigation maritime ou aérienne établies à l'étranger et provenant de l'exploitation de navires ou d'aéronefs étrangers sont exonérés des impôts sur les revenus, à condition qu'une exemption réciproque et équivalente soit accordée aux entreprises françaises de même nature. Les modalités de l'exemption et les impôts auxquels elle s'applique sont fixés, pour chaque pays, par un accord diplomatique et font l'objet d'un décret contresigné par le Ministre des Finances et qui doit être soumis à la ratification du Parlement dans un délai de trois mois.

En application de ces dispositions, un accord du 5 mars 1931 conclu entre la France et le Japon avait prévu une exonération réciproque des entreprises de navigation maritime des deux pays. Or, le gouvernement français et le gouvernement japonais se sont montrés désireux, en attendant la conclusion d'une convention générale sur les doubles impositions, de réviser les dispositions dudit accord et d'étendre l'exemption aux entreprises de navigation aérienne.

Ce nouvel accord a été constaté par un échange de lettres en date du 21 décembre 1962.

L'exonération ainsi prévue s'applique du côté français à l'impôt sur le revenu des personnes physiques et à l'impôt sur les sociétés. Elle jouera, pour la première fois, à l'égard des bénéfices compris dans le premier exercice comptable commençant le 1er janvier 1962 ou après cette date ainsi que pour les distributions de revenus opérées postérieurement au 31 décembre 1962.

L'arrangement dont il s'agit a fait l'objet du décret n° 63-413 du 9 avril 1963 publié au *Journal officiel* du 24 avril 1963.

Le présent projet de loi tend à la ratification de ce décret.

Projet de loi

Le Premier Ministre,

Sur le rapport du Ministre des Finances et des Affaires économiques,

Vu l'article 39 de la Constitution,

Décrète:

Le présent projet de loi, délibéré en Conseil des Ministres, après avis du Conseil d'Etat (Commission permanente), sera présenté à l'Assemblée Nationale par le Ministre des Finances et des Affaires économiques qui est chargé d'en exposer les motifs et d'en soutenir la discussion.

Article unique.

Est ratifié le décret n° 63-413 du 9 avril 1963 exonérant des impôts sur les revenus, par réciprocité, en vertu d'un accord conclu par un échange de lettres en date du 21 décembre 1962 entre les gouvernements français et japonais, les entreprises japonaises de navigation maritime ou aérienne.

Fait à Paris, le 24 août 1963.

ANNEXE

MINISTÈRE DES FINANCES ET DES AFFAIRES ÉCONOMIQUES

Décret no. 63-413 *du* 9 *Avril* 1963

exonérant des impôts sur les revenus, par réciprocité, les entreprises japonaises de navigation maritime ou aérienne.

Le Premier Ministre,

Sur le rapport du Ministre des Finances et des Affaires économiques,

Vu l'article 246 du Code général des impôts;

Vu l'accord résultant des communications échangées le 21 décembre 1961 entre le Gouvernement français et le Gouvernement japonais et ci-après reproduites:

AMBASSADE DU JAPON

24, rue Greuze — Paris, le 21 décembre 1962.

A Son Excellence Monsieur Leduc, Ministre plénipotentiaire, directeur des affaires administratives et sociales, Ministère des Affaires étrangères, Paris.

Monsieur le Ministre,

Me référant à la loi japonaise n° 144 de 1962 concernant l'exemption, sous condition de réciprocité, de l'impôt sur les revenus provenant de l'exploitation en trafic international de navires ou aéronefs, en vigueur depuis le 25 mai 1962, revisant la loi japonaise n° 6 de 1924, j'ai l'honneur de faire savoir à Votre Excellence que le Gouvernement japonais serait disposé à substituer à l'échange de lettres intervenu le 5 mai 1931 entre le Gouvernement japonais et le Gouvernement français, concernant l'exemption réciproque de l'impôt sur les revenus provenant de la navigation maritime, un accord plus général sous la forme du présent échange de lettres qui fait état de l'entente ci-dessous:

1 (A).—Le Gouvernement français exemptera de l'impôt sur le revenu des personnes physiques, de la taxe complémentaire, de l'impôt sur les bénéfices des sociétés et autres personnes morales et de tous autres impôts sur les bénéfices et revenus perçus au profit de l'Etat français qui peuvent devenir exigibles, tous les bénéfices et revenus perçus par une entreprise japonaise du fait de l'exploitation en trafic international de navires ou aéronefs, que ceux-ci soient possédés par l'entreprise ou affrétés par elle.

(B).—Le Gouvernement japonais exemptera de l'impôt sur le revenu, de l'impôt sur les sociétés et de tous autres impôts sur les bénéfices et revenus perçus au profit de l'Etat japonais qui peuvent devenir exigibles, tous les bénéfices et revenus perçus par une entreprise française du fait de l'exploitation en trafic international de navires ou aéronefs, que ceux-si soient possédés par l'entreprise ou affrétés par elle.

2 (A).—L'expression «entreprise française» désigne une entreprise exploitée par le Gouvernement français, une personne physique résidente de France et qui n'est pas résidente du Japon, une société de capitaux ou une société de personnes dirigée et contrôlée en France et qui n'a pas son siège social au Japon.

(B).—L'expression «entreprise japonaise» désigne une entreprise exploitée par le Gouvernement japonais, une personne physique résidente du Japon et qui n'est pas résidente de France, une société qui a son siège social au Japon et qui n'est pas dirigée et contrôlée en France.

3.—L'expression «exploitation en trafic international» vise non seulement les transports internationaux de passagers ou de marchandises réalisés par une entreprise d'un Etat dans l'autre Etat, mais également les recettes accessoires telles que la vente de billets de passage pour le compte d'autres entreprises de navigation maritime ou aérienne, l'exploitation de services d'autobus reliant une ville à l'aéroport, si l'ensemble de ces recettes n'excède pas 5% du chiffre d'affaires réalisé dans ce dernier Etat.

4.—Le présent accord entrera en vigueur dans chacun des deux pays dès qu' auront été accomplies en France et au Japon les formalités nécessaires pour l'y rendre applicable et que les deux parties s'en seront informées mutuellement.

Il produira ses effets pour la première fois:

a) En ce qui concerne les impôts sur les bénéfices pour l'imposition des bénéfices compris dans le premier exercice comptable commençant le 1er janvier 1962 ou après cette date;

b) En ce qui concerne les impôts perçus par voie de retenue à la source sur les revenus de capitaux mobiliers, pour l'imposition des revenus dont la mise en paiement est intervenue postérieurement au 31 décembre 1962.

5.—L'exemption des impôts prévus au paragraphe 1 continuera à s'effectuer jusqu'a l'entrée en vigueur de la convention générale sur les doubles impositions

actuellement en cours de négociation entre les deux Etats.

Cependant, dans le cas où, par suite de l'abrogation ou de la modification d'une loi ou d'un règlement, les dispositions du paragraphe 1 du présent accord cesseraient de pouvoir être appliquées au Japon ou en France, l'exemption susmentionnée prendrait fin immédiatement.

Si le texte qui précède recueille l'agrément du Gouvernement français, je suggère que la présente lettre et la réponse de Votre Excellence constituent l'accord recherché par nos deux gouvernements.

Veuillez agréer, Monsieur le Ministre, les assurances de ma très haute considération.

Signé: HAGUIWARA.

MINISTÈRE
DES AFFAIRES ÉTRANGÈRES

Paris, le 21 décembre 1962.

A Son Excellence, Monsieur Haguiwara, Ambassadeur du Japon, Paris.

Monsieur l'Ambassadeur,

J'ai l'honneur d'accuser réception de la lettre en date de ce jour que votre Excellence a bien voulu me faire parvenir et qui est ainsi conçue:

(Texte de la lettre de l'Ambassadeur du Japon).

J'ai l'honneur de faire connaître à Votre Excellence que les termes de la lettre qui précède rencontrent l'agrément du Gouvernement français et de lui confirmer que ladite lettre et la présente réponse constituent l'accord recherché par nos deux gouvernements.

Veuillez agréer, Monsieur l'Ambassadeur, les assurances de ma très haute considération.

Signé: F. LEDUC.

Décrète:

Article premier.

Les bénéfices provenant d'opérations commerciales de transport par mer ou par air entre la France et les autres pays réalisés par des entreprises japonaises sont exemptés de l'impôt sur le revenu des personnes physiques et de l'impôt sur les sociétés prévus au titre premier du Livre premier du Code général des impôts.

Art. 2

Le présent décret sera soumis à la ratification du Parlement, conformément aux dispositions de l'article 246 du Code général des impôts.

Art. 3.

Le Ministre des Finances et des Affaires économiques est chargé de l'exécution du présent décret, qui sera publié au *Journal officiel* de la République française.

Fait à Paris, le 9 avril 1963.

Source: *Assemblée nationale*, Nr. 541.

INTERNATIONAL BUREAU OF FISCAL DOCUMENTATION

HISTORY

Since its establishment in 1938, the International Bureau of Fiscal Documentation has served as an independent source of tax information and advice. After World War II its functions were broadened beyond mere simple fiscal documentation and assumed the character of supplying factual data on the tax systems of countries around the world in response to requests from various governmental and business organisations. This welding of practical and scientific functions has been the keystone of the Bureau's development.

In 1946, the Bureau began publication of the Bulletin for International Fiscal Documentation, the official organ of the International Fiscal Association. This publication, which exemplifies the blending of practical with scientific data, has been supplemented by nineteen special publications. In 1961, the Bureau published the first issue of European Taxation, a fortnightly English language review of tax developments on the European Continent, in the United Kingdom and in Ireland. During that time span the Bureau also published a well-received book in German by Dr. Albert J. Rädler about taxation in the common market countries. The Bureau continuously assisted in translating and preparing tax materials for other publications. Additionally, its library was greatly expanded and now contains well over 7000 volumes on national and international tax matters, as well as more than 250 selected periodicals; many visiting researchers have made use of these library facilities.

In August, 1963, the Bureau moved to the "Muiderpoort", an old City Gate which is one of Amsterdam's historical landmarks. These new quarters, made possible through the generosity of the City and the University of Amsterdam, will provide the potential for future expansion.

GOALS

The overriding goal of the Bureau is to serve the International community by collecting, evaluating and disseminating tax data in a manner which combines scientific objectivity with practical realism.

ORGANIZATION

The Bureau is a public foundation established under Dutch law. Its policies are determined by a "Curatorium", or board of trustees, composed of outstanding representatives of the government, business and academic communities in various countries. A managing director is responsible for carrying out the goals articulated by the Curatorium.

The Bureau is separated into four divisions: Library and Documentation, which is

responsible for acquisition and maintenance of tax materials; International Tax Service, which prepares reports for governmental, business and scholarly purposes; Publications Department, which is responsible for the whole gamma of the Bureau's publications; and the Administrative arm, which plans and coordinates Bureau activities.

PERSONNEL

The Bureau employs eight Associates, one Librarian and sixteen Staff. Of these, the majority are Dutch; but English, Spanish and United States nationals are also working in the Bureau.

CORRESPONDENTS

Apart from its own Associates, the Bureau avails itself of the cooperative services of a large number of expert correspondents throughout the world.

THE PROGRAM

The Bureau's removal to new quarters, which ended six years of overcrowding, has been an appropriate occasion for the formulation of a program of activities. The program consists of five points, all of which will be carried on concurrently. Emphasis during the next years will, however, be placed on training of personnel and assisting in research projects.

1. *Training*

The Bureau seeks to prepare young lawyers and economists to meet the growing demand for international tax experts. By doing so, the Bureau also seeks to broaden its own experience and viewpoint, in a sense it serves as a melting pot for tax oriented ideas to persons from a large number of countries.

2. *Research*

The Bureau is focusing its research efforts upon a significant contemporary problem – the relationship between capital exporting nations and developing countries. To aid in the accomplishment of this end, the Bureau is offering to young post-graduates from developing countries the opportunity to work with the Bureau. Other important research projects include studies of the tax aspects of economic integration and of the influence of tax incentives on economic growth.

3. *Education*

The Bureau seeks to stimulate, and participate in, seminars and discussion groups, lectures and publications.

4. *Library and Documentation*

The Bureau's program of cataloguing and completing its set of materials will be continued in the framework of its new library facilities.

5. *Reports*

The Bureau prepares reports containing factual data and legal appraisals relating to countries other than the country of residence of the organization or individual who requests a report.

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THE TAXATION OF PATENT ROYALTIES, DIVIDENDS, INTEREST IN EUROPE

This new publication is a looseleaf service which gives every tax (with basis and rates) levied on patent royalties, dividends and interest as each type of income flows from one European country to another and to the United States and Canada.
It is divided into chapters by country and each chapter describes the tax structure of one country in 5 sections as follows:

Section A: Taxation of Resident Companies

All taxes are summarized as they apply to patent royalties, dividends and interest.

Section B: Taxation of Foreign Source Income

The general rule as applied to patent royalties, dividends and interest received by resident companies from abroad is discussed, and then the specific rule as regards each two-country transaction is set out.

Section C: Taxation of Non-Resident Companies

Liability, basis and rate of income taxes, withholding taxes, business tax, net worth tax, turnover tax, stamp tax, local tax as applied to patent royalties, dividends and interest.

Section D: Taxation of Patent Royalties, Dividends Interest Received by Non-Resident Companies

Taxes applied to each type of income as it flows to a non-resident company in Europe, the US and Canada.

Section E: Holding Companies,

Taxation of international holding companies in each of the 18 European countries.

Monthly supplements (by airmail) immediately report all changes in basis, liability and rates and ensure that this work is a valuable source of up-to-date, reliable information, and an essential feature in the library of all those concerned with international tax problems.

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ARGENTINA

BIBLIOGRAPHY

In *derecho fiscal* of November, 1963, GONZALES, FRANSISCO G., analyzes the principal characteristics of the Argentine Income Tax relating to royalties paid to residents in foreign countries.

This periodical is published by the Ediciones Contabilidad Moderna S.A. Entre Rios 633, Buenos Aires.

TAX NEWS

On August 9, 1963 the "de facto" government promulgated Decree-Law Number 6677/63, which came into force on February 1, 1964. This measure, as implemented by Decree Number 9489/63, established a new tax on freight, 4% on importations and 2% on exportations. Exporters and importers are responsible for the payment of this tax.

The first constitutional law passed by the new Illia administration, which was inaugurated on October 12, 1963, has been enacted as Law Number 16.451, after passage by the Parliament on November 21, 1963, and approval by the Executive Power (President) by Decree on December 13, 1963.

This law modifies a certain number of Decree-Laws passed by the late "de facto" Administration of President Guido. Modifications, suspensions, and alterations of law are common practice in Argentina, and cause a certain instability for taxpayers. The most important aspects of this measure are:

– Suspension until September 30, 1964 of the application of the following Decree-Laws that would have come into force January 1, 1964;

A. – A system of extraordinary depreciation based on the variations of the gross price index. This system is an automatic adjustment method of depreciation due to monetary inflation.

B. – A special deduction in the capital gain law of 25% per annum of the cost of property sold.

C. – The Executive Power was authorized by the Parliament to extend the sales tax based on the added value system, from the last manufacturer to the gross seller. The tax rate was reduced from 10% to 5%.

D. – Increase in the percentage (10% to 50%), for the computation of "advanced payment of income tax", of donations to the National Government, Provinces (States), Counties, and religious and charitable institutions.

E. – Exemption from national taxes, import duties and customs duties for foundations created with juridical personality.

F. – Exemption from any national tax for "economic houses" (to be defined later), their income, sale or other transfer.

TAX CASES

On July 27, 1963, the Federal Commissioner required, by Decree of the Government of the Province of Buenos Aires, the Fiscals of State of the Province, to accede to any demands for refunds of the Provincial Turnover Tax, in those cases where the tax was levied on exportations. Article 67, item 12 of the Argentine Constitution extends the power to tax the international commerce of the country only to the National Government.

Bibliography, tax news and tax cases reported by HORACIO HIRSCH, *Contador Publico Nacional, Buenos Aires, Las Heras* 2881.

BRAZIL

BIBLIOGRAPHY

O Sistema Fazendario, THALEZ COUTO, R. and others, Brasilia, Direçao Geral da Fazenda Nacional, 1964, pp. 92.

This booklet contains a series of speeches about the following tax matters: the federal tax system, the system of custom duties, the administration of the income tax, the tax policy as it affects economic development and the collection of taxes.

Revista Fiscal e de Legislaçao de Fazenda of August, 1963, contains a survey of the incentives granted to those companies which operate in northeastern Brazil.

The same periodical of September 1963 contains an article, written by TITO REZENDE, dealing with proper and improper application of the new compulsory loan on individual income.

Revista Imposto Fiscal of November, 1963 contains an alphabetical survey of the various withholding taxes on income, *inter alia,* to foreign shareholders.

Revista de Finançcas Públicas of December, 1963 contains an article written by ALMIRO, A., dealing with the fiscal reform envisioned for Latin-American countries by the "Alliance for Progress" plan, with special emphasis on Brazilian problems.

TAX NEWS

Interest received from Brazilian sources by non-residents, whether individuals or entities, is subject to various withholding taxes, which are:

25% income tax (Impôsto de renda)
15% surcharge on income tax (Impôsto adicional restituevel)
5% surtax (Imposto adicional para 1964)
10% compulsory loan (Empréstimo compulsorio)

Thus, total withholding at source on payments of interest amounts to 43.75%.

TAX CASES

In the Parke-Davis case, it was held that stamp tax is levied also if the supply of capital is not in the form of legal currency but rather in the form of credits of account. The

Brazilian establishment of the USA enterprise had revalued its assets and dissolved certain reserves to increase its social capital, and, in addition, had received a credit from the USA enterprise for the payable royalties. Even the value of the credit for the royalties was held to be subject to the stamp tax which is levied on the supply of capital.

CHILE

TAX NEWS

On February 14, 1964 a new income tax law became effective. It applies to income from movable and immovable property, from commercial and industrial activities (the first category), and from dependent or independent services (the second category).

Concerning the first category, profits of corporations are taxed at a flat rate of 30% and income from other persons is taxed at 20%. Concerning the second category, employment income is subject to a 3.5% rate of tax and independent service income to a rate of 7%.

On income from both categories, a supplementary tax is levied with rates varying between 10 and 60%. Directors' fees are subject to a 20% withholding tax, which may not be credited against income tax and is not a deductible item for the payer corporation. A 20% tax on capital gains was also introduced.

Note, that on income from Chilean sources received by foreign corporations or foreign individuals, in stead of the supplementary tax, an additional tax is levied with a flat rate of 30%.

TAX CASES

The Court of Conception recently held that a non-resident partner of a Chilean partnership is not subject to the additional tax on that part of partnership profits that corresponds to the annual rental value of the buildings used by the enterprise carried on by the partnership. A Chilean enterprise is allowed to deduct from taxable profits 7% of the cadastral value of the buildings used by it, which amount is deemed to be income from immovables for an individual owner and therefore subject to income tax in his hands.

FRANCE

BIBLIOGRAPHY

Dictionnaire fiscal permanent, SARRUT, JEAN avec le concours de E. Pironneau et J. Casati, Paris (VIe), Editions Législatives et Administratives, loose-leaf.

Nous venons de recevoir l'ouvrage de base du Dictionnaire fiscal permanent. Cet ouvrage est mis à jour quatre fois par an par une refonte complète des feuillets périmés. Il se compose d'études classées alphabétiquement selon l'appellation usuelle du sujet traité. Chaque étude de plus d'une ou deux pages est précédée d'une table analytique. Pour les études particulièrement longues ou complexes, cette table est complétée par une table alphabétique.

We received the basic volume of the Dictionnaire fiscal permanent. This book, in loose-leaf form, is composed of studies that are grouped in alphabetic order, in accordance with the usual denomination of the subjects treated. Studies that occupy more than one or two pages, are preceded by an analytical table of contents and, for longer studies, an alphabetical table is added. The book is kept up-to-date by quarterly releases replacing the pages that are out of date.

Memento Lamy, Fiscal, Paris (17e), les Services Lamy, 1963 et 1964, pp. 612 et 659.

Cet ouvrage relié et illustré, donne une aperçu systématique et complète de la fiscalité française. Il est mis à jour par des feuillets avec références aux numéros des paragraphes du volume.

Each year this volume gives a complete summary of the French tax system and is kept up to date by regular additional papers with references to the paragraph numbers of the book.

Memento Lamy, Social, Paris (17e), les Services Lamy, 1963 et 1964, pp. 443 et 459.

Cet ouvrage traite la législation portant sur le travail et la sécurité sociale et est mis à jour par des feuillets avec références à ses paragraphes.

These volumes give a complete survey of the social security and labour law as in force in the year of publication of the book, which is kept up to date by additional papers referring to the numbers of the book-paragraphs.

Guide pratique du contribuable, pour souscrire les déclarations d'impôts sur les revenus réalisés en 1964, Le Syndicat National Unifié des Contributions directes, Revue de l'Enregistrement et des Impôts, Paris (8e), 1964, pp. 88.

Comme pour les années précédentes, le Guide Pratique a été publié, établi par des Agents des Contributions et dans lequel les contribuables peuvent trouver d'utiles renseignements.

As in previous years, the Guide pratique has been published for the use of French taxpayers who have to make their returns concerning income earned in 1963. The information given therein pertains to individual and company income taxes.

Unification ou harmonisation des procédures, délais et pénalités en matière fiscale (loi du 27 décembre 1963*)*, No. 147 des publications de l'A.N.S.A. (Association Nationale des Sociétés par Actions), Paris, A.N.S.A., 1964, pp. 84.

Dans la présente brochure est reproduit le texte de la loi du 27 décembre 1963, de décret d'application du 18 janvier 1964 et de la instruction du 30 décembre 1963 relative aux pénalités. Un tableau synoptique des pénalités fiscales complète cette brochure. Dans des additifs ultérieurs, les autres décrets d'application et les nouveaux commentaires de la Direction Générale des Impôts seront publiés dès qu'on aura connaissance.

This brochure contains the text of the law of December 27, 1963 on unification or harmonisation of provisions relating to tax procedure, penal law in tax cases and of the pertinent Decree and Official instruction. A comparative chart of the regulations on penal law applying to the various tax law is added.

Tarif fiscal, MICHEL, JEAN, Paris (17e), A.N.S.A., 1964, one folder with 34 columns.

Le pliant intitulé «Tarif fiscal», 28e édition, à jour au 1er janvier 1964 a paru. Il donne un sommaire des taux des impôts et taxes principaux étant en force au 1er janvier 1964.

The 28th edition of a folder "Tarif fiscal", which summarizes the principal French Taxes and duties in force as of January 1, 1964.

La réforme de la fiscalité immobilière; loi du 15 mars 1963 (T.V.A.-Plus values-Dispositions transitoires). SCHMIDT, JEAN, Docteur en Droit, Chargé de cours à la Faculté de Droit et des Sciences économiques à Rennes, et DANIEL SIZAIRE, Docteur en Droit, Professeur à l'Institut d'Etudes Economiques et Juridiques appliquées, Paris, Editions NICEA, 1963, pp. 221, Fr. 25,—.

Etude approfondie sur l'application des dispositions de la loi du mars 15, 1963, portant réforme de l'enregistrement, du timbre et de la fiscalité immobilière, en ce qui concerne la T.V.A. applicable aux opérations de construction d'immeubles d'habitation, l'imposition des plus-values retirées des opérations de construction et les sociétés immobilières.

Study of the provisions related to taxation of building construction and capital gains on such property, as introduced by the law of March 15, 1963 with subsequent Decrees.

Les sociétés d'investissement et la gestion collective de l'épargne (expérience americaine), Connaissances économiques, FAFFA, JEAN-CLAUDE, Paris, Editions CUJAS, 1963, pp. 351.

De la préface par M. Pierre Fournier nous citons:

Le livre que présente aujourd'hui M. Faffa sur les «Sociétés d'Investissement et la gestion collective de l'épargne», parait à l'heure particulièrement opportune, alors que le Gouvernement français, se propose d'étendre le domaine jusqu'à ce jour restreint, des Sociétés d'Investissement à capital fixe par la création d'organismes nouveaux, auxquels une grande souplesse de fonctionnement doit ouvrir de plus vastes champs d'action . . .

. . .Le séjour prolongé que M. Faffa a effectué aux Etats Unis, les études approfondies auxquelles il s'y est livré, l'ampleur des renseignements auxquels il a eu accès, donnent à son ouvrage une rare valeur de documentation. . .

The main part of this book deals with the development, economic importance and working methods of the investment companies in the U.S.A. Comparisons are made with the investment trusts in the United Kingdom and with similar companies in continental Europe.

Juris-Classeurs, Droit fiscal, Paris-I, Editions Techniques.

Editions Techniques, 128, rue de Rivoli, Paris-I a publié le supplément suivant de son ouvrage Juris-Classeurs, Droit Fiscal:

Code Fiscal «Impôts Directs», 1963 No. 1054. La présente mise a jour marque la réalisation d'une autre phase des travaux de refonte rendus nécessaires par la réforme fiscale de 1959 et porte sur les règles générales de détermination des personnes imposables à l'I.R.P.P., sur la notion et les caractères du revenu imposable, sur l'étude de certains régime spéciaux, sur les bénéfices industriels et commerciaux et les bénéfices des profes-

sions non commerciales et sur les règles relatives à l'ensemble des catégories de revenues soumises à l'I.R.P.P.

This release is an important step towards the complete revision of this work made necessary by the tax reform of 1959. It covers the general rules for determining taxable persons under the income tax, on the concept and characteristics of taxable income, on certain special tax requirements, on business income and income from non-commercial professions and the rule pertaining to the sum total of income that is subject to the individual income tax.

Sociétés immobilières conventionnées, sociétés immobilières d'investissement, sociétés immobilières de gestion, Publications de l'A.N.S.A., No. 146, Paris, Association Nationale des Sociétés par Actions, 1963, pp. 96.

Etude consacrée à l'examen du régime juridique et fiscal des sociétés mentionnées dans le titre, avec le texte des articles y portant de l'Ordonnance du 24 septembre 1958, des lois des 15 mars 1963 et 21 décembre 1963, et des décrets d'application.

Study of the juridical regulations and tax regime applicable to immovable investment companies, with text of the pertinent laws, ordinances and decrees.

DOCUMENTS

Loi de finances pour 1964 *(n° 63-1241 du 19 décembre 1963)* (1).
(Seulement les provisions sur les impôts et revenus autorisés)

L'Assemblée nationale et le Sénat ont adopté,
Le Président de la République promulgue la loi dont la teneur suit:

Première partie
Conditions générales de l'équilibre financier

TITRE I

I. — Impôts et revenues autorisés

Dispositions relatives aux ressources.

ARTICLE 1

I. — Sous réserve des dispositions de la présente loi, continueront d'être opérées pendant l'année 1964, conformément aux dispositions législatives et réglementaires:

1° La perception des impôts, produits et revenus affectés à l'Etat;

2° La perception des impôts, produits et revenus affectés aux collectivités territoriales, aux établissements publics et organismes divers dûment habilités.

II. — Toutes contributions, directes ou indirectes, autres que celles qui sont autorisées par les lois, ordonnances et décrets en vigueur et par la présente loi, à quelque titre et sous quelque dénomination qu'elles se perçoivent, sont formellement interdites, à

peine contre les employés qui confectionneraient les rôles et tarifs et ceux qui en poursuivraient le recouvrement, d'être poursuivis comme concussionnaires, sans préjudice de l'action en répétition, pendant trois années, contre tous receveurs, percepteurs ou individus qui en auraient fait la perception.

Sont également punissables des peines prévues à l'égard des concussionnaires, tous détenteurs de l'autorité publique qui, sous une forme quelconque, et pour quelque motif que ce soit, auront, sans autorisation de la loi, accordé toute exonération ou franchise de droit, impôt ou taxe publique, ou auront effectué gratuitement la délivrance de produits des établissements de l'Etat. Ces dispositions sont applicables aux personnels d'autorité des entreprises nationales qui auraient effectué gratuitement, sans autorisation légale ou réglementaire, la délivrance de produits ou services de ces entreprises.

ARTICLE 2

Pour l'établissement de l'impôt sur le revenu des personnes physiques dû au titre de l'année 1963 :

1° Le taux de 65 p. 100 figurant à la dernière ligne du barème prévu à l'article 197 du code général des impôts est porté à 66,5 p. 100;

2° Les cotisations établies par voie de rôles sont majorées de 5 p. 100 lorsque le revenu servant de base à l'imposition est supérieur à 36.000 F.

Cette majoration est calculée après application, le cas échéant, de la réduction d'impôt et de la décote visées respectivement aux articles 198 et 198 *ter* du code précité, mais avant déduction, s'il y a lieu, du crédit ouvert aux contribuables en vertu des dispositions de l'article 199 *ter* du même code.

ARTICLE 3

I. — 1. Les plus values réalisées par les personnes physiques à l'occasion de la cession à titre onéreux ou de l'expropriation de terrains non bâtis situés en France ou de droits portant sur ces terrains sont soumises à l'impôt sur le revenu des personnes physiques dans les conditions fixées par le présent article.

Ces dispositions sont applicables aux plus-values réalisées par les sociétés visées à l'article 8 du code général des impôts dans les conditions prévues à cet article.

2. Sont également soumis aux dispositions du présent article les terrains qui supportent des constructions de faible importance ou pouvant être considérées comme destinées à être démolies, eu égard, d'une part, à leur valeur et, d'autre part, au prix de cession ou à l'indemnité d'expropriation.

Un terrain est réputé insuffisamment bâti lorsque la superficie développée des bâtiments est inférieure à un pourcentage de la contenance cadastrale de ce terrain fixée par décret, compte tenu, le cas échéant, des règlements d'urbanisme. Ce chiffre ne pourra excéder 15 p. 100.

Les bâtiments existant sur un terrain sont réputés destinés à être démolis lorsque leur valeur intrinsique, appréciée en fonction du coût de la construction au jour de l'aliénation et compte tenu de leur état d'ancienneté et d'entretien à la même date, est inférieure à un pourcentage du prix de cession ou de l'indemnité d'expropriation qui sera fixé

par décret, eu égard au rapport normal constaté entre le prix d'acquisition des terrains et le coût des construction nouvelles. Ce chiffre ne pourra excéder 30 p. 100.

3. Toutefois, les plus values réalisées à l'occasion de la cession de terrains à usage agricole ou forestier ou de terrains supportant une construction ne sont pas imposables lorsque le prix de cession, l'indemnité d'expropriation ou les justifications apportées par le redevable permettent de considérer qu'il ne s'agit pas d'un terrain à batir.

Sont réputés ne pas revêtir ce caractère les terrains à usage agricole ou forestier dont le prix de cession ou l'indemnité d'expropriation n'excède pas, au mètre carré, chiffre fixé par décret, compte tenu, notamment, de la nature des cultures. Ce chiffre ne pourra être inférieur à 25 F pour les vignobles à appellation contrôlée et les cultures florales, à 8 F pour les cultures fruitières et maraîchères et à 3 F pour les autres terrains agricoles.

4. Nonobstant les dispositions qui précèdent, sont réputés terrains non bâtis, au sens du présent article, tous terrains à bâtir et biens assimilés dont la cession ou l'expropriation entre dans le champ d'application des articles 27-I ou 40-I de la loi n° 63-254 du 15 mars 1963.

5. Les dispositions du présent article ne sont pas applicables aux terrains grevés d'une servitude publique *non aedificandi* lorsque le prix de cession au mètre carré n'excède pas 8 F.

II. — 1. La plus-value imposable est constituée par la différence entre les deux termes ci-après:

a) Le prix de cession du bien ou l'indemnité d'expropriation;

b) Une somme égale au prix pour lequel le bien a été acquis à titre onéreux par le contribuable ou le prix pour lequel le bien a été acquis à titre onéreux par ses auteurs s'il est entré dans le patrimoine du cédant par voie de mutation à titre gratuit. Toutefois, pour les biens entrés dans le patrimoine du contribuable soit par voie de donation ayant acquis date certaine avant le 1er septembre 1963, soit par voie de donation-partage remontant à plus de trois ans, soit par voie de succession, la valeur vénale au jour de la mutation à titre gratuit est substituée au prix d'acquisition.

Cette somme est majorée forfaitairement de 25 p. 100 pour tenir compte des frais d'acquisition et des impenses. Toutefois, le contribuable est admis à justifier du montant réel des frais d'acquisition et des impenses.

Le prix d'acquisition ainsi défini est majoré de 3 p. 100 pour chaque année écoulée depuis l'entrée du bien dans le patrimoine du contribuable ou dans celui de ses auteurs, ou depuis la réalisation des impenses.

La somme globale ainsi obtenue est réévaluée en faisant application des coefficients prévus pour la réévaluation des immobilisations à l'article 21 de l'annexe III au code général des impôts et en tenant compte, le cas échéant, de la date de la réalisation des impenses.

Dans le cas d'expropriation portant sur des terrains possédés et exploités par des pépiniéristes, des arboriculteurs, des horticulteurs ou des maraîchers, la plus-value est, à concurrence de son montant, diminuée du coût de l'acquisition de terrains d'une superficie équivalente et qu'ils affectent à la poursuite de leur exploitation. Les modalités d'application du présent alinéa, et notamment le délai dans lequel la nouvelle acquisition doit être réalisée par le contribuable, sont fixées par décret.

2. Lorsque les biens ont été acquis à titre onéreux ou à titre gratuit par le contribuable antérieurement au 1er janvier 1950, celui-ci peut substituer au second terme de la différence tel qu'il est défini au 1 ci-dessus une somme forfaitaire égale à 30 p. 100 du prix de cession ou de l'indemnité d'expropriation. Ce taux peut être modifié par décret en fonction des variations de l'indice du coût de la construction.

3. Si la cession ou l'expropriation fait apparaître une moins-value, celle-ci ne peut s'imputer que sur les plus-values de même nature réalisées par le contribuable.

4. Lorsque, à la suite d'une proposition de redressement notifiée dans les conditions prévues à l'article 177 du code général des impôts, il subsiste, sur une question de fait, un désaccord relatif à la détermination de la plus-value, celui-ci peut être soumis par l'administration ou par le redevable à la commission départementale des impôts directs. Dans ce cas, les membres non fonctionnaires de cette commission sont remplacés par les personnes désignées aux 5° et 6° de l'article 1898-I du code général des impôts.

Le chiffre fixé par la commission est retenu pour l'établissement de l'imposition sous réserve du droit de recours du contribuable devant la juridiction contentieuse.

III. — 1. Les plus-values visées au paragraphe II qui précède ne sont pas imposées lorsque leur montant total pour une année n'excède pas 50.000 F, avant application, le cas échéant, des dispositions de l'article 163 du code général des impôts.

Lorsque ce montant est compris entre 50.000 F et 100.000 F, il est diminué d'une somme égale à la différence existant entre 100.000 F et ledit montant.

Ces limites sont portées respectivement à 60.000 F et 120.000 F pour les aliénations intervenues en 1963.

Les plus-values déterminées dans les conditions prévues au II ci-dessus et aux trois alinéas qui précèdent ne sont retenues dans les bases de l'impôt sur le revenu des personnes physiques qu'à concurrence de 50 p. 100 de leur montant si le bien cédé a été acquis par voie de succession ou de donation-partage visée à l'article 1075 du code civil, ou de 70 p. 100 dans le cas contraire.

Les pourcentages de 50 p. 100 et 70 p. 100 sont respectivement remenés à:

30 p. 100 et 50 p. 100 pour les aliénations intervenues en 1963 et 1964;

35 p. 100 et 55 p. 100 pour les aliénations intervenues en 1965;

40 p. 100 et 60 p. 100 pour les aliénations intervenues en 1966;

45 p. 100 et 65 p. 100 pour les aliénations intervenues en 1967.

Les pourcentages prévus aux quatrième et cinquième alinéas ci-dessus sont diminués de dix points lorsque la plus-value est dégagée à l'occasion de la cession, à titre onéreux, de terrains non bâtis ou de droits portant sur ces terrains, à l'Etat, aux collectivités publiques, aux collectivités locales et, après accord des collectivités locales et avis de l'administration des domaines, à des organismes d'habitations à loyer modéré et leurs unions et à des organismes dont la liste sera établie par décret.

2. Lorsqu'elle est réalisée par un contribuable qui n'a pas son domicile réel en France, la plus-value donne lieu à la perception d'un prélèvement perçu au moment de la présentation à la formalité de l'enregistrement de l'acte de cession ou de la déclaration y afférente ou, en cas d'expropriation, dans le délai d'un mois à dater du paiement de l'indemnité ou, le cas échéant, de la notification de sa consignation.

Ce prélèvement est égal à 50 p. 100 de la plus-value taxable telle qu'elle est définie au

1 ci-dessus. Il est à la charge exclusive du cédant et est établi et recouvré suivant les mêmes règles, sous les mêmes garanties et sous les mêmes sanctions que les droits d'enregistrement. Il s'impute sur le montant de l'impôt sur le revenu des personnes physiques dû au titre de l'année de la réalisation de la plus-value; il ne peut être restitué.

IV. — Les dispositions du présent article ne sont pas applicables:

1° Aux bénéfices soumis aux dispositions de l'article 35 du code général des impôts ou de l'article 4 de la présente loi;

2° Aux plus-values afférentes à des immeubles figurant à l'actif d'une entreprise relevant de l'impôt sur le revenu des personnes physiques au titre des bénéfices industriels ou commerciaux.

V. — Les dispositions des I, II, III-1 et IV du présent article sont applicables aux plus-values afférentes aux cessions ou aux expropriations intervenues depuis le 15 septembre 1963.

Toutefois les plus-values réalisées à l'occasion d'aliénations intervenues entre le 1er janvier 1963 et le 15 septembre 1963 sont imposables si leur montant total, décompté comme il est dit au II ci-dessus, excède 1 million de francs; si ce montant est compris entre 1 million et 2 millions de francs, la plus-value est diminuée, d'une somme égale à la différence existant entre 2 millions et ce montant.

Pour l'application des dispositions du présent article, une aliénation n'est considérée comme intervenue à la date portée à l'acte de cession que si cet acte est passé en la forme authentique ou, à dèfaut, est présénté à la formalité de l'enregistrement dans les trente jours de cette date.

L'article 999 *quater* du code général des impôts est abrogé à compter du 1er janvier 1964. Les dispositions du III-2 du présent article prennent effet à compter de la même date.

VI. — 1. Les dispositions des I à V ci-dessus sont applicables, sous réserve des adaptations nécessaires qui seront apportées par le décret en Conseil d'Etat prévu VII ci-dessous, aux cessions à titre onéreux des actions, parts sociales, parts bénéficiaires ou obligations convertibles émises par les sociétés dont l'actif est constitué principalement par des biens visés au I ci-dessus.

2. Les sociétés visées à l'alinéa précédent doivent:

1° Subordonner à la production, soit de l'expédition d'un acte authentique, soit d'un acte sous seings privés préalablement enregistré, tout transfert ou toute inscription sur les registres sociaux, consécutifs à une cession de leurs actions, parts sociales, parts bénéficiaires ou obligations convertibles;

2° S'il s'agit de sociétés par actions, prévoir dans leurs statuts que les actions, parts sociales, parts bénéficiaires ou obligations convertibles émises par elles, revêtent, obligatoirement, la forme nominative.

Les sociétés existant à la date du 1er janvier 1964 devront procéder avant le 1er juillet de la même année à la modification de leurs statuts pour les mettre en harmonie avec les dispositions qui précèdent.

3. Les porteurs d'actions, de parts sociales, de parts bénéficiaires ou d'obligations convertibles émises sous la forme au porteur par lesdites sociétés devront demander la conversion de leurs titres au nominatif avant le 1er octobre 1964.

4. En cas d'inobservation des dispositions du 2 ci-dessus ou des obligations qui leur seront imposées par le décret en Conseil d'Etat prévu au VII ci-dessous, les sociétés visées audit 2 seront redevables d'une amende fiscale égale à 10 p. 100 de leur actif net.

Les titulaires des titres visés au 3 ci-dessus qui n'auront pas observé les prescriptions de cette disposition ne pourront ni exercer aucun des droits attachés auxdits titres, ni percevoir aucun dividende, intérêt ou arrérage, ni céder leurs droits. En outre, ils seront redevables solidairement, le cas échéant, avec les cessionnaires, d'une amende fiscale égale à 50 p. 100 de la valeur de leurs titres.

Ces amendes sont recouvrées comme en matière de retenue à la source sur le revenu des capitaux mobiliers.

VII. — Les conditions d'application du présent article seront précisées par un décret en Conseil d'Etat qui fixera notamment les exceptions qui pourront être prévues en faveur de certaines sociétés pour l'application du VI ci-dessus, en particulier, des sociétés dont l'activité consiste uniquement ou principalement en immeubles loués ou affectés par elles à des organismes ayant un but charitable, éducatif, social ou culturel et qui, par leur construction ou leurs aménagements, sont spécialement adaptés à la réalisation de cet objectif.

ARTICLE 4

I. — Les dispositions des alinéas *a, b* et *c* du 3° de l'article 35 du code général des impôts sont abrogées.

L'exonération prévue à l'alinéa *d* du même 3° en faveur des opérations de lotissement faites suivant la procédure simplifiée prévue à l'article 7 du décret n° 59-898 du 28 juillet 1959 est subordonnée à la condition que le terrain ait été acquis par voie de succession ou de donation-partage remontant à plus de trois ans.

II. — Sans préjudice de l'application des dispositions des articles 34 et 35 du code général des impôts et de celles de l'article 8 de ce code, les profits réalisés par les personnes qui cèdent des immeubles ou fractions d'immeubles bâtis ou non bâtis, autres que des terrains visés au I-3 de l'article 3 de la présente loi, qu'elles ont acquis ou fait construire depuis moins de cinq ans sont soumis à l'impôt sur le revenu des personnes physiques et à la taxe complémentaire au titre des bénéfices industriels et commerciaux, à moins qu'elles justifient que l'achat ou la construction n'a pas été fait dans une intention spéculative.

Cette dernière condition est notamment réputée remplie lorsque l'immeuble a été depuis son acquisition ou son achèvement, occupé personnellement par l'acquéreur ou le constructeur ou par son conjoint, ses ascendants ou descendants, et que sa cession est motivée par une meilleure utilisation familiale ou un changement de résidence du redevable.

Le même régime est applicable aux profits réalisés à l'occasion de la cession de droits immobiliers ou mobiliers se rapportant aux immeubles définis ci-dessus, ainsi qu'aux profits provenant de la cession des titres visés au VI-1 de l'article 3 de la présente loi.

Pour la détermination du bénéfice imposable, le prix d'acquisition est majoré de 3 p. 100 pour chaque année écoulée depuis l'entrée du bien dans le patrimoine du contribuable ou depuis la réalisation des impenses.

III. — En cas de lotissement de terrain, le prix de revient du terrain à retenir pour le calcul du bénéfice imposable est déterminé dans les conditions prévues au II (1 et 2) de l'article 3 de la présente loi:

1° Lorsque le terrain loti provient de succession ou de donation-partage remontant à plus de trois ans ou a été acquis avant le 1er janvier 1940 et est demeuré en exploitation agricole;

2° Lorsque le lotissement est réalisé suivant la procédure simplifiée prévue à l'article 7 du décret n° 59-898 du 28 juillet 1959 par une personne n'ayant pas la qualité de marchand de biens et assimilés.

En cas de cession par un contribuable d'immeubles ou de fractions d'immeubles qu'il a construits ou fait construire, la même règle est applicable pour la détermination du prix de revient du terrain à retenir pour le calcul du bénéfice imposable lorsque ce bénéfice est soumis au prélèvement de 15 p. 100 institué par l'article 28-IV de la loi n° 63-254 du 15 mars 1963 et que le paiement de ce prélèvement libère ledit bénéfice de l'impôt sur le revenu des personnes physiques et de la taxe complémentaire.

Pour l'application des dispositions du présent paragraphe, le prix de revient du terrain doit être déterminé en faisant abstraction des impenses et autres travaux de construction.

IV. — Les donations entre vifs ne sont pas opposables pour l'application des dispositions du présent article et de celles de l'article 35 du code général des impôts.

V. — Les dispositions des I à IV ci-dessus s'appliqueront aux profits réalisés à l'occasion des cessions intervenues depuis le 1er janvier 1963.

Toutefois, les profits provenant des opérations de lotissement visées au III seront soumis à l'impôt sur le revenu des personnes physiques et à la taxe complémentaire dans les conditions prévues au III-1 de l'article 3 de la présente loi lorsqu'ils auront été réalisés en 1963 en et 1964.

VI. — Sous réserve des dispositions de l'article 28-IV de la loi n° 63-254 du 15 mars 1963, les profits visés au présent article et à l'article 35 du code général des impôts donnent lieu à la perception d'un prélèvement de 50 p. 100 lorsqu'ils sont réalisés par des contribuables ou par des sociétés, quelle qu'en soit la forme, qui n'ont pas d'établissement en France.

Ce prélèvement est à la charge exclusive du cédant; il est établi et recouvré suivant les mêmes règles, sous les mêmes garanties et sous les mêmes sanctions que les droits d'enregistrement.

Il s'impute sur le montant de l'impôt sur le revenu des personnes physiques et de la taxe complémentaire ou de l'impôt sur les sociétés dus par le cédant au titre de l'année de la réalisation des profits. Il ne peut être restitué.

Ces dispositions entreront en vigueur à compter du 1er janvier 1964.

VII. — Les dispositions du présent article ne modifient pas les règles particulières prévues par les articles 28 et 29 de la loi n° 63-254 du 15 mars 1963 pour les opérations de construction.

Un décret en Conseil d'Etat fixera, en tant que de besoin, les conditions d'application du présent article.

ARTICLE 5

I. — Sous réserve des dispositions des articles 28 et 29 de la loi n° 63-254 du 15 mars 1963, les plus-values réalisées par les entreprises passibles de l'impôt sur le revenu des personnes physiques au titre des bénéfices industriels et commerciaux ou de l'impôt sur les sociétés, à l'occasion de la cession d'immeubles ou droits visés au paragraphe I de l'article 3 de la présente loi, ne sont admises au bénéfice de l'exonération sous condition de remploi prévue à l'article 40 du code général des impôts que si le réinvestissement auquel cette exonération est subordonnée est fait en éléments définis par décret ou est agréé dans les conditions fixées par un arrêté du ministre des finances et des affaires économiques. Le décret prévu ci-dessus devra autoriser, notamment, le remploi en matériels qui ouvrent droit au bénéfice de l'amortissement dégressif prévu à l'article 39 A du code général des impôts.

II. — Le même régime est applicable aux plus-values provenant de la cession des titres des sociétés définies au VI-1 de l'article 3 susvisé.

III. — Les dispositions du présent article s'appliqueront aux plus-values afférentes aux cessions intervenues depuis le 1er janvier 1963.

ARTICLE 6

Lorsque les plus-values visées aux articles 3 à 5 de la présente loi ont été soumises au prélèvement prévu à l'article 999 *quater* du code général des impôts, celui-ci s'impute sur le montant de l'impôt sur le revenu des personnes physiques, de la taxe complémentaire ou de l'impôt sur les sociétés dans les bases desquels lesdites plus-values sont comprises en application des dispositions précitées.

Les dispositions du VII de l'article 999 *quater* susvisé ne sont pas applicables dans le cas prévu au présent article.

ARTICLE 7

Sans préjudice, les cas échéant, de l'application des dispositions de l'article 1835 du code général des impôts, est nulle et de nul effet toute promesse unilatérale de vente afférente à un immeuble, à un droit immobilier, à un fonds de commerce, à un droit à un bail portant sur tout ou partie d'un immeuble ou aux titres des sociétés visées à l'article 30 de la loi n° 63-254 du 15 mars 1963 ou au VI de l'article 3 de la présente loi, si elle n'est pas constatée par un acte authentique ou par un acte sous seings privés enregistré dans le délai de dix jours à compter de la date de son acceptation par le bénéficiaire. Il en est de même de toute cession portant sur lesdites promesses qui n'a pas fait l'objet d'un acte authentique ou d'un acte sous seings privés enregistré dans les dix jours de sa date.

ARTICLE 8

I. — Une tax de régularisation des valeurs foncières peut être mise à la charge des propriétaires de terrains nus ou bâtis ou des droits y afférents situés dans les zones en voie d'urbanisation ou de rénovation où sont réalisés des équipements publics d'infrastructure à la charge des collectivités locales.

Ces zones sont délimitées et la taxe est instituée, sur proposition des collectivités

locales ou des groupements de collectivités locales intéressés, par arrêté du préfet. Cet arrêté fixe la densité moyenne de construction qui est définie par le rapport entre le volume maximum des bâtiments qui peuvent être édifiés dans la zone et la surface de cette zone où la construction est autorisée.

A défaut de proposition de la ou des collectivités locales intéresssées, le préfet peut saisir celles-ci pour avis d'un projet de délimitation de zone. Passé un délai de six mois, ou dans le cas d'un avis défavorable, la zone peut être délimitée et la taxe peut être instituée par arrêté conjoint du ministre des finances et des affaires économiques, du ministre de l'intérieur et du ministre de la construction.

La taxe est perçue au profit exclusif de la ou des collectivités locales intéressées.

II. — La taxe est assise sur le volume prévu des bâtiments tel qu'il résulte de l'application de la densité moyenne à la surface de la ou des parcelles considérées. Toutefois, la taxe est assise sur le volume constaté lors de l'édification des bâtiments dans le cas où celui-ci est supérieur au volume prévu.

Par ailleurs, lorsque les servitudes de droit public — à l'exclusion des règles de prospect et des marges de reculement — qui pèsent sur la parcelle au moment du fait générateur, ne permettent pas d'édifier le volume prévu de bâtiments, le montant de la taxe est réduit en proportion.

III. — Le taux est fixé à 10 F par mètre cube. Ce taux pourra être modifié par décret dans la limite de 20 p. 100 en plus ou en moins.

IV. — La taxe est due dès le début des travaux de construction ou, à défaut de construction, à l'expiration du délai prévu à l'article 21 du décret n° 61-1036 du 13 septembre 1961 pris en application de l'article 87 du code l'urbanisme de et de l'habitation. Toutefois, pour les constructions existant avant l'institution de la taxe et pour les terrains non bâtis, elle est due à l'expiration d'un délai de deux ans après la publication en mairie d'un arrêté préfectoral constatant l'achèvement des travaux d'équipement.

V. — La taxe est due par la personne qui est propriétaire de l'immeuble ou des droits y afférents à la date du fait générateur tel qu'il est défini au IV ci-dessus. Ce redevable est tenu de faire une déclaration dans des conditions qui seront fixées par décret.

Dès l'institution de la taxe, tout acte portant mutation de terrains nus ou bâtis ou de droits y afférents situés à l'intérieur de la zone, doit contenir l'indication du montant de la taxe. Le refus de la formalité de l'enregistrement est opposable, dans les conditions prévues à l'article 857 *bis* du code général des impôts, aux actes qui ne contiendraient pas cette indication.

Sont exclus du champ d'application de la taxe les terrains nus ou bâtis visés aux articles 1383-1° à 3° et 1400-1° à 3° du code général des impôts.

VI. — La taxe est exclusive de toute participation des constructeurs à des dépenses d'équipements publics d'infrastructure telle qu'elle est prévue par l'article 26-3° de la loi n° 57-908 du 7 août 1957.

La redevance de raccordement à l'égout, telle qu'elle est prévue à l'article 35-4 du code de la santé publique, ne peut être demandée à l'intérieur des périmètres où la taxe a été instituée.

VII. — Le recouvrement de la taxe est poursuivi comme en matière de contributions directes. Toutefois, la taxe ne se prescrit qu'à l'expiration d'un délai de cinq ans suivant

la survenance du fait générateur. La taxe n'est pas admise en déduction pour l'établissement de l'impôt sur le revenu des personnes physiques, de la taxe complémentaire ou de l'impôt sur les sociétés.

VIII. — La loi n° 61-691 du 3 juillet 1961 relative à l'institution de la redevance d'équipement est abrogée.

IX. — Un règlement d'administration publique déterminera les conditions d'application de la présente loi.

Il fixera notamment:

Les conditions dans lesquelles pourront être exonérés en tout ou partie les propriétaires de terrains, compris dans la zone, sur lesquels des bâtiments auront été édifiés avant l'institution de la taxe;

Les modalités de répartition du produit de la taxe lorsque la zone s'étend sur le territoire de plusieurs collectivités locales;

Les dispositions transitoires que l'application du présent article pourra comporter.

ARTICLE 9

Le deuxième alinéa de l'article unique de la loi n° 57-837 du 26 juillet 1957 est compar les dispositions suivantes:

«Il est institué, en sus des prélèvements existants, un prélèvement spécial progressif sur les rapports du pari tiercé. Son taux sera progressif et ne pourra dépasser 6 p. 100 des sommes engagées. Les taux cumulés des prélèvements existants et de ce prélèvement spécial ne peuvent en aucun cas dépasser 26 p. 100.

«Le barème du prélèvement spécial sera fixé par décret contresigné par le ministre des finances et des affaires économiques, le secrétaire d'Etat au budget et le ministre de l'agriculture.»

ARTICLE 10

Les quantités de carburant pouvant, en 1964, donner lieu au dégrèvement institué par l'article 6 de loi n° 51-588 du 23 mai 1951 modifiée, sont fixées à 510.000 mètres cubes d'essence et à 24.000 mètres cubes de pétrole lampant.

II. — Ressources affectées

ARTICLE 11

Sous réserve des dispositions de la présente loi, les affectations résultant de budgets annexes et comptes spéciaux ouverts à la date du dépôt de la présente loi sont confirmées pour l'année 1964.

ARTICLE 12

Un prélèvement exceptionnel de 165.500.000 F sera opéré, en 1964, sur les ressources du fonds de soutien aux hydrocarbures pour être rattaché, en recettes, aux produits divers du budget.

ARTICLE 13

L'application des dispositions de l'article 5 de la loi de finances pour 1961 (n° 60-1384 du 23 décembre 1960) est prorogée en 1964.

ARTICLE 14

Le deuxième alinéa de l'article 77 de la loi n° 59-1454 du 26 décembre 1959 est modifié comme suit:

«Ce compte retrace:

«En crédit, le produit d'un prélèvement fixé pour l'année 1964 à 9 p. 100 de la taxe intérieure sur les produits pétroliers appliquée aux carburants routiers;» *(Le reste sans changement.)*

TITRE II

Dispositions relatives aux charges.

ARTICLE 15

Sous réserve des dispositions de la présente loi, sont confirmées, pour l'année 1964, les dispositions législatives qui ont pour effet de déterminer les charges publiques en dehors des domaines prévus par le cinquième alinéa de l'article 2 de l'ordonnance n° 59-2 du 2 janvier 1959 portant loi organique relative aux lois de finances.

ARTICLE 16

Le premier alinéa de l'article 1606 du code général des impôts est remplacé par la disposition suivante:

«Il est perçu dans la métropole, au profit du budget annexe des prestations sociales agricoles, une cotisation égale à 6 p. 100 du revenu imposable à la contribution foncière de la propriété non bâtie.»

MALAYA

BIBLIOGRAPHY

Income Tax Ordinance, 1947 *and Pioneer Industries Ordinance,* 1958, Kuala Lumpur, Attorney's General's Chambers, 1961, pp. 229, $ 3.00

We received from the Comptroller-General of Income Tax of the Federation of Malaya and Singapore this volume containing the full texts of the most important tax laws in effect in the Federation, brought up to date to 1963 by insertions. Legislation subsidiary to the Income Tax Ordinance is also included, *e.g.,* double taxation relief in relation to the United Kingdom, depreciation rates, employment rules, etc.

Personal Income Tax in the Federation of Malaya, TAN SIEW SIN, Minister of Finance, Kuala Lumpur, 1963, pp. 39, fifty cents.

We received from the Comptroller-General of Income Tax of the Federation of Malaya and Singapore this booklet which gives a clear survey of the income tax provisions in the Federation.

MEXICO

BIBLIOGRAPHY

Conozca sus nuevas obligaciones fiscales, Mexico D.F., Ediciones Universales, loose-leaf, 1963.

We received the last release for the basic volume of "Know your fiscal duties".

Escuela de Contabilidad, Economía y Administración of October 1963, contains an article written by ELIOT CAMARENA, B., dealing with foreign investments in Mexico.

TAX NEWS

Since the law of December 27, 1963, that introduced minor changes in the Mexican tax system, the Government has been authorized to collect the following levies:

1) Income tax, on income from:
   a) commerce (schedule 1)
   b) industry (schedule 2)
   c) agriculture, stock breeding, and fishing (schedule 3)
   d) employment (schedule 4)
   e) liberal professions (schedule 5)
   f) invested capital (schedule 6)
   g) distributed profits (schedule 7)
   h) leasing, subleasing and patents (schedule 8)
   i) governmental concessions (schedule 9)
2) Social security charges
3) Tax on national resources
4) Excise taxes
5) Tax on commercial receipts
6) Tax on payment of insurance premiums
7) Stamp taxes
8) Migration tax
9) Contributions for the prevention of plagues in the fields of agriculture, fishing and cattle-breeding
10) Import duties
11) Export duties
12) Tax on lotteries and games
13) Tax on special advantages
14) Participation in Inheritance Tax

Not mentioned here are the fees attributable to public services, public loans, income from public domain and sale of federal capital assets.

PARAGUAY

BIBLIOGRAPHY

Hacienda Pública, of October, 1963, contains the text of law 892, which provides that the only contributions in kind to a corporation which will be subject to the transfer tax introduced by Law 879, and levied on contribution of capital to a corporation, will be the transmission through a published document against shares of immovable property, motor vehicles and ships.

The same periodical of November, 1963, contains the text of Decree No. 68 bringing up to date the rules governing inheritance, legacy and gift duties.

TAX NEWS

According to the Hacienda Pública of October, 1963, a special commission has been formed to study modification of the Paraguayan tax system. Thus, at this moment, Argentina, Paraguay and Peru are studying reforms of their tax systems, in response to the dictates of the Alliance for Progress (Alianza para el progresso). It may be expected that other Latin-American countries will shortly follow suit.

PERU

BIBLIOGRAPHY

El Peruano of January 11, 1964, contains the text of the decree of January 10, which introduced a reduction of import duties on merchandise from the countries which are members of the Latin American Free Trade Association (Argentina, Brazil, Columbia, Chile, Ecuador, Mexico, Paraguay, Peru and Uruguay).

This reduction was decided upon in the third ordinary session of the conference of the members of this association.

The same periodical of January 14, 1964, contains the text of the decree of January 13, that regulated the exemption from import and stamp duties of transfers of machinery to conservation industries (tinned fish, tinned meat, tinned fruits, etc.) and from income tax of profits which will be reinvested in these industries.

TAX NEWS

In November, 1963, legislation was enacted to modify some Peruvian taxes. The tax on income from employment (impuesto a los sueldos) and on income from liberal professions (impuesto a las utílidades profesionales) has been abolished; instead the recipients of such income will be subject to the complementary tax (impuesto complementario de tarifa progressiva). A personal exemption of 4,000 soles a month will be given, as will exemptions of 2500 soles a month for a spouse and of 1500 soles a month for each of the minor children.

An additional luxury tax has been introduced which applies to a wide range of luxury products such as, *inter alia,* precious stones, furs, cosmetics, motor cars, yachts, petrol, leather, optical instruments, alcoholic beverages, and tobacco products.

TAX CASES

The High Council of Taxes (Consejo Superio de Contribuciones) has held that no complementary tax will be levied on interest from bonds issued by the Peruvian subsidiary of a foreign corporation and paid by the subsidiary to that foreign corporation, unless on bearer shares.

Payments of interest from a Peruvian branch to its foreign main office, however, are subject to this complementary tax (impuesto complementario de tasa proporcional) notwithstanding the fact that the foreign enterprise is not subject to the tax on movable capital.

PORTUGAL

BIBLIOGRAPHY

Diaro de Governo of December 21, 1963, published the text of law 2121 which contains the enumeration of taxes to be levied by the Government during 1964 and some remarks about related tax policy.

The same periodical of December 18, 1963, published decree no. 20258 containing

provisions to the effect that, up to December 31, 1964, fixed tangible assets may be revalued by individuals and corporations carrying on a business in Portugal.

The new value may not exceed the current market value. The increase in the book-value must be set aside in a special reserve, which will not be taxed.

In addition, no tax will be levied on capital gains realized from the sale of business assets, if the amount received is reinvested shortly.

TAX NEWS

Aliens, resident in Portugal, who receive income from abroad may be subject to the newly-introduced complementary tax on their world-wide incomes. The Financial Times Survey indicates, however, that "British residents in Portugal and Madeira in principle are liable to pay Portuguese taxes on their non-Portuguese income, but that in fact they will not be called upon to do so."

During 1964, the 10% tax for the "defense and improvement of overseas provinces" will continue to be levied on industrial and commercial enterprises.

Doctrinal Commentaries by Rodriguez Sainz dealing with taxation of interest, dividends and patent-royalties received by Portuguese residents from abroad.

According to article 2 of the new Code of the commercial and industrial tax, one-third of the profits (without deduction of the taxes thereon) obtained abroad or from abroad by a company which has its seat in Portugal, is subject to this tax.

According to article 23, the taxable base consists of: interest, dividends and royalties, as well as other income from the normal or occasional, basic or non-basic, activities of the company.

The question has arisen whether the interest, dividends and royalties, received abroad, or from abroad, by a Portuguese company, are included in the taxable base for the industrial and commercial tax.

To date, there have been neither official comments nor practical determinations about this question, and it is therefore difficult to predict an exact solution. It seems, however, that if dividends, interest and royalties from national resources are included in the base for the commercial and industrial tax and are considered as profits (except in the case of dividends received by a Portuguese holding company from its domestic subsidiaries) such payments from abroad, or those received abroad, should also be included. According to the returns, total profits include income both from national and foreign sources, and the company's gross income is the sum of all such income without regard to its type. It would therefore be difficult to understand why national income should include royalties, dividends and interest, and foreign income should not include such payments. Subsequently, two-thirds of the foreign profits are deducted from the total income, both from domestic and foreign sources, in the calculation of the taxable income, because, according the above mentioned provision of law, only one-third of foreign income is subject to tax.

Further, this revenue will no longer be subject to the 1% tax on movable capital and, therefore, dividends, interest and patent-royalties from abroad must be subject to the commercial and industrial tax; otherwise they would not be taxed and this is probably not the intent of the Government.

PUERTO RICO

BIBLIOGRAPHY

What you should know about taxes in Puerto Rico, San Juan, Department of the Treasury, 1963, pp. 89.

This booklet contains a review of Puerto Rican taxes.

SPAIN

BIBLIOGRAPHY

Boletín Informativo de Legislación Fiscal, Madrid, Instituto de Contabilidad, 1964, pp. 24.

This booklet contains the text of the new General Tax Law, which regulates, *inter alia,* kinds of taxpayers and taxes, circumstances which cause tax liability, the concept of domicile, the determination of the taxable base, the computation of taxes, the organization of the tax administration, tax faults and tax procedure.

Derecho Tributario, Amoro's Rica, N., Madrid, Editorial de Derecho Financiero, 1963, pp. 495.

In lectures given by Professor Amoro's to post-graduate students of the University of Madrid he presented an analytical survey of the general tax law, with references to authors, and to Spanish tax laws and jurisprudence.

Praxis Fiscal, Impuesto sobre sociedades, evaluación global, cuota y procidiementos especiales, Ordex Gesti, J. M., Barcelona, Editorial Praxis S.A., 1963, loose-leaf.

This book contains an extensive and systematic study of the determination of company profits and related matters, such as deductions and returns, for purposes of the national tax on profits. It covers the legal rules and jurisprudence, as well as the underlying theory. An appendix contains the text of applicable legislation.

Boletin Oficial del Ministerio de Hacienda of February 28, 1964, published the Decree Number 363/64 which lengthened the period during which surcharges on business license fees are levied at 38% for provinces and 18% for municipalities.

The same periodical of December 27, 1963, published Decree Law Number 25/63 suspending the period during which the provisions about the revaluation of assets and the creation of a complementary reserve are applicable.

The same periodical of January 25, 1964, published the regulations to law 196/63 of December 20, 1963, which relates to associations and combinations of enterprises. This law has created a new kind of combination of enterprises which is deemed to be an entity, the "sociedad de empresas", which must have an incorporated form and definite goals. It is also possible to create a temporary association of enterprises to perform particular temporary activities, *e.g.,* the building of a particular road. The importance of this new kind of association lies in the incentives granted to it, such as a far-reaching exemp-

tion from various taxes, as well as some advantages in financing the activities to be performed.

Boletin Informativo de Legislacion Fiscal of December 1963 contains a study written by TRYJILLO, OLIVER A., of the anticipated Spanish tax reform.

T.A.L.E. of January, 1964, contains a study of the incentives granted to co-operatives; the text of the law dealing with union of enterprises; and a consideration of the new Spanish general tax law.

TAX CASES

Judgement of the Central Administrative Tribunal on October 24, 1963.

An oil company used, on a certain piece of land, some dismountable gasoline tanks for holding crude gasoline. The tax authorities considered these tanks to be subject to the land tax (contribución territorial urbana). The company appealed to the provincial administrative tribunal and, after being rejected there, to the central administrative tribunal, arguing that the tanks were movable and similar to machines, because they were used for the process of refining gasoline. The central administrative tribunal held the tanks to be similar to structures which are permanently attached to the land and therefore taxable under the land tax, notwithstanding their technically movable character.

VENEZUELA

BIBLIOGRAPHY

Revista de Hacienda of December, 1963, contains an article written by DONIS, R.A. dealing with the income tax consequences of investment and participation in industrial and commercial activities in Venezuala, with emphasis on tax treatment of dividend distributions and mining and agricultural operations.

Swiss Measures against abuse of Tax-Conventions

The International Bureau of Fiscal Documentation has published the 19th Supplement to the Bulletin.

This 90-page publication contains:

— Explanatory articles by
DR. KURT LOCHER, Deputy Director of the Swiss Federal Tax Administration and DR. WALTER RYSER, Assistant Manager of the Fiduciaire Générale, SA, Berne;

— The Decree of the Federal Council;

— The Circular Letter of the Federal Administration and

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by Alan R. Rado

This publication was prepared for the International Bureau of Fiscal Documentation, by one of America's leading tax experts. The widespread interest abroad in the changes that took place recently in the United States taxation of Foreign income prompted the publication of this study. Attention is directed to the measures designed to prevent the postponement and avoidance of United States tax on certain foreign earnings.
This study is preceded by an examination of the basic concepts of the United States taxation of foreign income.

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III

TREATIES

AUSTRIA - FINLAND

Instruments of ratification concerning the Convention for the avoidance of double taxation on income and property, were exchanged on January 29, 1964.

AUSTRIA - LUXEMBURG

Instruments of ratification concerning the Convention for the avoidance of double taxation on income and property, were exchanged on February 7, 1964.

BRAZIL - ITALY

Revista Fiscal e de Legislaçao de Fazenda of August 1963 contains the text of the Convention to grant mutual exemptions from the tax on those profits from sea and air transport realized in the contracting country in which the enterprise is not established.

DENMARK - IRELAND

A Convention for the avoidance of double taxation on income and property was concluded on February 4, 1964.

SPAIN - FRANCE

Instruments of ratification concerning the Convention for the avoidance of double taxation on income and inheritance were exchanged on November 29, 1963.

SPAIN - SWEDEN

Instruments of ratification concerning the Convention for the avoidance of double taxation on income, property and inheritance were exchanged on December 30, 1963.

FRANCE - LEBANON

CONVENTION

ENTRE LA FRANCE ET LE LIBAN TENDANT À ÉVITER LES DOUBLES IMPOSITIONS ET À ÉTABLIR DES RÈGLES D'ASSISTANCE ADMINISTRATIVE RÉCIPROQUE EN MATIÈRE D'IMPÔTS SUR LE REVENU ET D'IMPÔTS SUR LES SUCCESSIONS

Le Président de la République française et le Président de la République libanaise, désireux d'éviter dans la mesure du possible les doubles impositions et d'établir des règles d'assistance réciproque en matière d'impôts sur le revenu et d'impôts sur les successions, ont décidé de conclure une convention et ont nommé à cet effet comme plénipotentiaires:

Le Président de la République française:

M. François Leduc, ministre plénipotentiaire, directeur des affaires administratives et sociales au ministère des affaires étrangères,

Le Président de la République libanaise:

Son Excellence M. Victor Khouri, ambassadeur extraordinaire et plénipotentiaire du Liban en France,

lesquels, après s'être communiqué leurs pleins pouvoirs et les avoir reconnus en bonne et due forme, sont convenus des dispositions suivantes:

TITRE Ier

Dispositions générales.

ARTICLE Ier

Pour l'application de la présente Convention:

1. Le terme «France» désigne la France métropolitaine et les départements d'outre-mer (Guadeloupe, Guyane, Martinique et Réunion);

Le terme «Liban» désigne les territoires de la République libanaise.

2. Le terme «personne» désigne:

a) Toute personne physique;

b) Toute personne morale;

c) Tout groupement de personnes physiques ou morales qui, en tant que tel, est imposable.

ARTICLE 2

1. Au sens de la présente Convention, on entend par »résident d'un Etat contractant« toute personne qui, en vertu de la législation dudit Etat, est assujettie à l'impôt dans cet Etat, en raison de son domicile, de sa résidence, de son siège de direction ou de tout autre critère analogue.

2. Lorsque, selon la disposition du paragraphe 1 ci-dessus, une personne physique est considérée comme résidente de chacun des Etats contractants, cette personne est réputée résidente de celui des deux Etats où se trouve le centre de ses intérêts vitaux c'est-à-dire le lieu avec lequel ses relations personnelles et professionnelles sont les plus étroites.

3. Si l'Etat contractant où la personne physique a le centre de ses intérêts vitaux ne peut pas être déterminé, cette personne physique est réputée résidente de celui des deux Etats où elle séjourne le plus longtemps.

4. Lorsque, selon la disposition du paragraphe 1 ci-dessus, une personne morale est considérée comme résidente de chacun des Etats contractants, elle est réputée résidente de l'Etat contractant où se trouve son siège de direction effective. Il en est de même des sociétés de personnes et des associations qui, selon les lois nationales qui les régissent, n'ont pas la personnalité juridique.

ARTICLE 3

Le terme «établissement stable» désigne une installation fixe d'affaires où une entreprise exerce tout ou partie de son activité.

a) Constituent notamment des établissements stables:

(aa) Un siège de direction;
(bb) Une succursale;
(cc) Un bureau;
(dd) Une usine;
(ee) Un atelier;
(ff) une mine, carrière ou autre lieu d'extraction de ressources naturelles;
(gg) Un chantier de construction ou de montage dont la durée dépasse six mois.

b) On ne considère pas qu'il y a établissement stable si:

(aa) Il est fait usage d'installations aux seules fins de stockage, d'exposition ou de livraison de marchandises appartenant à l'entreprise;
(bb) Des marchandises appartenant à l'entreprise sont entreposées aux seules fins de stockage, d'exposition ou de livraison;
(cc) Des marchandises appartenant à l'entreprise sont entreposées aux seules fins de transformation par une autre entreprise;

(dd) Une installation fixe d'affaires est utilisée aux seules fins d'acheter des marchandises ou de réunir des informations pour l'entreprise;

(ee) Une installation fixe d'affaires est utilisée aux seules fins de publicité, de fourniture d'informations, de recherche scientifique ou d'activités analogues qui ont pour l'entreprise un caractère préparatoire ou auxiliaire.

c) Lorsqu'une entreprise de l'un des deux Etats fait des affaires dans l'autre Etat par l'intermédiaire d'un agent y établi qui est investi des pouvoirs nécessaires pour la négociation et la conclusion des contrats, cette entreprise est considérée comme ayant un établissement stable dans ce dernier Etat. Il en est ainsi, en particulier, lorsque l'agent dispose d'un dépôt et qu en fait il y prélève des produits ou marchandises qu'il vend et livre directement à la clientèle.

d) Une entreprise d'assurance de l'un des Etats contractants est considérée comme ayant un établissement stable dans l'autre Etat contractant dès l'instant que, par l'intermédiaire d'un représentant n'entrant pas dans la catégorie des personnes visées à l'alinéa *(e)* ci-après, elle perçoit des primes sur le territoire dudit Etat ou assure des risques situés sur ce territoire.

e) On ne considère pas qu'une entreprise d'un Etat contractant a un établissement stable dans l'autre Etat contractant du seul fait qu'elle y effectue des opérations commerciales par l'entremise d'un courtier, d'un commissionnaire général ou de tout autre intermédiaire jouissant d'un statut indépendant, à condition que ces personnes agissent dans le cadre ordinaire de leur activité. Toutefois, si l'intermédiaire dont le concours est utilisé dispose d'un stock de marchandises en consignation à partir duquel sont effectuées les ventes et les livraisons, il est admis que ce stock est caractéristique de l'existence d'un établissement stable de l'entreprise.

f) Le fait qu'une société domiciliée dans un Etat contractant contrôle ou est contrôlée par une société qui est domiciliée dans l'autre Etat contractant ou qui y effectue des opérations commerciales (que ce soit par l'intermédiaire d'un établissement stable ou non) ne suffit pas, en lui-même, à faire de l'une quelconque de ces deux sociétés un établissement stable de l'autre.

ARTICLE 4

Sont considérés comme biens immobiliers, pour l'application de la présente Convention, les droits auxquels s'appliquent les dispositions du droit privé concernant la propriété foncière, ainsi que les droits d'usufruit sur les biens immobiliers, à l'exception des créances de toute nature garanties par gage immobilier.

La question de savoir si un bien ou un droit a le caractère immobilier ou peut être considéré comme l'accessoire d'un immeuble est résolue d'après la législation de l'Etat sur le territoire duquel est situé le bien considéré ou le bien sur lequel porte le droit envisagé.

ARTICLE 5

1. Les nationaux d'un Etat contractant ne sont soumis dans l'autre Etat contractant à aucune imposition ou obligation y relative, qui est autre ou plus lourde que les impositions et les obligations y relatives auxquelles sont ou pourront être assujettis les nationaux de cet autre Etat se trouvant dans la même situation.

2. En particulier, les nationaux d'un Etat contractant qui sont imposables sur le territoire de l'autre Etat contractant bénéficient, dans les mêmes conditions que les nationaux de ce dernier Etat, des exemptions, abattements à la base, déductions et réductions d'impôts ou taxes quelconques accordés pour charges de famille.

3. Le terme «nationaux» désigne:

a) En ce qui concerne la France, toutes les personnes physiques qui possèdent la nationalité française;

b) En ce qui concerne le Liban, toutes les personnes physiques possédant la nationalité libanaise;

c) Toutes les personnes morales, sociétés de personnes et associations constituées conformément à la législation en vigueur dans un Etat contractant.

4. Les apatrides ne sont soumis dans un Etat contractant à aucune imposition ou obligation y relative, qui est autre ou plus lourde que les impositions et les obligations y relatives auxquelles sont ou pourront être-assujettis les nationaux de cet Etat se trouvant dans la même situation.

5. L'imposition d'un établissement stable qu'une entreprise d'un Etat contractant a dans l'autre Etat contractant n'est pas établie dans cet autre Etat d'une façon moins favorable que l'imposition des entreprises de cet autre Etat qui exercent la même activité dans les mêmes conditions.

Cette disposition ne peut être interprétée comme obligeant un Etat contractant à accorder aux résidents de l'autre Etat contractant les déductions personnelles, abattements et réductions d'impôt en fonction de la situation ou des charges de famille qu'il accorde à ses propres résidents.

6. Les entreprises d'un Etat contractant, dont le capital est en totalité ou en partie, directement ou indirectement, détenu ou contrôlé par un ou plusieurs résidents de l'autre Etat contractant, ne sont soumises dans le premier Etat contractant à aucune imposition ou obligation y relative, qui est autre ou plus lourde que les impositions et les obligations y relatives auxquelles sont ou pourront être assujetties les autres entreprises de même nature de ce premier Etat.

7. Le terme «imposition» désigne dans le présent article les impôts de toute nature et dénomination.

ARTICLE 6

Pour l'application des dispositions contenues dans la présente Convention,

l'expression «autorités compétentes» désigne, dans chaque Etat, le ministre des finances de cet Etat ou son représentant dûment autorisé.

ARTICLE 7

Pour l'application de la présente Convention par l'un des Etats contractants, tout terme non défini dans cette Convention reçoit, à moins que le contexte ne l'exige autrement, la signification que lui donnent les lois en vigueur dans l'Etat considéré, en ce qui concerne les impôts visés dans cette Convention.

TITRE II

Doubles impositions.

CHAPITRE Ier

Impôts sur les revenus

ARTICLE 8

1. Le présent chapitre est applicable aux impôts sur le revenu perçus pour le compte de chacun des Etats contractants, de ses subdivisions politiques et de ses collectivités locales, quel que soit le système de perception.

Ses dispositions ont pour objet d'éviter les doubles impositions qui pourraient résulter, pour les résidents de chacun des Etats contractants, de la perception simultanée ou successive dans l'un et l'autre Etats des impôts visés à l'alinéa qui précède.

2. Les impôts actuels auxquels s'applique le présent chapitre dans chacun des Etats contractants sont:

A.—En ce qui concerne la France:

1° L'impôt sur le revenu des personnes physiques;
2° La taxe complémentaire;
3° L'impôt sur les bénéfices des sociétés et autres personnes morales.

B.—En ce qui concerne le Liban:

1° L'impôt foncier bâti;
2° L'impôt sur le revenu agricole;
3° L'impôt sur les bénéfices des professions industrielles, commerciales et non commerciales;
4° L'impôt sur les traitements, salaires et pensions;
5° L'impôt sur le revenu des capitaux mobiliers.

3. La convention s'appliquera aussi aux impôts futurs de nature identique ou analogue qui s'ajouteraient aux impôts actuels ou qui les remplaceraient. Les autorités compétentes des Etats contractants se communiqueront, au début de chaque année, les modifications apportées à leur législation fiscale pendant le cours de l'année précédente.

4. Il est entendu que dans le cas où la législation fiscale de l'un des Etats contractants ferait l'objet de modifications affectant sensiblement la nature ou le caractère des impôts visés au paragraphe 2 du présent article, les autorités compétentes des deux Etats se concerteraient pour déterminer les aménagements qu'il serait éventuellement nécessaire d'apporter à la présente convention.

ARTICLE 9

Les revenus des biens immobiliers, y compris les bénéfices des exploitations agricoles et forestières, ne sont imposables que dans l'Etat où ces biens sont situés.

ARTICLE 10

1. Les bénéfices d'une entreprise d'un Etat contractant ne sont imposables que dans cet Etat, à moins que l'entreprise n'exerce une activité industrielle ou commerciale dans l'autre Etat par l'intermédiaire d'un établissement stable qui y est situé. Si l'entreprise exerce une telle activité, l'impôt peut être perçu dans l'autre Etat sur les bénéfices de l'entreprise, mais uniquement dans la mesure où ces bénéfices sont imputables audit établissement stable.

2. Lorsqu'une entreprise d'un Etat contractant exerce une activité industrielle ou commerciale dans l'autre Etat par l'intermédiaire d'un établissement stable qui y est situé, il est imputé, dans chacun des deux Etats, à cet établissement stable, les bénéfices qu'il aurait pu réaliser s'il avait constitué une entreprise distincte et séparée exerçant des activités identiques ou analogues dans des conditions identiques ou analogues et traitant en toute indépendance avec l'entreprise dont il constitue un établissement stable.

3. Dans le calcul des bénéfices d'un établissement stable, les dépenses exposées aux fins poursuivies par cet établissement stable, y compris les dépenses de direction et les frais généraux d'administration ainsi exposés, soit dans l'Etat où est situé ledit établissement stable, soit ailleurs, sont admises en déduction, cette déduction ne pouvant toutefois excéder les limites permises par la législation ou la réglementation de l'Etat où ces bénéfices sont imposables.

4. S'il est d'usage, dans un Etat contractant, de déterminer les bénéfices imputables à un établissement stable sur la base d'une répartition des bénéfices totaux

de l'entreprise entre ses diverses parties, aucune disposition du paragraphe 2 du présent article n'empêche cet Etat contractant de déterminer les bénéfices imposables selon la répartition en usage; la méthode de répartition adoptée doit cependant être telle que le résultat obtenu soit conforme aux principes énoncés dans le présent article.

5. Aucun bénéfice n'est imputé à un établissement stable du fait que cet établissement stable a simplement acheté des marchandises pour le compte de l'entreprise.

6. Aux fins des paragraphes précédents, les bénéfices à imputer à l'établissement stable sont calculés chaque année selon la même méthode, à moins qu'il n'existe des motifs valables et suffisants de procéder autrement.

ARTICLE 11

Lorsque:

a) Une entreprise d'un Etat contractant participe directement ou indirectement à la direction, au contrôle ou au capital d'un entreprise de l'autre Etat contractant, ou que

b) Les mêmes personnes participent directement ou indirectement à la direction, au contrôle ou au capital d'une entreprise d'un Etat contractant et d'une entreprise de l'autre Etat contractant,

et que, dans l'un et l'autre cas, les deux entreprises sont, dans leurs relations commerciales ou financières, liées par des conditions acceptées ou imposées, qui diffèrent de celles qui seraient conclues entre des entreprises indépendantes, les bénéfices qui, sans ces conditions, auraient été obtenus par l'une des entreprises mais n'ont pu l'être en fait à cause de ces conditions, peuvent être inclus dans les bénéfices de cette entreprise et imposés en conséquence.

ARTICLE 12

Les revenus provenant de l'exploitation des entreprises de navigation maritime ou aérienne ne sont imposables que dans l'Etat contractant où se trouve le siège de la direction effective de l'entreprise.

ARTICLE 13

1. Les revenus provenant de la cession d'une participation dans une société de capitaux ne sont imposables que dans l'Etat contractant dont le cédant est le résident.

2. Le paragraphe 1 ne s'applique pas quand la participation cédée fait partie de l'actif d'un établissement stable que le cédant possède dans l'autre Etat. Dans ce cas, l'article 10 est applicable.

ARTICLE 14

1. Les sociétés résidentes du Liban qui possèdent un établissement stable en France restent soumises en France, en ce qui concerne les répartitions de bénéfices qu'elles effectuent, à l'application, au titre de l'impôt sur le revenu des personnes physiques, d'une retenue à la source, dans les conditions prévues à l'article 109-2 du code général des impôts.

Toutefois, la fraction des répartitions de bénéfices effectivement passible de la retenue française ne peut dépasser le montant des bénéfices réalisés par l'établissement stable français tel que ce montant est retenu pour l'assiette de l'impôt sur les sociétés dans les conditions prévues par les dispositions de la présente Convention.

2. Une société résidente du Liban ne peut être soumise en France à la retenue visée au paragraphe 1 ci-dessus en raison de sa participation dans la gestion ou dans le capital d'une société résidente de France ou à cause de tout autre rapport avec cette société, mais les bénéfices distribués par cette dernière société et passibles de cette retenue sont, le cas échéant, augmentés pour l'assiette de ladite retenue de tous les bénéfices ou avantages que la société résidente du Liban aurait indirectement retirés de la société résidente de France dans les conditions prévues à l'article 11 ci-dessus, la double imposition étant évitée en ce qui concerne ces bénéfices et avantages conformément aux dispositions de l'article 26.

ARTICLE 15

1. Les dividendes payés par une société qui est un résident d'un Etat contractant à un résident de l'autre Etat contractant ne sont imposables que dans cet autre Etat.

2. Le terme «dividendes» employé dans le présent article désigne les revenus provenant d'actions, actions ou bons de jouissance, parts de fondateur ou autres parts bénéficiaires, ainsi que les revenus d'autres parts sociales qui sont imposés comme les revenus d'actions d'après la législation fiscale de l'Etat dont la société distributrice est un résident.

3. Les dispositions du paragraphe 1 du présent article ne s'appliquent pas lorsque le bénéficiaire des dividendes, résident d'un Etat contractant, a, dans l'autre Etat contractant dont la société qui paie ces dividendes est un résident, un établissement stable auquel se rattache effectivement la participation génératrice de ces dividendes. Dans ce cas, l'article 10 concernant l'imputation des bénéfices aux établissements stables est applicable.

ARTICLE 16

1. Les intérêts provenant d'un Etat contractant et payés à un résident de l'autre Etat contractant ne sont imposables que dans cet autre Etat.

2. Le terme «intérêts» employé dans le présent article désigne les revenus des

fonds publics, des obligations d'emprunt, assorties ou non de garanties hypothécaires ou d'une clause de participation aux bénéfices, et des créances de toute nature, ainsi que tous autres produits assimilés par la législation fiscale aux revenus de sommes prêtées.

3. Les dispositions du paragraphe 1 ci-dessus ne s'appliquent pas lorsque le bénéficiaire des intérêts, résident d'un Etat contractant, a, dans l'autre Etat contractant d'où proviennent ces intérêts, un établissement stable auquel se rattache effectivement la créance qui les produit. Dans ce cas, l'article 10 concernant l'imputation des bénéfices aux établissements stables est applicable.

ARTICLE 17

1. Les redevances en provenance de l'un des Etats contractants et payées à une personne résidente de l'autre Etat contractant sont imposables dans le premier Etat.

2. Toutefois, sous réserve des dispositions du paragraphe 3 de l'article 26 ci-après, l'Etat contractant dont le bénéficiaire des redevances est le résident conserve le droit d'imposer ces redevances conformément à sa législation, à moins que ce bénéficiaire ne possède, dans l'Etat d'où proviennent lesdites redevances, un établissement stable ou un lieu fixe pour l'exercice d'une profession libérale ou autre activité indépendante auxquels le droit qui les produit se rattache effectivement. L'article 10 ou l'article 22, suivant le cas, sont alors applicables.

3. Le terme «redevances» employé dans le présent article désigne les rémunérations de toute nature payées pour l'usage ou le droit à l'usage d'un droit d'auteur sur une oeuvre littéraire, artistique ou scientifique, d'un brevet, d'une marque de fabrique ou de commerce, d'un dessin ou d'un modèle, d'un plan, d'un procédé ou d'une formule secrets ou de tous biens analogues.

4. Sont traitées comme les redevances visées au paragraphe 3 les sommes payées pour la location ou le droit d'utilisation des films cinématographiques, les droits de location et rémunérations analogues pour l'usage ou le droit à l'usage d'équipements industriels, commerciaux ou scientifiques et pour la fourniture d'informations concernant des expériences d'ordre industriel, commercial ou scientifique.

5. Les paragraphes 1 et 2 s'appliquent également aux bénéfices provenant de l'aliénation des biens et droits mentionnés aux paragraphes 3 et 4.

6. Ne sont traités comme redevances les paiements variables ou fixes pour l'exploitation de gisements minéraux, sources ou autres richesses du sol. Pour ces revenus, l'article 9 concernant l'imposition des revenus provenant de biens immobiliers est applicable.

7. Si une redevance est supérieure à la valeur intrinsèque et normale des droits pour lesquels elle est payée, l'impôt prélevé à la source dans l'Etat du débiteur

peut être déterminé à raison de cette valeur intrinsèque et normale. L'excédent reste imposable, dans l'un et l'autre Etats contractants, conformément à leur législation.

ARTICLE 18

Sous réserve des dispositions de l'article 20 ci-après, les pensions et les rentes viagères ne sont imposables que dans l'Etat contractant dont le bénéficiaire est le résident.

ARTICLE 19

1. Sous réserve des dispositions de l'article 20 ci-apres, les traitements, salaires et autres rémunérations analogues ne sont imposables que dans l'Etat contractant sur le territoire duquel s'exerce l'activité personnelle génératrice de ces revenus.

2. Pour l'application du paragraphe précédent, n'est pas considéré comme l'exercice d'une activité personelle dans l'un des deux Etats contractants le fait pour un salarié d'un établissement situé dans l'autre Etat d'accomplir sur le territoire du premier Etat une mission temporaire ne comportant pas un séjour supérieur à cent quatrevingt-trois jours, à la condition toutefois que sa rémunération continue d'être supportée et payée par ledit établissement.

Dans le cas où la mission excède une durée totale de cent quatrevingt-trois jours, l'impôt est applicable dans l'Etat sur le territoire duquel la mission est accomplie et porte sur l'ensemble des rémunérations perçues par le salarié du chef de l'activité qu'il a exercée sur ledit territoire depuis le début de la mission.

ARTICLE 20

1. Les rémunérations, y compris les pensions, versées par un Etat contractant ou l'une de ses subdivisions politiques ou collectivités locales, à une personne physique exerçant son activité dans l'autre Etat ne sont imposables que dans le premier Etat.

Il en est ainsi, notamment, des rémunérations versées au moyen de subventions allouées à cet effet par un Etat contractant.

2. Le paragraphe 1 ne trouve pas à s'appliquer:

Lorsque les rémunérations sont allouées à des personnes possédant la nationalité de l'autre Etat sans être en même temps ressortissantes du premier Etat, leé rémunérations étant en ce cas exclusivement imposables dans l'Etat dont ces personnes sont les résidentes;

Lorsque les rémunérations sont versées au titre de services rendus à l'occasins d'une activité commerciale ou industrielle exercée à des fins lucratives, par l'ns des Etats contractants ou l'une de ses subdivisions politiques ou collectivitu locales, les dispositions de l'article 19 étant en ce cas applicables.

ARTICLE 21

1. Les tantièmes, jetons de présence et autres rétributions similaires attribués aux membres des conseils d'administration ou de surveillance des sociétés anonymes et des sociétés en commandite par actions ou aux membres d'organes analogues et qui leur sont alloués en leur dite qualité sont imposables dans l'Etat contractant dont la société est la résidente.

Toutefois, sous réserve des dispositions du paragraphe 3 de l'article 26 ci-après, lorsque le bénéficiaire des revenus visés à l'alinéa qui précède est résident de l'autre Etat contractant, ce dernier Etat conserve le droit d'imposer ces revenus conformément à sa législation générale.

2. Les rémunérations que les personnes visées au paragraphe 1 reçoivent en une autre qualité entrent selon leur nature dans les prévisions de l'article 19 ou de l'article 22.

ARTICLE 22

1. Les revenus des professions libérales ou d'autres activités indépendantes de caractère analogue sont imposables dans l'Etat où s'exerce l'activité personnelle génératrice de ces revenus, sous réserve de l'application éventuelle des dispositions du paragraphe 3 de l'article 26 ci-après.

2. Sont considérées comme professions libérales, au sens du présent article, notamment l'activité scientifique, artistique, littéraire, enseignante ou pédagogique ainsi que celle des médecins, avocats, architectes ou ingénieurs.

ARTICLE 23

Les sommes qu'un étudiant ou un stagiaire de l'un des Etats contractants, séjournant dans l'autre Etat à seule fin d'y poursuivre ses études ou d'y acquérir une formation professionnelle, reçoit pour couvrir ses frais d'entretien, d'études ou de formation ne sont pas imposables dans cet autre Etat, à condition qu'elles proviennent de sources étrangéres ou, dans l'hypothèse où elles proviennent de sources nationales, qu'elles ne revêtent pas, pour le bénéficiaire, le caractère de revenus professionnels et qu'elles ne soient pas déductibles des revenus de la partie versante pour l'imposition de ces revenus.

ARTICLE 24

Nonobstant toute autre disposition de la présente convention, les revenus que les professionnels du spectacle, tels les artistes de théâtre, de cinéma, de la radio ou de la télévision et les musiciens, ainsi que les sportifs, retirent de leurs activités personnelles en cette qualité sont imposables dans l'Etat contractant où ces activités sont exercées.

ARTICLE 25

Les revenus non mentionnés aux articles précédents ne sont imposables que dans l'Etat contractant d'où ces revenus tirent leur origine.

ARTICLE 26

1. Les revenus qui, d'après la présente convention, sont soumis à l'imposition exclusive de l'un des deux Etats ne peuvent être imposés dans l'autre Etat, même par voie de retenue à la source.

2. Chacun des deux Etats conserve le droit de calculer l'impôt, dû par un contribuable résident de son territoire, sur les éléments du revenu dont l'imposition lui est réservée, au taux correspondant à l'ensemble des revenus de ce contribuable qu'en l'absence de convention sa législation lui permettrait d'imposer.

3. Lorsqu'un résident d'un Etat contractant tire des revenus de l'autre Etat contractant et que, conformément aux dispositions des articles 17, 21, 22 et 24 de la présente Convention, ces revenus sont imposables dans cet autre Etat, l'Etat contractant dont la personne est résidente n'est pas tenu d'exempter lesdits revenus du paiement de l'impôt, mais il doit accorder sur l'impôt dont il frappe les revenus de cette personne une déduction d'un montant égal à l'impôt versé, conformément aux dispositions desdits articles, dans l'autre Etat contractant. La somme ainsi déduite ne peut exéder la fraction de l'impôt (calculé avant la déduction) correspondant aux revenus tirés de l'autre Etat contractant.

CHAPITRE II

Impôts sur les successions

ARTICLE 27

1. Le présent chapitre est applicable aux impôts sur les successions perçus pour le compte de chacun des Etats contractants.

Sont considérés comme impôts sur les successions: les impôts perçus par suite de décès sous forme d'impôts sur la masse successorale, d'impôt sur les parts héréditaires, de droits de mutation sur les donations pour cause de mort.

2. Le présent chapitre a pour but d'éviter les doubles impositions qui pourraient résulter, au décès d'une personne résidente de l'un des deux Etats, de la perception simultanée d'impôts libanais et français sur les successions.

3. Les impôts qui font l'objet de la présente Convention sont:

a) En ce qui concerne la France:

L'impôt sur les successions prélevé sur les parts héréditaires;

b) En ce qui concerne le Liban:

L'impôt sur les successions prélevé sur les parts héréditaires.

4. La présente Convention est conclue en l'état des législations française et libanaise en vigueur à la date de sa signature. En conséquence, si des modifications substantielles viennent à leur être apportées, les autorités compétentes des deux Etats se consulteront en vue d'adapter la présente Convention à ces modifications.

5. Sous réserve des dispositions des articles 35 et 36, la présente Convention n'est pas applicable aux droits perçus sur les donations entre vifs.

ARTICLE 28

Les biens immobiliers (y compris les accessoires) ne sont soumis à l'impôt sur les successions que dans l'Etat contractant où ils sont situées; le cheptel mort ou vif servant à une exploitation agricole ou forestière n'est imposable que dans l'Etat contractant où l'exploitation est située.

ARTICLE 29

1. Les biens meubles corporels ou incorporels laissés par un défunt résident de l'un des deux Etats contractants au moment de son décès et investi dans une entreprise commerciale, industrielle ou artisanale de tout genre sont soumis à l'impôt sur les successions suivant la règle ci-après:

a) Si l'entreprise ne possède un établissement stable que dans l'un des deux Etats contractants, les biens ne sont soumis à l'impôt que dans cet Etat; il en est ainsi même lorsque l'entreprise étend son activité sur le territoire de l'autre Etat sans y avoir un établissement stable;

b) Si l'entreprise a un établissement stable dans chacun des deux Etats contractants, les biens sont soumis à l'impôt dans chaque Etat dans la mesure où ils sont affectés à un établissement stable situé sur le territoire de cet Etat.

2. Les dispositions du paragraphe 1 ne sont pas applicables aux investissements effectués par le défunt dans les sociétés à base de capitaux (sociétés anonymes, sociétés en commandite par actions, sociétés à responsabilité limitée, sociétés coopératives, sociétés civiles soumises au régime fiscal des sociétés des capitaux) ou sous forme de commandite dans les sociétés en commandite simple.

ARTICLE 30

Les biens meubles corporels ou incorporels rattachés à des installations permanentes et affectés à l'exercice d'une profession libérale dans l'un des deux Etats contractants ne sont soumis à l'impôt sur les successions que dans l'Etat où se trouvent ces installations.

ARTICLE 31

Les biens meubles corporels (y compris les meubles meublants), le linge et les objets ménagers ainsi que les objets et collections d'art autres que les meubles visés aux articles 29 et 30 sont soumis à l'impôt sur les successions au lieu où ils se trouvent effectivement à la date du décès.

Toutefois, les bateaux et les aéronefs sont imposables dans l'Etat où ils ont été immatriculés.

ARTICLE 32

Les biens incorporels de la succession auxquels les articles 29 et 30 ne sont pas applicables ne sont soumis aux impôts sur les successions que dans l'Etat dont le défunt était le résident au moment de son décès.

ARTICLE 33

1. Les dettes afférentes aux entreprises visées aux articles 29 et 30 sont imputables sur les biens affectés à ces entreprises. Si l'entreprise possède, selon le cas, un établissement stable ou une installation permanente dans chacun des deux Etats, les dettes sont imputables sur les biens affectés à l'établissement ou à l'installation dont elles dépendent. Si elles dépendent de plusieurs établissements ou installations permanentes, ces dettes s'imputent au prorata de la valeur de l'actif brut de ces établissements ou installations.

2. Les dettes garanties soit par des immeubles ou des droits immobiliers, soit par des bateaux ou aéronefs visés à l'article 31, soit par des biens effectés à l'exercise d'une profession libérale dans les conditions prévues à l'article 30, soit par des biens affectés à une entreprise de la nature visée à l'article 29 sont imputables sur ces biens. Si la même dette est garantie à la fois par des biens situés dans les deux Etats, l'imputation se fait sur les biens situés chacun des deux Etats proportionnellement à la valeur brute de ces biens.

Cette disposition n'est applicable aux dettes visées au paragraphe 1 que dans la mesure où ces dettes ne sont pas couvertes par l'imputation prévue à ce paragraphe.

3. Les dettes non visées aux paragraphes 1 et 2 sont imputées sur les biens auxquels sont applicables les dispositions de l'article 32.

4. Si l'imputation prévue aux trois paragraphes qui précèdent laisse subsister dans un Etat contractant un solde non couvert, ce solde est déduit des autres biens soumis à l'impôt des successions dans ce même Etat.

ARTICLE 34

Nonobstant les dispositions de la présente Convention, chaque Etat conserve le droit de calculer l'impôt sur les biens héréditaires qui sont réservés à son im-

position exclusive, d'après le taux moyen qui serait applicable s'il était tenu compte de l'ensemble des biens qui seraient imposables d'après sa législation interne.

ARTICLE 35

1. Les ressortissants de chacun des Etats contractants bénéficient sur le territoire de l'autre, en ce qui concerne les droits de succession et les droits de donation, des mêmes avantages pour situation et charges de famille que les nationaux de ce dernier Etat.

2. La présente Convention ne porte aucune atteinte aux exemptions fiscales accordées ou qui pourront être accordées à l'avenir, en vertu des règles générales du droit des gens, aux agents diplomatiques et consulaires. Dans la mesure où en raison desdites exemptions les droits de succession ne sont pas perçus dans l'Etat où les agents susvisés exercent leurs fonctions, il appartient à l'Etat qui les a nommés de percevoir ces droits.

ARTICLE 36

Les collectivités et les établissements publics, les établissements d'utilité publique ainsi que les sociétés, associations, institutions et fondations ayant leur siège sur le territoire de l'un des deux Etats contractants bénéficient sur le territoire de l'autre Etat, dans les conditions prévues par la législation de celui-ci, des exonérations, abattements, réductions et tous autres avantages accordées en matière de droits de donation et de droits de succession aux collectivités de même catégorie ou d'une catégorie similaire ayant leur siège sur le territoire de ce dernier Etat.

TITRE III

Assistance administrative.

ARTICLE 37

1. Les autorités fiscales des parties contractantes échangeront les renseignements que les législations fiscales des deux Etats permettent d'obtenir dans le cadre de la pratique administrative normale et qui seront utiles pour assurer l'établissement et le recouvrement réguliers des impôts visés par la présente Convention ainsi que l'application, en ce qui concerne ces impôts, des dispositions légales relatives à la répression de la fraude fiscale.

2. Les renseignements ainsi échangé qui conservent un caractère secret ne sont pas communiqués à des personnes autres que celles qui sont chargées de l'assiette et du recouvrement des impôts visés par la présente Convention. Aucun renseignement n'est échangé qui révélerait un secret commercial, industriel ou professionnel. L'assistance peut ne pas être donnée lorsque l'Etat requis estime qu'elle

est de nature à mettre en danger sa souveraineté ou sa sécurité ou à porter atteinte à ses intérêts généraux.

3. L'échange des renseignements a lieu soit d'office, soit sur demande visant des cas concrets. Les autorités compétentes des Etats contractants s'entendent pour déterminer la liste des informations qui sont fournier d'office.

ARTICLE 38

1. Les Etats contractants conviennent de se prêter mutuellement assistance et appui en vue de recouvrer, suivant les règles propres à leurs législation ou réglementation respectives, les impôts visés par la présente Convention ainsi que les majorations de droits, droits en sus, indemnités de retard, intérêts et frais afférents à ces impôts, lorsque ces sommes sont définitivement dues en application des lois ou règlements de l'Etat demandeur.

2. La demande formulée à cette fin doit être accompagnée des documents exigés par les lois ou règlements de l'Etat requérant pour établir que les sommes à recouvrer sont définitivement dues.

3. Au vu de ces documents, les significations et mesures de recouvrement et de perception ont lieu dans l'Etat requis conformément aux lois ou règlements applicables pour le recouvrement et la perception de ses propres impôts.

4. Les créances fiscales à recouvrer bénéficient des mêmes sûretés et privilèges que les créances fiscales de même nature dans l'Etat de recouvrement.

5. Les contestations touchant l'existence ou le montant de la créance ne peuvent être portées que devant la juridiction compétente de l'Etat requérant.

6. Les autorités compétentes des Etats contractants pourront, d'une commune entente, décider d'étendre les mesures d'assistance définies au présent article ainsi qu'à l'article 39 ci-après au recouvrement de tous impôts et taxes autres que ceux visés par la présente Convention.

ARTICLE 39

En ce qui concerne les créances fiscales qui sont encore susceptibles de recours, les autorités fiscales de l'Etat créancier, pour la sauvegarde de ses droits, peuvent demander aux autorités fiscales compétentes de l'autre Etat de prendre les mesures conservatoires que la législation ou la réglementation de celui-ci autorise.

TITRE IV

Dispositions diverses.

ARTICLE 40

1. Lorsqu'un résident d'un Etat contractant estime que les mesures prises par l'un ou l'autre ou par l'un et l'autre des deux Etats contractants entraînent ou en-

traîneront pour lui une imposition qui n'est pas conforme aux dispositions de la présente convention, il peut, indépendamment des recours prévus par les législations nationales, soumettre son cas à l'autorité compétente de l'Etat contractant dont il est résident.

2. Si la réclamation lui paraît fondée, ladite autorité compétente, lorsqu'elle n'est pas elle-même en mesure de parvenir à une solution satisfaisante, s'efforce de résoudre le cas par voie d'accord amiable avec l'autorité compétente de l'autre Etat contractant, en vue d'éviter l'imposition qui n'est pas conforme aux dispositions de la présente convention.

3. Les autorités compétentes des Etats contractants s'efforcent par voie d'accord amiable de résoudre les difficultés ou de lever les doutes auxquels peuvent donner lieu l'interprétation ou l'application de la présente convention. Elles peuvent aussi se concerter en vue d'éviter la double imposition dans les cas qui n'y ont pas été prévus.

4. Les autorités compétentes des Etats contractants communiquent directement entre elles en vue de parvenir à un accord comme il est indiqué aux paragraphes précédents. Si des échanges de vues oraux semblent devoir faciliter cet accord, ces échanges de vues peuvent avoir lieu au sein d'une commission mixte composée de représentants des autorités compétentes des Etats contractants.

ARTICLE 41

Les autorités compétentes des deux Etats contractants se concerteront pour déterminer d'une commune entente les modalités d'application de la présente convention.

ARTICLE 42

1. La présente convention sera ratifiée et les instruments de ratification seront échangés à Beyrouth dans le plus bref délai.

2. Elle entrera en vigueur un mois après l'échange des instruments de ratification et ses dispositions s'appliqueront pour la première fois:

1° En matière d'impôts sur les revenus:

a) Aux impôts perçus par voie de retenue à la source sur les revenus de capitaux mobiliers mis en paiement après l'expiration d'un délai, de trois mois suivant l'entrée en vigueur de la convention;

b) En ce qui concerne les autres impôts sur les revenus, pour l'imposition des revenus afférents à l'année civile au cours de laquelle interviendra l'échange des instruments de ratification ou aux exercices clos au cours de ladite année.

2° En matière d'impôt sur les successions, pour l'imposition des successions de personnes décédées depuis et y compris le jour où les instruments de ratification auront été échangés.

ARTICLE 43

La présente Convention restera en vigueur aussi longtemps quelle n'aura pas été dénoncée par l'un des Etats contractants.

Toutefois, à partir de la cinquième année suivant celle de la ratification, chaque Etat pourra, moyennant un préavis de six mois notifié par la voie diplomatique, la dénoncer soit en totalité, soit en partie, pour la fin de l'année civile en cours.

Dans ce cas, la convention s'appliquera pour la dernière fois:

1° En matière d'impôts sur les revenus:

a) Aux impôts perçus par voie de retenue à la source sur les revenus de capitaux mobiliers dont la mise en paiement interviendra avant l'expiration de l'année civile pour la fin de laquelle la dénonciation aura été notifiée;

b) En ce qui concerne les autres impôts sur les revenus, pour l'imposition des revenus afférents à l'année civile au cours de laquelle la dénonciation sera intervenue.

2° En matière d'impôts sur les successions, pour l'imposition des successions de personnes décédées au plus tard le 31 décembre de ladite année.

ARTICLE 44

Seront ratifiés en même temps que la présente Convention les accords que les gouvernements français et libanais ont successivement conclus le 25 juin 1959 et les 29 mars et 8 juin 1960 pour proroger jusqu'au 31 décembre 1960 les dispositions fiscales de l'article 21 de la convention monétaire et financière franco-libanaise du 24 janvier 1948. Ces dernières dispositions trouveront également à s'appliquer, postérieurement au 31 décembre 1960, jusqu'à la prise d'effet de la présente Convention, telle qu'elle est prévue à l'article 42 (§ 2, 1°, *a*) ci-dessus.

En foi de quoi les plénipotentiaires des deux Etats ont signé la présente Convention et y ont apposé leur sceau.

Fait à Paris, le 24 juillet 1962, en double exemplaire en langue française.

Pour le Président de la République libanaise:	Pour le Président de la République française:
VICTOR KHOURI	F. LEDUC

PROTOCOLE ADDITIONNEL

Au moment de procéder à la signature de la présente Convention, les plénipotentiaires soussignés ont fait les déclarations concordantes suivantes qui forment partie intégrante de la Convention:

I

Pour l'exécution des articles 15 et 16 de la Convention, il est précisé que, si la législation de l'Etat du débiteur des revenus permet d'imposer ces revenus à la source, l'application de la règle de perception prévue au paragraphe 1 de chacun desdits articles est subordonnée à la condition qu'il soit justifié à l'autorité fiscale de cet Etat, suivant des modalités arrêtées de concert entre les administrations compétentes des deux Etats, compte tenu le cas échéant de la législation et de la réglementation des changes, que le bénéficiaire est un résident de l'autre Etat contractant, qu'il acquitte l'impôt de cet autre Etat à raison desdits revenus ou qu'il s'y trouve sous le contrôle des autorités fiscales de ce dernier Etat.

Si, à défaut de la justification préalable ci-dessus prévue, l'Etat du débiteur des revenus applique son impôt au moment du paiement desdits revenus, le bénéficiaire de ce paiement n'est pas autorisé à mettre en oeuvre ultérieurement la procédure visée à l'alinéa qui précède, pour obtenir la restitution de l'impôt.

II

Les deux Etats contractants conviennent sur le plan de la réciprocité, à la faveur de la conclusion de la présente Convention et comme une contrepartie des concessions mutuelles qu'ils s'y sont faites pour régler équitablement leurs rapports en matière d'impôts sur le revenu et d'impôts sur les successions, de ne subordonner au paiement d'aucun droit ou d'aucune taxe spéciale la délivrance ou le renouvellement d'autorisations permettant respectivement aux ressortissants de chacun d'eux d'exercer une profession dépendante ou indépendante sur le territoire de l'autre Etat. Cette disposition recevra effet à compter de l'entrée en vigueur de la Convention.

III

Il est entendu qu'en ce qui concerne le sociétés françaises qui ont été libanisées, la présente Convention prend effet à compter du 1er janvier 1961.

F. LEDUC VICTOR KHOURI

Le Président de la République,

Sur le rapport du Premier ministre et du ministre des affaires étrangères,

Vu les articles 52 à 55 de la Constitution;

Vu la loi n° 68-813 du 6 août 1963 autorisant la ratification de la convention entre la France et le Liban du 24 juillet 1962;

Vu le décret n° 53-192 du 14 mars 1953 relatif à la ratification et à la publication des engagements internationaux souscrits par la France,

Décrète:

ARTICLE I

Le convention entre la France et le Liban tendant à éviter les doubles impositions et à établir des règles d'assistance administrative réciproque en matière d'impôts sur le revenu et d'impôts sur les successions, signée le 24 juillet 1962, dont les instruments de ratification ont été échangés le 28 novembre 1963, sera publiée au *Journal officiel* de la République française.

ARTICLE II

Le Premier ministre et le ministre des affaires étrangères sont chargés de l'application du présent décret.

Fait à Paris, le 2 janvier 1964.

C. DE GAULLE

Par le Président de la République:
Le Premier ministre,

GEORGE POMPIDOU

Le ministre des affaires étrangères,

MAURICE COUVE DE MURVILLE

Décret No. 64-5.

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I

THE STATE OF AFFAIRS AND THE DEVELOPMENT OF THE HARMONIZATION-PROCESS OF THE EEC WITH RESPECT TO INDIRECT TAXATION

by

J. J. JANSEN

Chief of the Department "Indirect Taxes" at the EEC

The harmonization of indirect taxes by virtue of Article 99 of the Treaty of Rome mainly concerns three categories of taxation, namely

1) Turnover tax
2) the other indirect taxes on products that are characterized as excise duties or special consumer's taxes, and
3) the indirect taxes on capital transactions.

In my report on the state of things and the development of the harmonization process with respect to the above mentioned points I would like to confine myself to the turnover tax and the excise duties.

Naturally the stress will be put on turnover tax because in this field the preparations for harmonizing have today made so much progress that soon important political decisions may be expected. These decisions will be so much the more important as they will inevitably give a strong incentive to the further development of tax harmonization in the Common Market. On the other hand the harmonization of turnover taxes will immediately have an important impact on the tax system as a whole and on the economic and social policy of the member countries.

In view of the excise duties I may for the moment point out that—as we will see later—there are probably certain connections with the turnover-tax harmonization, but that one cannot accord such an urgent character to the measures concerning the excise duties as to those which are necessary within the field of the general turnover tax.

At this moment the actual harmonization process of the special consumer's taxes is still in course of preparation. At the end of my lecture, however, I would like to inform you in short of the state of this work.

It is easier and more logical to explain the problems of the capital movement taxes in connection with the direct taxes. My colleague, Mr. Hutchings, has kindly taken over this matter and will touch upon these problems in his report.

As mentioned before, the problems of the turnover tax harmonization are gradually approaching the important moment of great decisions.

The "Directive for harmonizing the legal provisions of the member countries with respect to the turnover tax" which was proposed by the EEC Commission and submitted to the Council of Ministers on November 5, 1962, has ever since evoked many comments. At numerous important meetings the matter was discussed a great deal. Several official institutions and various groups of tax experts, economists, representatives of industry and commerce, etc. have taken this complex of difficult problems into consideration and have given their opinions.

It is not surprising that the innumerable views expressed are not in complete agreement and that sometimes opinions even vary on main points of the Directive. But one thing is certain: the question still cropping up now and then as to whether harmonization of the turnover tax will be necessary at all for the benefit of the Common Market seems to have been settled once and for all. All opinions which can be regarded as competent agree with the EEC Commission that the present situation—in which five differently developed cumulative multi-stage systems are opposed to the French tax-on-value-added system—is standing in the way of the establishment of a Common Market with healthy competitive relationships.

Although there is almost unanimity about the necessity of harmonizing turnover tax, the opinions concerning the scope of the measures proposed by the EEC Commission and of the harmonization process still differ considerably.

If we consider the views that have been revealed up to now toward the Directive then it immediately strikes us that two completely different concepts are opposing each other. On the one hand there are those who believe that the EEC Commission is proceeding too cautiously. They support the goals energetically, but advocate the acceleration of the process. On the other hand there are those who are of the opinion that the EEC Commission is too ambitious and is taking on more than seems realistic.

The standpoints of the European Parliament and of the Economic and Social Committee are especially of great importance for the coming discussions of the Directive in the Council of Ministers. By virtue of Article 100 of the Treaty of Rome these two Institutions have been consulted by the Council of Ministers. But undoubtedly the decisions of the German "Bundestag" and "Bundesrat" as well as the opinions of the industrial and commercial sectors—as for instance the Resolution adopted the other day by the Permanent Conference of the Chambers of Industry and Commerce of the EEC—are able to play significant parts.

In order to give you a survey of the different concepts it seemed the simplest to me to explain the three main elements of the Directive one after another, together with the corresponding most important views.

First of all I would like to start by reminding you of the fact that with its

proposed Directive the EEC Commission aims at two objects which in their opinion cannot be realized at the same time but have to be achieved one after another.

The first goal is to ensure sound competion in the field of turnover tax, which is to say the application of turnover tax systems which in principle cannot disturb free competition. This goal could be achieved within a first four-year phase.

The second goal of harmonization consists in the realization of a completely free traffic of goods between the member countries.

In the field of turnover tax this means the ensurance of an exchange in goods which is not impeded by compensatory measures on importation and exportation at the internal frontiers of the Community. The EEC Commission presumes that in order to attain this ideal situation a certain amount of time will be necessary. To this end two more stages have been provided for, viz., one stage up to the end of the transition period—this is till the end of 1969—in which a common tax-on-value-added system should be introduced and finally a last phase in which conditions should be established so as to bring about the abolition of the compensatory measures for imports and exports or in other words to remove the tax frontiers between the member-states.

So the harmonization proposed by the Commission includes—I repeat this once again—two objects which are to be achieved by a process of three stages.

If one keeps this plan in mind, it is, in order to get a better understanding of some deviating opinions, useful to point out that the introduction of a common tax-on-added-value system may be seen in the light of the second goal, viz. the removal of the tax frontiers. In other words, in order to establish neutral competitive relations the adoption of a common turnover tax system is not absolutely necessary according to this opinion; or expressed differently again; one common turnover tax structure is only one of the conditions for the abolishment of the tax frontiers. Later on I will refer to this "thesis", which plays such a significant part in the Directive's judgement.

Article 1 of the Directive contains two salient elements.

Firstly: the cumulative multi-stage systems which distort sound competitions are to be replaced by neutral non-cumulative systems within four years. In this connection, the application of average rates for compensatory measures on imports and exports will be prohibited after the end of this period. It may be stated that this proposal has not encountered any resistance in the official institutions which have been consulted by the Council and in the other leading circles of the EEC but on the contrary, has been widely supported.

The *second* important element of article 1 is that until the end of the second stage every member state may choose the non-cumulative system which suits its country

best: whether it is a one-stage tax on the production level, the wholesale or retail level or whether it is a value-added tax up to one of the mentioned levels. However, we can immediately determine that in reality it is only a question of making a choice between a one-stage wholesale tax or a tax on-added-value up to and including the wholesale or retail level.

This proposal to provide an intermediate phase before the transition to a common system whereby the choice between the two mentioned systems is supposed to be left to the member countries, is rejected by many parties.

The European Parliament, the Economic and Social Committee, the German "Bundestag" and "Bundesrat", the Permanent Conference of the Chambers of Industry and Commerce, all of them favour an immediate transition to the common system.

As a result of this unanimous expression of thought the point is raised as to why the European Commission believed it necessary to suggest a process of two stages here. Mr. Von der Groeben, member of the EEC Commission explained this point as follows—I quote from the Protocol:

"When we suggested an operation in two stages, it was not done because the Commission considered it desirable, but only because of the knowledge that it would be difficult for some Governments to carry out this operation in one stage. You know that several stages had to be completed while introducing the present French turnover tax system, which, by the way, did not at all lead to revolutionary changes. The case is an organic development. As a matter of fact the Commission has no objections in the least to the fact that the Governments might come to an agreement on one single stage. Thus we can assure this honourable House that we are absolutely prepared to accept one stage. Perhaps a misunderstanding has also cropped up on the following point: We did not propose an obligatory application of this two-stages-principle, but merely provided the possibility of such a process for the Governments."

In this connection I would like to draw attention to a statement made by the Belgian Minister of Finance. As you may know the Belgian Government is already making preparations for a change in the system which might, so to say, be considered as a forerunner to Article 1 of the Directive: sector by sector—starting with the metal industry—the levy of the actual cumulative multi-stage tax is to be replaced by overall fixed one-stage-taxes at the wholesale level. To the objection voiced in the Finance Committee by the Parliament that this change of system might perhaps cause difficulties in the future transition to the European tax-on-added-value system, Min. of Finance Dequae answered as follows: for the time being the Belgian Government has not yet taken its decision about a probable adaptation of a tax-on-added-value system, but, (however that may be) it is a fact

that if a transition from the proposed one-stage-system to a value-added tax were to be taken into consideration, such a transition would cause no difficulties at all.

One of the reasons of the European Commission for not having proposed the immediate transition to the common tax-on-added-value system was the fear that such a change of system could perhaps not be executed within a short time. The result would therefore be that we would have to deal with the disadvantageous cascade-taxes of the Common Market for more than four years. The opinion of the Economic and Social Committee indicates that indeed this danger does exist. In these opinions it is proposed to switch over to the common system in one single stage, but not to introduce it until the end of the transition period, thus prohibiting the application of average rates for imports and exports only then. The European Parliament however, would like to introduce the common tax-on-added-value system by December 31, 1967 at the latest.

How is this common system supposed to look? As is well known, Article 3 of the Directive proposes a tax-on-added-value extending to the wholesale level. However, the member countries are free to apply the common tax-on-added-value up to and including the retail.

Before we start discussing the opinions on the tax-on-added-value system chosen by the Commission, we have to discuss the previously mentioned problem whether it is necessary to change over to a common turnover tax system at all.

This problem has led to great difficulties in the Economic and Social Committee. According to the views expressed by this Committee, it is clear that the majority is of the opinion that the tax frontiers cannot be removed within the near future. And so Article 4 of the Directive should be changed accordingly.

As we have already pointed out—when the tax frontiers are maintained—the introduction of a common turnover tax system might not be absolutely necessary. This conception is especially held by some representatives of Dutch and Belgian industry. They are furthermore of the opinion that a non-cumulative one-stage-tax levied at the wholesale level is preferable to an added-value tax. One of the Dutch arguments for this point of view is that the wholesale tax, by means of an extensive list of exemptions, allows much more easily than an added-value-tax for the maintenance of the present role of the turnover tax as a social-political instrument.

It would not be surprising if this conception should have influenced the standpoint taken by the Economic and Social Committee. At any rate, this standpoint obviously bears the character of a very peculiar compromise. For here it says that it is advisable to replace the turnover taxes in the various member countries by a common system in the nature of an added-value-tax *with or without fractionated payments*.

Well now, this method of fractionated payments is exactly the essential element by which the added-value tax distinguishes itself from a one-stage non-cumulative tax. So it is clear that in this manner the Committee has left the question whether the common system ought to be a real added-value-tax or a single stage tax completely open.

At any rate the European Parliament and the German "Bundestag" and "Bundesrat" are in favour of the introduction of a common added-value tax system. The Permanent Conference of the Chambers of Industry and Commerce are of the same opinion, with this remark, however, that the Dutch delegation prefers the one-stage tax.

With respect to the structure and the modes of application of the common added-value tax the situation is as follows:

According to Article 3 of the Directive the Council of Ministers ought to decide, upon later proposals of the EEC Commission, on the structure and the modes of application of the common added-value tax before the end of the first phase—so within four years.

It has been pointed out from many sides that these proposals will come too late for those countries that want to introduce the common added-value tax immediately in order to avoid a twofold change of system. But apart from this it is highly desirable that these governments have an idea of how this system will roughly look before they decide upon the common system.

In order to meet these wishes the Permanent Committee of the leading officials of the national Tax Administrations under the chairmanship of Mr. Von der Groeben instructed a study group in its meeting of July 16, 1963 to examine thoroughly a number of problems which are connected with the introduction of an added-value-tax. The knowledge of these problems and the possibilities of solving them could facilitate the discussion about the turnover tax directive to be held shortly in the Council of Ministers.

In the meantime this study group submitted its report to the Permanent Committee. In its session of November 22, this Committee made a thorough examination of this report and approved of it with a few reservations on some items.

The following main problems were examined in this study:

—concept and character of the added-value tax
—field of application of the tax
—methods of deduction
—possibilities of application of tax exemptions and differentiated tax rates
—taxation of services
—tax treatment of agriculture and
—arrangements for application of the tax on small enterprises.

For most of these questions, agreement has been reached in the Permanent Committee concerning the solutions to be used. But the decision on some other delicate problems having a clear political character, had to be left to the Ministers of Finance. They will discuss these problems during the next Conference to be held in Rome at the beginning of 1964.

The investigations on various other less important modes of application of a common system will in the meantime be carried on by the above mentioned group of tax experts so that the EEC Commission can submit its proposals for a complete and detailed system to the Council of Ministers in due time. The European Parliament would like to change the date given in Article 3 to the earlier date of December 31, 1964.

Moreover the Parliament suggests the introduction of the common added-value tax system on December 31, 1967 at the latest, instead of at the end of the transition period. In its decision on the Directive, the German "Bundestag" also requested the publication of the main lines and the field of application of the common system before July 30, 1964.

I am now getting at the very difficult problems that are connected with the realization of the second main object—the abolishment of the turnover tax frontiers.

The realization of this final object of the harmonization of turnover tax raises numerous difficult problems. Elaborate investigations and negotiations with the governments are necessary before a solution can be found for all of them.

If the EEC Commission wanted to postpone its proposals for harmonization until agreement is reached on an all round satisfactory arrangement for the abolition of the tax frontiers, then the start of the harmonization process would have taken place much later. According to the Commission, however, the introduction of systems which are neutral with regard to competition is such an urgent requirement for the further development of the Common Market that the Commission considered it absolutely justifiable to ask the governments to agree upon the suggested phase plan and to abolish the cumulative taxes at short notice before a decision has been made about the ways and means for realizing the ultimate goal, viz. the abolishment of compensatory measures on importation and on exportation in so far as trade among member states is concerned.

Article 4 of the Directive ought to be regarded in this light.

In this Article the Commission has been charged with submitting a new directive to the Council of Ministers before the end of the transition period; a directive which should fix in what manner and within what period of time the harmonization ought to achieve the above mentioned final object—the abolition of the fiscal frontiers.

The European Parliament has approved of this process in principle but would

like to charge the Commission to submit these proposals to the Council of Ministers before the end of 1967 so that the Council can make its decision before the end of the transition period.

Furthermore the Parliament urges the Commission while considering these proposals to not only examine the relationship between the direct and indirect taxes in the member countries and the consequences of a change of the tax systems on the tax and budget policy of the member-countries but to also pay attention to the influences of the tax systems in their entirety on the competitive relations and the social conditions in the Community.

With this formula Parliament has given an almost complete summary of the intricate problems which have to be solved before the abolition of tax frontiers.

Practically all these problems can be reduced to the necessity of having to equalize the turnover tax rates and exemptions in the six countries or at least to approach equalization.

The great difficulties of political, economic and social character standing in the way of the abolition of the tax frontiers have caused doubt in the Economic and Social Committee as to whether a realization of this object will be possible.

The Committee's standpoint is the following:

"The taxation obstacles to inter-community goods traffic can only be removed to the same extent that other relevant obstacles that have no tax character are removed, and when the member countries make certain political decisions. So a certain amount of reticence is recommended as to this object as long as the various opinions on the political and economic unification of Europe are not yet known." According to the opinion of the Economic and Social Committee Article 4 of the Directive ought to deal in the first instance with the removal of the physical control of goods at the borders without prejudging the abolition of taxation on imports and exemption and refund on exports.

Fortunately, the European Parliament has countered these negative tendencies. At the suggestion of the German delegate, Mr. Dichgans, the Parliament in its meeting of October 17, 1963 inserted the following in the Preamble of its decision on the directive: "The European Parliament is convinced that in connection with the abolition of the customs barriers all tax control at the internal frontiers of the Community should be removed as well".

The Permanent Conference of the Chambers of Industry and Commerce were also clear on the point that the tax frontiers should disappear at the same time as the customs barriers.

With regard to these opposed opinions the point is raised whether the proposal made by the EEC Commission does not really form the golden mean, namely: a determined decision on the final object in expectation of further proposals about

the ways and means which may lead to the achievement of this goal as soon as possible.

However that may be, it is now up to the governments to decide on the directive in the Council of Ministers to be held shortly.

Various problems connected with the abolition of the tax frontiers are at the time being examined in the Permanent Committee of the leading officials of the national Tax Administrations under the chairmanship of Mr. Von der Groeben, in order to prepare the standpoints of the Ministers of Finance.

Finally I would like to tell you something more about the process of harmonization in the field of the special excise duties. I think I can be brief. This does not mean, however, that these problems are less difficult and therefore easier to solve than those of the turnover tax harmonization. On the contrary: the numerous special consumer's levies which are levied in the six member-countries at the time show far greater divergences than the turnover taxes. Partly this is connected with the greatly varying consumption patterns and standards the harmonization of which is for the time being neither desirable or possible. The EEC Commission would for instance be making an excessive demand if it were to strive for a consumer's change from beer to mineral water in Bavaria. Furthermore the budget significance of the smaller and larger excise duties in the six member-countries varies considerably: from about 13 % of the total tax revenue in the Netherlands to about 31 % in Italy.

If one compares the reasons why these levies should be harmonized with the demands in the field of turnover taxes it can be stated that the argument of competition plays a minor part in the field of the special excise duties.

However, there are some cases where the compensatory measures at the frontiers do not quite come into accord with Articles 95 and 96 of the Treaty of Rome, but these problems of a pure technical character do not appear to be insurmountable. Negotiations with the representatives of the Governments are taking place on these problems in an ad-hoc group, which in the meantime has made satisfactory progress.

Here again the main problem is to finally abolish the compensatory measures in the goods traffic between the countries.

If an economic union showing the real character of a domestic market with free goods traffic is to be established, then it is clear that one cannot be content with the removal of the turnover tax frontiers.

The European Parliament has, therefore, emphasized the connection existing here and has drawn the following logical conclusion: "The special excise duties present a particular form of the turnover tax and the same holds true for all that has been said on the turnover tax. The treaty makes no distinction between the treatment of the turnover tax and the special excise duties. A genuine removal of

tax frontiers is only possible when the regulations pertaining to the special excise duties in the member-countries are also harmonized. Because of this the harmonization of the special excise duties should proceed according to the same schedule as the harmonization of the turnover taxes".

In order to achieve this object, it is thought that one could proceed along the following lines.

Excise duties which yield little revenue and which are levied only in some member countries could be abolished. The integration into the added value system should be considered for a second category of excise duties which exists in several member-states at a fairly low rate.

Only the remaining taxes which yield important revenue and which are common to several member-countries, ought to be harmonized, so that the compensatory measures at the frontiers can be removed. The following special excise duties will probably come under this category: the taxes on

—spirits and wines
—beer
—sugar
—tobacco and
—mineral oils

The harmonization of these levies could proceed in two stages:

In the course of the first stage the *structures* of these taxes could be harmonized and during a second phase the rates should be harmonized.

The Commission plans to submit such a program to the Conference of the Ministers of Finance, to be held at the beginning of 1964, so that, now that the harmonization of the turnover tax has reached an advanced phase, the authorities of the Commission can tackle the problem of the harmonization of the consumer's tax in a useful manner.

This lecture was held before the German I.F.A.-Group in Cologne on December 4, 1963 in German and it has been translated by the editors of the Bulletin; the translation has been approved of by Mr. J. J. Jansen.

AUSTRIA

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Initial commentary is given on the general commercial law, but emphasis is put on personal income tax, corporate income tax, property tax, business tax, land tax, turnover tax and capital transfer taxes. Commentary is also given on the Austrian-German tax treaty.

This book is one in a series wherein the following countries have also been surveyed: Germany, Switzerland, Canada, the United States, South-Africa, Brazil, Venezuela, Argentina, Belgium, Italy, Luxemburg, Australia, the Netherlands, France, Liechtenstein, Great Britain, Sweden and Greece (see infra).

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This book is the third supplement to a major volume which appeared in 1962 and updates it up to November 30, 1963. The primary volume gives the rates of the turnover tax on goods imported to countries in the Common Market. A feature which makes this book particularly useful is that the goods have been classified according to the Brussels nomenclature so that if the tariff number is known the corresponding rate of turnover tax on the goods concerned may be found immediately.

FRANCE

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Ce Guide permet, avec des exemples numériques à l'appui, de connaître dans chaque

cas le régime fiscal réglementaire et, lorsqu'une option est permise, il indique la solution la plus économique. Il s'adresse à tous ceux qui construisent ou font construire et est complété par un tableau résumant les principales taxations et par la liste des textes officiels, circulaires et instructions parus depuis l'entrée en vigueur de la réforme fiscale, avec la référence au numéro du Moniteur ayant publié ces documents.

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Cette refonte a été effectuée en collaboration avec M. Prosper Weil.

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Les sociétés d'investissement à capital variable; régime juridique et fiscal, No. 148 des publications de l'Association Nationale des Sociétés par Actions (A.N.S.A.), Paris, A.N.S.A., 1964, pp. 112.

Cette brochure traite les régimes juridique et fiscal des sociétés d'investissement à capital variable, constituées dans le cadre de l'ordonnance du 2 novembre 1945, et contient le texte intégral des disposition y relatives.

The present booklet deals with the provisions of civil and tax law, applicable to the French "open end" investment companies, under the rulings initiated by the Ordinance of November 2, 1945.

GERMANY

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Bewertungsgesetz und Vermögensteuergesetz, RÖSSLER, Dr. R. und Dr. MAX TROLL, unter Mitwirkung von J. Langner, Berlin, Verlag Franz Vahlen GmbH, 1964, pp. 1310.

This valuable book, in its seventh edition, deals with the German net worth tax, including the very complex valuation provisions, which relate to it.

Germany has a separate administrative arm which attributes to all immovable and business property a value used in the computation of the base for the net worth tax, the estate tax, the business tax and other taxes. The book includes material on the relevant law and administrative practice, and provides ready answers to many common problems.

Einkommensteuergesetz, Band 1, BLÜMICH, Dr. W. und Dr. LUDWIG FALK, unter Mitwirkung von W. Steinbring, Berlin, Verlag Frans Vahlen GmbH, 1964, pp. 1188, DM 78,—.

Today's German personal income tax act contains 53 sections. The first 12 of these sections, constituting the basis of the German personal income tax system, are explained in the first volume of this authorative handbook. This publication, in its ninth edition, is invaluable because of its clarity and the ease with which solutions to problems can be found. The ninth edition of the second volume, discussing sections 13 to 53, will be published shortly.

Die Grenzen der Bilanzbündeltheorie, Schriftenreihe des Instituts für Steuerrecht der Universität zu Köln, Band 38, KRANEIS, Dr. KARL-KRISTIAN, Düsseldorf, Verlagsbuchhandlung des Instituts der Wirtschaftsprüfer GmbH, 1963, pp. 104, DM 16,50.

Difficult problems arise in distinguishing the account of a partnership, which is a commercial entity but not a tax entity, from the accounts of the several partners, which are computed by adding to their partnership income other income. The author is primarily concerned with solutions through taxation.

Die GmbH & Co im Steuerrecht, Schriftenreihe des Instituts für Steuerrecht der Universität zu Köln, Band 39, FETSCH, Dr. HUGO, Düsseldorf, Verlagsbuchhandlung des Instituts der Wirtschaftsprüfer GmbH., 1964, pp. 147, DM 28,—.

Questions about income, turnover and capital transfer taxes in connection with the form of enterprise known as GmbH & Co, KG. are clarified in this book. Many tax problems arise from this form of enterprise in which a GmbH is the active manager and fully liable partner of the partnership and in which the individual shareholders of the GmbH are also the silent partners.

Die Fehlerberichtigung nach § 222 Abs. I Ziff. 3 und 4 AO, Schriftenreihe des Instituts für Steuerrecht der Universität zu Köln, Band 40, MITTENZWEI, Dr. WOLFGANG, Düsseldorf, Verlagsbuchhandlung des Instituts der Wirtschaftsprüfer GmbH, 1964, pp. 128, DM 22,—.

This book deals with the fact that mistakes are made in computing the assessments or applicable rates which must be paid pursuant to section 222 of the German General Tax Law, which permits a change in the assessment of taxes where the period of prescription is more than one year.

Strukturwandlungen des Verbrauchsteuerrrechts, Schriftenreihe des Instituts für Steuerrecht der Universität zu Köln, Band 41, SENCKPIEHL, J., Düsseldorf, Verlagsbuchhandlung des Instituts der Wirtschaftsprüfer GmbH, 1964, pp. 130, DM 30,—.

This book, written by a tax expert in the German Ministry of Finance contains a theoretical study and a practical survey of consumer taxes. The book discusses the necessity for the taxes, the present development of these taxes and its effect on the future harmonization of consumer taxes in the common market.

Zur steuerlichen Behandlung zwischen staatlicher Kapitalinvestitionen unter besonderer Berücksichtigung des Aussensteuerrechts der Bundesrepublik Deutschland, Schriftenreihe des Instituts für Steuerrecht der Universität zu Köln, Band 42, VOGEL, Dr. HORST, Düssel-

dorf, Verlagsbuchhandlung des Instituts der Wirtschaftsprüfer GmbH, 1964, pp. 116, DM 20,—.

This book was written by Dr. Vogel, an expert on international tax law affairs for the German Ministry of Finance. This book gives Dr. Vogel's commentary on the taxation of capital investment between countries. Emphasis is placed upon the German Laws, the Swiss measures against the abuse of tax treaties, the United States Internal Revenue Act of 1962, the Netherlands holding company provisions and the various Canadian incentives.

Aside from the practical problems this book presents, Dr. Vogel gives a clear theoretical study of the problems of double taxation.

Grunderwerbsteuer, Finanz und Steuern, Band 23, HOHRMANN, Dr. H. und. Dr. W. LIEROW, Stuttgart, Fachverlag für Wirtschafts- und Steuerrecht Schäffer & Co. GmbH, 1963, pp. 195, DM 12.—.

This is the second and revised edition of a study which treats the tax aspects of the acquisition of real property and other immovables. Such acquisitions are, in Germany, subject to a special turnover tax. The problems connected with the imposition of this tax and the distinction between it and both other kinds of turnover taxes and registration duties are discussed in some detail.

Das Aktienrecht der Niederlande, Ausländische Aktiengesetze, Band 8, JAHR, Dr. G. und Dr. H.F.A. VÖLLMAR, Berlin, Alfred Metzner Verlag, 1962, pp. 97.

This book contains a survey, in German, of the principal forms of Dutch enterprise with the text of the most important applicable provisions of the Dutch Commercial Law.

Amtliche Kurswerte und Rücknahmepreise zur Vermögensteuer-Hauptveranlagung 1963, Düsseldorf, Verlagsbuchhandlung des Instituts der Wirtschaftsprüfer GmbH, 1963, pp. 180.

This booklet, authorized by the German Ministry of Finance for the purpose of computing the net worth tax for 1963, contains the assessed value of securities available in Germany.

Die steuerrechtliche Problematik der Betriebsaufspaltung, BOSCHERT, Dr. D., Düsseldorf, Verlagsbuchhandlung des Instituts der Wirtschaftsprüfer, GmbH, 1963, pp. 144.

This book contains a study of the tax problems involved in the division of an enterprise into two or more parts, each with a separate legal identity.

Der lästige Gesellschafter in der Wirtschaftspraxis, HARTMANN, Dr. Dr. B., Köln, Verlag Dr. Otto Schmidt KG, 1963, pp. 216.

This is the second and revised edition of a book which considers the tax problems raised by the elimination from a partnership of one of the partners and the payment to him of an amount equal to the value of his share. Whether this situation requires dissolution of the partnership and whether capital gain is realized are just two of the questions discussed in this excellent work.

Die Rechtsbesorgungsbefugnis der Wirtschaftsprüfer, HESSDÖRFER, Dr. L., Düsseldorf, Verlagsbuchhandlung des Instituts der Wirtschaftsprüfer GmbH, 1963, pp. 183.

This book deals with the limits of the representative power of a certified auditor and, especially, with whether a certified auditor is permitted to represent an enterprise, which he advises on financial matters, in court proceedings and in agreements with administrative authorities.

Grundsätze ordnungsmässiger aktienrechtlicher Jahresabschlussprüfung, SCHULZE ZUR WIESCH, D.W., Düsseldorf, Verlagsbuchhandlung des Instituts der Wirtschaftsprüfer, GmbH, 1963, pp. 209.

This is a study of the principles for auditing the annual statements of accounts, in accordance with the dictates of commercial law.

GREECE

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Griechenland, Internationale Steuern, Heft 18, NEZIS, G.A., Mondorf/Rhein, Titz Verlag GmbH, 1963, pp. 75.

The author surveys in a very lucid way the main provisions of the Greek direct and indirect taxes. The book covers, inter alia, the general and special income taxes, real estate taxes, succession and gift duties and the various types of turnover and excise taxes. In an introduction an outline of the main features of Greec civil and public law is added, covering e.g. the various forms of business undertakings, the law regarding residence and domicile, and succession law.

ITALY

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Le Società Civili e Commerciali nei paesi minori d'Europa, BENINI, NANDO, Padova, CEDAM (Casa Editirice Dott. Antonio Milani), 1964, pp. 452, L. 6,000.

The author gives a survey of the legal forms of business organizations, e.g. partnerships, cooperative societies, companies etc. in some lesser-known countries, i.e. Andorra, Vatican-City, Guernsey, Jersey, Liechtenstein, Luxemburg, San Marino and Monaco.

L'imposta sugli incrementi di valore delle aree fabbricabili e il contributo di diglioria specifica, CORRADO, TOMASCO, Milano, Dott. A. Giuffrè, 1963, pp. 206, L. 1,500.

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Legislatione Italiana sui brevetti per invenzioni, modelli e marchi, Roma, Confederazione generale dell' Industria Italiana, 1964, pp. 92.

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LUXEMBOURG

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Etudes fiscales, SINNER, JOSEPH, Luxembourg, Armand Pfeiffer, 1963, p. 134.

This is a loose leaf volume pertaining to various subjects of the Luxembourg tax law. The book is edited with the aid of major tax officials, so that it may be assumed that it reflects official views. Significant subjects treated up to this moment are: a discussion of the procedure in tax law; a summary of the tax conventions concluded by Luxembourg; and a description of the evolution of tax law in Luxembourg.

NETHERLANDS

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Tarieven en tariefsvergelijking, TEMPEL, Prof. Dr. A.J. VAN DEN, Amsterdam, Uitgeverij FED, 1964, pp. 67.

This book contains a lecture delivered by Mr. van den Tempel, a professor at the University of Amsterdam. The author compares the rate structure of the Dutch income tax with the succession duty. Also, comparisons of these taxes are made with similar taxes in other countries. The general conclusion is that Dutch income tax rapidly reaches a relatively high top bracket, whereas the brackets for the succession duty are comparatively low for large acquisitions but high for small acquisitions.

Fiscale Waardebegrippen, DIJCK, Prof. J.E.A.M. VAN, Deventer, N.V. Uitgeversmaatschappij Æ. E. Kluwer, 1963, pp. 56, Dfl. 3,50.

Speech delivered on the occasion of the speaker's appointment as professor at the University of Tilburg. It deals with the tax concept of "value". His conclusion is that the borrowing of definitions from other sciences may be dangerous and often that too little differentiation is made.

Grensgevallen, BOUMA, J.M., Amsterdam, N.V. Uitgeverij FED, 1964, pp. 157, Dfl. 8,90.

This is a practical booklet dealing with the most significant tax aspects and formalities concerning import and export of goods. Some subjects which have been dealt with are: organization of the Dutch customs; bonded warehouses; legal sanctions; collection of the various taxes (import duties, excizes and turnover taxes); special provisions for the Benelux, Common Market, Coal and Steel Community and Euratom; value to be declared at importation; exemptions; refund of tax; and procedure.

PHILIPPINES

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SOUTHERN RHODESIA

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SWEDEN

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This official report on the subject of tax evasion, prepared by a committee of experts contains a thorough study of possible measures against tax evasion and the report proposes amending the legislation to counteract certain sham transactions or similar devices in the field of income and net worth taxation, and gift and death duties.

SWITZERLAND

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Dieses Buch gibt einen Leitfaden über den heutigen Stand der Bundesgerichtlichen Rechtsprechung auf dem Gebiete der interkantonalen Doppelbesteuerung. Der Autor hat die bisher erschienenen Auflagen der neuesten Bundesgerichtspraxis angepasst und gleichzeitig das Werk vollständig neu bearbeitet.

Third edition of a publication, containing a survey of the prevention of intercantonal double taxation, as has been developed by case law of the federal courts.

Steuer-Lexikon, Nr. 162 in der Schriftenreihe für Rechnungswesen und Steuerfragen, GYGAX, Dr. EDUARD, Zürich, Verlag Organisator AG, 1963, pp. 383.

Dieses Nachschlagewerk für eidgenössische und kantonale Steuern enthält in Teil I ein Steuer-Lexikon, welche nach Stichwörtern alphabetisch geordnete Erläuterungen über die Veranlagungspraxis in Bund und Kantonen, Steuerjustizentscheide, Fachausdrücke, Steuerbuchhaltung, Steuerbilanz, Abzüge, Rechtsmittel, Normen für Abschreibungen, Warenlagerbewertung usw. gibt. In Teil II bis IV wird eine Uebersicht gegeben über die Bundessteuern, die Kantons- und Gemeindesteuern und das interkantonale Doppelbesteuerungsverbot.

This publication is a reference book for federal and cantonal taxes. Part I contains a list of word-headings in alphabetical order; Part II gives a survey on federal taxation; Part III gives a survey of cantonal and municipal taxation and Part IV discusses the measures to avoid intercantonal double taxation.

Kommentar zum Zürcher Steuergesetz, Band II, REIMANN, AUGUST, FERDINAND ZUPPINGER und ERWIN SCHÄRRER, Bern, Verlag Stämpfli & Cie, 1963, pp. 461, Fr. 67.

Der hier vorliegende zweite Band des auf vier Bände geplanten Werkes ist abgeschlossen auf den 1. Januar 1963. Kommentiert werden die Vorschriften über die Einkommensteuer der natürlichen Personen. Dieser Teil enthält einen Kommentar zu den Grundregeln der steuerlich richtigen Bilanzierung.

The second volume of a commentary on the tax legislation in the Canton of Zürich which discusses the personal income tax.

Die Besteuerung des gewerblichen Gewinnes nach deutschem und schweizerischem Recht. (Darstellung und Kritik der herrschenden Steuern und Meinung darüber). MEIER, Dr. HELMUT, Zürich, Juris-Verlag, 1960, pp. 139.

Diese Dissertation gibt eine vergleichende Untersuchung der Besteuerung des gewerblichen Gewinnes in Deutschland un der Schweiz; insbesondere eine vergleichende Beurteilung der Warenumsatzsteuer, der Ertragssteuern, der Vermögenssteuer und der Besteuerung der Holdinggesellschaft in diese beide Ländern.

Discussion on the taxation of business profits in Germany and Switzerland.

Wohnsitz und Staatsangehörigkeit als Anknüpfungsbegriffe im Internationalen Privatrecht. Wandel in ihrem gegenseitigen Verhältnis. LAUBE, JACQUES, Zürich, Juris-Verlag, 1961, pp. 164.

Diese Dissertation umfasst eine Uebersicht über die historische Entwicklung im internationalen Privatrecht der Verknüpfung von Person und Recht; eine Uebersicht über die positivrechtliche Regelung in europäischen und nicht—europäischen Ländern und eine kritische Betrachtung der verschiedenen Theorien und Prinzipien, wobei das Wohnsitzprinzip als Anknüpfungsbegriff im internationalen Privatrecht, gegen das Staatsangehörigkeitsprinzip abgewogen wird.

Discussion of the importance of domicile and nationality in international private law.

UNITED STATES OF AMERICA

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This Volume contains unabridged Federal and State Court Decisions arising under the Federal Tax Laws and previously reported in Prentice-Hall Federal Taxes. This volume, as did volume 11 sent in Sept. 1963 for the first half of 1963, replaces all loose-leaf current decisions of the 1963 P.H. Volume. In September 1964 the first bound volume (13) of the current court decisions of the first half of 1964 may be expected as a part of the 1964 subscription to P.H. Federal Taxes.

United States Tax Aspects of Foreign Subsidiary Operations (*pp.* 52); *Planning Subsidiary Operations in Argentina, Brazil, Canada, Chile and the Netherlands Antilles* (pp. 37); *Planning Subsidiary Operations in Iran, Israel, Japan, New Zealand, and Philippines* (pp. 50). JOSEPH, FRANZ M. and RICHARD U. KOPPEL, Englewood Cliffs, New Jersey, Prentice Hall, 1963, pp. 52+37+50.

These studies and surveys are reprinted from P.H.'s Tax Ideas. The authors discuss the following major topics in the brochure dealing with the foreign subsidiary operations:

1) the general rules for the taxation of foreign corporations and their shareholders
2) the Controlled Foreign Corporation—the concept-subpart F income — increase in earnings invested in US property—US shareholders
3) the special treatment of gains from certain sales or exchanges
4) other tax problems in connection with foreign subsidiaries
5) the method avoiding certain tax problems
6) other factors to be considered in setting up foreign subsidiary operations.

In the brochures of the various countries, the authors arrange the material as follows: 1) types of business organizations; 2) taxation; 3) customs and import-export duties; 4) currency restrictions and controls; 5) special incentives and special requirements.

Estates of Aliens, JOSEPH, FRANZ M. and RICHARD U. KOPPEL, Albany 1, N.Y., Matthew Bender & Co., Inc., 1963, pp. 35.

This brochure is reprinted from Lassers Estate Tax Techniques.

The authors deal primarily with tax problems of non-resident alien estates. Since estates of resident aliens receive basically the same tax treatment as estates of U.S. citizens, they are discussed only briefly.

Taxation of Foreign Investment Income; an economic analysis, BREWER RICHMAN, PEGGY, Baltimore 18, Maryland, John Hopkins Press, 1963, pp. 140, $ 5.50.

This study is concerned almost exclusively with the taxation of foreign source income, and in particular how it relates to the corporate tax in the USA. A broad analysis is made of the economic effects of certain tax policies as they relate to foreign source business income.

In part I the author provides a theoretical discussion of the economic criteria applied to the principles of taxing foreign investment income.

Part II deals with the historic development of the principles of taxation involved, with particular reference to U.S. policy.

Models are developed in Part III, to test the various international tax relationships with a view to the criteria discussed in this book and to the formation of capital in under-developed countries. The last part evaluates current U.S. private investment abroad and draws conclusions for policies to tax the income from this investment.

DOCUMENTS

The following is the US Treasury Regulations on Controlled Foreign Corporations

Reg. § 1.955-1 *Shareholder's pro rata share of amount of previously excluded subpart F income withdrawn from investment in less developed countries.*

(a) In general. Section 955 provides rules for determining the amount of a controlled foreign corporation's previously excluded subpart F income which is withdrawn for any taxable year from investment in less developed countries. Pursuant to section 951 (a) (1) (A) (ii) and the regulations thereunder, a United States shareholder of such controlled foreign corporation must include in his gross income his pro rata share of such amount as determined in accordance with paragraph (c) of this section.

(b) Amount withdrawn by controlled foreign corporation—(1) In general. For purposes of sections 951 through 964, the amount of a controlled foreign corporation's previously excluded subpart F income which is withdrawn for any taxable year from investment in less developed countries is an amount equal to the decrease for such year in such corporation's qualified investments in less developed countries. Such decrease is, except as provided in § 1.955-3—

(i) An amount equal to the excess of the amount of its qualified investments in less developed countries at the close of the preceding taxable year over the amount of its qualified investments in less developed countries at the close of the taxable year, minus.

(ii) The amount (if any) by which recognized losses on sales or exchanges by such

corporation during the taxable year of qualified investments in less developed countries exceeds its recognized gains on sales or exchanges during such year of qualified investments in less developed countries, but only to the extent that the net amount so determined does not exceed the limitation determined under subparagraph (2) of this paragraph. See § 1.955-2 for determining the amount of qualified investments in less developed countries.

(2) Limitations applicable in determining decreases—(i) *General.* The limitation referred to in subparagraph (1) of this paragraph for any taxable year of a controlled foreign corporation shall be the lesser of the following two limitations:

(a) The sum of the controlled foreign corporation's earnings and profits (or deficit in earnings and profits) for the taxable year, computed as of the close of the taxable year without diminution by reason of any distributions made during the taxable year, plus the sum of its earnings and profits (or deficits in earnings and profits) accumulated for prior taxable years beginning after December 31, 1962, or,

(b) The sum of the amounts excluded under section 954 (b) (1) and paragraph (b) (1) of § 1.954-1 from the foreign base company income of such corporation for all prior taxable years, minus the sum of the amounts (determined under this paragraph) of its previously excluded subpart F income withdrawn from investment in less developed countries for all prior taxable years.

(ii) Treatment of earnings and profits. For purposes of determining earnings and profits of a controlled foreign corporation under subdivision (i) (a) of this subparagraph, such earnings and profits shall be considered not to include any amounts which are attributable to—

(a) Amounts which are, or have been, included in the gross income of a United States shareholder of such controlled foreign corporation under section 951 (a) (other than an amount included in the gross income of a United States shareholder under section 951 (a) (1) (A) (ii) or section 951 (a) (1) (B) for the taxable year) and have not been distributed, or

(b) Amounts described in section 959 (b) which are, or have been, included in the gross income of a United States shareholder of another controlled foreign corporation under section 951 (a) and which are distributed through a chain of ownership described in section 958 (a) to the controlled foreign corporation with respect to which such determination is being made.

The rules of this subdivision apply only in determining the limitation on a controlled foreign corporation's decrease in qualified investments in less developed countries. See section 959 and the regulations thereunder for limitations on the exclusion from gross income of previously taxed earnings and profits.

(c) Shareholder's pro rata share of amount withdrawn by controlled foreign corporation—(1) In general. A United States shareholder's pro rata share of a controlled foreign corporation's previously excluded subpart F income withdrawn for any taxable year from investment in less developed countries is his pro rata share of the amount withdrawn for such year by such corporation, as determined under paragraph (b) of this section. See section 955 (a) (3).

(2) Special rule. A United States shareholder's pro rata share of the net amount

determined under paragraph (b) (2) (i) *(b)* of this section with respect to any stock of the controlled foreign corporation owned by such shareholder shall be determined without taking into account any amount attributable to a period prior to the date on which such shareholder acquired such stock. See section 1248 and the regulations thereunder for rules governing treatment of gain from sales or exchanges of stock in certain foreign corporations.

(d) Illustrations. The application of this section may be illustrated by the following examples:

Example (1). A, a United States shareholder, owns 60 percent of the only class of stock of M Corporation, a controlled foreign corporation throughout the entire period here involved. Both A and M Corporation use the calendar years as a taxable year. Corporation M's qualified investments in less developed countries at the close of 1964 amount to $125,000; and, at the close of 1965, to $75,000. During 1965, M Corporation realizes recognized gains of $5,000 and recognized losses of $15,000, on sales of qualified investments in less developed countries. Corporation M's earnings and profits for 1965 and its accumulated earnings and profits for 1963 and 1964 amount to $45,000, as determined under paragraph (b) (2) of this section. The amount excluded under section 954 (b) (1) for 1963 from its foreign base company income is $75,000, and the amount of its previously excluded subpart F income withdrawn for 1964 from investment in less developed countries is $25,000. The amount of M Corporation's previously excluded subpart F income withdrawn for 1965 from investment in less developed countries is $40,000, and A's pro rata share of such amount is $24,000 determined as follows:

(i) Qualified investments in less developed countries at the close of 1964	$125,000
(ii) Less: Qualified investment in less developed countries at the close of 1965	75,000
(iii) Balance	50,000
(iv) Less: Excess of recognized losses over recognized gains on sales during 1965 of qualified investments in less developed countries ($15,000 less $5,000)	10,000
(v) Tentative decrease in qualified investments in less developed countries for 1965	40,000
(vi) Earnings and profits for 1963, 1964, and 1965	45,000
(vii) Excess of amount excluded under sec. 954 (b) (1) from foreign base company income for 1963 ($75,000) over amount of previously excluded subpart F income withdrawn for 1964 from investment in less developed countries ($25,000)	50,000
(viii) M Corporation's amount of previously excluded subpart F income withdrawn for 1965 from investment in less developed countries (item (v), but not to exceed the lesser of item (vi) or item (vii))	40,000

(ix) A's pro rata share of M Corporation's amount of previously excluded subpart F income withdrawn for 1965 from investment in less developed countries (60 percent of $40,000)..... $ 24,000

Example (2). The facts are the same as in example (1), except that M Corporation's earnings and profits (determined under paragraph (b) (2) of this section) for 1963, 1964, and 1965 (item (vi)) are $30,000 instead of $45,000. Corporation M's amount of previously excluded subpart F income withdrawn for 1965 from investment in less developed countries is $30,000. A's pro rata share of such amount is $18,000 (60 percent of $30,000).

Example (3). The facts are the same as in example (1), except that the excess of the amount excluded under section 954 (b) (1) for 1963 from M Corporation's foreign base company income over the amount of its previously excluded subpart F income withdrawn for 1964 from investment in less developed countries (item (vii)) is $20,000 instead of $50,000. Corporation M's amount of previously excluded subpart F income withdrawn for 1965 from investment in less developed countries is $20,000. A's pro rata share of such amount is $12,000 (60 percent of $20,000).

Reg. § 1.955-2 *Amount of a controlled foreign corporation's qualified investments in less developed countries.*

(a) Included property. For purposes of sections 951 through 964, a controlled foreign corporation's "qualified investments in less developed countries" are items of property (other than property excluded under paragraph (b) (1) of this section) owned directly by such corporation on the applicable determination date for purposes of section 954 (f) or section 955 (a) (2) and consisting of one or more of the following:

(1) Stock of a less developed country corporation if the controlled foreign corporation owns (within the meaning of paragraph (b) (2) of this section) on the applicable determination date 10 percent or more of the total combined voting power of all classes of stock of such less developed country corporation;

(2) An obligation (as defined in paragraph (b) (3) of this section) of a less developed country corporation which, at the time of acquisition (as defined in paragraph (b) (4) of this section) of such obligation by the controlled foreign corporation, has a maturity of one year or more, but only if the controlled foreign corporation owns (within the meaning of paragraph (b) (2) of this section) on the applicable determination date 10 percent or more of the total combined voting power of all classes of stock of such less developed country corporation; and

(3) An obligation (as defined in paragraph (b) (3) of this section) of a less developed country, including obligations issued or guaranteed by the government of such country or of a political subdivision thereof and obligations of any agency or instrumentality of such country, in which such country is financially committed. The application of this subparagraph may be illustrated by the following example:

Example. A, a political subdivision of foreign country X, constructs and operates a toll bridge. Country X is a less developed country throughout the period here involved. A issues bonds under an indenture which provides for amortization of the principal

and interest of such bonds only out of the net revenues derived from operation of the bridge. The bonds of A are obligations in which X Country is financially committed and, in the hands of a controlled foreign corporation, are qualified investments in less developed countries.

(b) Special rules—(1) Excluded property. For purposes of paragraph (a) of this section, property which is disposed of within 6 months after the date of its acquisition shall be excluded from a controlled foreign corporation's qualified investments in less developed countries. However, the fact that property acquired by a controlled foreign corporation has not been held on an applicable determination date for more than 6 months after the date of its acquisition shall not prevent such property from being included in the controlled foreign corporation's qualified investments in less developed countries on such date. Proper adjustments shall be made subsequently, however, to exclude any item of property so included, if the property is in fact disposed of within 6 months after the date of its acquisition. See section 955 (b) (4).

(2) Determination of stock ownership. In determining for purposes of paragraph (a) (1) and (2) of this section whether a controlled foreign corporation owns 10 percent or more of the total combined voting power of all classes of stock of a less developed country corporation, only stock owned directly by such controlled foreign corporation shall be taken into account and the provisions of section 958 and the regulations thereunder shall not apply. See section 958 (a) (1).

(3) Obligation defined. For purposes of paragraph (a) (2) and (3) of this section, the term "obligation" means any bond, note, debenture, certificate, or other evidence of indebtedness. In the absence of legal, governmental, or business reasons to the contrary, the indebtedness must bear interest or be issued at a discount.

(4) Date of acquisition. For purposes of paragraph (a) (2) of this section, an obligation shall be considered acquired by a foreign corporation as of the date such corporation acquires an adjusted basis in the obligation. For this purpose, in a case in which a foreign corporation acquires an obligation in a transaction (other than a reorganization of the type described in section 368 (a) (1) (E) or (F) in which no gain or loss would be recognized had the transaction been between two domestic corporations, such corporation will be considered to have acquired an adjusted basis in such obligation as of the date such transaction occurs.

(c) Termination of designation as a less developed country. For purposes of sections 951 through 964, property which would constitute a qualified investment in a less developed country but for the fact that a foreign country or United States possession has, after the acquisition of such property by the controlled foreign corporation, ceased to be a less developed country shall be treated as a qualified investment in a less developed country. The application of this paragraph may be illustrated by the following example:

Example. On December 31, 1969, in accordance with the provisions of § 1.955-4, the designation of foreign country X as an economically less developed country is terminated. Corporation M, a controlled foreign corporation, has $50,000 of qualified investments in country X acquired before December 31, 1969. After 1969 such investments are treated as qualified investments in a less developed country notwithstanding the termination of the status of X Country as an economically less developed country.

However, if such qualified investments of M Corporation are reduced to $40,000, each United States shareholder of M Corporation is required, subject to the provisions of $1.955-1, to include his pro rata share of the $10,000 decrease in his gross income under section 951 (a) (1) (A) (ii) and the regulations thereunder.

(d) Amount attributable to property—(1) General rule. For purposes of this section, the amount taken into account with respect to any property which constitutes a qualified investment in a less developed country shall be its adjusted basis as of the applicable determination date, reduced by any liability (other than a liability described in subparagraph (2) of this paragraph) to which such property is subject on such date. To be taken into account under this subparagraph, a liability must constitute a specific charge against the property involved. Thus, a liability evidenced by an open account or a liability secured only by the general credit of the controlled foreign corporation will not be taken into account. On the other hand, if a liability constitutes a specific charge against several items of property and cannot definitely be allocated to any single item of property, the liability shall be apportioned against each of such items of property in that ratio which the adjusted basis of such item on the applicable determination date bears to the adjusted basis of all such items at such time. A liability in excess of the adjusted basis of the property which is subject to such liability shall not be taken into account for the purpose of reducing the adjusted basis of other property which is not subject to such liability.

Reg. § 1.955-3 *Election as to date of determining qualified investments in less developed countries.*

(a) Nature of election. In lieu of determining the increase under the provisions of section 954 (f) and paragraph (a) of § 1.954-5, or the decrease under the provisions of section 955 (a) (2) and paragraph (b) of § 1.955-1, in a controlled foreign corporation's qualified investments in less developed countries for a taxable year in the manner provided in such provisions, a United States shareholder of such controlled foreign corporation may elect, under the provisions of section 955 (b) (3) and this section, to determine such increase in accordance with the provisions of paragraph (b) of § 1.954-5 and to determine such decrease by ascertaining the amount by which—

(1) Such controlled foreign corporation's qualified investments in less developed countries at the close of such taxable year exceed its qualified investments in less developed countries at the close of the taxable year immediately following such taxable year, and reducing such excess by

(2) The amount determined under paragraph (b) (1) (ii) of § 1.955-1 for such taxable year,

subject to the limitation provided in paragraph (b) (2) of § 1.955-1 for such taxable year. An election under this section may be made with respect to each controlled foreign corporation with respect to which a person is a United States shareholder within the meaning of section 951 (b), but the election may not be exercised separately with respect to the increases and the decreases of such controlled foreign corporation. If an election is made under this section to determine the increase of a controlled foreign corporation in accordance with the provisions of paragraph (b) of § 1.954-5, subsequent decreases of such controlled foreign corporation shall be determined in accordance with this para-

graph and not in accordance with paragraph (b) of § 1.955-1.

(b) Time and manner of making election—(1) Without consent. An election under this section with respect to a controlled foreign corporation shall be made without the consent of the Commissioner by a United States shareholder's filing a statement to such effect with his return for his taxable year in which or with which ends the first taxable year of such controlled foreign corporation in which—

(i) Such shareholder owns, within the meaning of section 958 (a), or is considered as owning by applying the rules of ownership of section 958 (b), 10 percent or more of the total combined voting power of all classes of stock entitled to vote of such controlled foreign corporation, and

(ii) Such controlled foreign corporation realizes foreign base company income from which amounts are excluded under section 954 (b) (1) and paragraph (b) (1) of § 1.954-1.

The statement shall contain the name and address of the controlled foreign corporation and identification of such first taxable year of such corporation.

(2) With consent. An election under this section with respect to a controlled foreign corporation may be made by a United States shareholder at any time with the consent of the Commissioner. Consent will not be granted unless the United States shareholder and the Commissioner agree to the terms, conditions, and adjustments under which the election will be effected. The application for consent to elect shall be made by the United States shareholder's mailing a letter for such purpose to the Commissioner of Internal Revenue, Washington, D.C. 20224. The application shall be mailed before the close of the first taxable year of the controlled foreign corporation with respect to which the shareholder desires to compute an amount described in section 954 (b) (1) in accordance with the election provided in this section. The application shall include the following information:

(i) The name, address, and taxable year of the United States shareholder;

(ii) The name and address of the controlled foreign corporation;

(iii) The first taxable year of the controlled foreign corporation for which income is to be computed under the election;

(iv) The amount of the controlled foreign corporation's qualified investments in less developed countries at the close of its preceding taxable year; and

(v) The sum of the amounts excluded under section 954 (b) (1) and paragraph (b) (1) of § 1.954-1 from the foreign base company income of the controlled foreign corporation for all prior taxable years during which such shareholder was a United States shareholder of such corporation and the sum of the amounts of its previously excluded subpart F income withdrawn from investment in less developed countries for all prior taxable years during which such shareholder was a United States shareholder of such corporation.

(c) Effect of election—(1) General. Except as provided in subparagraphs (3) and (4) of this paragraph, an election under this section with respect to a controlled foreign corporation shall be binding on the United States shareholder and shall apply to all qualified investments in less developed countries acquired, or disposed of, by such controlled foreign corporation during the taxable year following its taxable year for which income is first computed under the election and during all succeeding taxable years of such corporation.

(2) Returns. Any return of a United States shareholder required to be filed before the completion of a period with respect to which determinations are to be made as to a controlled foreign corporation's qualified investments in less developed countries for purposes of computing such shareholder's taxable income shall be filed on the basis of an estimate of the amount of the controlled foreign corporation's qualified investments in less developed countries at the close of the period. If the actual amount of such investments is not the same as the amount of the estimate, the United States shareholder shall immediately notify the Commissioner. The Commissioner will thereupon redetermine the amount of tax of such United States shareholder for the year with respect to which the incorrect amount was taken into account. The amount of tax, if any, due upon such redetermination shall be paid by the United States shareholder upon notice and demand by the district director. The amount of tax, if any, shown by such redetermination to have been overpaid shall be credited or refunded to the United States shareholder in accordance with the provisions of sections 6402 and 6511 and the regulations thereunder.

(3) Revocation. Upon application by the United States shareholder, the elections made under this section may, subject to the approval of the Commissioner, be revoked. Approval will not be granted unless the United States shareholder and the Commissioner agree to the terms, conditions, and adjustments under which the revocation will be effected. Unless such agreement provides otherwise, the change in the controlled foreign corporation's qualified investments in less developed countries for its first taxable year for which income is computed without regard to the election previously made will be considered to be zero for purposes of effectuating the revocation. The application for consent to revocation shall be made by the United States shareholder's mailing a letter for such purpose to the Commissioner of Internal Revenue, Washington, D.C. 20224. The application shall be mailed before the close of the first taxable year of the controlled foreign corporation with respect to which the shareholder desires to compute the amounts described in section 954(b)(1) or 955(a) without regard to the election provided in this section.

The application shall include the following information:

(i) The name and address of the United States shareholder;

(ii) The name and address of the controlled foreign corporation;

(iii) The taxable year of the controlled foreign corporation for which such amounts are to be so computed;

(iv) The amount of the controlled foreign corporation's qualified investments in less developed countries at the close of its preceding taxable year;

(v) The sum of the amounts excluded under section 954(b)(1) and paragraph (b)(1) of § 1.954-1 from the foreign base company income of the controlled foreign corporation for all prior taxable years during which such shareholder was a United States shareholder of such corporation and the sum of the amounts of its previously excluded subpart F income withdrawn from investment in less developed countries for all prior taxable years during which such shareholder was a United States shareholder of such corporation; and

(vi) The reasons for the request for consent to revocation.

(4) Transfer of stock. If during any taxable year of a controlled foreign corporation—

(i) A United States shareholder who has made an election under this section with respect to such controlled foreign corporation sells, exchanges, or otherwise disposes of all or part of his stock in such controlled foreign corporation, and

(ii) The foreign corporation is a controlled foreign corporation immediately after the sale, exchange, or other disposition,

then, with respect to the stock so sold, exchanged, or disposed of, the controlled foreign corporation's acquisitions and dispositions of qualified investments in less developed countries for such taxable year shall be considered to be zero. If the United States shareholder's successor in interest is entitled to and does make an election under paragraph (b) (1) of this section to determine the controlled foreign corporation's increase in qualified investments in less developed countries for the taxable year in which he acquires such stock, such increase with respect to the stock so acquired shall be determined in accordance with the provisions of paragraph (b) (1) of § 1.954-5. If the controlled foreign corporation realizes no foreign base company income from which amounts are excluded under section 954 (b) (1) and paragraph (b) (1) of § 1.954-1 for the taxable year in which the United States shareholder's successor in interest acquires such stock and such successor in interest makes an election under paragraph (b) (1) of this section with respect to a subsequent taxable year of such controlled foreign corporation, the increase in the controlled foreign corporation's qualified investments in less developed countries for such subsequent taxable year shall be determined in accordance with the provisions of paragraph (b) (2) of § 1.954-5.

(d) Illustrations. The application of this section may be illustrated by the following examples:

Example (1). Foreign corporation A is a wholly owned subsidiary of domestic corporation M. Both corporations use the calendar year as a taxable year. In a statement filed with its return for 1963, M Corporation makes an election under section 955 (b) (3) and the election remains in force for the taxable year 1964. At December 31, 1964, A Corporation's qualified investments in less developed countries amount to $ 100,000; and, at December 31, 1965, to $80,000. For purposes of paragraph (a) (1) of this section, A Corporation's decrease in qualified investments in less developed countries for the taxable year 1964 is $20,000 and is determined by ascertaining the amount by which A Corporation's qualified investments in less developed countries at December 31, 1964 ($100,000) exceed its qualified investments in less developed countries at December 31, 1965 ($80,000).

Example (2). The facts are the same as in example (1) except that A Corporation experiences no changes in qualified investments in less developed countries during its taxable years 1966 and 1967. If M Corporation's election were to remain in force, A Corporation's acquisitions and dispositions of qualified investments in less developed countries during A Corporation's taxable year 1968 would be taken into account in determining whether A Corporation has experienced an increase or a decrease in qualified investments in less developed countries for its taxable year 1967. However, M Corporation duly files before the close of A Corporation's taxable year 1967 an application for consent to revocation of M Corporation's election under section 955 (b) (3), and, pur-

suant to an agreement between the Commissioner and M Corporation, consent is granted by the Commissioner. Assuming such agreement does not provide otherwise, A Corporation's change in qualified investments in less developed countries for its taxable year 1967 is zero because the effect of the revocation of the election is to treat acquisitions and dispositions of qualified investments in less developed countries actually occurring in 1968 as having occurred in such year rather than in 1967.

Example (3). The facts are the same as in example (2) except that A Corporation's qualified investments in less developed countries at December 31, 1968, amount to $70,000. For purposes of paragraph (b) (1) (i) of § 1.955-1, the decrease in A Corporation's qualified investments in less developed countries for the taxable year 1968 is $10,000 and is determined by ascertaining the amount by which A Corporation's qualified investments in less developed countries at December 31, 1967 ($80,000) exceed its qualified investments in less developed countries at December 31, 1968 ($70,000).

Example (4). The facts are the same as in example (1) except that on September 30, 1965, M Corporation sells 40 percent of the only class of stock of A Corporation to N Corporation, a domestic corporation. Corporation N uses the calendar year as a taxable year. Corporation A remains a controlled foreign corporation immediately after such sale of its stock. Corporation A's qualified investments in less developed countries at December 31, 1966, amount to $90,000. The changes in A Corporation's qualified investments in less developed countries occurring in its taxable year 1965 are considered to be zero with respect to the 40-percent stock interest acquired by N Corporation. The entire $20,000 reduction in A Corporation's qualified investments in less developed countries which occurs during the taxable year 1965 is taken into account by M Corporation for purposes of paragraph (a) (1) of this section in determining its tax liability for the taxable year 1964. Corporation A's increase in qualified investments in less developed countries for the taxable year 1965 with respect to the 60-percent stock interest retained by M Corporation is $6,000 and is determined by ascertaining M Corporation's pro rata share (60 percent) of the amount by which A Corporation's qualified investments in less developed countries at December 31, 1966 ($90,000) exceed its qualified investments in less developed countries at December 31, 1965 ($80,000). Corporation N does not make an election under section 955 (b) (3) in its return for its taxable year 1966. Corporation A's increase in qualified investments in less developed countries for the taxable year 1966 with respect to the 40-percent stock interest acquired by N Corporation is $4,000.

Reg. § 1.955-4 *Definition of less developed country.*

(a) Designation by Executive Order. For purposes of sections 951 through 964, the term "less developed country" means any foreign country (other than an area within the Sino-Soviet bloc) or any possession of the United States with respect to which, on the first day of the foreign corporation's taxable year, there is in effect an Executive order by the President of the United States designating such country or possession as an economically less developed country for purposes of such sections. Each territory, department, province, or possession of any foreign country other than a country within the Sino-Soviet bloc may be treated as a separate foreign country for purposes of such designation if the territory, department, province, or possession is overseas from the

country of which it is a territory, department, province, or possession. Thus, for example, an overseas possession of a foreign country may be designated by Executive order as an economically less developed country even though the foreign country itself has not been designated as an economically less developed country; or the foreign country may be so designated even though the overseas possessions of such country have not been designated as economically less developed countries. The term "possession of the United States", for purposes of section 955 (c) (3) and this section, shall be construed to have the same meaning as that contained in paragraph (b) (2) of § 1.957-3.

(b) Countries not eligible for designation. Section 955 (c) (3) provides that no designation by Executive order may be made under section 955 (c) (3) and paragraph (a) of this section with respect to—

Australia
Austria
Belgium
Canada
Denmark
France
Germany
(Federal Republic)
Hong Kong
Italy
Japan
Liechtenstein
Luxembourg
Monaco
Netherlands
New Zealand
Norway
Union of South Africa
San Marino
Sweden
Switzerland
United Kingdom

(c) Termination of designation. Section 955 (c) (3) provides that, after the President has designated any foreign country or possession of the United States as an economically less developed country for purposes of sections 951 through 964, he may not terminate such designation (either by issuing an Executive order for the purpose of terminating such designation or by issuing an Executive order which has the effect of terminating such designation) unless, at least 30 days prior to such termination, he has notified the Senate and the House of Representatives of his intention to terminate such designation. If such 30-day notice is given, no action by the Congress of the United States is necessary to effectuate the termination. The requirement for giving 30-day notice to the Senate and House of Representatives applies also to the termination of a designation with respect to an overseas territory, department, province, or possession of a foreign country. See paragraph (c) of § 1.955-2 for the effect of a termination of a Presidential designation upon property which would be a qualified investment in a less developed country but for the fact of such termination.

Reg. § 1.955-5 *Definition of less developed country corporation.*

(a) Less developed country corporation—(1) In general. For purposes of sections 951 through 964, the term "less developed country corporation" means a foreign corporation described in paragraph (b) of this section and also any foreign corporation—

(i) Which is engaged in the active conduct of one or more trades or businesses during the entire taxable year;

(ii) Which derives 80 percent or more of its gross income, if any, for such taxable

year from sources within less developed countries, as determined under the provisions of § 1.955-6; and

(iii) Which has 80 percent or more in value (within the meaning of paragraph (d) of this section) of its assets on each day of such taxable year consisting of one or more of the following items of property:

(a) Property (other than property described in (b) through (h) of this subdivision) which is used, or held for use, in such trades or businesses and is located in one or more less developed countries;

(b) Money;

(c) Deposits with persons carrying on the banking business;

(d) Stock of any other less developed country corporation;

(e) Obligations (within the meaning of paragraph (b) (3) of § 1.955-2) of another less developed country corporation which at the time of their acquisition (within the meaning of paragraph (b) (4) of § 1.955-2) by the foreign corporation have a maturity of one year or more;

(f) Obligations (within the meaning of paragraph (b) (3) of § 1.955-2) of any less developed country;

(g) Investments which are required to be made or held because of restrictions imposed by the government of any less developed country; and

(h) Property described in section 956 (b) (2).

For purposes of this subparagraph, if a foreign corporation is a partner in a foreign partnership, as defined in section 7701 (a) (2) and (5) and the regulations thereunder, such corporation will be considered to be engaged in the active conduct of a trade or business to the extent and in the manner in which the partnership is so engaged and to own directly its proportionate share of each of the assets of the partnership. For purposes of subdivision (i) of this subparagraph, a newly-organized foreign corporation will be considered engaged in the active conduct of a trade or business from the date of its organization if such corporation commences business operations as soon as practicable after such organization. In the absence of affirmative evidence showing that the 80-percent requirement of subdivision (iii) of this subparagraph has not been satisfied on each day of the taxable year, such requirement will be considered satisfied if it is established to the satisfaction of the district director that such requirement has been satisfied on the last day of each quarter of the taxable year of the foreign corporation. For purposes of subdivision (iii) of this subparagraph, property (other than stock in trade or other property of a kind which would properly be included in inventory of the foreign corporation if on hand at the close of the taxable year, or property held primarily for sale to customers in the ordinary course of the trade or business of the foreign corporation) purchased for use in a trade or business and temporarily located outside less developed countries will be considered located in less developed countries if, but only if, such property is shipped to and received in less developed countries promptly after such purchase.

(2) Special rules. For purposes of subparagraph (1) (iii) (a) of this paragraph—

(i) Treatment of receivables. Bills receivable, accounts receivable, notes receivable and open accounts shall be considered to be used in the trade or business and located in less developed countries if, but only if—

(a) Such obligations arise out of the rental of property located in less developed countries, the performance of services within less developed countries, or the sale of property manufactured, produced, grown, or extracted in less developed countries, but only to the extent that the aggregate amount of such obligations at any time during the taxable year does not exceed an amount which is ordinary and necessary to carry on the business of both parties to the transactions if such transactions are between unrelated persons or, if such transactions are between related persons, an amount which would be ordinary and necessary to carry on the business of both parties to the transactions if such transactions were between unrelated persons;

(b) In the case of bills receivable, accounts receivable, notes receivable, and open accounts arising out of transactions other than those referred to in (a) of this subdivision–

(1) If the obligor is an individual, such individual is a resident of one or more less developed countries and of no other country which is not a less developed country;

(2) If the obligor is a corporation which as to the foreign corporation is a related person as defined in section 954 (d) (3) and paragraph (e) of § 1.954-1, such obligor meets, with respect to the period ending with the close of its annual accounting period in which occurs the date on which the obligation is incurred, the 80-percent gross income requirement of paragraph (b) (1) (ii) of § 1.955-6; or

(3) If the obligor is a corporation which as to the foreign corporation is not a related person as defined in section 954 (d) (3), and paragraph (e) of § 1.954-1, it is reasonable, on the basis of ascertainable facts, for the obligee to believe that the obligor meets, with respect to such period, the 80-percent gross income requirement of paragraph (b) (1) (ii) of § 1.955-6.

(ii) Location of interests in real estate. Interests in real estate such as leaseholds of land or improvements thereon, mortgages on real property (including interests in mortgages on leaseholds of land or improvements thereon), and mineral, oil, or gas interests shall be considered located in less developed countries if, but only if, the underlying real estate is located in less developed countries.

(iii) Location of certain other intangibles. Intangible property (other than any such property described in subdivision (i) or (ii) of this subparagraph) used in the trade or business of the foreign corporation shall be considered to be located in less developed countries in the same ratio that the amount of the foreign corporation's tangible property described in subdivision (i) or (ii) of this subparagraph used in its trades or businesses and located or deemed located in less developed countries bears to the total amount of its tangible property and property described in subdivision (i) or (ii) of this subparagraph used in its trades or businesses.

(3) Illustration. The provisions of subparagraph (1) of this paragraph may be illustrated by the following example:

Example. Foreign corporation A is formed on November 1, 1963, to engage in the business of manufacturing and selling radios in Brazil, a less developed country as of November 1, 1963. Corporation A uses the calendar year as a taxable year. Shortly after it is formed, A Corporation acquires a plant site and begins construction of a plant which is completed on August 1, 1964. Corporation A commences business operations as soon as practicable and continues such operations through December 31, 1964, and

thereafter. Corporation A will be considered for purposes of subparagraph (1) (i) of this paragraph to be engaged in the active conduct of a trade or business for its entire taxable years ending on December 31, 1963, and 1964. The plant site and the plant (while under construction and after completion) will be considered to be property held during such taxable years for use in A Corporation's trade or business.

(b) Shipping companies. For purposes of sections 951 through 964, the term "less developed country corporation" also means any foreign corporation—

(1) Which has 80 percent or more of its gross income, if any, for the taxable year consisting of one or more of—

(i) Gross income derived—

(a) From, or in connection with, the using (or hiring or leasing for use) in foreign commerce of aircraft or vessels registered under the laws of a less developed country,

(b) From, or in connection with, the performance of services directly related to the use in foreign commerce of aircraft or vessels registered under the laws of a less developed country, or

(c) From the sale or exchange of aircraft or vessels registered under the laws of a less developed country and used in foreign commerce by such foreign corporation:

(ii) Dividends and interest received or accrued from other foreign corporations which are less developed country corporations within the meaning of this paragraph and 10 percent or more of the total combined voting power of all classes of stock of which is owned at the time such dividends and interest are so received or accrued by such foreign corporation; and

(iii) Gain from the sale or exchange of stock or obligations of other foreign corporations which are less developed country corporations within the meaning of this paragraph and 10 percent or more of the total combined voting power of all classes of stock of which is owned by such foreign corporation immediately before such sale or exchange; and

(2) Which has 80 percent or more in value (within the meaning of paragraph (d) of this section) of its assets on each day of the taxable year consisting of—

(i) Assets used, or held for use for the production of income described in subparagraph (1) of this paragraph, or in connection with the production of such income, whether or not such income is received during the taxable year; and

(ii) Property described in section 956 (b) (2).

In the absence of affirmative evidence showing that the 80-percent requirement of this subparagraph has not been satisfied on each day of the taxable year, such requirement will be considered satisfied if it is established to the satisfaction of the district director that such requirement has been satisfied on the last day of each quarter of the taxable year of the foreign corporation. The provisions of this subparagraph may be illustrated by the following example:

Example. Foreign corporation A is formed on November 1, 1963, for the purpose of constructing and operating a vessel and, on that date, enters a charter agreement which provides that such vessel will be registered under the laws of Liberia, a less developed country as of November 1, 1963, and operated between South American and European ports. Corporation A uses the calendar year as a taxable year. Construction

of the vessel is completed on September 1, 1965, and the vessel is registered under the laws of Liberia and operated between South American and European ports through December 31, 1965, and thereafter. The charter and the vessel (while under construction and after completion), or any interest of A Corporation in such assets, will be considered assets which are held by A Corporation during its taxable years ending on December 31, 1963, 1964, and 1965, for use in the production of income described in subparagraph (1) of this paragraph.

(c) Determination of stock ownership. In determining for purposes of paragraph (b) (1) (ii) and (iii) of this section whether a foreign corporation owns 10 percent or more of the total combined voting power of all classes of stock of a less developed country corporation, only stock owned directly by such foreign corporation shall be taken into account and the provisions of section 958 and the regulations thereunder shall not apply. See section 958 (a) (1).

(d) Determination of value. For purposes of paragraphs (a) (1) (iii) and (b) (2) of this section—

(1) General. Except as provided in subparagraph (2) of this paragraph, the value at which property shall be taken into account is its actual value (not reduced by liabilities) which, in the absence of affirmative evidence to the contrary, shall be deemed to be its adjusted basis.

(2) Treatment of certain receivables. The value at which receivables described in paragraph (a) (2) (i) of this section and held by a foreign corporation using the cash receipts and disbursements method of accounting shall be taken into account is their actual value (not reduced by liabilities) which, in the absence of affirmative evidence to the contrary, shall be deemed to be their face value.

Reg. § 1.955-6 *Gross income from sources within less developed countries.*

(a) General. For purposes of paragraph (a) (1) (ii) of § 1.955-5, the determination whether a foreign corporation has derived 80 percent or more of its gross income from sources within less developed countries for any taxable year shall be made by the application of the provisions of sections 861 through 864, and §§ 1.861-1 through 1.863-5, in application of which the name of a less developed country shall be substituted for "the United States", except that if income is derived by the foreign corporation from—

(1) Interest (other than interest to which subparagraph (3) of this paragraph applies), the rules set forth in paragraph (b) of this section shall apply;

(2) Dividends, the rules set forth in paragraph (c) of this section shall apply; or

(3) Income (including interest) derived in connection with the sale of tangible personal property, the rules set forth in paragraph (d) of this section shall apply. The source of income described in subparagraphs (1), (2), or (3) of this paragraph shall be determined solely under the rules of this section and without regard to the rules of sections 861 through 864, and the regulations thereunder.

(b) Interest—(1) In general. Except as provided in subparagraph (2) of this paragraph and paragraph (d) of this section, gross income derived by the foreign corporation from interest on any indebtedness—

(i) Of an individual shall be treated as income from sources within a less developed

country if, but only if, such individual is a resident of one or more less developed countries and of no other country which is not a less developed country.

(ii) Of a corporation shall be treated as income from sources within less developed countries if, but only if, 80 percent or more of the gross income of the payer corporation for the 3-year period ending with the close of its annual accounting period in which such interest is paid, or for such part of such 3-year period as such corporation has been in existence, or for such part of such 3-year period as occurs on and after the beginning of such corporation's first annual accounting period beginning after December 31, 1962, whichever period is shortest, was derived from sources within less developed countries as determined in accordance with the principles of this section; or

(iii) Of a less developed country, including obligations issued or guaranteed by the government of such country or of a political subdivision thereof and obligation of any agency or instrumentality of such country, in which such country is financially committed shall be treated as income from sources within such country.

(2) Special rule. Gross income derived by the foreign corporation from interest on obligations of the United States shall be treated as income from sources within less developed countries without regard to the provisions of subparagraph (1) of this paragraph.

(3) Payers other than related persons. For purposes of subparagraph (1) (ii) of this paragraph, a payer corporation which as to the recipient corporation is not a related person as defined in section 954 (d) (3) and paragraph (e) of § 1.954-1 shall be deemed to have satisfied the 80-percent gross income requirement if, on the basis of ascertainable facts, it is reasonable for the recipient corporation to believe that such requirement is satisfied.

(c) Dividends—(1) In General. Gross income derived by the foreign corporation from dividends, as defined in section 316 and the regulations thereunder, shall be treated as income from sources within less developed countries if, but only if, 80 percent or more of the gross income of the payer corporation for the 3-year period ending with the close of its annual accounting period in which such dividends are distributed, or for such part of such 3-year period as such corporation has been in existence, or for such part of such 3-year period as occurs on and after the beginning of such corporation's first annual accounting period beginning after December 31, 1962, whichever period is shortest, was derived from sources within less developed countries as determined in accordance with the principles of this section.

(2) Payers other than related person. See paragraph (b) (3) of this section for rule governing satisfaction of the 80-percent gross income requirement by payers other than related persons.

(d) Sale of tangible personal property—(1) In general. Income (whether in the form of profits, commissions, fees, interest, or otherwise) derived by the foreign corporation in connection with the sale of tangible personal property shall be treated as income from sources within less developed countries if, but only if—

(i) Such property is produced (within the meaning of subparagraph (2) of this paragraph) within less developed countries; or

(ii) Such property is sold for use, consumption, or disposition within less developed countries even though produced outside less developed countries and the selling cor-

poration is engaged within less developed countries, in connection with sales of such property, in continuous operational activities which are substantial in relation to such sales, as evidenced, for example, by the maintenance within less developed countries of a substantial sales or service organization or substantial facilities for the storage, handling, transportation, assembly, packaging, or servicing of such property.

(2) Production defined. For purposes of this paragraph, the term "produced" means manufactured, grown, extracted, or constructed and includes a substantial transformation of property purchased for resale or the manufacture of a product when purchased components constitute part of the property which is sold. See paragraph (a) (4) (ii) and (iii) of § 1.954-3 for a statement and illustration of the principles set forth in the preceding sentence.

Reg. § 1.957-1 *Definition of controlled foreign corporation.*

(a) *In general.* For purposes of sections 951 through 964, the term "controlled foreign corporation" means any foreign corporation of which more than 50 percent (or more than 25 percent, in a case to which section 957 (b) and § 1.957-2 apply) of the total combined voting power of all classes of stock entitled to vote is owned within the meaning of section 958 (a), or is considered as owned by applying the rules of ownership of section 958 (b) by United States shareholders on any day of the taxable year of such foreign corporation. For definition of the term "United States shareholder", see section 951 (b) and the regulations thereunder. For definition of the term "foreign corporation", see § 301.7701-5 of this chapter (Procedure and Administration Regulations). For treatment of associations as corporations, see section 7701 (a) (3) and §§ 301.7701-1 and 7701-2 of this chapter. For definition of the term "stock," see sections 958 (a) (3) and 7701 (a) (7). For the classification of a member in an association, joint-stock company, or insurance company as a shareholder, see section 7701 (a) (8).

(b) Percentage of total combined voting power owned by United States shareholders—(1) Meaning of combined voting power. In determining for purposes of paragraph (a) of this section whether United States shareholders own the requisite percentage of total combined voting power of all classes of stock entitled to vote, consideration will be given to all the facts and circumstances of each case. In all cases, however, United States shareholders of a foreign corporation will be deemed to own the requisite percentage of total combined voting power with respect to such corporation—

(i) If they have the power to elect, appoint, or replace a majority of that body of persons exercising, with respect to such corporation, the powers ordinarily exercised by the board of directors of a domestic corporation;

(ii) If any person or persons elected or designated by such shareholders have the power, where such shareholders have the power to elect exactly one half of the members of such governing body of such foreign corporation, either to cast a vote deciding an evenly divided vote of such body or, for the duration of any deadlock which may arise, to exercise the powers ordinarily exercised by such governing body; or

(iii) If the powers which would ordinarily be exercised by the board of directors of a domestic corporation are exercised with respect to such foreign corporation by a person whom such shareholders have the power to elect, appoint, or replace.

(2) Shifting of formal voting power. Any arrangement to shift formal voting power

away from United States shareholders of a foreign corporation will not be given effect if in reality voting power is retained. The mere ownership of stock entitled to vote does not by itself mean that the shareholder owing such stock has the voting power of such stock for purposes of section 957. For example, if there is any agreement, whether express or implied, that any shareholder will not vote his stock or will vote it only in a specified manner, or that shareholders owning stock having not more than 50 precent of the total combined voting power will exercise voting power normally possessed by a majority of stockholders, then the nominal ownership of the voting will be disregarded in determining, which shareholders actually hold such voting power, and this determination will be made on the basis of such agreement. Moreover, where United States shareholders own shares of one or more classes of stock of a foreign corporation which has another class of stock outstanding, the voting power ostensibly provided such other class of stock will be deemed owned by any person or persons on whose behalf it is exercised or, if not exercised, will be disregarded if the percentage of voting power of such other class of stock is substantially greater than its proportionate share of the corporate earnings, if the facts indicate that the shareholders of such other class of stock do not exercise their voting rights independently or fail to exercise such voting rights, and if a principal purpose of the arrangement is to avoid the classification of such foreign corporation as a controlled foreign corporation under section 957.

(c) Illustrations. The application of this section may be illustrated by the following examples;

Example (1). Foreign corporation R has two classes of capital stock outstanding, 60 shares of class A stock, and 40 shares of class B stock. Each share of each class of stock has one vote for all purposes. E, a United States person owns 51 shares of class A stock. Corporation R is a controlled foreign corporation.

Example (2). Foreign corporation S has three classes of capital stock outstanding, consisting of 60 shares of class A stock, 40 shares of class B stock, and 200 shares of class C stock. The owners of a majority of class A stock are entitled to elect 6 of the 10 corporate directors, and the owners of a majority of the class B stock are entitled to elect the other 4 of the 10 directors. Class C stock has no voting rights. D, a United States person, owns all of the shares of the class C stock. He also owns 31 shares of class A stock and as such an owner can elect 6 members of the board of directors. None of the remaining shares of class A stock, or the 40 shares of class B stock, is owned, or considered as owned, within the meaning of section 958, by a United States person. Since, as owner of 31 shares of the class A stock, D has sufficient voting power to elect 6 directors, D has more than 50 percent of the total combined voting power of all classes of stock entitled to vote, and S Corporation is a controlled foreign corporation.

Example (3). M, a United States person, owns a 51-percent interest in R Company, a foreign company of which he is a member. The company, if it were domestic, would be taxable as a corporation. The remaining interest of 49 percent in the company is owned by seven other members none of whom is a United States person. The memorandum of association of R Company provides for only one manager, who with respect to the company exercises the powers ordinarily exercised by a board of directors of a domestic corporation. The manager is to be elected by unanimous agreement of all the members.

Since M owns 51 percent of the company, he will be deemed to own more than 50 percent of the total combined voting power of all classes of stock of R Company entitled to vote, notwithstanding that he has power to elect a manager only with the agreement of the other members. Company R is a controlled foreign corporation.

Example (4). Domestic corporation M owns a 49-percent interest in S Company, a foreign company of which it is a member. The company, if it were domestic, would be taxable as a corporation. Company S is formed under the laws of foreign country Y. The remaining interest of 51 percent in S Company is owned by persons who are not United States persons. The organization contract of S Company provides for one manager, B, a citizen and resident of country Y who is an officer of M Corporation in charge of its foreign operations in such country, or any person M Corporation may at any time appoint to succeed B in such capacity. The manager has the sole authority with respect to S Company to exercise powers ordinarily exercised by a board of directors of a domestic corporation. Since M Corporation has the discretionary power to replace B and to appoint his successor as manager of S Company, the company is a controlled foreign corporation.

Example (5). N, a United States person, owns 50 percent of the outstanding shares of the only class of capital stock of foreign corporation R. An additional 48 percent of the outstanding shares is owned by foreign corporation S. The remaining 2 percent of shares is owned by P, a citizen and resident of foreign country T, who regularly acts as attorney for N in the conduct of N's business affairs in country T. All of the shares of the outstanding capital stock of R Corporation are bearer shares. At the time of the issuance of the shares to him, P places the certificates for such shares in a depository to which N has access. On several occasions N, with P's acquiescence, has taken such shares from the depository and, on one such occasion, used the shares as collateral in borrowing funds on a loan. Although dividends, when paid, are paid to P on his shares, his charges to N for legal fees are reduced by the amount of the dividens paid on such shares. Although P votes his shares at meetings of shareholders, the facts set forth above indicate an implied agreement between P and N that N is really to retain dominion over the stock. N is deemed to own voting rights ostensibly attached to the stock owned by P, and R Corporation is a controlled foreign corporation.

Example (6). M, a domestic corporation which manufactures in the United States and distributes all of its production for foreign consumption through N, a person other than a related person or a United States person, forms foreign corporation S to purchase products from M Corporation and sell them to N. Corporations S and M have common directors. The outstanding capital stock of S Corporation consists of 10,000 shares of $100 par value class A stock, which has no voting rights except to vote for dissolution of the corporation on a share for share basis, and 500 shares of no par class B stock which has full voting rights. Each classs of the outstanding stock is to participate on a share for share basis in any dividend. The class A stock has a preference as to assets on dissolution of the corporation to the extent of its par value as well as the right to participate with the class B stock in all other assets on a share for share basis. All of the shares of class A stock are issued to M Corporation in return for property having a value of $1 million. Of the class B stock, 300 of the shares are issued to N in return for $3,000 in cash

and 200 shares are issued to M Corporation for $2,000 in cash. At stockholder meetings N never votes in opposition to M Corporation on important issues. Corporation S has average annual earnings of $200,000, all of which will be subpart F income if S Corporation is held to be a controlled foreign corporation. All such earnings are accumulated. Although N ostensibly has 60 percent of the voting power of S Corporation by virtue of his ownership of 300 shares of class B stock, he has the right to only approximately 3 percent of any dividends which may be paid by S Corporation; in addition, upon liquidation of S Corporation, N is entitled to share in the assets only after M Corporation has received the par value of its 10,000 shares of class A stock, or $1 million. Thus, the voting power owned by N is substantially greater than its proportionate share of the earnings of S Corporation. In addition, the facts set forth above indicate that N is not exercising his voting rights independently and that a principal purpose of the capitalization arrangement is to avoid classification of S Corporation as a controlled foreign corporation. For these reasons, the voting power ostensibly provided the class B stock will be deemed owned by M Corporation, and S Corporation is a controlled foreign corporation.

Example (7). Foreign corporation A, authorized to issue 100 shares of one class of capital stock, issues, for $1,000 per share, 45 shares to domestic corporation M, 45 shares to foreign corporation B, and 10 shares to foreign corporation C. Corporation C, a bank, lends $3 million to finance the operations of A Corporation. In the course of negotiating these financial arrangements, D, an officer of C Corporation, and E, an officer of M Corporation, orally agree that C Corporation will vote its stock as M Corporation directs. By virtue of such oral agreement M Corporation possesses the voting power ostensibly owned by C Corporation, and A Corporation is a controlled foreign corporation.

Reg. § 1.957-2 (reserved)

Reg. § 1.957-3 *Corporations organized in United States possessions.*

(a) General rule. For purposes of sections 951 through 964, a corporation created or organized in a possession of the United States or under the laws of a possession of the United States shall not be treated as a controlled foreign corporation for any taxable year if—

(1) 80 percent or more of the gross income of such corporation for the 3-year period immediately preceding the close of the taxable year or for such part of such 3-year period as such corporation was in existence or for such part of such 3-year period as occurs on and after the beginning of such corporation's first annual accounting period beginning after December 31, 1962, whichever period is shortest, was derived from sources within a possession of the United States; and

(2) 50 percent or more of the gross income of such corporation for such period, or for such part of such period, was derived from the active conduct within a possession of the United States of one or more trades or businesses constituting—

(i) The manufacture or processing of goods, wares, merchandise, or other tangible personal property;

(ii) The processing of agricultural or horticultural products or commodities (including but not limited to livestock, poultry, or fur-bearing animals);

(iii) The catching or taking of any kind of fish, or manufacturing or processing of any products or commodities obtained from such activities;

(iv) The mining or extraction of natural resources, or any manufacturing or processing of any products or commodities obtained from such activities; or

(v) The ownership or operation of hotels.

(b) Special provisions. For purposes of section 957 (c) and this section—

(1) United States defined. The term "United States" includes only the States and the District of Columbia.

(2) Possession of the United States defined. The term "possession of the United States" includes Guam, the Midway Islands, the Panama Canal Zone, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, and Wake Island.

(3) Determination of source of gross income. Whether gross income of a corporation referred to in paragraph (a) of this section is derived from sources within a possession of the United States shall be determined by the application of the provisions of § 1.955-6 except that, for purposes of making such determination, the term "produced", as used in paragraph (d) (2) of § 1.955-6, shall also include the activities described in paragraph (a) (2) (i) through (iv) of this section and the activities considered, under subparagraph (4) of this paragraph, to be qualifying trades or businesses.

(4) Manufacturing or processing. The trades or businesses which qualify under the provisions of paragraph (a) (2) of this section shall include, but not be limited to, the manufacture of tabulating cards, paper tablets or pads, facial tissues, and paper napkins from rolls of paper; the manufacture of such household products as liquid starch by mixing quantities of the ingredients which are used to produce liquid starch; and the manufacture of juices and drinks from fruit concentrates. In the application of paragraph (a) (2) of this section, proper regard shall be given to the classification of a trade or business as a manufacturing or processing activity under the applicable economic incentive law of the possession involved. The fact that an activity of a corporation qualifies as a trade or business for purposes of paragraph (a) of this section does not necessarily mean that such activity constitutes a substantial transformation of property within the meaning of paragraph (a) (4) of § 1.954-3 for purposes of determining any foreign base company income of such corporation.

Source: *U.S. Treasury Department Regulations to the I.R.C. of 1954 as amended.*

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III

TREATIES

EXCHANGE OF NOTES BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND, IN RESPECT OF JERSEY, AND THE GOVERNMENT OF THE FRENCH REPUBLIC CONCERNING THE AVOIDANCE OF DOUBLE TAXATION IN INCOME DERIVED FROM SEA AND AIR TRANSPORT.

No. 1

Her Majesty's Ambassador at Paris to the Minister for Foreign Affairs of the French Republic.

(Herein is omitted the letter referred to in the body of the letter set forth below in view of the fact that it has already been published in Supplementary Service to European Taxation No. 4, April 1964.)

No. 2

The Minister for Foreign Affairs of the French Republic to Her Majesty's Ambassador at Paris.

Monsieur l'Ambassadeur *Paris, 5 novembre 1963*

Par lettre en date de ce jour dont la traduction figure ci-après, vous avez bien voulu me faire savoir ce qui suit:

"J'ai l'honneur d'informer Votre Excellence que le Gouvernement du Royaume-Uni de Grande-Bretagne et d'Irlande du Nord, agissant en ce qui concerne Jersey, désireux d'éviter la double imposition du revenu provenant des transports maritimes et aériens, est disposé à conclure, à cet effet, avec le Gouvernement de la République française un accord dans les termes ci-après:

I—(*a*) Les Etats de Jersey exempteront de l'impôt de Jersey tous bénéfices et revenus perçus par une entreprise française du fait de l'exploitation de navires ou aéronefs, que ceux-ci soient possédés par l'entreprise ou affrétés par elle.

(*b*) Le Gouvernement français exemptera de l'impôt français tous bénéfices et revenus perçus par une entreprise de Jersey du fait de l'exploitation de navires ou aéronefs, que ceux-ci soient possédés par l'entreprise ou affrétés par elle.

II—Pour l'application du présent accord:

(*a*) L'expression "l'impôt de Jersey" désigne l'impôt sur le revenu et tous autres impôts sur les bénéfices et revenus qui sont ou peuvent devenir exigibles à Jersey:

(*b*) L'expression "l'impôt français" désigne l'impôt sur le revenu des personnes physiques, la taxe complémentaire, l'impôt sur les bénéfices des sociétés et autres personnes morales et tous autres impôts sur les bénéfices et revenus qui sont ou peuvent devenir exigibles en France;

(*c*) Le terme "France" désigne la France métropolitaine et les départements d'Outre-Mer (Guadeloupe, Martinique, Guyane et Réunion).

(*d*) L'expression "entreprise de Jersey" désigne les Etats de Jersey, les personnes physiques qui sont des résidents de Jersey et qui ne sont pas des résidents de France, les sociétés de capitaux et les sociétés de personnes dirigées et contrôlées à Jersey:

(*e*) L'expression "entreprise française" désigne le Gouvernement français, les personnes physiques qui sont des résidents de France et qui ne sont pas des résidents de Jersey, les sociétés de capitaux et sociétés de personnes (y compris les sociétés en nom collectif, les sociétés en commandite simple et les sociétés civiles) dirigées et contrôlées en France.

III—Les présent accord sera approuvé conformément aux dispositions en vigueur dans chacun des deux Etats contractants. Il entrera en vigueur le 1er jour du mois qui suivra l'échange des notifications constatant que de part et d'autre il a été satisfait à ces dispositions et produira effet pour l'imposition des bénéfices et revenus réalisés à compter du 1er janvier 1961.

IV—Le présent accord restera en vigueur sans limitation de durée mais il pourra être dénoncé par l'une ou l'autre des Parties Contractantes, moyennant un préavis de six mois adressé par écrit à l'autre Partie Contractante.

Si le texte qui précède recueille l'agrément du Gouvernement français, je suggère que la présente lettre et la réponse de Votre Excellence constituent l'accord recherché par nos deux Gouvernements."

J'ai l'honneur de porter à la connaissance de Votre Excellence que les termes de la lettre qui précède rencontrent l'agrément du Gouvernement français. Celle-ci et la présente réponse constituent l'accord recherché par nos deux Gouvernements.

Veuillez agréer, etc.

FR. LEDUC

Swiss Measures against abuse of Tax-Conventions

The International Bureau of Fiscal Documentation has published the 19th Supplement to the Bulletin.

This 90-page publication contains:

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The New Approach

by Alan R. Rado

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INTERNATIONAL BUREAU OF FISCAL DOCUMENTATION

HISTORY

Since its establishment in 1938, the International Bureau of Fiscal Documentation has served as an independent source of tax information and advice. After World War II its functions were broadened beyond mere simple fiscal documentation and assumed the character of supplying factual data on the tax systems of countries around the world in response to requests from various governmental and business organisations.

In 1946, the Bureau began publication of the *Bulletin for International Fiscal Documentation,* the official organ of the International Fiscal Association. This publication has been supplemented by various special publications. In 1961, the Bureau published the first issue of *European Taxation,* a fortnightly English language review of tax developments on the European Continent, in the United Kingdom and in Ireland, followed in 1963 by two loose-leaf services, *Supplementary Service to European Taxation* and *The Taxation of Patent Royalties, Dividends and Interest in Europe.* During that time span the Bureau also published the Germany original of the well-known book by Dr. Albert J. Rädler about taxation in the common market countries. The Bureau continuously assisted in translating and preparing tax materials for other publications. Additionally, its library was greatly expanded and now contains well over 7000 volumes on national and international tax matters, as well as more than 250 selected periodicals; many visiting researchers make use of these library facilities.

GOALS

The overriding goal of the Bureau is to serve the International community by collecting, evaluating and disseminating tax data in a manner which combines scientific objectivity with practical realism.

Organization

The Bureau is a public non-profit foundation established under Dutch law. Its policies are determined by a "Curatorium", or board of trustees, composed of outstanding representatives of the government, business and academic communities in various countries. A managing director is responsible for carrying out the goals articulated by the Curatorium.

The Bureau is separated into four divisions: Library and Documentation, which is responsible for acquisition and maintenance of tax materials; International Tax Service, which prepares reports for governmental, business and scholarly purposes; Publications Department, which is responsible for the whole gamma of the Bureau's publications; and the Administrative arm, which plans and coordinates Bureau activities.

Correspondents

Apart from its own Associates, who represent several nationalities, the Bureau avails itself of the coopeative services of a large number of expert correspondents throughout the world.

The program

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The Bureau seeks to prepare young lawyers and economists to meet the growing demand for international tax experts and offers to young post-graduates from developed and developing countries the opportunity to work with the Bureau.

2. *Research*

The Bureau is focusing its research efforts upon a significant contemporary problem—the relationship between capital exporting nations and developing countries. Other important research projects include studies of the tax aspects of economic integration and of the influence of tax incentives on economic growth.

3. *Education*

The Bureau seeks to stimulate, and participate in, seminars and discussion groups, lectures and publications.

4. *Library and Documentation*

The Bureau's program of cataloguing and completing its set of materials will be continued in the framework of its library facilities which were much improved as a result of the move in 1963 to new quarters in an old city gate of Amsterdam.

5. *Reports*

The Bureau prepares reports containing factual data and legal appraisals relating to countries other than the country of residence of the organization or individual who requests a report.

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BELGIUM

TAX NEWS

Rectification

Monsieur Jean van Weddingen à Woluwe-Saint-Pierre nous a informé qu'il avait signalé une erreur dans notre Bulletin no. 1 de janvier 1964, sous la rubrique (page 8) "Taxe de transmission", partie inférieure gauche. Dans la dixième ligne il faut dire $6^0/_{00}$ au lieu de 6%.

Codification of the new income tax legislation

The Belgian Government has issued a royal decree of February 26, 1964 which contains the new Belgian Income Tax Code (Official Gazette of April 10, 1964).

CANADA

TAX NEWS

Budget speech 1964

On March 16, 1964 the Canadian Minister of Finance Mr. Walter Gordon delivered his 1964 Budget Speech, whereby a number of important amendments have been proposed.

Dividend withholding tax rise dropped

In 1963 the 15% dividend withholding tax has been reduced to 10% for dividends paid to non-resident stockholders by Canadian corporations having a "degree of Canadian ownership". A "degree of Canadian ownership" means in substance that 25% of the shares issued must be owned by Canadian residents or by Canadian controlled corporations. The dividend withholding tax on dividends distributed to non-resident stockholders by Canadian corporations not having such a degree of Canadian ownership would be increased to 20% as of January 1, 1965. It has now been proposed to drop this latter increase and maintain the original 15% rate in this case. The reduction to 10% dividends distributed by Canadian corporations having a "degree of Canadian ownership" will not be abolished. The latter definition will be changed, however. See *infra*.

Non-resident-owned investment corporations

The rate for so-called non-resident-owned investment corporations which was increased from 15% to 20% in 1963 will again be lowered to 15%.

"*Degree of Canadian ownership*"

The definition of "degree of Canadian ownership" required only that 25% of the issued stock of a corporation having full voting rights must be owned by Canadian individuals or Canadian controlled corporations. It has now been proposed to

add that also at least 25% of the "equity shares" of a corporation must be held by Canadian individuals or Canadian controlled corporations. Equity shares are to be defined as shares the holders of which have the right to participate in the dividends and, after the repayment of capital, in the surplus of the corporation on redemption, reduction of capital or winding-up of the corporation to an extent at least as great as holders of stock of other classes in the corporation, after making adjustment for differences in paid-up capital values of separate classes of stock.

Scientific research

Expenditure of a current nature for scientific research carried on outside of Canada related to the taxpayer's business directly undertaken by or on behalf of the taxpayer will be eligible for deduction.

TAX CASES

Foreign tax credit if foreign taxes were actually overpaid

On February 4, 1964 the Canadian Tax Appeal Board released a judgement wherein it considered whether a taxpayer was entitled to claim a foreign tax credit under section 47.3(b) Income Tax Act based on an amount of foreign tax actually paid in the relevant year even though, in the next year, the taxpayer succesfully applied to the foreign government for a refund of those taxes paid.

In the case under review the tax payer—a Canadian resident who was an employee of an American firm—paid United States taxes in the amount of $ 4,537.30. in 1957. In 1961 he received a refund of $ 3,485.40 in respect of those taxes paid in 1957. The Board held that under these circumstances the amount eligible for the credit was the difference between the tax paid in 1957 and the refund received in 1961.

Source: *McDonald's Current Taxation, Vol 5, no 10, March 4, 1964.*

DOCUMENTS

DEPARTMENT OF NATIONAL REVENUE

Information Bulletin No. 22 27th January, 1964.

The income tax act – part III – Relating to Corporations With a Degree of Canadian Ownership

Information Bulletins Nos. 18 en 19 are cancelled.

Canadian resident corporations that pay dividends to non-resident shareholders in a taxation year may have such dividends taxed in the hands of such shareholders at 10%, if the company has a degree of Canadian ownership in the year.

The general provisions governing whether a corporation has a degree of Canadian ownership in a taxation year are contained in Section 139A of the Income Tax Act.

Information return required

Corporations desiring to establish a degree of Canadian ownership must file two copies of return T2039 with the first form NR7 "Tax Remittance Statement" submitted in the corporation's taxation year, if dividends have been paid or credited to non-residents and tax has been deducted at 10%.

The names and addresses of beneficial owners whose shareholdings have been considered in determining that the corporation has the required degree of Canadian owner-

ship, and the names and addresses of Directors who were resident in Canada must be submitted in duplicate with the form T2039.

Election

Form T2039 also provides for companies to elect to use any 60-day period between 13th June, 1963 and 1st May, 1964 to qualify as a corporation having a degree of Canadian ownership for taxation years commencing before 1st May, 1964. If an election is made, an appropriately completed form T2039 must be filed by 1st May, 1964.

Dividends

Commencing 14th June 1963 dividends paid or credited to non-residents by a corporation resident in Canada are subject to the reduced rate of non-resident withholding tax of 10% if the corporation has the required degree of Canadian ownership.

If a corporation does not have the required degree of Canadian ownership as defined, and dividends are paid before 1st January, 1965, the rate of tax is 15%.

If the corporation does not have the required degree of Canadian ownership as defined, and dividends are paid after 31st December, 1964, the rate of tax is 20%.

Where these rates of tax are in excess of the maximum permitted under tax treaties between Canada and various foreign countries, the rates in the treaties will prevail. The imposition of the 20% rate of withholding by Canada on 1st January, 1965 will terminate Article XI of the Canada-U.S. Tax Convention on that date.

Refunds under sections 106(1b) and 123(7)

If a corporation resident in Canada has withheld tax at a rate in excess of 10% from dividends paid or credited to non-residents between the period 13th June, 1963 and 1st January, 1967, those non-residents will be entitled to claim refunds of overpaid taxes, providing that the corporation attains the required degree of Canadian ownership for its first taxation year commencing after 31st December, 1966. The refund will be the amount of tax in excess of the amount that would have been payable if the corporation had the required degree of Canadian ownership on the dates the dividends were paid. It follows that refunds under this section may only be claimed after the end of 1966.

J. GEAR MCENTYRE,
Deputy Minister (Taxation).

(Extract from the CANADA GAZETTE *of Saturday, February 1, 1964)*

Information Bulletin No. 23 27th January, 1964.
The Income Tax Act—Part III—Relating to Management or Administration Fees or Charges

Management or administration fees or charges paid or credited by a resident of Canada to a non-resident person after 13th June, 1963 are taxed at the rate of 15% of the pay-

ment, collected by withholding by the Canadian resident payor, and remitted on Form NR7.

Management or administration fees or charges paid or credited to an independent firm are not subject to tax under Part III of the Act, but such amounts paid in respect of services rendered in Canada will continue to be subject to a deduction of 15% under Section 105 of the Income Tax Regulations on account of the recipient's liability for the tax under Part I of the Act.

An amount paid by a corporation resident in Canada to a related corporation resident outside Canada is not a management or administration fee or charge subject to tax under Part III of the Act if:

(a) it was in reimbursement of a specific expense incurred by the non-resident corporation for a service that was for the benefit of the payor, and
(b) the amount was reasonable in the circumstances.

To the extent that these conditions are not met, the amount will be taxed as a management or administration fee or charge.

If an amount paid is a contractual amount based on a period of time, a pro-rating of expense, or percentage of sales, the onus will be on the Canadian corporation to provide a breakdown of the contracted amount into the Canadian corporation's share of its components by specific expenses, at their cost to the non-resident related company. If these components total at least the amount of the charge, and are allowable expenses to the Canadian corporation, the amount will not be taxed as a management or administration fee or charge.

Salaries paid to non-resident persons direct from Canadian corporations will not be considered management or administration fees or charges under Part III of the Act.

J. GEAR MCENTYRE,
Deputy Minister (Taxation).

(Extract from the CANADA GAZETTE *of Saturday, February* 1, 1964*)*

DOMINICAN REPUBLIC

Income tax law amended

The latest amendment to the Income Tax Law of the Dominican Republic became effective with passage of Law No. 152 signed and published by the Triumvirate of the Provisional Government.

The following are among the principal changes made in the previous income tax. Law No. 5911 of May 22, 1962, as subsequently amended by Law No. 6173 of

January 30, 1963. The complementary tax which had been superimposed at all income levels had previously not been in excess of 40% of income over RD $ 40,000. (One Dominican peso equals one US $).

Tax exemptions, rates

The net result under the amended law is establishment of a new progressive scale of rates. The new law amends tax exemptions in the following manner:

1) Up to 5% of one's net taxable income.—Funds set aside as a reserve for payment of pensions and of severance pay, provided such monies were deposited in savings and loan associations.

2) Stock dividends and income from Government securities, provided such income is not derived from a mortgage or lien.

3) Up to 5% of one's taxable income.—Funds set aside in term deposits for a period of 5 years or more in Government banks or savings and loan associations.

4) Up to 5% of one's taxable income.—Donations made to the State, to autonomous institutions, charitable institutions, and where funds have been set aside to create scholarships, usable both locally and abroad, provided, however, that such scholarship will not benefit the families of the directors or shareholders with net taxable incomes in excess of RD$ 10,000.

The new law provides for the imposition of severe penalties against the submission of inaccurate returns, failure to file returns and failure to file on time.

Source: *International Commerce, April 20, 1964.*

EL SALVADOR

TAX NEWS

Tax reform

Rates for the tax levied on individual income have recently been changed. Within the lower brackets the rates have not changed appreciably, but within the middle brackets they have been increased, and within the upper brackets reduced. The maximum tax rate is now 60%, replacing the previous 75.5%. Non-resident individuals are now taxed at 28% (formerly 20%).

Rates for the tax on corporate income have also been increased, especially for foreign companies, which are now taxed at a rate of 38%. Dividends received by foreign companies are taxed at 28% (withheld) in addition to the normal 15% withholding tax.

Income earned abroad by a resident of El Salvador will be taxed beginning in 1966. A capital tax has also been established.

Source: *International Commerce, February 17, 1964.*

FINLAND

TAX NEWS

In the last few years the expenditures of the Finnish Government rose to such heights that it was faced with serious budgetary problems. Notwithstanding the fact that its revenues were increasing and far more income was brought about by the

new turnover tax, provision had to be taken to ameliorate the deficit; as a result, the Riksdag increased the rate for the corporate income tax from 38% to 45%.

In May, 1963 the Government introduced a bill in the Riksdag whereby individuals and partnerships would be subjected to a compulsory loan, which would be equal to a sum of 20% of income tax and of 50% of net worth tax due in 1962. One half of this loan was to be repaid in 1967 and the remainder in 1968. Since this bill needed a qualified majority, which from appearances it was unlikely to secure, it was subsequently withdrawn.

After the Government's resignation in December (caused by a disagreement, about the solutions for the budgetary problems) the new Government in January 1964 introduced a bill to levy a surtax for the year 1964 on individual income and net worth taxes. This bill was subsequently approved by a one vote majority.

As a result, individuals and partnerships will pay a surtax in 1964, amounting to 20% of their national income tax for that year. However, if the income tax payable exceeds FMk. 3,000, the surtax will increase progressively so that the rate will be 40% if the amount of the ordinary income tax exceeds FMk. 70,000. The surtax on the net worth tax will be levied without progression at a rate of 50% of the tax.

The surtax will be deductible from the taxes payable during 1967 and 1968 in such a way that one half of the surtax, plus 15% of one half of the surtax will be deductible from the 1967 tax and the other half of the surtax plus 20% of the half of the surtax will be deductible from the 1968 tax.

The surtax will be payable as of April 1, 1964, when the preliminary tax rates are to be increased accordingly.

The Riksdag rejected that part of the bill seeking to impose the surtax on income derived from newly built dwelling houses, which benefit from a ten year exemption under the ordinary tax. Therefore this income will likewise be exempt from the surtax.

The yield of the surtax is estimated at FMk. 120,000,000, which equals 10% of the total ordinary income and net worth tax (payable by individuals and legal entities).

Reported by: Eero Schrey, Federation of Finnish Industries, E. Ranta 10, Helsinki; *and translated by* the Editing Staff of the Bulletin.

The 1964 Purchase Tax Reform

In the beginning of this year, a thoroughly revised purchase tax system was introduced. The tax burden is now equitable among different commodity groups, and at the same time the loopholes in the previous system have been filled.

Fiscal needs made it necessary to impose a purchase tax—more properly termed a sales or a turnover tax—in 1941. This tax was levied at two stages, on producers sales to wholesalers, and on sales by the latter to retailers. Certain categories of goods, mainly food necessities, primary production, and small scale handicraft products, were exempted, as was production for export.

In 1951, there was adopted a system whereby the tax was levied at the production stage only. This change had a technical motivation; the number of those liable to pay tax fell considerably, as all retailers were omitted. The supervision

of tax collection had caused difficulties, owing to the variations and deficiencies in the bookkeeping methods of retailers. Further complications resulted from the simultaneous sale of taxed and tax free goods.

During the last thirteen years, a number of minor changes have been made, with a consequent gradual widening of the range of tax-exempted goods and differentiation in the rates. By the end of 1963, the general rate was 20 per cent on the manufacturer's tax-inclusive price. A rate of 10 per cent was applied to certain types of workshops, and 13 per cent to a wide but specified category of investment goods. Coal, coke and oil fuels were taxed at 10 per cent, as were restaurants and licensed bars. Numerous exemptions included books, journals and newspapers, farm produce, bread and other food items, fertilizers, medical equipment, shoes, textiles, agricultural machinery, sawing tools, ships and aeroplanes, water and electricity. Service trades were not taxed, with the exception of the workshops and restaurants mentioned above.

This purchase tax system was found to contain inherent flaws, although the aims of the 1951 reform—simplification of supervision, and improvement in opportunity to grant exemptions—had been accomplished. First of all, the granting and the withdrawal of exemption privileges appreciably blurred the overall picture of the tax and its effects. The free list could not be consistent in every point, with the result that of two commodities serving the same end, one might be taxed, and the other exempted. Unprocessed goods were not taxed, whereas the smallest amount of processing brought in its train tax liability on the whole value. A machine could be tax-exempt, and its accessories and spare parts taxed. The legislation abounded with problems of interpretation.

In another respect, the system introduced friction and skewness in production and distribution, apart from deliberate attempts at tax evasion. The larger the wholesale and retail margins were, the smaller was the portion of the tax in the final consumer's price, since the tax was levied on the manufacturer's price. Firms with both production plant and sales outlets could therefore, by manipulation of the transfer prices within the firm, gain an advantage over those merchants buying through the customary channels. The exemption granted to handicraft shops hampered the expansion of small undertakings.

In spring 1963, the Government issued a carefully prepared proposal for tax reform; its underlying principle was that the tax should neither affect the competitive position of firms, nor trammel their expansion. The same rate of tax was to apply to all goods and to the whole of the final price, exemptions being kept down to a bare minimum.

Tax is to be paid on all domestic sales and imports, as well as on repair work and restaurant trading. Other service trades remain untaxed. Exemptions granted include those for primary agricultural products, fertilizers, fodder, and medical supplies, when sold by the first or primary producer, or imported. Total exemption is granted to water, electricity and landed property, along with newspapers and journals, round timber and firewood, reindeer, lichen, soil, sand and gravel, living animals, aeroplanes and ships. Second-hand trade is taxed only with respect to the dealer's margin. Artisans not employing labour and without business premises are not taxed; previ-

ously, the sole criterion was the absence of paid labour.

The tax liability is divided into two classes; the wholesale and the retail stage, with the former including manufacturers. Each stage pays tax only on its own share in the final price; a manufacturer pays tax on the producer's price and wholesale and retail traders on their margins. In the latter case, the calculation of the tax base is exceedingly simple; tax is to be paid each month on the difference between total sales and total purchases. Technically, this means a return to the two-step taxation previously in force, which included all retailers. However, the new system is superior in simplicity, with only one uniform rate, and with but few, distinctly defined tax-free categories. As the methods of book-keeping and tax supervision have meanwhile improved, the new system is not too complicated.

A rate of 11 per cent on the value of sales was originally proposed. This was voted down by parliament to 7 per cent except that 10 per cent will be levied in 1964 to augment public revenue.

Almost all prices change with the new system. The relative rise is largest in those items previously tax-exempt and now taxed, such as textiles and shoes. The prices of processed food items rise less, as the new tax applies only to the cost of processing and distribution. Consumer items such as consumer durables, which earlier bore the 20 per cent rate, are falling in price, although the percentage drop will be less than the reduction in the tax rate, as the former higher rate was applied on a narrower base (the producer's price). Cases are even conceivable in which a very high proportion of markup can result in the payment of more tax with the lower rate.

It will take some time for the new level of relative prices to settle down. The cost of living is rising as a consequence of these measures. As a number of daily necessities are among the goods with rising prices, the Government has raised child allowances and national pensions by 5 per cent.

Monthly Bulletin of the Bank of Finland, Vol. 38, *No.* 1, *January* 1964.

FRANCE

DOCUMENTS

Décret no 64-223 du 11 mars 1964 pris pour l'application de l'article 36 de la loi no 62-873 du 31 juillet 1962.

Le Premier ministre,
Sur le rapport du ministre des finances et des affaires économiques,
Vu l'article 36 de la loi no 62-873 du 31 juillet 1962 portant loi de finances rectificative pour 1962;
Le Conseil d'Etat (section des finances) entendu,

Décrète:

Art. 1er.—Toute communauté d'intérêts existant entre une entreprise venderesse et

une entreprise acheteuse, quelle que soit leur forme, est considérée comme créant entre les deux entreprises intéressées des liens de dépendance au sens de l'article 36 de la loi susvisée du 31 juillet 1962.

Art. 2.—Sans que ces dispositions aient un caractère limitatif:

La communauté d'intérêts visée à l'article 1er est établie dès lors que l'une des deux entreprises possède en droit ou en fait, directement ou par personnes subordonnées ou interposées, un pouvoir de décision dans l'autre entreprise; il en est de même lorsque l'une des deux entreprises possède soit une part prépondérante dans le capital, soit la majorité absolue des suffrages susceptibles de s'exprimer dans les assemblées d'associés ou d'actionnaires de l'autre entreprise;

La communauté d'intérêts visée à l'article 1er est également établie lorsque l'entreprise acheteuse, directement ou par personnes subordonnées ou interposées, prend en charge, en totalité ou en partie, des frais qui auraient dû normalement être exposés par l'entreprise venderesse.

Il en est de même lorsque l'entreprise acheteuse, directement ou par personnes subordonnées ou interposées, consent à l'entreprise venderesse des avantages de quelque nature que ce soit qui ont eu pour effet de provoquer une réduction du prix des objets vendus par cette dernière.

Art. 3.—Sont réputés, sauf preuve contraire, personnes subordonnées ou interposées au sens de l'article précédent:

Le propriétaire, les gérants et administrateurs, les directeurs et employés salariés de chacune des entreprises en cause ainsi que les personnes qui ont cessé d'exercer l'une de ces activités dans l'une des entreprises pour prendre un poste de direction, de gestion ou d'administration dans l'autre entreprise;

Les père et mère, les enfants et descendants ainsi que le conjoint, quel que soit le régime matrimonial, des personnes désignées à l'alinéa précédent;

Les autres entreprises ayant un lien de dépendance avec l'une des entreprises considérées;

Toute tierce personne qui possède un intérêt dans le commerce de chacune des entreprises considérées ou une part de leur capital.

Art. 4.—Les dispositions qui précèdent ne sont pas applicables lorsque les produits faisant l'objet de transactions entre les entreprises considérées sont également livrés habituellement et par quantités importantes à des tiers au même prix que celui consenti entre elles par lesdites entreprises.

Art. 5.—Le ministre des finances et des affaires économiques est chargé de l'exécution du présent décret, qui sera publié au *Journal Officiel* de la République française.

Fait à Paris, le 11 mars 1964.

Source: *Journal Officiel, du 15 mars 1964.*

Article 36 de la loi du 31 juillet 1962 portant loi de finances rectificative pour 1962.

Art. 36.—I.—Les entreprises qui revendent en l'état, en gros ou en détail, des produits achetés à d'autres entreprises établies hors de France ou assujetties en France à la taxe sur la valeur ajoutée sont elles-mêmes soumises à cette taxe, lorsqu'il existe des liens de dépendance entre les entreprises considérées.

Les conditions de la dépendance des entreprises au sens du présent paragraphe sont définies par décret en Conseil d'Etat.

II.—Les dispositions de l'alinéa 4e du paragraphe I de l'article 263 du code général des impôts et du paragraphe 2 de l'article 273 du même code sont abrogées.

INDIA

TAX NEWS

The Indian fiscal year commences on 1st April and ends on 31st March. On the last day of February every year the Indian Budget is presented by the Finance Minister.

The Budget for the fiscal year 1964/65 was presented by the Finance Minister to the Indian Parliament on 29th February, 1964. The revenue receipts for the year are estimated at Rs. 2,95 crores and revenue expenditure at Rs. 2,41 crores leaving a revenue surplus of Rs.54 crores for the year. (£ = Rs.13.33; crore = 10 millions).

Numerous tax proposals have been announced by the Finance Minister with a view to attract foreign investors, to provide incentives for the corporate sector and to promote savings. The important proposals are summarised below.

PERSONAL TAXATION

1 INCOME-TAX

(a) The personal income tax structure will be regraded and income-tax at rates varying between 6% to 25% of the total income of an individual will be charged. In addition, super-tax on annual incomes above Rs.20,000 will be levied at rates varying between 10% to 50% of the total income above Rs.20,000.

(b) A surcharge on tax will be levied on earned income above Rs. 100,000 and unearned income above Rs.10,000. Rates: 10% of tax on earned income; 12.5% to 17.5% on unearned income.

(c) Foreigners working in India will get a rebate of income-tax and super-tax on the amount spent on the education of children abroad subject to a maximum of Rs.2,000 per child up to two children under 21 years of age.

(d) The tax exemption granted to foreign technicians (industrial engineers etc.,) for a period of three years will be extended to foreign teachers and professors coming to India on approved programmes.

(e) A compulsory Annuity Deposit Scheme applicable to Indian citizens with income above Rs.15,000 per annum will be introduced from 1st April, 1964. The deposits will be made with the Government at rates varying between 5% to 12.5% of annual gross income of Rs.15,000 and above. The amount of the deposit will be allowed as a deduction from taxable income but repayment of the deposit will be included in taxable income. The deposit will earn interest at the rate of 4% which will be taxable.

2 WEALTH-TAX

The exemption limit has been brought down from Rs.200,000 to Rs.100,000. The revised schedule of rates is:

On the first	Rs.100,000 of net wealth	.. Nil
,, ,, next	Rs.400,000 ,, ,, ,,	.. 0.5%
,, ,, ,,	Rs.500,000 ,, ,, ,,	.. 1 %
,, ,, ,,	Rs.1,200,000 ,, ,, ,,	.. 2 %
,, ,,	balance of net wealth	.. 2.5%

In the case of Hindu Undivided Families the initial exemption limit is Rs.200,000.

3 GIFT TAX

The rates of gift tax are also revised. These are:

On the first	Rs.5,000 on the value of all taxable gifts	.. 4%
,, ,, next	Rs.15,000 ,, ,, ,, ,, ,, ,, ,,	.. 8%
,, ,, ,,	Rs.25,000 ,, ,, ,, ,, ,, ,, ,,	.. 15%
,, ,, ,,	Rs.100,000 ,, ,, ,, ,, ,, ,, ,,	.. 25%
,, ,, ,,	Rs.200,000 ,, ,, ,, ,, ,, ,, ,,	.. 40%
,, ,,	balance of the value of all taxable gifts	.. 50%

4 ESTATE DUTY

The rates of duty in the case of property which passes or is deemed to pass on the death of the deceased have also been revised. These are:

On the first	Rs.15,000 of the principal value of the estate	.. Nil
,, ,, next	Rs.50,000 ,, ,, ,, ,, ,, ,, ,,	.. 4%
,, ,, ,,	Rs.100,000 ,, ,, ,, ,, ,, ,, ,,	.. 8%
,, ,, ,,	Rs.300,000 ,, ,, ,, ,, ,, ,, ,,	.. 15%
,, ,, ,,	Rs.500,000 ,, ,, ,, ,, ,, ,, ,,	.. 25%
,, ,, ,,	Rs.500,000 ,, ,, ,, ,, ,, ,, ,,	.. 40%
,, ,, ,,	Rs.500,000 ,, ,, ,, ,, ,, ,, ,,	.. 50%
,, ,,	balance of the principal value of the estate	.. 85%

5 EXPENDITURE TAX

This was originally introduced in 1957 and was suspended after five years of operation. It has been reintroduced. It will apply to all expenditures above Rs.36,000 per annum and the proposed rates of tax are:

Expenditure which does not exceed Rs.36,000									..	Nil
,,	,,	exceeds	Rs.36,000	but	does	not	exeed	Rs.48,000	..	5 %
,,	,,	,,	Rs.48,000	,,	,,	,,	,,	Rs.60,000	..	7.5%
,,	,,	,,	Rs.60,000	,,	,,	,,	,,	Rs.72,000	..	10 %
,,	,,	,,	Rs.72,000	,,	,,	,,	,,	Rs.84,000	..	15 %
,,	,,	,,	Rs.84,000						..	20 %

6 CAPITAL GAINS TAX

The tax will be on a graded scale of all gains realised from the sale of capital assets. Such assets exclude agricultural land an personal effects, that is to say, moveable property including wearing apparel, jewelry and furniture held for personal use. Stock in trade, consumable stores or raw materials held for purposes of business or profession are also excluded.

The scale of tax will be different for houses and landed property and will be at the rate of 75% of the average rate of income-tax and super-tax payable by an individual.

Other types of capital gains will be taxed at 50% of the average rate. An investor in shares will be charged to tax on capital gains on the fair market value of bonus shares received.

CORPORATE TAXATION

1 The standard rate of corporation tax remains at 50% of total income. However, a rebate of 10% of tax will be given to corporations engaged in basic industries. Fourteen items of basic industries have been listed in the Finance Bill and these include iron and steel, aluminium, copper, lead, zinc, coal, equipment for generation, transmission and distribution of electricity, machine tools, cement, fertilizers, paper, tea, coffee and rubber.

2 "Controlled corporations" will pay tax at 60% of taxable income, but they will get a rebate of 10% if engaged in one of the basic industries.

3 Foreign corporations operating in India through Indian branches will now pay a total tax at the rate of 65% of total income instead of 63%.

4 Super-tax on intercorporate dividends has been withdrawn. This means a reduction in tax of 5% to 10% on dividends received by one corporation from another. The standard rate of tax on intercorporate dividends will now be 25% but a foreign shareholding company having investments in a "controlled corporation" engaged in a basic industry will get a rebate of 10% reducing the effective rate of tax to 15%.

5 For the assessment year 1963/64 corporations were liable to super profits tax in addition to income-tax and super-tax. This tax has now been abolished but a surtax on corporation profits has been proposed. The surtax will be charged at the rate of 40% on the net profits of corporation after payment of income-tax and super-tax as are in excess of 10% of the capital and reserves of the company. Capital will include debentures and other long term loans.

6 A rebate of 20% of surtax will be allowed to companies engaged in any of the basic industries outlined above.

7 In addition to income-tax, super-tax and surtax, corporations will be subject to dividend tax at the rate of 7½% of all dividends distributed.

Reported by: K.C. Khanna, 16 Strandroad, Calcutta.

JAPAN

TAX NEWS

The main items of the Acts concerning the tax revision which passed the Diet on March 31, 1964 are as follows:

I. An Act partially amending the Corporate Tax Law.
II. An Act partially amending the Inheritance Tax Law.
III. An Act partially amending the Gasoline Tax Law and the Local Road Tax Law.
IV. An Act partially amending the Income Tax Law.
V. An Act partially amending the Special Taxation Measures Law.
VI. An Act partially amending the Local Tax Law.

The increase of the tax revenue in the Fiscal Year 1964 (April 1964-March 1965), as contrasted to the National Budget of the Fiscal Year 1963, is estimated at 682.6 billion Yens (the official exchange rate to a dollar is 360 Yens) and the Government has projected the tax cut of approximately 220 billion Yens (the full year) under the 1964 Tax Reforms. The tax reduction in the national tax amounts to 137.6 billion Yens and the local tax is reduced by 88.6 billion Yens. The new Acts contain both tax reducing and tax increasing measures. The net tax reduction is estimated to reach approximately 220 billion Yens.

Among the amending Acts concerning the national tax, the revision of Income Tax Law has the greatest weight; the amount of the tax reduction under the income tax reform will be about 36.8% of total reduction. The primary measures for effecting this reduction are to raise the limit of the basic deduction, the tax deduction for dependents and spouse, and the earned income deduction.

The Act amending the Special Taxation Measures Law contains the abolition of the corporate income tax relief on income arising from export.

The amending Acts, to the local tax, place their greatest emphasis upon the reduction of the Inhabitant Tax.

The purpose of this reform is to adjust unbalanced tax burdens among regions, by unifying taxing methods.

The tax reduction is accompanied by several tax raising measures. The most extensive tax increase is in the Consumption Tax on Gasoline and the Local Road Tax as a revenue source for expenditures on road construction and improvement.

In addition to the amendment of Laws, the Ministry of Finance revised the decree concerning the depreciation of depreciation assets. They shortened the useful lives of machines and equipments by an average of 15%. Other measures in the new Decree reduce the salvage value and provide an option on allowance methods of depreciation on certain assets, etc. This revision constitutes the main assistance to business enterprises. The revenue loss of the National Government is estimated at 41.1 billion Yens.

With all these tax reductions planned for the Fiscal Year 1964, the ratio of the tax burden to national income is estimated to increase to about 22.2% from 21.5% in 1963.

Therefore, whether the tax burden is too heavy or not is being disputed.

Reported by: Hideyasu Iwasaki, General Secretary Japan Tax Association, 2, 1-Chome Marunouchi Chiyoda-Ku, Tokyo.

PAKISTAN

TAX NEWS

Budget 1963-64; *Summary of Financial Proposals*

INCOME-TAX

Education allowance

The rate has been increased from Rs.200 to Rs.300 per child. The maximum limit has also been raised from Rs.600 to Rs.900.

Earned income relief

The rate of relief has been raised from 20 *per cent* of the salary income to 25 *per cent* of such income up to Rs.20,000 *plus* 20 *per cent* of the balance. The maximum limit of Rs.6,000 remains unchanged.

Exemption of dividend income

The exemption limit has been changed from the first Rs.1,000 *plus* 20 *per cent* of the balance to Rs.2,000. The increase in the exemption limit would provide relief to persons in the lower and middle income brackets while modification of the concession would only affect those in the high income brackets.

These three proposals provide for the grant of substantial relief to persons in the low and middle income groups.

Investment allowance

The scope of this allowance has been widened to cover investments in Government-sponsored finance corporations and transport companies.

Rates of corporate and inter-corporate taxes

These have been revised so that closely held companies and family corporations would pay tax at a rate 5 *per cent* higher than public companies. The definition of public companies has also been changed to make them more broadbased. The relaxation in the matter of declaration of dividends by private companies has also been withdrawn.

In view of the consideration that industrial companies are earning substantial profits, the 5 *per cent* rebate admissible to such companies has been discontinued.

Small companies whose income does not exceed Rs.25,000 will get a rebate of 5 *per cent*.

To curb the tendency among big business houses to provide their directors and other *privileged* employees *lavish* perquisites and services at a considerable cost to the company, the deduction to be allowed from taxable profits on account of such perquisites and benefits has been restricted to 75 *per cent* of the salary subject to a maximum of Rs.30,000 per annum in the case of any one person. This restriction will not apply for two years to those foreign technicians whose salaries are not taxable under approved contracts and who are required to stay in Pakistan after their tax-exemption period.

Initial and additional depreciation allowances:—These allowances admissible in the case of motor vehicles not plying for hire have been withdrawn. Any addition in excess of Rs.40,000 in the cost of such vehicles would not be eligible for depreciation allowance. This measure is designed to discourage the purchase and maintenance of luxury cars by big business houses.

The development allowance admissible at the rate of 20 *per cent* over and above the depreciation allowance, which is admissible to the extent of 100 *per cent* of the capital cost of plant and machinery has been discontinued.

Export incentives

In addition to the other export incentives, an incentive in the field of direct taxation has been provided for exports. A rebate of 15 *per cent* of the tax payable by export houses which are incorporated and 10 *per cent* in other cases will be allowed. In the case of manufacturers who are also exporters, a rebate of 10 *per cent* of the tax attributable to export sales will be allowed if the export sales range between 10 and 20 *per cent*. For export sales ranging between 20 and 30 *per cent*, the rebate will be at the rate of 15 *per cent* and on export sales exceeding 30 *per cent*, the rebate will be allowed at the rate of 20 *per cent*. For this purpose the value of export sales will be reduced by the amount of the export bonus earned through export sales. The tax rebate will not, however, be allowed in the case of tea, cotton, raw jute, jute manufactures and such other manufactured goods as may be notified from time to time.

Investment allowance in the case of life insurance policies will be allowed in respect of such policies only as are taken in Pakistan and the proceeds of which are also payable in Pakistan. This condition will not, however, apply to policies taken on or before the 8th June, 1963.

Additional charge for delayed payment of tax

Several changes have been made in the Income-Tax Act in recent years to make tax-payers conscious of their liabilities. It is, however, noticed that many tax-payers still do not pay sufficient attention to the settlement of their tax liabilities. An additional charge at the rate of 6 *per cent* per annum is proposed to be made if the tax is not paid by the due date. This additional charge will also be made where the tax is allowed to be paid in instalments at the request of the tax-payer.

ESTATE DUTY

Insurance policies taken out for the sole purpose of meeting estate duty liability and assigned to Government will be exempt from estate duty to the extent of the duty which becomes actually payable. Any balance left over will, however, be added to the other estate and charged to estate duty in the normal way. Provision has also been made for accepting property and compensation bonds issued under the Land Reforms in satisfaction of estate duty liability.

NEW DIRECT TAXES

Three new direct taxes are proposed to be levied viz. an annual tax on wealth, a tax on capital gains and a tax on gifts.

Wealth tax

This is proposed to be levied on assets exceeding Rs.400,000. The first Rs.400,000 would be exempt and on the next Rs. 100,000, the tax would be levied at the rate of 1 per cent and on the balance at the rate of 1½ *per cent*. Public companies will be exempt from this tax but private companies would be liable at the rate of 1 *per cent*. Partnerships as such would be exempt but the share of each partner would be taxable along with his other assets. Certain assets, such as agricultural land, machinery and implements growing crops, standing trees, animals, properties held in the trust, etc. etc. would be exempt.

Gift tax

This is proposed to be levied at the rate of 5 *per cent* on the first Rs.50,000 rising upto 30 *per cent* on gifts above the value

of Rs.200,000. Gifts up to a total value of Rs.10,000 in a year, gifts made to recognised schools, colleges, hospitals and approved charitable institutions and funds, gifts to wife or husband up to Rs.100,000 in their life time would be exempt.
In addition, gifts to employees and dependent relatives up to a maximum of Rs.5,000 would be exempt.

Capital gains tax

This proposed to be levied at the rate of 20 *per cent* on the amount of the capital gains in the case of companies and registered partnerships. No further capital gains tax would be levied on the shareholders and the partners in respect of any dividend or share received by them out of such gains. In other cases, two-thirds of the capital gains, subject to a minimum of Rs.10,000 would be exempt and the balance added to the other income of the tax-payer and assessed at the appropriate income-tax rate. This tax will *not be levied on gains in respect of immovable property*. These gains, however, are subject to a provincial tax in urban districts in West Pakistan.

SALES TAX

The general rate of sales tax has been increased from 12½ to 15 per cent. This is not likely to cause undue hardship as many goods of common use such as foodstuffs, edible oils, salt, handloom cloth, ready-made garments and utensils, etc. are already exempt from sales tax.

Cotton fabrics

Cotton fabrics, the excise duty-paid value of which does not exceed Rs.1.10 per linear yard would be liable to sales tax at the concessional rate of 10 per cent. As a measure of relief to small powerloom units, such units having not more than 20 powerlooms will be exempted from sales tax.

The levy of sales tax on yarn and sweetmeat and bakery products has been rationalised. The general rate will apply to all these commodities.

Reported by: Rashid Ahmed, P.O. Box 4690, Karachi

PANAMA

TAX NEWS

Panama domestic company income tax

Article 649 of the Fiscal Code of the Republic of Panama states that the income tax is levied on that income, as defined in this article, received by all individual or juridical persons, national or foreign, whether or not domiciled in the country, which is earned within Panama by employment, business, industry, trade, profession or any other occupation, or as the product of personal or real property of whatever kind, or from any other source within the country, regardless of the place where such income is collected. Thus, income received by a Panamanian corporation from sources outside the country is exempted from the Panamanian income tax.

Furthermore, dividends, interest and royalties received by a Panamanian company from abroad are not taxable in Panama, and the company may distribute such income free of Panamanian income tax.

Profits from transactions not consummated in Panama, are also not taxable under the Panamanian income tax, regardless of whether the seller has an office in Panama which arranges the sale. According to Panamanian practice and case law, management or administrative functions alone do not constitute a source of income if they are not translated into effective and material commercial operations within Panama. In this respect, resolution number 38 of the Ministry of Finance stated, on October 5, 1949 that profits represented by the difference between the purchase price and the sale price of products which did not enter the country, were not subject to the Panamanian income tax. Consequently, profits realized on goods by a Panamanian corporation in the United States and shipped directly to buyers in other Latin American countries, were exempted. Income from vessels registered in Panama and engaged in international maritime commerce, are also exempt from the Panamanian income tax, notwithstanding the fact that the transportation contracts are signed within the country.

Taxable income consists of gross income less allowable deductions.

POLAND

TAX NEWS

Ab Januar 1964 wurde in Polen bei der Einkommenbesteuerung der gewerblichen Genossenschaften ein neuer progressiver Steuertarif festgesetzt (Anordnung des Finanzministers vom 6. März 1964—Amtsblatt der polnischen Volksrepublik "Monitor Polski" Nr 18). Der Steuersatz ist von der Rentabilität der Genossenschaft (verstanden als Relation von Gewinn zu Selbstkosten) und—was neu ist—von der Relation der Personalkosten zu den allgemeinen Selbstkosten (Arbeitsaufwand) abhängig. Der niedrigste Steuersatz (bei der Rentabilität bis 5%) beträgt 20% der Besteuerungsgrundlage (d.h. des Bilanzgewinnes), der höchste—85%.

Die Handelsgenossenschaften (Konsumgenossenschaften) unterliegen weiterhin einer Einkommensteuer mit festen Steuersätzen. Die Sätze betragen: 25% des Gewinnes—bei den Handelsgenossenschaften auf dem Lande, 53% des Gewinnes—bei manchen Handelsgenossenschaften in den Städten. Die Einkommensteuer von den übrigen Genossenschaften beträgt 1/3 des Bilanzgewinnes. Die landwirtschaftlichen Produktionsgenossenschaften sind von der Einkommensteuer befreit, mit Ausnahme der Betriebe gewerblicher Art. Steuerliche Vergünstigungen auf dem Gebiet der Einkommenbesteuerung wurden vor allen den gewerblichen Invalidengenossenschaften und neugegründeten Genossenschaften gewährt; vor einer Darstellung im einzelnen wird abgesehen.

Die Besteuerung der Genossenschaften durch die Einkommensteuer erfolgt nach dem Ministerratsbeschluss vom 5. März 1955 (Monitor Polski Nr 78/1962 und Nr 8/1964).

Einkommensteuertarif für die gewerblichen Genossenschaften

Bei der Rentabilität über	bis	a) vom Teil des Gewinnes betragend (in Relation zu den Selbstkosten)	beträgt die Steuer	b) vom Rest des Gewinnes beträgt die Steuer
	5%	—	20%	—
5%	10%	5%	25%	45%
10%	15%	10%	35%	80%
15%	30%	15%	50%	90%
30%	—	30%	70%	95%

Für die Genossenschaften, deren Rentabilität 5% überschreitet und bei welchen der Prozentsatz des Arbeitsaufwandes zu den allgemeinen Selbstkosten 40% nicht überschreitet, erhöht sich nach dem vorstehenden Tarif festgesetzte Steuer wie folgend:

Prozentsatz des Arbeitsaufwandes zu den allgem. Selbstkosten	unter 8%	von 8% bis 10%	über 10% bis 15%	über 15% bis 20%	über 20% bis 25%	über 25% bis 40%
Erhöhung der Steuer in %	50%	40%	35%	20%	15%	10%

Der Gesamtbetrag der Steuer, die nach vorstehenden Prinzipien festgesetzt wurde, darf nicht 85% des Gewinnes überschreiten.

Reported by: Dr. Stanislaw Chudzynski, Kwiatowa 21, Warsaw.

TURKEY

TAX NEWS

Tax Reform Movement

Introduction

The heavy burden imposed on its financial facilities by the armament program of the Second World War, displayed in a striking fashion the economic underdevelopment in Turkey. Moreover, the inflationist political program pursued by the government which was in power from 1950 to 1958 worsened the country's already alarming economic situation.

Turkey was, however, started on the road to economic development in 1958 by the establishment of the Consolidation Agreement and the initiation of various stabilization measures. Further progress has come in the form of the foundation of the State Planning Organization and its Five Year Plan, the establishment of the Consortium and Turkey's acceptance by the Common Market as an Associate Member.

These developments strengthen the

hope for a brighter economic future, but, in addition to extensive foreign aid, Turkey needs a series of tax reforms to fulfil the predictions of the State Planning Organization—an increase of 18% in investment and 7% in national income.

The traditional Turkish tax policy, which developed from the feudal tithe system, was discarded by the Republican Government and was replaced by a new policy based on "dividend" and "income" taxation. After a trial period in 1949, the personal income tax was adopted. Its effectiveness is, however, limited by the fact that only 800,000 of Turkey's 30,000,000 people are subject to it. Moreover, it is not applicable to agricultural incomes which comprise 50% of the national income. Numerous exemptions and exceptions also limit its coverage in the areas of industrial, commercial and professional activities.

This inability of the government to apply and collect the tax in the broadest manner has substantially decreased both its efficiency and its value as as a major source of revenue.

In the field of indirect taxation, the system of spread-out turnover taxes has been used for many years. However, the same problems of overly-liberal exemptions and an inability to collect the tax with the utmost efficiency have severely limited its scope. It now applies only to certain enumerated industrial products.

It seems evident that without a vastly improved system of taxation and a broadened financial structure the goals established in the Turkish Five Year Plan will not be realized. The tax reform movement, which was actually begun in the fiscal year 1963, is presently the most talked of subject in government, business and legal circles. Following this introduction some proposals for the 1964 Fiscal Year Program are set out.

1964 Tax Reforms

In a radio speech on January 17, 1964 the Prime Minister explained the highlights of the anticipated reforms, which are intended to be made in the income tax, turnover tax, expenditure tax, national defence tax, real estate tax, tax on buildings and in the organization of the tax administration, e.g. a rearrangement of the division of the revenues between the government and the local authorities.

Source: *Extract from a report by F. Ervardar, Istanbul.*

UNITED KINGDOM

TAX NEWS

Does Section 170 of the British Income Tax Act, 1952, imposing the duty of deducting tax from certain payments and accounting for the tax to the Revenue, apply to payments by non-resident persons?

Section 170 ITA. 1952[1]) provides that where payments of interest or annuities or other annual payments taxable under Schedule D, or any royalty or other sum paid in respect of the use of a patent; or any rent, royalty or other payment which by any other provision of the Income Tax Act is expressly subject to deduction of tax under section 169 or 170 of the Act if it were a royalty or other sum paid in respect of the use of a patent[2]), are not or not wholly payable out of profits or gains brought into charge for United Kingdom income tax, the payer or his agent is obliged to deduct tax at the standard rate in force at the time of the payment.

The payer has to account to the Commissioners of Inland Revenue for the payment or so much thereof as is not made out of profits or gains brought into charge and of the tax deducted and the Special Commissioners will then make an assessment on the payer in respect of the payment. If no account has been delivered or the Special Commissioners are not satisfied with the account, they will make an assessment according to the best of their judgment.

Section 170 is the counterpart of section 169 which authorises a person who pays out of profits or gains brought into charge to deduct income tax at the standard rate in force for the year in which the amount payable becomes due. There will be no assessment made on the person entitled to the interest, annuity or annual payment. The payer has not to account to the Revenue for the tax he deducted and thus finds himself in the same position as if he had deducted the debt which he met with his payment from his taxable income.

If the payment does not come out of taxable income, the payer has no claim against the Revenue for keeping the tax which he is entitled to deduct under section 170. He deducts tax as collecting agent of the United Kingdom Revenue and has to account to his principal.[3])

The question arises what is the position of a person who is not resident in the United Kingdom and makes payments which are within the scope of either section 169 or 170 Income Tax Act, 1952.

If the non-resident person makes the payments out of income which is subject to United Kingdom tax, for instance dividends taxed at source or rents or royalties for the use of a British patent or copyright, etc., he will certainly make use of his authorisation by section 169 ITA and thereby avoid taxation of his full United Kingdom income without deduction of payments of debts due to a person resident in the United Kingdom from his United Kingdom income.

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1) Incorporating Rule 21 of the General Rules of the Income Tax Act, 1918.
2) cp. ss. 177(2), 180(1), (2), 470(1) Income Tax Act, 1952.
3) Viscount Simon, L.C. in Alchin v. Corp. of South Shields (1943), 25 Tax C. 445 on p. 460/461.

In how far, however, is the non-resident person subject to the obligation under section 170 to deduct and account to the Revenue for tax from payments which he makes not out of income from sources in the United Kingdom, but out of income from sources abroad?

The tax liability of a non-resident person is limited to "the annual profits or gains arising or accruing from any property whatever in the United Kingdom, or from any trade, profession or vocation exercised within the United Kingdom"[4]) or to emoluments in respect of any office or employment whose duties are performed in the United Kingdom.[5])

Can a non-resident person, by failing to deliver an account of tax deducted from payments out of his income or gains which are not chargeable to United Kingdom tax, become a person liable to the penalties provided by sections 44, 46-48, 50 and 63 and of Schedule VI of Finance Act, 1960?[6])

It should be noted that not all payments made by a non-resident to a resident person are within the scope of Article 170. This provision is only part of the collection machinery for tax assessable under Case III of Schedule D, i.e. for tax on income from sources within the United Kingdom. Payments by a non-resident to a resident person may be liable to tax not under Schedule III, but under Case V of Schedule D as income from a foreign possession, such as payment of royalties for the use of a foreign patent or copyright of annuities from a foreign trust, maintenance paid under a foreign deed or by the order of a foreign court. Tax on such payments constituting income from foreign possessions[7]) is not collected by deduction of tax under section 170, but by assessment.[8])

If the payments of the non-resident to a resident person are income in the meaning of Case III of Schedule D, i.e. if the debt of the non-resident person is governed by British law, the non-resident person is *entitled* to deduct tax in accordance with the provision of section 169 if he makes the payment out of income assessable to United Kingdom tax. If he makes the payment out of income not subject to United Kingdom tax, he is entitled to deduct tax and, if he does so, obliged to account for the deducted tax to the Commissioners of Inland Revenue under section 170.

What is his position, if he does not deduct tax and consequently cannot account for it to the Revenue?

In the Whitney case it was stated by one of the Law Lords:

"The Act has nothing to do with the foreign income of one who is not a British subject and who is not resident here. The territorial limit of the Act . . . does not extend to the foreign income of the person who is foreign both by nationality and by residence. The Act nowhere purports to tax income which is neither derived from property in the United Kingdom nor income received by a person resident in the United Kingdom. The

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4) Section 122.1.(a) (iii) Income Tax Act, 1952.
5) Section 156 Case II (unless excepted as "foreign emoluments").
6) Formerly section 170(3) Income Tax Act, 1952.
7) Section 123(1) Case V. Income Tax Act, 1952.
8) C.I.R. v. Anderström (1927) 13 Tax C. 482.
Chamney v. Lewis (1932) 17 Tax C. 318.

word income wherever found in the United Kingdom is to be understood as excluding income neither so derived nor so received".[9])

Adopting this principle in the case of Stokes v. Bennett[10]), where the Crown sought to assess the divorced wife of a non-resident husband to income tax on maintenance payments by her husband under a High Court Order out of income not taxable in the United Kingdom, the Crown submitted "as regards Rule 21, that the Rule did not apply to payments made by a person not resident in the United Kingdom."[11]) The Special Commissioners accepted this view by stating:—"If the payments were made out of profits or gains not charged to British income tax, in our opinion the provisions of Rule 21(1) and (2) are inapplicable and inappropriate to a person, making such payments, who is not resident in this country."[12])

On appeal Upjohn J., however, decided otherwise:

"Since the husband made, more or less exactly, payments of the net sums prescribed by the Order, and in my judgment the only permissible inference to be drawn from that is that he was intending to and did deduct tax from the gross amount which was due from him upon the proper construction of the Order . . . if Rule 21 is applicable, the balance unpaid, being the amount representing the tax, is or ought to be paid to the Crown."

To the contention that the application of Rule 21 to a person resident abroad would conflict with the principle stated in the Whitney case, he thought there was a short answer:

"The income arose under an Order of an English court. There was no foreign element about the income at all. The husband had in his hands tax upon this English income which he has withheld solely in reliance upon an Imperial Statute. He holds that income, as Lord Simon said in the South Shields case, in effect as Collector for the Crown of tax due from the recipient. That is, he is an agent bound to account to his principal. The Crown may not be able to recover it in a foreign court, as it would be an action to enforce our revenue laws, but there can be no doubt of the matter in principle."

"It was, therefore, held that the wife should be treated as having received sums from which tax had been deducted and no further assessments in respect of these sums could be raised upon her."[13])

The decision does not answer the question which is the subject of this treatise. It only establishes the principle that *if* a non-resident person makes payments to a resident person, which represent United Kingdom income and from which he has, or is regarded as having deducted income tax in accordance with section 170, the Revenue cannot assess the recipient of the payments directly, since he is regarded as having suffered tax by deduction.[14])

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9) Lord Wrenbury in Whitney v. C.I.R. (1925) 10. Tax C. 88 on p. 113 (H. of Lords).
10) (1953) 34 Tax C. 337.
11) ibidem on page 339.
12) ibidem on page 340.
13) Ibidem p. 344/5.
14) Where the payer has failed to deduct tax from his payments, the Revenue may assess the recipient directly. C.A. in Grosvenor Place Estates, Ltd. v. Roberts (1960) 39 Tax C. 433.

And here, in my opinion, ends the binding force of the judgment of Upjohn J. in Stokes v. Bennett.

The question remains: Has a non-resident person who "is not subject to the jurisdiction of the English Court, nor can be enjoined personally by British Parliament to do anything"[15]) any duty to know the provisions of our Income Tax Acts[16]) and be subject to liability under section 170 of the British Income Tax Act, although his liability under the Income Tac Axt is plainly confined by the provision of section 122.1.(a) (iii)?

Can the Crown take any action to recover tax from a non-resident person who has not deducted tax under section 170, and is the non-resident payer, who does not deduct tax, liable to the penalties under section 44ff. of Finance Act, 1960?

Section 170 is not a charging provision. It is part of the tax collecting machinery[17]) which applies only to resident persons, and cannot be forced upon non-residents who do not make themselves voluntarily agents of the Crown by obeying the provision of section 170.

The non-resident payer has no obligation under section 170 to make himself a collecting agent of the United Kingdom Revenue and to deduct and account to the Revenue for tax due by the resident recipient in accordance with section 170.

The Court of Appeal, as mentioned before[18]), has confirmed that where the payer has omitted to deduct tax from his payments covered by section 170, the Revenue has the power to make a direct assessment on the recipient and thereby to recover the tax which the payer has not deducted.

In the case of Stokes v. Bennett the court has assumed that tax had been deducted by the non-resident husband from the payments to his wife, because he had only "more or less" paid the monthly sums which the Court Order had fixed as "free of tax".

It is most doubtful whether in many or even the majority of cases the answer to the question whether or not the payer has deliberately deducted tax, is so clear cut.

The non-resident debtor of maintenance payments or annuities may have been advised by his legal or tax advisers that in view of income which he derives from sources within the United Kingdom, it would be advantageous from the tax point of view if he would commit himself by Deed of Covenant to pay the amounts he wishes to pay which in the deed will be described as "net after deduction of tax". When his United Kingdom income should decrease or cease altogether, he may continue to pay the same amounts without knowing any duty under section 170 to deduct and account to the United Kingdom Revenue for the balance of gross amount due less payments made which represents tax[19]). Surely the Revenue could not claim that the payer has deducted tax nor that he should be treated as if he had deducted tax where the non-resident payer did nothing but make the payments which he had covenanted to make to his creditor.

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15) Lord Dunedin in Whitney v. C.I.R. p. 111.
16) Lord Phillimore ibidem, p. 117.
17) as expressly stated by Finlay J. in Rye & Eyre, v. C.I.R., 19 Tax C. 164 on p. 168.
Donovan L.J. in Grosvenor Place Estates, Ltd. v. Roberts, 39 Tax C. 433 on p. 449.
18) see footnote 14).
19) Section 170 comes into operation to the extent to which the gross sums covenanted exceed in the year of assessment the gross income from sources in the United Kingdom.

The term "to pay in each year such a sum as will after deduction of Income Tax therefrom at the rate current at the date of payment amount to . . ." is certainly no basis for the fictitious assumption that tax has been retained and for a claim to recover tax from a non-resident person who does not know and has no duty to know the complex rule of British Income tax law.

In how far in other cases, for instance, of payments under a British Court Order, the payer can or must be regarded as having deducted tax and being obliged to account for the tax to the Revenue, will depend on the proven facts of the individual case. For the Revenue the question is of decisive importance. The Revenue may, in fact, not be in the position to recover tax which has been deducted by assessment of the non-resident payer, who has not accounted for it; on the other hand tax can legally not be recovered by assessment of the recipient, if he has already suffered tax by deduction. Only if the Revenue can prove that no tax has, in fact, been deducted, they can proceed against the recipient of the payments.

If the Revenue has the right to assess the recipient because tax has not been deducted by the non-resident payer who has only paid that sum which he had undertaken or is obliged to pay net after deduction of tax, assessment can only be made in respect of, not the gross, but the net sum paid. Where the payer is not regarded as having paid after deduction of tax, the sum received by the payee is the gross income which is assessable.

In a number of cases the recipient may have a claim against the payer for a higher gross sum which indemnifies the recipient for the tax suffered by assessment. He may even have a claim against the payer to account for tax he has not deducted to the Revenue. It seems, however, doubtful whether the Revenue has any means to force the recipient to raise or to enforce such claim against the payer. The Revenue is entitled to tax on the income from payments by the payer either by deduction at source or by assessment. The Revenue will lose income tax and perhaps surtax if tax has not been collected by the payer at source on the gross, but can only been assessed on the recipient in respect of the smaller net sum received.

The recipient, however, has every right to release the payer at any time from any obligation under the Deed of Covenant by a Deed of Release. He may also waive part of his claim by releasing the payer from his obligation governed by British law and instead accepting an undertaking by the payer under an obligation governed by foreign law. Such waiver would convert income from a source covered by section 170 to income from a foreign source. It seems that the Revenue has no more power to prevent such conversion of income taxable under Case III of Schedule D to income taxable under Case V, as it has to prevent the release of the non-resident payer from his obligation to pay more than the net sum originally covenanted or to pay anything.

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III

TREATIES

BELGIUM-FRANCE

ADAPTATION TRANSITOIRE DE LA CONVENTION FISCALE FRANCO-BELGE DU 16 MAI 1931 A LA REFORME DES IMPOTS SUR LES REVENUS

Le Moniteur belge du 21 mars 1964 publie le texte de l'Accord conclu par échange de lettres, datées à Bruxelles le 31 décembre 1963, portant modification de la convention entre la Belgique et la France, pour éviter les doubles impositions et régler certaines autres questions en matière fiscale, ainsi que du Protocole final, signés à Bruxelles le 16 mai 1931.

Les dispositions de cet accord seront appelées à s'appliquer pendant le temps nécessaire à l'entrée en vigueur du nouveau projet de convention destiné à se substituer à la convention du 16 mai 1931. Signalons par ailleurs, que ce projet de nouvelle convention a été signé à Bruxelles, en même temps que l'accord transitoire et qu'une projet de loi sera déposé incessamment au Parlement pour l'approuver.

Nous publions ci-après une coordination officieuse de la convention franco-belge de 1931 et du texte de l'accord transitoire du 31 décembre 1963.

Préambule

La Belgique et la France ont conclu le 16 mai 1931 une convention pour éviter les doubles impositions et régler certaines autres questions fiscales.

Cette convention a été élaborée en fonction des systèmes fiscaux en vigueur à l'époque dans les deux pays. Toutefois, le numéro III du protocole final annexé à cette convention prévoit que:

«1 Dans le cas où l'une des Hautes Parties contractantes apporterait des changements à sa législation fiscale, les réajustements des dispositions de la présente convention seraient effectués, dans l'esprit de celle-ci, par accord entre les administrations compétentes des deux Etats.

2 Les accords modificatifs ou complémentaires feraient l'objet de notes échangées par la voie diplomatique».

Or, une loi belge du 20 novembre 1962 portant réforme des impôts sur les revenus, a apporté des modifications substantielles au régime fiscal belge; elle a remplacé les trois impôts cédulaires, l'impôt complémentaire personnel et la contribution nationale de crise par les impôts ci-après:

1°) *l'impôt des personnes physiques,* dû sur le revenu global des habitants du royaume;

2°) *l'impôt des sociétés,* dû sur l'ensemble des bénéfices des sociétés résidentes de la Belgique et des autres personnes morales résidentes de la Belgique se livrant à des opérations lucratives;

3°) *l'impôt des personnes morales,* frappant les revenus des propriétés foncières et des biens mobiliers des personnes morales résidentes de la Belgique et ne se livrant pas à des opérations de caractère lucratif;

4°) *l'impôt des non-résidents,* frappant les revenus réalisés ou recueillis en Belgique par des non-habitants du royaume ou par d'autres non-résidents (sociétés, associations, établissements ou organismes quelconques).

Ces impôts sont perçus par voie de précompte dans la mesure où ils se rapportent à certains revenus immobiliers, mobiliers, professionnels ou divers.

D'autre part, la réforme fiscale réalisée en France par le décret no 48-1986 du 9 décembre 1948 avait déjà également supprimé les impôts cédulaires précédemment en vigueur dans ce pays et institué en remplacement:

a) un impôt sur le revenu des personnes physiques qui comportait deux éléments: une taxe proportionnelle et une surtaxe progressive;
b) un impôt sur les bénéfices des sociétés et autres personnes morales.

Enfin, une nouvelle réforme fiscale réalisée par la loi no 59-1472 du 28 décembre 1959 a fusionné en un impôt unique les deux éléments (taxe proportionnelle et surtaxe progressive) qui constituaient l'impôt sur le revenu des personnes physiques institué en 1948.

Il s'ensuit que les deux pays sont désormais dotés d'un système fiscal comportant essentiellement un impôt spécifique des sociétés et un impôt unique perçu sur le revenu global des personnes physiques.

En présence de cette situation, la conclusion d'une nouvelle convention destinée à se substituer à celle du 16 mai 1931, apparaît indispensable dans le plus bref délai.

Toutefois et bien qu'un nouveau projet soit déjà techniquement au point, il est évident que son entrée en vigueur demandera un certain temps en raison des délais nécessaires pour sa signature et son approbation par les Assemblées parlementaires de nos deux Etats.

Dans ces conditions, le Gouvernement belge estime qu'il convient, en attendant la mise en application de la nouvelle convention, de remédier dès maintenant, dans toute la mesure du possible, dans le cadre et dans l'esprit de la convention du 16 mai 1931, à la double imposition aux impôts nouveaux instaurés dans les deux pays et ce, en rendant applicables à ces impôts les principes énoncés dans cette

convention relativement aux anciens impôts cédulaires. Cette adaptation peut se faire sur la base d'une parfaite réciprocité puisque les systèmes fiscaux actuellement en vigueur dans les deux pays sont de structure identique.

1. Coordination officieuse de la Convention du 16 mai 1931.

ARTICLE 1

Par. 1—Les contribuables qui ont leur domicile fiscal dans l'un des deux Etats contractants et dont certains revenus proviennent, en tout ou en partie, de l'autre Etat, bénéficieront, à raison de ces revenus, du régime spécial établi par les articles ci-après.
Par. 2—Pour l'application de la présente Convention, le domicile fiscal des personnes physiques est au lieu de leur résidence normale entendue dans le sens de foyer permanent d'habitation, et celui des sociétés, qui constituent une individualité juridique distincte, est au lieu de leur siège social effectif.

ARTICLE 2

Par. 1—La présente Convention s'applique aux impôts directs.
Par. 2—Sont considérés comme impôts directs, ceux qui sont établis directement sur les revenus pour le compte de l'Etat ou pour celui des provinces, départements et communes.
Par. 3—Les impôts visés par la présente convention sont les suivants:

a Pour la Belgique: l'impôt des personnes physiques, l'impôt des sociétés, l'impôt des personnes morales et l'impôt des non-résidents, y compris la partie de ces impôts perçue par voie de précomptes et compléments de précomptes, ainsi que les centimes additionnels et les taxes communales et provinciales qui sont ou seraient établis sur la base ou sur le montant de ces impôts.

b Pour la France: l'impôt sur le revenu des personnes physiques, l'impôt sur les bénéfices des sociétés et autres personnes morales, la taxe complémentaire, la contribution foncière des propriétés bâties et non bâties ainsi que les centimes additionnels et les taxes locales qui sont ou seraient établis sur la base ou sur le montant de ces impôts.

ARTICLE 3

Le revenu des biens immobiliers, qui correspond à leur valeur locative réelle ou présumée, ainsi que tous les autres revenus de ces biens qui ne sont pas visés

à l'article 7 ci-après, sont imposables exclusivement dans celui des deux Etats où ces biens sont situés.

ARTICLE 4

Par. 1—Les revenus des fonds publics, des obligations, des prêts, des dépôts et comptes de dépôts, et de toutes autres créances, sont imposables dans celui des deux Etats où se trouve le débiteur de ces revenus.

Par. 2—Si le débiteur possède dans les deux Etats des établissements stables au sens de l'article 7 ci-après et si l'un de ces établissements, dans le cadre de son activité propre, contracte un emprunt ou reçoit un dépôt, l'impôt est perçu par celui des deux Etats sur le territoire duquel est situé cet établissement.

ARTICLE 5

Les revenus des actions ou des parts analogues, ceux des commandites dans les sociétés en commandite simple, ceux des parts dans les sociétés civiles, dans les sociétés coopératives ainsi que dans les sociétés de personnes à responsabilité limitée de droit belge et dans les sociétés à responsabilité limitée de droit français, sont imposables dans celui des deux Etats où se trouve le siège social effectif.

ARTICLE 6

Par. 1—Par dérogation aux dispositions des articles 4 et 5 de la présente Convention, les revenus des valeurs mobilières (fonds publics, actions ou autres titres d'associés, dans les sociétés, obligations ou autres titres d'emprunts) pourront être frappés d'un impôt par l'Etat du domicile fiscal des bénéficiaires, suivant les modes prévus par sa législation générale. Mais, dans ce cas, cet Etat accepte de précompter sur l'impôt qu'il percevrait de ce chef, celui qui aura été payé dans l'autre Etat pour le même revenu.

Par. 2—Eu égard à la situation actuelle des charges fiscales en France et en Belgique, les deux Etats s'engagent à appliquer forfaitairement comme suit les dispositions du paragraphe précédent.

Par. 3—En ce qui concerne la Belgique:

a) l'impôt afférent aux revenus visés à l'article 4 qui sont attribués par un débiteur domicilié ou établi en France et qui sont recueillis par des personnes ayant leur domicile fiscal en Belgique est, conformément à la législation belge, diminué d'une quotité forfaitaire, tenant compte de l'impôt effectivement perçu en France, fixée à 15 p.c. du revenu imposable correspondant au revenu net d'impôt français;

b) le précompte mobilier sur les revenus visés à l'article 5 qui sont attribués par des sociétés ayant leur siège social effectif en France et qui sont recueillis par des personnes ayant leur domicile fiscal en Belgique, est réduit de moitié. En outre, l'impôt des personnes physiques afférent auxdits revenus est, conformément à la législation belge, diminué d'une quotité forfaitaire tenant compte de l'impôt effectivement perçu en France et fixé à 15 p.c. du revenu imposable correspondant au revenu net d'impôt français; d'autre part, une fraction desdits revenus est, dans les limites et conditions prévues par la législation belge, déduite des bénéfices sociaux imposables à l'impôt des sociétés et des revenus distribués passibles du précompte mobilier.

Par. 4—En ce qui concerne la France, les revenus de capitaux mobiliers attribués par un débiteur domicilié ou établi en Belgique et qui ont été effectivement soumis au précompte mobilier donnent lieu à un crédit d'impôt au profit du bénéficiaire ayant son domicile fiscal en France:
de 15 p.c. de leur montant brut pour les revenus visés à l'article 4;
de 18 p.c. de leur montant brut pour les revenus visés à l'article 5.

Ce crédit s'impute soit sur la retenue à la source au titre de l'impôt sur le revenu des personnes physiques soit, lorsque cette retenue n'est pas exigible, sur les impôts dans les bases desquels ces revenus se trouvent compris.

Par. 5—Les quotités de réduction indiquées aux par. 3 et 4 seront revisées tous les cinq ans à dater de la mise en vigueur de la présente Convention.

ARTICLE 7

Par. 1—Sans préjudice aux dispositions qui précèdent, les exploitations industrielles, minières, commerciales ou agricoles, sont imposables dans chacun des Etats au prorata des revenus produits par les établissements stables y situés.

Par. 2—A défaut de comptabilité régulière faisant ressortir exactement et distinctement ces revenus, les Administrations compétentes des deux Etats contractants s'entendront, le cas échéant, pour arrêter les règles de ventilation.

Par. 3—Sont considérés comme établissements stables, les sièges de direction effective, succursales, fabriques, usines, ateliers, agences, magasins, bureaux, laboratoires, comptoirs d'achat ou de vente, dépôts, ainsi que toutes autres installations fixes de caractère productif. Le fait pour une entreprise établie dans l'un des deux Etats contractants d'avoir des relations d'affaires avec l'autre pays par l'intermédiaire d'un agent ou d'une société vraiment autonomes (courtier, commissionnaire, filiale, etc.) n'implique pas, pour cette entreprise, l'existence d'un établissement stable dans ce dernier pays.

Par. 4—Par dérogation au par. 3 qui précède, ne sont pas imposables les comptoirs qui se bornent à l'achat de marchandises diverses destinées à l'approvision-

nement d'un ou de plusieurs établissements de vente ou de transformation que le contribuable exploite dans l'autre pays.

ARTICLE 8

Par. 1—Les sociétés ayant leur domicile fiscal en Belgique, qui possèdent en France un établissement stable et qui sont soumises, ce qui concerne les répartitions de bénéfices qu'elles effectuent, à l'application d'une retenue à la source au titre de l'impôt sur le revenu des personnes physiques, acquittent cet impôt dans les conditions prévues à l'article 109-2 du Code général des Impôts; toutefois, le revenu taxé ne peut excéder le montant des bénéfices réalisés en France, y compris, s'il y a lieu, les bénéfices ou avantages que la société aurait retirés indirectement de sa succursale ou qui auraient été attribués ou accordés à des tiers soit par voie de majoration ou de diminution des prix d'achat ou de vente, soit par tout autre moyen.

Par. 2—Les sociétés ayant leur domicile fiscal en Belgique ne peuvent être soumises en France à la retenue à la source visée au paragraphe 1er ci-dessus à raison de leur participation dans une société dont le siège social effectif est en France; mais les bénéfices distribués par la société française et passibles de cette retenue sont augmentés, le cas échéant, pour la perception de cette retenue, des bénéfices ou avantages que la société belge aurait indirectement retirés de sa participation ou qui auraient été attribués ou accordés à des tiers, soit par voie de majoration ou de diminution des prix d'achat ou de vente, soit par tout autre moyen.

Par. 3—Les sociétés par actions ayant leur domicile fiscal en France, qui possèdent un établissement stable en Belgique, y sont assujetties, du chef des bénéfices qu'elles y réalisent, à l'impôt des non-résidents dû par les sociétés étrangères similaires, à moins qu'elles ne demandent en faisant leur déclaration annuelle, que la charge de cet impôt soit limitée au montant cumulé de l'impôt des sociétés dû au taux normal (actuellement 30 p.c.) par les sociétés résidentes de la Belgique et du précompte mobilier dû par ces sociétés sur une fraction du bénéfice belge égale au rapport existant entre le bénéfice distribué par la société et son bénéfice total.

ARTICLE 9

Par. 1—Les revenus des professions non commerciales exercées à demeure, et non visées à l'article 11, sont imposables dans celui des deux Etats contractants où les intéressés possèdent une installation permanente pour l'exercice de leur activité professionnelle.

Par. 2—Les droits d'auteur et les revenus de brevets d'invention sont imposables

dans le pays du domicile fiscal des bénéficiaires. Toutefois, s'ils constituent un revenu d'entreprise industrielle ou commerciale, ils sont imposables dans les conditions prévues à l'article 7.

ARTICLE 10

Les rémunérations des administrateurs de sociétés par actions et des personnes qui remplissent des fonctions analogues à celles d'administrateur sont imposables dans celui des deux Etats où se trouve le siège social effectif, sous réserve de l'application de l'article 11, en ce qui concerne les rémunérations que les intéressés touchent en leurs autres qualités effectives.

ARTICLE 11

Les rémunérations quelconques des salariés et appointés sont imposables dans celui des deux Etats où les intéressés exercent leur activité.

Toutefois, les traitements, salaires ou autres rémunérations des travailleurs frontaliers, qui justifient de cette qualité par la production de la carte frontalière instituée par les conventions intervenues entre les deux Hautes Parties contractantes, ne sont soumis à l'impôt que dans le pays où les intéressés ont leur domicile fiscal.

D'autre part, les traitements des fonctionnaires et employés publics d'un des deux Etats contractants, qui exercent leurs fonctions dans l'autre Etat, sont imposables seulement dans celui qui les rétribue.

ARTICLE 12

Les pensions publiques ou privées sont imposables dans l'Etat du débiteur de ces revenus.

ARTICLE 13

Les rentes viagères et les revenus de toutes occupations lucratives non visées dans les articles précédents sont imposables dans l'Etat sur le territoire duquel le bénéficiaire a son domicile fiscal.

ARTICLE 14

Cet article a été remplacé par l'article 16 de la convention du 20 janvier 1959 entre la Belgique et la France tendant à éviter les doubles impositions et à régler

certaines autres questions en matière d'impôts sur les successions et de droits d'enregistrement.

ARTICLE 15

Par. 1—Les Etats contractants s'engagent, sur la base de la réciprocité, à se prêter concours et assistance aux fins de recouvrer en principal, additionnels, intérêts et frais ou amendes, suivant les règles de leur propre législation, les impôts définitivement dus, visés par l'article 2 de la présente Convention, ainsi que les autres impôts directs.
Par. 2—Les poursuites et mesures d'exécution auront lieu sur production d'une copie officielle des titres exécutoires accompagnée éventuellement des décisions passées en force de chose jugée.
Par. 3—Les créances fiscales à recouvrer ne sont pas considérées comme des créances privilégiées dans l'Etat requis et celui-ci ne sera pas obligé d'appliquer un moyen d'exécution non prévu par la législation de l'Etat requérant.
Par. 4—Si une créance fiscale est encore susceptible d'une recours, l'Etat requérant peut demander à l'Etat requis de prendre des mesures conservatoires, auxquelles sont applicables *mutatis mutandis* les dispositions précédentes.
Par. 5—Les Administrations fiscales des deux Etats contractants règleront la procédure administrative à suivre en l'occurrence.

ARTICLE 16

La présente Convention ne s'applique qu'au territoire métropolitain des Hautes Parties contractantes.

ARTICLE 17

Par. 1—La présente convention sera ratifiée et les instruments de ratification seront échangés à Paris dans le plus bref délai.
Par. 2—La convention entrera en vigueur le premier janvier de l'année qui suivra celle de la ratification.
Par. 3—Elle pourra cesser de produire ses effets le premier janvier de chaque année, à condition qu'elle ait été dénoncée au moins huit mois à l'avance.

II. Observations ayant trait à plusieurs articles

Il convient de considérer:
1. que les revenus dont le pouvoir de taxation est attribué à l'un des Etats

contractants en vertu des articles 9 à 13 de la Convention du 16 mai 1931 ne sont pas imposables dans l'autre Etat contractant;

2. que les impôts dûs dans l'un des Etats contractants sur les revenus imposables dans cet Etat en vertu de la Convention précité peuvent néanmoins être calculés au taux correspondant à l'ensemble des revenus imposables d'après la législation de cet Etat:

3. que, compte tenu de la législation fiscale en vigueur dans les deux Etats contractants, les revenus visés à l'article 5 sont, pour l'application de l'article 6, paragraphes 3 et 4, réputés avoir été effectivement soumis à une retenue d'impôt à la source dans l'Etat où se trouve le siège social effectif de la société débitrice;

4. que le seul fait que les revenus mobiliers perçus par une personne ayant son domicile fiscal en France, aient supporté en Belgique le précompte mobilier ne suffit pas à faire considérer l'intéressé comme ayant été soumise en Belgique à un impôt personnel sur le revenu global au sens de l'article 164, paragraphe 1 du Code général des Impôts français.

III. Dates de la mise en application des nouvelles dispositions

Les dispositions qui précèdent s'appliquent pour la première fois:

a) aux revenus de l'année civile 1963 ou d'exercices comptables clos pendant cette année qui sont soumis:
—en Belgique, à l'impôt des personnes physiques ou à l'impôt des non-résidents à charge des personnes physiques;
—en France, à l'impôt sur le revenu des personnes physiques et à la taxe complémentaire;
—ainsi que, dans les deux Etats, aux taxes accessoires ou connexes à ces impôts visées à l'article 2, de ladite convention;

b) aux revenus d'exercices comptables clos le 31 décembre 1962, ou postérieurement à cette date, qui sont soumis:
—en Belgique, à l'impôt des sociétés à charge des sociétés anonymes et des sociétés en commandite par actions, à l'impôt des personnes morales ou à l'impôt des non-résidents à charge des sociétés;
—en France, à l'impôt sur les bénéfices des sociétés et autres personnes morales;
—ainsi qu'aux taxes accessoires ou connexes à ces impôts visées à l'article 2 de ladite convention;

c) aux revenus d'exercices comptables clos le 31 décembre 1963, ou postérieurement à cette date, qui sont soumis en Belgique à l'impôt des sociétés à charge des sociétés de personnes;

d) en Belgique, aux précomptes et compléments de précomptes:
—sur les revenus immobiliers de l'année 1963;
—sur les autres revenus attribués ou mis en paiement, à partir du 1er janvier 1963, par des débiteurs établis en Belgique ou recueillis à partir de la même date à charge de débiteurs établis en France par des contribuables ayant leur domicile fiscal en Belgique;

e) en France, aux impôts perçus par voie de retenue à la source sur les revenus visés à l'article 6, paragraphe 4 de la convention et mis en paiement à partir du 1er janvier 1963.

Les nouvelles dispositions de l'article 5 de la convention et celles du numéro II ci-dessus, sont immédiatement applicables, ces dispositions ayant un caractère interprétatif.

IV. Abrogation de l'Accord additionnel à la Convention du 16 mai 1931

Il convient d'abroger l'Accord additionnel à la convention du 16 mai 1931, conclu par échange de lettres datées à Paris, les 2 mai et 7 juillet 1961.

Il en résulte notamment que, d'une part, la Belgique renonce à soumettre les contribuables ayant leur domicile fiscal en France à l'impôt des non-résidents sur une base minimale fixée en fonction du revenu cadastral des habitations dont ils disposent en Belgique, et que, d'autre part, la France renonce à soumettre les contribuables ayant leur domicile fiscal en Belgique et disposant d'une ou plusieurs résidences en France, à l'impôt sur le revenu des personnes physiques d'après une base forfaitaire égale à cinq fois la valeur locative de cette ou de ces résidences.

V. Autres observations

Il convient de constater au surplus:
1°) que le no II du Protocole final y annexé a été remplacé
2°) que le no IV du Protocole final susvisé est devenu sans objet.

Source: *Bulletin de la Fédération des Industries Belges, le 1 avril 1964.*

FRANCE-UNITED KINGDOM

CONVENTION
ENTRE LA FRANCE ET LE ROYAUME-UNI DE GRANDE-BRETAGNE ET D'IRLANDE DU NORD TENDANT À ÉVITER LES DOUBLES IMPOSITIONS EN MATIÈRE D'IMPÔTS SUR LES SUCCESSIONS.

Le Gouvernement de la République française et le Gouvernement du Royaume-Uni de Grande-Bretagne et de l'Irlande du Nord,

Désireux de conclure une Convention en vue d'éviter les doubles impositions en matière d'impôts sur les successions,

Sont convenus des dispositions suivantes:

ARTICLE 1

1 —La présente Convention s'applique:

a) En France, à l'impôt sur les successions prélevé sur les parts héréditaires;

b) Dans le Royaume-Uni de Grande-Bretagne et de l'Irlande du Nord, à l'impôt sur la masse successorale (estate duty) prélevé en Grande-Bretagne.

2 —La présente Convention s'appliquera également à tous autres droits d'une nature similaire qui seront établis en France ou en Grande-Bretagne après la date de sa signature ou dans tout autre territoire auquel elle aura été étendue en vertu de l'article 9 ou auquel elle s'applique en vertu de l'article 10.

ARTICLE 2

1 — Dans la présente Convention,

a) Le terme «France» désigne la France métropolitaine et les départements d'outre-mer;

b) Le terme «Royaume-Uni» désigne la Grande-Bretagne et l'Irlande du Nord;

c) Le terme «Grande-Bretagne» désigne l'Angleterre, le Pays de Galles et l'Ecosse; il ne comprend pas les Iles anglo-normandes ni l'Ile de Man;

d) Le terme «territoire», lorsqu'il est employé à propos de l'une ou l'autre Partie contractante, désigne la France ou la Grande-Bretagne selon les exigences du contexte;

e) Le terme «impôt» désigne selon les exigences du contexte l'impôt prélevé en France sur les successions ou l'impôt prélevé en Grande-Bretagne sur la masse successorale.

2 — Pour l'application des dispositions de la présente Convention, sur l'une quelconque des Parties contractantes, tout terme qui n'est pas autrement défini, aura, à moins que le contexte n'exige une interprétation différente, le sens que lui attribue la législation qui régit, dans le territoire de cette Partie, les impôts auxquels s'applique la présente Convention.

3 — *a)* Pour l'application de la présente Convention, la question de savoir si une personne décédée était, au moment de son décès, domiciliée sur une partie quelconque du territoire de l'une des Parties contractantes sera résolue conformément à la législation en vigueur dans ce territoire;

b) Lorsque, selon la disposition de l'alinéa qui précède, la personne décédée est considérée comme domiciliée sur le territoire de chacune des Parties contractantes, le cas est résolu d'après les règles énoncées ci-dessous:

1° Cette personne est réputée domiciliée sur le territoire de la Partie contractante où elle avait, au moment de son décès, son foyer permanent d'habitation. Si elle disposait d'un foyer permanent d'habitation sur le territoire de chacune des deux Parties contractantes, elle est considérée comme domiciliée sur le territoire de la Partie contractante avec laquelle ses liens personnels et économiques étaient les plus étroits (centre des intérêts vitaux);

2° Si la Partie contractante sur le territoire de laquelle la personne décédée avait le centre de ses intérêts vitaux ne peut être déterminée, ou si cette personne ne disposait de foyer permanent d'habitation sur le territoire d'aucune des Parties contractantes, ladite personne est réputée avoir possédé son domicile sur le territoire de la Partie contractante où elle a séjourné de façon habituelle;

3° Si cette personne a séjourné de façon habituelle sur le territoire de chacune des Parties contractantes ou si elle n'a séjourné de façon habituelle sur le territoire d'aucune d'elles, elle est réputée domiciliée sur le territoire de celle des Parties contractantes dont elle possédait la nationalité.

4° Si elle possédait la nationalité de chacune des Parties contractantes ou si elle ne possédait la nationalité d'aucune d'elles, les autorités fiscales des Parties contractantes trancheraient la question d'un commun accord.

ARTICLE 3

1 — Si une personne donnée était, au moment de son décès, domiciliée sur une partie quelconque du territoire de l'une des Parties contractantes, le lieu de la situation d'un bien sera, pour l'assiette de l'impôt et pour le calcul de l'imputation à accorder en vertu de l'article 6, déterminé exclusivement conformément aux règles fixées à l'article 4.

2 — Le paragraphe 1 du présent article ne s'appliquera que si, abstraction faite des dispositions de l'article 4,

a) le bien est imposable en vertu de la législation de chacune des Parties contractantes,

b) ou si le bien, étant imposable en vertu de la législation de l'une des Parties contractantes, il le serait aussi, en vertu de la législation de l'autre Partie contractante, s'il ne faisait l'objet d'une exonération spéciale.

ARTICLE 4

Les règles mentionnées au paragraphe 1 de l'article 3 sont les suivantes:

a) Les immeubles sont réputés situés au lieu où ils se trouvent; les droits immobiliers, à l'exception de ceux résultant de garanties hypothécaires ou autres, sur le territoire où se trouvent les immeubles auxquels ils s'appliquent. La question de savoir si un bien ou un droit a le caractère immobilier est résolue d'après la législation du lieu dans lequel est situé le bien considéré ou le bien sur lequel porte le droit envisagé.

b) Les biens mobiliers corporels autres que ceux qui font ci-après l'objet de dispositions particulières et les droits réels, à l'exception des droits de gage, portant sur des biens de cette nature, sont réputés situés au lieu où se trouvent, à la date du décès, les biens considérés ou les biens auxquels s'appliquent les droits envisagés, ou, si ces biens sont en cours de transfert à la date du décès, au lieu de leur destination. Sont tenus pour des biens mobiliers corporels régis par le présent alinéa les billets de banque et autres espèces monétaires ayant cours légal au lieu de leur émission.

c) Les créances, assorties ou non de garanties, à l'exception de celles qui font l'objet de dispositions particulières dans le présent article, mais y compris celles qui résultent d'obligations et de reconnaissance de dettes émanant d'une société, de lettres de change, de billets à ordre et de chèques, sont réputées au lieu où la personne décédée était domiciliée au moment de son décès.

d) Les titres émis par un Etat, un conseil de comté, un département, une commune ou par toute autre autorité publique sont réputés situés au lieu où la personne décédée était domiciliée au moment de son décès.

e) Les actions et les parts dans les sociétés de capitaux (y compris les titres de cette nature qui sont détenus par un «nominee», que le droit de jouissance soit constaté par un certificat ou autrement), sont réputées situées au lieu où la société a été constituée.

f) Les sommes payables en vertu de polices d'assurances sont réputées situées au lieu où la personne décédée était domiciliée au moment de son décès.

g) Les parts d'intérêt dans une «partnership», ce terme incluant une société en nom collectif, une société en commandite simple ou une société civile de droit français, sont réputées situées au lieu où l'affaire est principalement exploitée.

Pour les sociétés civiles immobilières, ce lieu est celui de la situation des immeubles exploités conformément à l'objet social.

h) La clientèle en tant qu'élément de l'exploitation d'une entreprise commerciale ou industrielle ou d'une profession libérale est réputée située au lieu où est exploitée l'entreprise ou exercée la profession à laquelle se rattache cette clientèle.

i) Les bateaux et les aéronefs, ainsi que les parts dans la propriété indivise de tels biens sont réputés situés au lieu d'immatriculation du bateau ou de l'aéronef.

j) Les brevets, marques de fabrique, dessins, droits d'auteur, ainsi que les droits ou licences pour l'exploitation de brevets, marques de fabrique, dessins ou oeuvres protégées par un droit d'auteur, sont réputés situés au lieu ou la personne décédée était domiciliée au moment de son décès.

k) Les droits et actions dérivés d'obligations délictuelles ou quasi-délictuelles et subsistant au bénéfice de la succession d'une personne décédée sont réputés situés au lieu où la personne décédée était domiciliée au moment de son décès.

l) Les créances établies par jugement sont réputées situées au lieu où la personne décédée était domiciliée au moment de son décès.

m) Tous autres droits ou intérêts sont réputés situés au lieu qui est déterminé par la législation en vigueur dans le territoire de la Partie contractante où la personne décédée n'avait pas son domicile à la date de son décès.

ARTICLE 5

1 — Lorsqu'une personne était au moment de son décès domiciliée dans une partie quelconque de la France, aucun impôt n'est prélevé en Grande-Bretagne sur les biens qui ne sont ni situés en Grande-Bretagne, ni transmis en vertu d'une disposition ou d'une dévolution régies par la législation en vigueur dans une partie quelconque de la Grande-Bretagne et il est fait abstraction de ces biens pour la détermination du montant ou du taux de l'impôt payable en Grande-Bretagne.

2 — Lorsqu'une personne était, au moment de son décès, domiciliée dans une partie quelconque de la Grande-Bretagne, aucun impôt n'est prélevé en France sur les biens qui n'y sont pas situés et, pour déterminer le montant ou le taux de l'impôt payable sur ceux des biens héréditaires qui sont imposables en France, il est fait abstraction des biens non situés en France.

3 — Lorsqu'une Partie contractante prélève un impôt à l'occasion du décès d'une personne qui, au moment de sa mort, était domiciliée sur le territoire de l'autre Partie contractante, elle accorde toute exonération, abattement ou dègrèvement, ou toute remise ou réduction de droits (autres que ceux se rapportant à des droits appliqués par l'autre Partie ou par tout autre pays) qui aurait trouvé à s'appliquer conformément à sa législation si le défunt avait été domicilié sur son territoire.

ARTICLE 6

Lorsqu'à l'occasion du décès d'une personne domiciliée, au moment de sa mort, sur le territoire d'une Partie contractante, cette Partie prélève un impôt sur un bien queconque situé au sens de la présente Convention sur le territoire de l'autre Partie contractante, elle impute sur l'impôt applicable à ce bien, tel qu'il est calculé d'après sa législation interne et dans la limite de cet impôt, un crédit égal au montant du droit afférent au même bien, prélevé par cette autre Partie contractante.

ARTICLE 7

1 — Toute demande d'imputation ou de remboursement d'impôt, fondée sur les dispositions de la présente Convention, doit être présentée dans les cinq ans à compter de la date du décès de la personne dont la succession motive cette demande, ou, lorsque la cause rendant exigible l'impôt se produit à une date postérieure au décès, dans les cinq ans qui suivent cette date.

2 — Le remboursement est effectué sans payement d'intérêt sur la somme remboursée.

ARTICLE 8

1 — Les autorités fiscales des Parties contractantes échangent les renseignements que les législations fiscales des deux Etats permettent d'obtenir dans le cadre de la pratique administrative normale et qui sont nécessaires pour assurer l'établissement et le recouvrement réguliers des impôts que chaque Partie contractante prélève à l'occasion du décès des personnes domiciliées sur son territoire au moment de leur mort.

Les renseignements ainsi échangés, considérés comme secrets, ne sont pas communiqués à d'autres personnes que celles qui sont chargées de l'assiette et du recouvrement de ces impôts. Aucun renseignement n'est échangé qui révèlerait un secret commercial, industriel ou professionnel, ou un procédé commercial.

2 — Les autorités fiscales des Parties contractantes se concerteront, en tant que de besoin, pour la mise en oeuvre des dispositions de la présente Convention.

3 — Dans la présente Convention, l'expression «autorités fiscales» désigne:

a) s'il s'agit de la Grande-Bretagne, les Commissaires de l'Inland Revenue,

b) s'il s'agit de la France, le Directeur général des impôts,

c) s'il s'agit de l'Irlande du Nord, à laquelle s'applique la présente Convention en vertu de l'article 10, le Ministère des finances,

où leurs représentants dûment habilités;

d) enfin s'il s'agit d'un territoire auquel la présente Convention est étendue en vertu de l'article 9, l'autorité compétente dans ce territoire pour administrer les impôts auxquels s'applique la présente Convention.

ARTICLE 9

1 — La présente Convention pourra être étendue, dans son intégralité ou avec des modifications, à tout territoire auquel s'applique le présent article et qui perçoit des impôts sensiblements analogues dans leur nature à ceux qui font l'objet de ladite Convention; cette extension prendra effet à la date, avec les modifications et dans les conditions (y compris celles relatives à la cessation d'application) qui seront fixées entre les Parties contractantes dans des notes échangées à ces fins.

2 — Sauf décision contraire des Parties Contractantes, lorsque la présente Convention cessera de s'appliquer à la France ou à la Grande-Bretagne en vertu de l'article 12, elle cessera également de s'appliquer à tout territoire auquel elle aura été étendue en vertu du présent article.

3 — Les territoires auxquels s'applique le présent article sont:

a) pour le Royaume-Uni:

Tout territoire autre que le Royaume-Uni dont le Royaume-Uni assume la responsabilité des relations internationales,

b) pour la France:

Les territoires français d'outre-mer.

ARTICLE 10

La présente Convention s'appliquera aux droits de succession prélevés en Irlande du Nord de la même manière qu'elle s'applique aux droits de succession prélevés en Grande-Bretagne; mais elle pourra cesser de s'appliquer séparément, en ce qui concerne l'Irlande du Nord, conformément aux dispositions de l'article 12.

ARTICLE 11

Chacune des Parties Contractantes notifiera à l'autre l'accomplissement des procédures requises par ses règles constitutionnelles pour la mise en vigueur de la présente Convention. Celle-ci prendra effet à la date de la dernière de ces notifications et s'appliquera aux successions de personnes décédées depuis et y compris le jour de sa signature.

ARTICLE 12

1 — La présente Convention demeurera en vigueur pendant trois ans au moins à partir du jour de l'entrée en application.

2 — Si l'une des deux Parties Contractantes ne l'a pas dénoncée par écrit et par la voie diplomatique six mois au moins avant l'expiration de cette période de trois ans, la présente Convention demeurera en vigueur après ce terme jusqu'à ce que l'une des deux Parties Contractantes ait procédé à la notification dont il s'agit: dans ce cas, la Convention ne sera pas applicable aux successions de personnes décédées depuis la date prévue dans la notification inclusivement (cette date ne pouvant être fixée antérieurement au soixantième jour consécutif à celui de la notification) ou, si aucune date n'a été prévue, à dater du soixantième jour inclusivement après la date de la notification.

En foi de quoi, les soussignés, dûment autorisés à cet effet par leur Gouvernement respectif, ont signé la présente Convention.

Fait à Paris, le vingt-et-un juin mil neuf cent soixante-trois en double exemplaire en langues française et anglaise, les deux textes faisant également foi.

Pour le Gouvernement de la République francaise:
Signé: F. LEDUC.

Pour le Gouvernement du Royaume-Uni de Grande-Bretagne et d'Irlande du Nord:
Signé: PIERSON DIXON

PROJET DE LOI

autorisant l'approbation de la Convention signée à Paris, le 21 juin 1963, entre la France et le Royaume-Uni de Grande-Bretagne et d'Irlande du Nord, tendant à éviter les doubles impositions en matière d'impôts sur les succesions.

EXPOSÉ DES MOTIFS

L'application des législations fiscales, française et britannique, en matière d'impôts sur les successions, aboutit à l'imposition simultanée de certains éléments et notamment des valeurs mobilières dépendant d'une même hérédité. C'est pour remédier à cette situation qu'une Convention franco-britannique dont la conclusion était demandée depuis longtemps dans l'un et l'autre pays, a été signée à Paris, le 21 juin 1963.

Divisée en douze articles, cette Convention énonce en premier lieu la liste des impôts successoraux français et britanniques dont le cumul sera évité (art. 1er).

L'article 2 définit la portée territoriale de l'Accord et précise la notion de domicile à laquelle il convient de se référer pour l'application de ses dispositions.

Il est ensuite posé en règle que la situation légale des biens ou droits passibles de l'impôt de succession est fixée par la Convention (art. 3). A cet égard, selon les dispositions de l'article 4, les immeubles et droits immobiliers, les meubles corporels, y compris les espèces monétaires seront censés situés au lieu où ils se trouveront, les clientèles attachées à l'exploitation d'un fonds de commerce ou à l'exercice d'une profession libérale au lieu où est exploitée l'entreprise ou exercée la profession, les bateaux et les aéronefs au lieu de leur immatriculation. Par contre, les créances de toute nature, y compris les obligations négociables, les fonds d'Etat, les valeurs émises par les collectivités locales, les indemnités d'assurances, les brevets, marques de fabrique, droits d'auteur ainsi que tous autres droits ou intérêts non spécialement visés, au lieu où la personne décédée était domiciliée au moment de sa mort.

Quant aux actions et parts dans les sociétés de capitaux, elles sont réputées situées au lieu où la société a été constituée, tandis que les parts d'intérêt dans les sociétés de personnes et dans les «partnerships» du droit anglo-saxon sont rattachées au lieu où l'affaire est principalement exploitée, étant précisé que pour les sociétés civiles immobilières, ce lieu est celui de la situation des immeubles exploités conformément à l'objet social.

La Convention consacre, dans les articles suivants, le principe selon lequel un même bien ne devra supporter qu'une seule charge fiscale.

Pour y parvenir, d'une part, elle prévoit que l'Etat qui perçoit un impôt à l'occasion du décès d'une personne domiciliée au moment de son décès dans l'autre Etat contractant, se bornera à taxer les biens situés sur son propre territoire au sens de la Convention (art. 5).

D'autre part, elle stipule que si l'Etat du domicile du défunt est amené, d'après sa législation interne, à imposer des biens situés, au sens de la Convention, sur le territoire de l'autre Etat contractant, l'Etat du domicile accorde sur son imposition et dans la limite de cette imposition, un crédit égal au montant de l'impôt prélevé sur les mêmes biens par l'autre Etat contractant (art. 6).

L'article 7 indique les modalités de l'exercice de ce droit d'imputation par les ayants-droit du défunt.

Des clauses d'assistance administrative réciproque, pour l'établissement et le recouvrement réguliers de l'impôt de succession exigible à l'occasion du décès d'une personne domiciliée sur le territoire de l'un des deux Etats complètent ces dispositions (art. 8).

L'article 9 réserve la possibilité d'étendre d'un commun accord l'application de la Convention à tout territoire dont le Royaume-Uni assume la responsabilité des relations internationales et, pour la France, aux territoires français d'outre-mer.

La Convention prendra effet après échange de notifications constatant que de part et d'autre les formalités constitutionnellement requises pour son entrée en vigueur, ont été accomplies, mais elle s'appliquera aux successions ouvertes à compter du jour de sa signature, c'est-à-dire à compter du 21 juin 1963, inclusivement (art. 11).

La Convention qui aura une durée initiale de trois ans, restera en vigueur, sauf dénonciation six mois au moins avant l'expiration de cette période. Passé le délai de trois ans, la dénonciation pourra intervenir avec préavis de deux mois seulement.

En procurant à de nombreux contribuables français et britanniques d'équitables allégements fiscaux, la Convention, dont les dispositions viennent d'être analysées, est de nature à influer heureusement sur les relations économiques et humaines traditionnellement actives entre la France et la Grande-Bretagne. Sa date d'effet étant d'ores et déjà fixée au 21 juin 1963, il serait souhaitable qu'elle soit approuvée et puisse entrer en vigueur aussi rapidement que possible.

PROJET DE LOI

Le Premier Ministre,
Sur le rapport du Ministre des Affaires étrangères et du Ministre des Finances et des Affaires économiques,
Vu l'article 39 de la Constitution,

Décrète:

Le présent projet de loi, délibéré en Conseil des Ministres, après avis du Conseil d'Etat, sera présenté à l'Assemblée Nationale par le Ministre des Affaires étrangères et par le Ministre des Finances et des Affaires économiques qui sont chargés d'en exposer les motifs et d'en soutenir la discussion.

ARTICLE UNIQUE

Est autorisée l'approbation de la Convention signée à Paris le 21 juin 1963 entre la France et le Royaume-Uni de Grande-Bretagne et d'Irlande du Nord, tendant à éviter les doubles impositions en matière d'impôts sur les successions, Convention dont le texte est annexé à la présente loi.

Fait à Paris, le 5 mars 1964. *Signé*: GEORGES POMPIDOU

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INTERNATIONAL BUREAU OF FISCAL DOCUMENTATION

HISTORY

Since its establishment in 1938, the International Bureau of Fiscal Documentation has served as an independent source of tax information and advice. After World War II its functions were broadened beyond mere simple fiscal documentation and assumed the character of supplying factual data on the tax systems of countries around the world in response to requests from various governmental and business organisations.

In 1946, the Bureau began publication of the *Bulletin for International Fiscal Documentation,* the official organ of the International Fiscal Association. This publication has been supplemented by various special publications. In 1961, the Bureau published the first issue of *European Taxation,* a fortnightly English language review of tax developments on the European Continent, in the United Kingdom and in Ireland, followed in 1963 by two loose-leaf services, *Supplementary Service to European Taxation* and *The Taxation of Patent Royalties, Dividends and Interest in Europe.* During that time span the Bureau also published the Germany original of the well-known book by Dr. Albert J. Rädler about taxation in the common market countries. The Bureau continuously assisted in translating and preparing tax materials for other publications. Additionally, its library was greatly expanded and now contains well over 7000 volumes on national and international tax matters, as well as more than 250 selected periodicals; many visiting researchers make use of these library facilities.

GOALS

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The Bureau is a public non-profit foundation established under Dutch law. Its policies are determined by a "Curatorium", or board of trustees, composed of outstanding representatives of the government, business and academic communities in various countries. A managing director is responsible for carrying out the goals articulated by the Curatorium.

The Bureau is separated into four divisions: Library and Documentation, which is responsible for acquisition and maintenance of tax materials; International Tax Service, which prepares reports for governmental, business and scholarly purposes; Publications Department, which is responsible for the whole gamma of the Bureau's publications; and the Administrative arm, which plans and coordinates Bureau activities.

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Apart from its own Associates, who represent several nationalities, the Bureau avails itself of the coopeative services of a large number of expert correspondents throughout the world.

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4. *Library and Documentation*

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5. *Reports*

The Bureau prepares reports containing factual data and legal appraisals relating to countries other than the country of residence of the organization or individual who requests a report.

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II

WORLD TAX REVIEW

ALGERIA

Reported by: M.H. Brochier, Algiers, 24 Boulevard Camille Saint Saens

Avant Propos

Il y a lieu de noter que les Codes Fiscaux Français, (Enregistrement, Valeurs Mobilières, Impôts Directes, Taxes sur le Chiffre d'Affaires, et annexes), forment toujours la base de la documentation fiscale dans ce pays.

De même la loi du sept mars 1925 fixant le statut des SARL, et la loi du 24 juillet 1867 fixant celui des Sociétés par actions, sont toujours applicables en Algérie. De ce qui précède, on peut aisément déduire qu'il n'y a pas encore en Algérie une jurisprudence en matière fiscale, et à notre connaissance aucun ouvrage d'importance traitant de ces questions d'actualité, n'y paru à ce jour.

Les circulaires de l'Administration fiscale algérienne sont celles qui étaient en vigueur du temps de la présence française.

Mesures fiscales

1 *Décret sur les transactions*

Le Décret du 22 janvier 1964 fixe le régime des Transactions. Il stipule que toute opération entre vis à vis ayant pour objet la création, l'extension ou le transfert des droits réels immobiliers (propriété, servitude, cession de part, hypothèque, antichrèse, emphytéose) ainsi que les baux d'une durée supérieure à neuf ans et les cessions, apports de location, gérance de fonds de commerce, sont libres, sous réserve des dispositions suivantes:

Les opérations énumérées ci-dessus sont soumises à l'autorisation administrative lorsqu'elles portent sur un bien d'une valeur supérieure:

- 100.000 NF s'il s'agit d'un immeuble;
- 200.000 NF s'il s'agait d'un fonds de commerce.

Sont dispensés d'autorisation:

- les transferts pour cause de mort et les opérations successorales qui en découlent (partages, retraits, rapports);
- les opérations auxquelles sont parties l'Etat, une Collectivité locale ou une personne morale de droit public.

Par ailleurs, nul ne peut, s'il n'y a été dûment autorisé, effectuer plus de deux opérations, même si les opérations suivantes portent sur des biens d'une valeur inférieure aux sommes prévues ci-dessus.

2 *Droits d'Enregistrement*

Le Décret du trente janvier 1964 fixe les droits d'enregistrement en matière de ventes de fonds de commerce et de ventes d'immeubles.

Dans tous les cas, l'acquéreur paie un droit de 10 pour cent.
Quant au vendeur, les droits sont fixés comme suit:

jusqu'à	20.000 NF	10 pour cent
de	20.001 à 50.000 NF	12 pour cent
de	50.001 à 100.000 NF	15 pour cent
au delà de	100.000 NF	20 pour cent

Etant ici précisé qu'en Algérie les «nouveaux francs» ont toujours cours.

3 *Taxe sur l'activité industrielle et commerciale*

En ce qui concerne les établissements publics, les entreprises de bâtiment et de travaux publics, les banques et les établissements financiers, assimilés et les entreprises de transport, la taxe est dans tous les cas, établie au lieu du principal établissement pour l'ensemble de leurs entreprises exploitées en Algérie.

Le taux appliqué aux recettes provenant des activités sus indiquées, égal au taux moyen global de la taxe constaté pour l'Algérie l'année précédente, est fixé chaque année par arrêté.

Pour l'application de cette disposition, un arrêté du 10 octobre 1963 a fixé à 2,0486 pour cent le taux 1962. Ce taux est donc appliqué aux entreprises visées pour leur imposition 1963. Ce taux est majoré de la taxe additionnelle prévue pour les bourses et chambres de commerce, et éventuellement de la majoration de 0.03 point prévue pour les communes de plus de 100.000 habitants.

Tel est le régime particulier prévu par l'Article 246/2 du Code Algérien des Impôts Directs.

4 *Nouveau Tarif Douanier*

Le nouveau tarif douanier est institué par l'Ordonnance du 28 octobre 1963. Ce texte fixe ce qui suit: Il est institué un nouveau tarif douanier.

Le tarif douanier indique les taux des droits de douane applicables à l'importation des marchandises suivant leur origine.

Les droits figurant dans le colonne du tarif dite «De Droit Commun» sont applicables aux marchandises originaires de pays qui accordent à l'Algérie le traitement de la nation la plus favorisée.

Les marchandises originaires du territoire douanier français sont passibles des droits figurant dans la colonne «France».

En attendant la définition des relations tarifaires entre l'Agérie et la Communauté Economique Européenne, les marchandises qui sont originaires de cette dernière, à l'exception de la France, sont passibles des droits de la colonne «C.E.E.» si les conditions, pour être admises à ce tarif, sont remplies.

Les marchandises originaires des pays autres que ceux visés ci-dessus sont passibles des droits du tarif général. Les droits du tarif général sont fixés au triple de ceux du tarif du droit commun.

Des décrets rendus sur le rapport du Ministre de l'Economie Nationale, pourront suspendre, réduire ou relever les droits de douane dans les circonstances exceptionnelles, si la situation économique du pays le justifie.

Sont abrogées toutes dispositions contraires à la présente ordonnance, y compris l'arrêté du 10 février 1963 instituant une surtax spéciale temporaire à l'occasion de l'importation de certains matériels.

Ces dispositions sont entrées en application le 1 novembre 1963.

5 *Controle des changes*

Le Décret du 19 octobre 1963 a étendu provisoirement aux pays de la zone franc, les obligations et interdictions prévues par le Décret du 15 juillet 1947, et les avis de change de caractère général pris pour son application.

Ce dernier décret est celui qui a codifié les obligations et prohibitions édictées par la réglementation des changes. Le nouveau décret du 19 octobre 1963 est entré en vigueur le 21 octobre 1963. Il précise que les modalités d'application, qui comporteront un régime préférentiel pour les pays de la zone franc, feront l'objet d'avis du Ministre de l'Economie Nationale.

Les dispositions de l'article 57 de la loi du 13 décembre 1962 portant création et fixant les statuts de la Banque Centrale d'Algérie, sont rendues applicables aux opérations avec la zone franc.

C'est ainsi qu'il est stipulé ce qui suit:

La Banque Centrale participe à l'élaboration de la législation et de la réglementation des changes; elle est chargée de leur application.

A cet effet, la Banque Centrale vise pour accord les licences d'importation et d'exportation et délivre toutes autres autorisations particulières prévues par le réglementation des changes.

En vue d'assurer l'application de la réglementation des changes, la Banque Centrale peut donner toutes instructions aux banques et autres intermédiaires agrées et leur demander tous renseignements et documents statistiques.

Elle peut également réclamer à toutes personnes et administrations, les renseignements et documents nécessaires à l'établissement de la balance des paiements de l'Algérie.

6 *Taxe à la production – Taux majoré*

Les quatre arrêtés du 25 octobre 1963, relatifs à la Taxe Unique globale à la production, ont en réalité un champ d'application nettement délimité.

Toute sorte de produits figurent sur la liste des produits soumis à l'application de la taxe au taux majoré (actuellement 25 pour cent).

Ces mesures sont rentrées en application le 10 novembre 1963.

7 *Taxe sur les transactions*

Le Ministre de l'Economie Nationale, par deux avis du septembre et octobre 1963 nos. 884 et 885, vient d'apporter dans ce domaine les précisions ci-après:

– En raison de son double caractère de taxe sur la consommation locale et de taxe de remplacement, à la taxe à la production, la taxe sur les transactions est normalement acquittée sur toutes les ventes, tant en gros qu'au détail, effectuées par des commerçants non assujettis à la taxe à la production et ceux qui sont redevables de cette taxe mais qui vendent directement au consommateur. Il parait utile de préciser que par livraison à la

consommation, il faut entendre la dernière livraison d'un produit imposable qui n'est pas destiné à la revente.

Le taux de la taxe étant de 1 pour cent, la base imposable est constituée par le montant total des paiements. Il y a donc lieu d'appliquer simplement 1 pour cent sur le montant total des ventes.

La taxe sur les transactions est dûe par les seules personnes effectuant des opérations imposables et dont le chiffre d'affaires global annuel est égal ou supérieur à 180.000 NF.

Par chiffre d'affaires annuel il faut entendre le montant global des affaires réalisées par le redevable pour l'ensemble des activités qu'il exerce en Algérie.

8 *Transferts de fonds vers l'étranger*

Depuis le 18 novembre 1963, l'envoi de tous objets avec valeur déclarée à destination de l'étranger est provisoirement suspendu.

L'insertion des billets de banque algériens ou étrangers dans les lettres recommandées est interdite jusqu'à nouvel ordre.

9 *Mise sous protection de l'état de biens mobiliers et immobiliers.*

Le décret du 9 mai 1963 fixe que les biens immobiliers, les fonds de commerce, les entreprises, établissements et exploitations de caractère industriel, commercial, artisanal, financier, minier, agricole, peuvent être placés, après enquête et par arrêté du préfet du département sur lequel ces biens se trouvent situées, sous protection de l'Etat.

Cette mesure peut être décidée soit en raison de l'irrégularité de la transaction dont ils ont fait l'objet, soit en raison de troubles à l'ordre public ou de l'atteinte à la paix sociale portés ou susceptibles d'être portés par leur mode de gestion, d'exploitation ou d'utilisation.

10 *Réimmatriculation au régistre de commerce des sociétés*

Le délai obligatoire de réimmatriculation au Registre de Commerce d'Alger, Oran, Constantine, des Sociétés, a été reporté au 31 octobre 1964.

L'inobservation des formalités de réimmatriculation obligatoire des Sociétés, dans les délais impartis, entraîne la nullité de la Société. Toutefois, les actionnaires d'une Société anonyme ne pourront se prévaloir vis à vis des tiers, de cette cause de nullité.

11 *Transfert de siège social hors d'Algérie*

Le Décret du 23 décembre 1963 stipule que le transfert hors d'Algérie du siège social de personnes morales établies en Algérie est soumis à l'autorisation préalable du ministre de l'Economie Nationale.

Reported by:
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AUSTRIA

BIBLIOGRAPHY

Das Recht der Doppelbesteuerung in Oesterreich, LAGER A., Wien, Wirtschaftsverlag Dr. Anton Orac, 1964, loose-leaf publication.

The first section of this treatise on foreign taxation explains in short the principles of double taxation treaties upon direct taxes. The second section (approximately 340 pages) contains the text of the tax treaties concluded by Austria, with their corresponding regulations etc, covering income taxes, net worth taxes, estate duties, gift taxes, motor-vehicle taxes and conventions for reciprocal assistance in juridical tax-matters. The tax treatment of members of supranational and international organizations is also included. Except for the first short explanatory section, the book reproduces texts and documents but offers up to now no critical commentary.

Internationales Steuerrecht, Manz'sche Grosze Gesetzausgabe Nr. 15, WATZKE O, R. POLLAK und A. PHILIPP, Wien, Manz'sche Verlags- und Universitätsbuchhandlung, 1964, pp. 788.

This handbook concerns itself with the tax treaties concluded by Austria and provisions of Austrian law pertinent to residents and non-residents receiving foreign income. Aside from income taxes, the book discusses net worth taxes, death duties and motor-vehicle taxes. Also contained in this book is the tax treatment of individual employees of supranational or international organizations. The first part of the book explains the general principles and problems of international tax relations, followed by the text of the tax conventions concluded with relevant provisions. The second part speaks to the reciprocal tax administration assistance between Austria and other countries. The third part extracts articles from multilateral conventions or conventions not limited to taxation, which are important for the Austrian or international taxation. The fourth part pertains to tax exemptions as they relate to extraterritorial individuals and international entities.

BRAZIL

TAX NEWS

For many years, Brazil has been plagued by inflation. Its latest attempt to remedy the situation is via taxation through law 3.898 and 4.194. These laws introduce a system, for the avoidance of inflationary effects, which does not require frequent changes in the rate structure. The following rates of complementary tax are now applicable:

Up to 24 times the minimum taxable salary								exempt	
between	24	times the minimum salary and					30	3	per cent
,,	30	,,	,,	,,	,,	,,	45	5	,, ,,
,,	45	,,	,,	,,	,,	,,	60	8	,, ,,
,,	60	,,	,,	,,	,,	,,	75	12	,, ,,
,,	75	,,	,,	,,	,,	,,	90	16	,, ,,

between	90	times	the	minimum	salary	and	120	. . . . .	20	per cent
,,	120	,,	,,	,,	,,	,,	150	. . . . .	25	,, ,,
,,	150	,,	,,	,,	,,	,,	180	. . . . .	25	,, ,,
,,	180	,,	,,	,,	,,	,,	250	. . . . .	35	,, ,,
,,	250	,,	,,	,,	,,	,,	350	. . . . .	40	,, ,,
,,	350	,,	,,	,,	,,	,,	450	. . . . .	45	,, ,,
,,	450	,,	,,	,,	,,	,,	600	. . . . .	51	,, ,,
,,	600	,,	,,	,,	,,	,,	800	. . . . .	57	,, ,,
over	800	. . . . .							65	,, ,,

To illustrate the way within the tax operates, the stages of income to which the various tax rates were applied in 1963 and 1964 (yearly income from 1962 and 1963) are set forth as follows:

1963					*1964*				
up to	336.000				up to	504.000		exempt	
between	336.001	and	420.000		between	504.001	and	630.000	3 per cent
,,	420.001	,,	630.000		,,	630.000	,,	945.000	5 ,, ,,
,,	630.001	,,	840.000		,,	945.001	,,	1.260.000	8 ,, ,,
,,	840.001	,,	1.050.000		,,	1.260.001	,,	1.575.000	12 ,, ,,
,,	1.050.001	,,	1.260.000		,,	1.575.001	,,	1.890.000	16 ,, ,,
,,	1.260.001	,,	1.680.000		,,	1.890.001	,,	2.520.000	20 ,, ,,
,,	1.680.001	,,	2.100.000		,,	2.520.001	,,	3.150.000	25 ,, ,,
,,	2.100.001	,,	2.520.000		,,	3.150.001	,,	3.780.000	30 ,, ,,
,,	2.520.001	,,	3.500.000		,,	3.780.001	,,	5.250.000	35 ,, ,,
,,	3.500.001	,,	4.900.000		,,	5.250.001	,,	7.350.000	40 ,, ,,
,,	4.900.001	,,	6.300.000		,,	7.350.001	,,	9.450.000	45 ,, ,,
,,	6.300.001	,,	8.400.000		,,	9.450.001	,,	12.600.000	51 ,, ,,
,,	8.400.001	,,	11.200.000		,,	12.000.001	,,	16.800.000	57 ,, ,,
			11.200.001					16.800.001	65 ,, ,,

The minimum taxable salary is the maximum labour salary for the year in which the income is accrued. The labour salary is fixed by the government and generally changes in accordance with changes in the price level. Thus, tax rates need not change to satisfy the State's revenue needs. Perhaps a curious anomaly exists with regard to this tax: most Brazilians know how much the maximum labour salary is but few know how high the minimum taxable salary is.

TAX CASES

A Brazilian corporation contracted outside of Brazil with a non-Brazilian corporation (known hereinafter as the foreign corporation) for construction that was to be done in Brazil. Not only was the contract entered into outside of Brazil, but it was stipulated that the payments to the foreign corporation would also be made outside of Brazil. The main office of the foreign corporation performed various functions outside

of Brazil, viz., recruitment of technical personnel, purchase of heavy machinery, preparation of various contracts, preparation of the budget, etc. The Brazilian branch of this company performed various functions in Brazil, to wit, furnishing the materials for construction, arranging for hiring labourers, accounting for receipts and expenses, administering and guiding the performance of the contract, etc.

The payments, outside of Brazil, were directed to the main office, and years later a portion of the income (40%) was distributed to the Brazilian branch by its home office. Only then did the books of the branch office reflect any income from the performance of the contract. The tax authorities subjected the entire payments to tax, and fined the Brazilian branch of the foreign corporation because it had not included in its accounts the total Brazilian payments.

The foreign corporation appealed the decision of the tax authorities, arguing that it was unimportant that the contract was to be performed in Brazil; what was important was the proper allocation of the income for service rendered, and a view must be taken to the services performed by the main office. The appellant argued that any other solution would be contrary to reality since the main office would be uncompensated for the services which it performed. Also, unless this allocation was made, the remuneration would far exceed the actual work done in Brazil.

The "Conselho de Contribuientes" rejected these arguments and held that although art. 35 of the Income Tax Law, in some cases, permits the attribution of income to sources within and without Brazil, in the case at hand the activity was not within the ambit of art. 35; therefore, all receipts from the work must be included in the statement by the foreign branch. The "Counsel of Taxpayers" further stated that the income should have been included in the year of receipt. Since the branch did not include the income, the fine must be levied.

This judgement is important because it contributes to the doctrine stated in other judgements, namely, that income from Brazilian sources, not income from activities performed in Brazil, are taxable in Brazil—See Revista Fiscal e de Legislaçao de Fazenda, 397/61, 24/62 and 431/61.

(Research-editor's commentaries on the judgement pubished in the Revista Fiscal e de Legislaçao de Fazenda 777/63).

GERMANY

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Bewertungsgesetz, Vermögensteuergesetz, Kommentar von GÜRSCHING L., A. STENGER und H. DIEDENHOFEN, Köln, Verlag Dr. Otto Schmidt KG, loose-leaf publication in 2 volumes, DM 78.— for both volumes plus DM 4.— for each binder.

We regularly receive the supplements to this publication. The 16th supplement to the basic volume which is a guide to a most difficult subject, i.e. valuation and net worth taxation, appeared in March 1964.

Der Bundeshaushalt, Schriftenreihe des Instituts "Finanzen und Steuern", Heft 15, Band 13, Bonn, Institut "Finanzen und Steuern", 1964, pp. 195, DM 15.—.

Since 1952 each year one volume (no. 15) of this series is devoted to a survey of the public finance situation of the Federal Republic. The Budget is analyzed and data and commentaries are given on the receipts and expenditures of the Government. Emphasis is put on the development of public finance between 1961 and 1964.

Bundesverfassungsgericht und Rückwirkung von Gesetzen, Schriftenreihe des Instituts "Finanzen und Steuern", Heft 72, KLEIN F. und G. BARBEY, Bonn, Institut "Finanzen und Steuern", 1964, pp. 138, DM 10.50.

This book contains a discussion of the problem whether or not it is permitted to enact laws retroactively effective from a date prior to that of its enactment. Discussion is held within the scope of critizing decisions of the German High Tax Court since 1951 related to this matter. After that a theoretical survey on the meaning of retroactiveness of law is given. The conclusion is that in a few cases it must be permitted, but that generally retroactive laws are not in accordance with legal security and therefore should not be permitted.

Die Erteilung von Rechtsauskünften durch die Finanzämter, Spezialfragen im Steuerrecht, KAMPMANN M., Stuttgart, Fachverlag für Wirtschafts- und Steuerrecht Schaffer & Co GmbH, 1963, pp. 120, DM 9.80.

In many transactions, concerning import duties, income tax, etc. rulings are asked from the tax authorities. A question arises whether or not the tax authorities are obliged to render rulings; once rulings are rendered the second problem is effected, namely, whether or not the tax authorities are bound, in the case at hand, to their rulings. The above and other related problems are discussed in this book, along with the applicable legal and administrative provisions.

Grundriss des Steuerrechts, Schriftenreihe der Berliner Verwaltungsschule, Heft 7, FECHNER R., Berlin, Verlag Franz Vahlen GmbH, 1960, 3rd edition, pp. 174, DM 10.—.

This educative booklet gives a clear survey of the total German tax law. It is mainly written for students and other persons who have no experience with German tax law but who are interested in it or who wish to have a quick glance at it. The booklet covers tax history, tax legislation, organization of tax administration, tax procedure, valuation and the separate taxes i.e. federal taxes, state taxes, municipal taxes and additional levies such as the "church tax". The special tax treatment of Berlin is dealt with in the appendix.

Kommentar zum Umsatzsteuergesetz, HÜBSCHMANN W., R. GRABOWER, E. BECK, H. VON WALLIS und O. SCHWARZ, Köln, Verlag Dr. Otto Schmidt KG, March 1964, loose-leaf publication of 3 volumes, DM 137,— plus DM 4.— for each binder.

Supplement 27 contains commentary on: who pays the tax, how is it computed and how is it paid or refunded.

Kommentar zur Einkommensteuer und Körperschaftsteuer, HERRMANN C., G. HEUER, A. HEINING und O. VON SCHILLING, Köln, Verlag Dr. Otto Schmidt KG, May 1964, loose-leaf publication of 6 volumes, DM 174.— for all volumes plus DM 4.— for each binder.

Supplement 59 contains commentary *inter alia* about incidental and foreign income, incentives for investment in development countries and assessment of tax-payers who received income subject to withholding. In addition it contains an index of decisions and an index of "catch words".

Oeffentliche Finanzhilfen an Entwicklungsländer, Finanzwissenschaftliche Forschungsarbeiten, Neue Folge Heft 29, herausgegeben von Prof. Dr. G. Schmölders, Universität zu Köln, ZIMMERMANN H., Berlin, Duncker & Humbult, 1963, pp. 168, DM 19.80.

This book covers the field of financial aid to development countries. The author states that private investments since 1948 have decreased and that public investments have increased. Conditions, however, often remained as in a private contract. Many development countries therefore suffer under a high burden of financial debts to foreign nations. The World Bank has this as one problem under discussion. The book starts with a short historical survey, *inter alia* the discussions in the U.N. of 1949 and 1952. The subsequent part is devoted to the theory of possible forms of financial aid both from an economic point of view and from a political point of view. The third part is directed to the new criteria of theoretical thought on practical aid given by several capital exporting countries and financial organizations.

Schnellkartei des deutschen Rechts bzw. des Steuerrechts, Köln, Verlag Dr. Otto Schmidt KG, April 1964, loose-leaf publication of 4 volumes pertaining to taxes, DM 48.— for 4 volumes.

Supplement 124 contains the directives to the income tax of 1963 and regulations to the depreciation of buildings.

Steuererlasse in Karteiform, FELIX G. und D. CARLE, Köln, Verlag Dr. Otto Schmidt KG, March 1964, loose-leaf publication of 7 volumes, DM 73.— for all volumes.

Supplement 31 contains rulings and disposals pertaining *inter alia* to the computation of profits and net worth, depreciation on buildings, alienation of a business, business tax, wage tax, exemptions and rates for turnover tax.

Steuerrechtsprechung in Karteiform, HÜBSCHMANN W. und P. KAATZ, Köln, Verlag Dr. Otto Schmidt KG, April 1964, loose-leaf publication in 19 volumes, DM 164.— for all volumes plus DM 3.50 for each binder.

Supplement 148 contains decisions *inter alia* about notices of assessemt to tax; waiver of tax; accounting; returns; appeals; equity in tax treatment of spouses; abuse of commercial law provisions to avoid taxes; domicile and residence; computation of profits income from employment and wage tax.

INDIA

TAX NEWS

Reported by: K. C. Khanna, 16 Strandroad, Calcutta

Finance Act, 1964

The Finance Act, 1964 received the assent of the President on 28th April, 1964 and has been passed as Act No. 5 of 1964. No material changes have been made in the original proposals but the following amendments are worthy of note:

Personal Taxation

(i) The exemption limit in respect of individuals has been revised and the current limits of annual income exempt from tax in their cases are as follows:

(a) Unmarried individuals	Rs. 1,000—
(b) Married individual with no child	Rs. 3,200.—
(c) Married individual with one child	Rs. 3,600.—
(d) Married individual with more than one child	Rs. 4,000.—

(ii) Stipends or remunerations received by foreign students and professors from Foreign Governments or Institutes for carrying on research work in India under an approved programme will be exempt from taxation for a period of 2 years for each such individual.

Corporate Taxation

(i) Some relief in the form of reduced rate of tax on profits has been given to small companies in which the public is not substantially interested. Details are given in the Tables below.

(ii) Manufacturing companies and companies the book value of whose plant and machinery is Rs. 5,000,000 or more will be exempt from compulsory distribution of profits.

(iii) The development rebate (investment allowance) at 20% of cost will be allowed in respect of second-hand plant and machinery imported from abroad.

(iv) Additional depreciation at 50% of the normal rate of depreciation will be allowed for a third shift working of the plant and machinery.

(v) The list of basic industries entitled to a tax rebate of 10% (20% in case of surtax) has been amended to include electronic equipment, petrochemicals, manganese ore, dolomite and mineral oils; coffee and rubber have been deleted from the list.

Table A.

	rate of tax
A. Indian Companies in which the public is substantially interested.	
(a) With income not exceeding Rs. 25.000 on total income	42.5%
(b) With income exceeding Rs. 25,000	
(i) on income attributable to specified "priority" industries	45 %
(ii) on other income	50 %
B. Indian Companies in which the public is not substantially interested.	
(a) With income not exeeding Rs. 5 lakhs	
(i) on the first Rs. 2 lakhs of total income attributable to specified "priority" industries	45 %

(ii) on the balance of such income 54 %
(iii) on the first Rs. 2 lakhs of total income attributable to manufacturing or processing of goods other than in specified "priority" industries 50 %
(iv) on the balance of such income 60 %

(b) With income exceeding Rs. 5 lakhs
(i) on income attributable to specified "priority" industries 54 %
(ii) on other income 60 %

c. Foreign Companies operating in India through a Branch.
On all income 65 %

NOTE: The table is confined to income tax and super tax and does not take into account additional levies in the form of dividend tax, bonus tax and surtax on company profits which further enhance the effective rate of corporate taxation.

Table B.
Rates of tax payable by companies on income from dividends, royalties and technical service fees.

	Rate of Tax
1. Indian Company	
(a) income from dividends	25%
(b) other income	As per Table A
2. Foreign Company	
(a) dividends from a closely-held Indian company ("controlled corporation") engaged in a "basic" industry	15%
(b) dividends from any other Indian company	25%
(c) royalties from an Indian concern in pursurance of an agreement made on or after 1.4.61 and approved by the Government	50%
(d) fees for technical services received from an Indian concern in pursuance of an agreement made after 29.2.64 and approved by the Government	50%

"Basic" or "Priority" industry includes iron and steel, aluminium, coal, boilers and steam generating plants, equipment for the generation and transmission of electricity, machine tools, tractors, cement, fertilizers, paper, tea, electronic equipment, petrochemicals etc.

ITALY

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Finanza Publica. Tome Secondo – Parti Speciali, Trattato Italiano di Economia, Volume XIV, CELESTINO ARENA, Torino, Unione Tipografico – Editrice Torinese (UTET), 1963, pp. 725, 7500 Lire.

This second Volume on the study of public finance in Italy is devoted to specific subjects. It contains not only a general theoretical discussion of the principles of public finance, but it also contains a survey of the present system of taxation in Italy.
The publication has six sections:
– Section 1 : a general discussion of the technique of taxation

- Section II : assessment and collection of taxes
- Section III: the Italian tax system
- Section IV : local public finance; the relation between the state and local entities
- Section V : problems of public finance in case of economic depression or war
- Section VI : international public finance; international financial bodies, tax problems with respect to the EEG and tax problems caused by international cooperation.

(For a discussion of Tome I, see Bulletin Vol. XVII, nr. 6, p. 368).

Il fondamento teorico dell'imposta di registro – Applicazione pratica e problemi relativi, Dott. WALTHER ALVISI, Milano, 1963, pp. 95.

This publication contains a critical discussion of the theoretical principles underlying the Italian Registration duties, and a survey of the practical application of these duties. This survey is amplified by many examples based on case law.

JAPAN

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Proceedings of the Special Meeting of the Japan Tax Association on Tax System and Administration in Asian Countries, April 8th to 16th, 1963, edited by HIDEYASU IWASAKI – Japan Tax Association, 2,1-chome, Marunouchi, Chiyoda-ku, Tokyo, 282 pages, 1964.

Price $5.60 (Airmail $9.20)

The Japan Tax Association deserves to be better known outside of Japan than it actually is. According to its by-laws, "the particular objects . . . shall be to promote theoretical and practical studies on the subject of taxation, and to help to diffuse the knowledge or experiences attained therefrom."

The Association has done much to disseminate information about the Japanese tax system. Its officers and members have made successful efforts to acquire knowledge about tax systems in other countries, especially those of the West.

Commendation must be directed to the Association for the important and interesting initiative which it had undertaken in the spring of 1963. Leading tax officials from a large number of Asian countries, many of which are known as developing countries, were brought together. Delegations came from Cambodia, China, India, Indonesia, Korea, Laos, Malaya, Philippines, Singapore, Thailand and Viet-Nam. The Organisation for Economic Cooperation and Development was represented by the chairman of its Fiscal Committee, Prof. A.J. van den Tempel, and in attendance for the United States Internal Revenue Service was Mr. Robert L. Chandler, representative in Manila.

The agenda included five subjects for discussion, viz.

- Tax policy and tax system
- Taxation of foreign corporations and aliens
- Special measures for industrial development

- Tax Administration
- Various problems with respect to conventions for the avoidance of double taxation.

Two days of intensive discussions were followed by visits to various Japanese business firms throughout the country. Thus, theory and practice were combined and this should contribute to a more profound knowledge of the problems faced by corporate taxpayers.

The first day was devoted to introductory remarks by the heads of the delegations directed to the above subjects as they pertain to their respective countries. These talks, comprising 75 pages, were preceded by a welcome address from the President of the Japan Tax Association, the Minister of Foreign Affairs and the Minister of Finance of Japan, as well as a talk by Prof. van den Tempel on tax developments in the European Common Market.

The next 30 pages of the book are devoted to discussions of the second day, during which questions were directed from the floor to a panel of delegates. The questions pertain mainly to the taxation of Japanese business firms operating in the delegate represented countries. The attitude of the tax authorities vis-à-vis foreign business were set forth clearly.

The third section of this book (160 pages) contains detailed answers to questionnaires submitted by the Japan Tax Association to the Governments represented. This is of utmost importance as it sets forth information which is otherwise difficult to obtain.

The preparatory work done by the members of the Japan Tax Association must have been enormous. Tax experts throughout the world benefit from the Association's initiative because of the fruitful exchange of ideas and experiences. This meeting and book may be qualified as a landmark work which must be consulted by anyone having concern with taxation in the represented countries; countries which will only be able to solve their economic problems through a well administered tax system.

A direct result of the meeting in Tokyo was that the Philippine representatives compared analytically the income tax structures of the represented countries. For a brief review, see below.

Comparative Study on the Individual Income Tax Structures of Selected Asian Countries, ANGEL Q. YOINGCO and F. RUBEN TRINIDAD, Japan Tax Association, April 1964. 40 pages.

The meeting of eleven Asian countries in Tokyo in April 1963 (see the preceding review), resulted in the two Philippine representatives having analytically compared the tax burdens in the countries concerned. The drawback with this publication was that the authors had insufficient data on the distribution of income among the various groups of taxpayers. Therefore assumptions were made in the analysis. The comparisons "reflect the features of the individual income tax system, such as the level of exemptions, progressivity, flexibility and the level of personal income taxation in general".

After stating that a comparison of tax burdens on the basis of foreign exchange rates would be erroneous because they do not take into account such factors as standard of living, cost of production, taxable capacity, and the stage of economic development, the authors proceed to a comparison of all types of ratios.

First, a comparison is made of *income subject to the minimum tax rate*. The basis of comparison is the income of a family of five, which was assumed to be the per capita income multiplied by 5.
The amount of personal exemptions is assumed to be that which conforms to a certain standard of living. On the basis of these assumptions, the result is that in a number of countries the average five-member family income is lower than the income subject to the minimum tax rate.

Another comparison concerns the flexibility of the tax burden on changing incomes. This is arrived at by computing ratios between (a) a change in tax liability, i.e. tax rate, and (b) a change in gross income. Since statistical data on income tax returns were not available, the authors have "measured this flexibility by the degree in which income is taxed at various rates as it moves from one bracket to another", starting from the tax tables in each of the countries concerned.
A third comparison is made on the effective tax rates. The basis started from is for each country, what the authors –erreoneously– refer to as "maximum taxable income", i.e. the amount of gross income above which a flat rate is applied. The assumptions here are twofold. First, that "taxpayers who are in the highest taxable income bracket are in the same level of satisfaction". This means that it is assumed that a taxpayer in the Philippines, where the highest bracket is 500,000 Pesos, can compare with a taxpayer in Japan (highest bracket 60,000,000 Yen) or Malaya (55,000 Malayan $), etc. whatever the foreign exchange rate is.

The second assumption is that taxpayers in different countries earning the same percentage of the "maximum taxable income" in their respective countries are on equal levels of satisfaction. Thus, the taxpayers in the three above-mentioned countries, whose incomes amount to respectively 25,000 Pesos, 3,000,000 Yen and 2,750 Malayan $, which in the three cases is 5 per cent of the "maximum taxable income", are considered as comparable as far as the burden of income tax is concerned. By applying the tax tables to these incomes, the respective percentages are 19.92, 28.26 and 6.18. A table gives the effective income tax rates, computed in the way described, for nine countries and for twenty percentages of "maximum taxable income".

In the discussions about the tax aspect of the problems relating to developing countries, this form of analysis deserves more attention and it would be useful if further similar studies would be undertaken.

MEXICO

Reported by: Roberto Casas, Abogado, Avenue Hidalgo 5, Mexico D.F.

Survey of The Mexican General Income Tax

The Mexican General Income Tax is regulated by the Federal Law of December 30, 1953, issued by the Congress of the Union and published in the Federation Courant of December 31, 1953.

This law, effected as of January 10, 1954, had had various modifications added thereto; the last modification occurring on January 10, 1964. This law contains the rules which

govern the payment of the general income tax by all individual and juridical entities, be they national or foreign.

The structure for the tax is schedular, subjecting to the tax the income from different categories. Each category has its own provision for deductions in reaching taxable income.

Schedule I: This schedule subjects to tax the commercial activities of individual and juridical persons, nationals or foreign. The progressive tax ranges from 5% to 39% of the taxable income (gross income less the allowed deductions).

Rate Schedule on Annual Taxable Income lower limit		upper limit	fixed amount of tax	% applicable on the excess of lower limit
between	0.01	and 2,000.00	exempted	
	2,000.01	3,500.00		5%
	3,500.01	5,000.00	75.00	6%
	5,000.01	8,000.00	165.00	7%
	8,000.01	11,000.00	375.00	8%
	11,000.01	14,000.00	615.00	9%
	14,000.01	20,000.00	885.00	10%
	20,000.01	26,000.00	1,485.00	11%
	26,000.01	32,000.00	2,145.00	12%
	32,000.01	38,000.00	2,865.00	13%
	38,000.01	50,000.00	3,645.00	14%
	50,000.01	62,000.00	5,325.00	15.1%
	62,000.01	74,000.00	7,137.00	16.2%
	74,000.01	86,000.00	9,081.00	17.3%
	86,000.01	100,000.00	11,157.00	18.4%
	100,000.01	125,000.00	13,733.00	19,5%
	125,000.01	150,000.00	18,608.00	20.6%
	150,000.01	175,000.00	23,758.00	21.7%
	175,000.01	200,000.00	29,183.00	22.9%
	200,000.01	250,000.00	34,908.00	24.1%
	250,000.01	300,000.00	46,958.00	25.3%
	300,000.01	350,000.00	59,608.00	26.5%
	350,000.01	400,000.00	72,000.00	27.8%
	400,000.01	500,000.00	86,758.00	29.1%
	500,000.01	750,000.00	115,858.00	30.4%
	750.000.01	1,000,000.00	191,858.00	31.7%
1,000,000.01		1,250,000.00	271,108.00	33.1%
1,250,000.01		1,500,000.00	353,858.00	34.5%
1,500,000.01		1,750,000.00	440,108.00	36%
1,750,000.01		2,000,000.00	530,103.00	37.5%
2,000,000.01	and higher		623,858.00	39%

The tax must be prepaid in the fifth, ninth and twelfth month of corresponding fiscal year, and three months following the filling of the income tax return which is filed at the end of the fiscal year.

Schedule II: This schedule subjects to tax the income from industrial activities of individual and juridical persons, national or foreign. The tax is the same as hereinbefore mentioned in Schedule I.

Schedule III: This schedule subjects to tax the income from agriculture, ranching and fishing. The progressive tax, ranging from 3.2% to 25%, is applicable on annual taxable income (gross income less allowed deductions) and it is set forth as follows:

lower limit	upper limit	fixed amount of tax	% applicable on excess of lower limit
between	and	exempted	
2,000,01	3,500.00		3.2%
3,500.01	5,000.00	48.00	3.6%
5,000.01	8,000.00	102.00	4 %
8,000.01	11,000.00	222.00	4.6%
11,000.01	14,000.00	360.00	5.2%
14,000.01	20,000.00	516.00	5.8%
20,000.01	26,000.00	864.00	6.5%
26,000.01	32,000.00	1,254.00	7.2%
32,000.01	38,000.00	1,686.00	7.9%
38,000.01	50,000.00	2,160.00	8.6%
50,000.01	62,000.00	3,192.00	9.4%
62,000.01	74,000.00	4,320.00	10.2%
74,000.01	86,000.00	5,544.00	11 %
86,000.01	100,000.00	6,864.00	11.8%
100,000.01	125,000.00	8,516.00	12.6%
125,000.01	150,000.00	11,666.00	13.5%
150,000.01	175,000.00	15,041.00	14.4%
175,000.01	200,000.00	18,641.00	15.3%
200,000.01	250,000.00	22,466.00	16.2%
250,000.01	300.000.00	30,566.00	17.1%
300,000.01	350,000.00	39,116.00	18 %
350,000.01	400,000.00	48,116.00	19 %
400,000.01	500,000.00	57,616.00	20 %
500,000.01	750,000.00	77,616.00	21 %
750,000.01	1,000,000.00	130,116.00	22 %
1,000,000.01	1,250,000.00	185,116.00	23 %
1,250,000.01	1,500,000.00	242,616.00	24 %
1,500,000.01	and higher	302,616.00	25 %

The prepayment of the tax, upon cattle ranching enterprises, is based upon a stamp tax of 1% of sales which must be included as part of the invoice.

It is important to note that according to a convention between the National Cattle Confederation ("Confederación Nacional Ganadera") and the Secretary of the Treasury held on June 5, 1963, a set amount of tax is paid on each head of cattle sold and when this is paid, this income will not be subject to any other schedular tax.

Schedule IV: This schedule subjects to the tax income earned under the dependence and direction of one or more employers. This tax is paid on gross income without deductions.

The tax is withheld by the employer and delivered monthly to the Tax Collection Office. At the end of the year the employee must file a return to account for all income subject to this schedule, whereupon the progressive rate is imposed. When the tax is computed at the end of the year the withholdings by the employer are deducted.

The tax is as follows:

Annual taxable income			
lower limit	upper limit	fixed amount of tax	% applicable on excess of lower limit
between	and	exempted	
0.01	6,000.00	0.00	
6,000.01	7,200.00	54.00	2.10%
7,200.01	8,400.00	79.20	2.15%
8,400.01	9,600.00	105.00	2.21%
9,600.01	10,800.00	131.52	2.27%
10,800.01	12,000.00	158.76	2.57%
12,000.01	18,000.00	189.60	3.54%
18,000.01	24,000.00	402.00	4.50%
24,000.01	30,000.00	672.00	5.45%
30,000.01	36,000.00	999.00	6.55%
36,000.01	48,000.00	1,392.00	8,30%
48.000.01	60,000.00	2,388.00	9.85%
60,000.01	72,000.00	3,570.00	11.20%
72,000.01	84,000.00	4,914.00	12.40%
84,000.01	96,000.00	6,402.00	13.50%
96,000.01	108,000.00	8,022.00	14.60%
108,000.01	120,000.00	9,774.00	15.65%
120,000.01	144,000,00	11,652.00	17.75%
144,000.01	168,000.00	15,912.00	19.75%
168,000.01	216,000.00	20,652.00	23.07%
216,000.01	264,000.00	31,725.60	26.41%
264,000.01	336,000.00	44,402.40	30.65%
336,000.01	408,000.00	66,470.40	34.12%

lower limit	upper limit	fixed amount of tax	% applicable on excess of lower limit
408,000.01	480,000.00	91,036.80	40.10%
480,000.01	840,000.00	119,908.80	48.03%
840,000.01 and higher		292,816.80	50.00%

Schedule V: This is applicable only to national or foreign individuals, but associations of professionals, e.g. firms of lawyers, engineers, accountants, etc. are included within this schedule.

The progressive tax is applied to the annual taxable income and is as follows:

Annual taxable income

lower limit	upper limit	fixed amount of tax	% applicable on excess of lower limit
between	and		
0.01	2,000.00		3 %
2,000.01	3,500.00	60.00	3.4%
3,500.01	5,000.00	111.00	4 %
5,000.01	8,000.00	171.00	4.6%
8,000.01	11,000.00	309.00	5.4%
11,000.01	14,000.00	471.00	6.2%
14,000.01	20,000.00	657.00	7 %
20,000.01	26,000.00	1,077.00	8 %
26,000.01	32,000.00	1,557.00	9 %
32,000.01	38,000.00	2,097.00	10 %
38,000.01	50,000.00	2,697.00	11 %
50,000.01	62,000.00	4,017.00	12.2%
62,000.01	74,000.00	5,481.00	13.4%
74,000.01	86,000.00	7,089.00	14.6%
86,000.01	100,000.00	8,841.00	15.8%
100,000.01	125,000.00	11,053.00	17 %
125,000.01	150,000.00	15,303.00	18.3%
150,000.01	175,000.00	19,878.00	19.6%
175,000.01	200,000.00	24,778.00	20.9%
200,000.01	250,000.00	30,003.00	22.2%
250,000.01	300,000.00	41,103.00	23.6%
300,000.01	350,000.00	52,903.00	25 %
350,000.01	400,000.00	65,403.00	26.5%
400,000.01	500,000.00	78,653.00	28 %
500,000.01	750,000.00	106,653.00	29.5%
750,000.01	1,000,000.00	180,403.00	31 %
1,000,000.01 and higher		257,903.00	33 %

The income from professional entertainers, sportsmen, etc. who do not continuously perform their activities within the country, are taxed under a special tax applicable upon each individual receipt.

Up to		500.00	8%
between $	500.01 and	1,000.00	10%
	1,000.01	1,500.00	12%
	1,500.01	2,000.00	15%
	2,000.01	3,000.00	20%
	3,000.01	4,000.00	25%
	4,000.01 and higher		30%

The taxpayer within this schedule must submit invoices wherein a stamp for the tax due must be affixed. The prepayment will be deducted from the entire tax due which is based upon the taxpayer's total taxable income for the calendar year.

Schedule VI: This schedule subjects the individual or juridical person (national or foreign) to tax on the income derived from the transfer of urban real property or securities by individuals or civil companies or associations.

The rules for taxing interest varies according to the transaction within which it is derived. In some cases the tax of 10% is withheld by the payor; in other cases the schedular tax is applied. In still other cases a special tax is imposed, namely, when the interest on a single transaction is greater than 15% the tax is 50% of the interest collected; if the interest is 18% or more, the excess from 18% is taxed at 90% of the interest collected.

Generally the tax is levied on the gross income without deductions, and it is as follows:

lower limit	upper limit	fixed amount of tax	% applicable on excess of lower limit
between	and		
0.01	2,000.00		10.0%
2,000.01	5,000.00	200.00	11.3%
5,000.01	8,000.00	539.00	12.6%
8,000.01	14,000.00	917.00	13.9%
14,000.01	20,000.00	1,751.00	15.2%
20,000.01	26,000.00	2,663.00	16.5%
26,000.01	38,000.00	3,653.00	17.9%
38,000.01	50,000.00	5,801.00	19.3%
50,000.01	62,000.00	8,117.00	20.7%
62,000.01	75,000.00	10,601.00	22.1%
75,000.01	100,000.00	13,474.00	23.5%
100,000.01	125,000.00	19,349.00	24.9%
125,000.01	150,000.00	25,574.00	26.4%
150,000.01	200,000.00	32,174.00	27.9%

lower limit	upper limit	fixed amount of tax	% applicable on excess of lower limit
200,000.01	250,000.00	46,124.00	29.4%
250,000.01	350,000.00	60,824.00	30.9%
350,000.01	408,000.00	91,724.00	32.4%
408,000.01	480,000.00	110,516.00	36.0%
480,000.01	720,000.00	136,436.00	40.0%
720.000.01	840,000.00	232,436.00	45.0%
840,000.01 and higher		286,436.00	50.0%

The gain from the sale of urban real estate and securities by individuals, civil companies and civil associations, are taxed as follows:

taxable income time elapsed between acquisition date and sale	up to $ 100,000	from $ 100,001 to $ 200,000	from $ 200,001 to $ 300,000	from $ 300,001 to $ 400,000	more than $ 400,000
up to 1 year	12%	14%	16%	18%	20%
more than 1 year up to 3 years	10%	12%	14%	16%	18%
more than 2 years up to 3 years	8%	10%	12%	14%	16%
more than 3 years up to 4 years	6%	8%	10%	12%	14%
more than 4 years	5%	6%	8%	10%	12%

Schedule VII: This schedule subjects to tax the profits distributed or which must be distributed by all Mexican or foreign enterprises doing business in Mexico.

The tax rate of 15% is levied on distributable profits and must be withheld and paid to the tax authorities by the corporation. Where bearer shares of a corporation are not deposited with a financial institution an additional 5% of the gross distributable profits per bearer shares will be levied. The distributable profits upon which the tax is calculated is not the distributable dividends but rather the accounting profits adjusted to satisfy legal requirements.

In case a general meeting of shareholders decides to reinvest 100% of the profits and the company has not received any authorization from the Minister of Finance, the company must withhold the tax thereon. Exempt from this tax are dividends distributed by investment companies, or which come from securities exempted in Schedule VI, or when a tax imposed by Schedules VI or VII has been withheld and paid.

Also exempted from this tax are the profits distributed by companies composed of professionals.

Schedule VIII: This schedule subjects to tax the income from the following: leasing and subleasing real estate; businesses of a commercial, industrial, agricultural, cattle-raising

or fishing nature; premiums and royalties and remunerations of any kind brought about by the exploitation of patents, trademarks, trade names, or copyrights where the income is derived by someone other than the owner; also included is income from film distributions, jukeboxes, weighing machines and vending machines.

Case law permits different deductions in the above categories but the tax is uniformly as follows:

annual taxable income				
lower limit		upper limit	fixed amount of tax	% applicable on excess of lower limit
between		and		
0.01		2,000.00		10.0%
2,000.01		5,000.00	200.00	11.3%
5,000.01		8,000.00	539.00	12.6%
8,000.01		14,000.00	917.00	13.9%
14,000.01		20,000.00	1,751.00	15.2%
20,000.01		26,000.00	2,663.00	16.5%
26,000.01		38,000.00	3,653.00	17.9%
38,000.01		50,000.00	5,801.00	19.3%
50,000.01		62,000.00	8,117.00	20.7%
62,000.01		75,000.00	10,601.00	22.1%
75,000.01		100,000.00	13,474.00	23.5%
100,000.01		125,000.00	19,349.00	24.9%
125,000.01		150,000.00	25,574.00	26.4%
150,000.01		200,000.00	32,174.00	27.9%
200,000.01		250,000.00	46,124.00	29.4%
250,000.01		350,000.00	60,824.00	30.9%
350,000.01		408,000.00	91,724.00	32.4%
408,000.01		480,000.00	110,516.00	36.0%
480,000.01		720,000.00	136,436.00	40.0%
720,000.01		840,000.00	232,436.00	45.0%
840,000.01	and higher		286,436.00	50.0%

The income from leasing and subleasing real estate is subject to the preceding tax, but it is possible to reduce the taxable income by 30% for the following tax as established by Presidential Decree of September 24, 1942:

in case of controlled rents	0.14%
rents from m$n 1 to m$n 1.000	0.75%
over 1.000	5.00%

The tax is paid by stamps which must be affixed to the vouchers which corrobarate the payment.

Schedule IX: This schedule subjects to tax the income or consideration received in any manner from the sale or exchange of a contract, license, concession or authorization by the Federation, Municipality or Province. Where the Federation, Municipality or Province issued any concession, license, authorization or right for the exploitation of mineral rights, the sale (total or partial) or exchange of any of the above rights is subject to the tax under this schedule, as follows:

annual taxable income			
lower limit	upper limit	fixed amount of tax	% applicable on excess of lower limit
between	and		
0.01	2,000.00		20.0%
2,000.01	5,000.00	400.00	21.3%
5,000.01	8,000.00	1,039.00	22.6%
8,000.01	14,000.00	1,717.00	23.9%
14,000.01	20,000.00	3,151.00	25.2%
20,000.01	26,000.00	4,663.00	26.5%
26,000.01	38,000.00	6,253.00	27.9%
38,000.01	50,000.00	9,601.00	29.3%
50,000.01	62,000.00	13,117.00	30.7%
62,000.01	75,000.00	16,801.00	32.1%
75,000.01	100,000.00	20,974.00	33.5%
100,000.01	125,000.00	29,349.00	34.9%
125,000.01	150,000.00	38,074.00	36.4%
150,000.01	200,000.00	47,174.00	37.9%
200,000.01	250,000.00	66,124.00	39.4%
250,000.01	350,000.00	85,824.00	40.9%
350,000.01	500,000.00	126,724.00	42.4%
500,000.01	750,000.00	190,324.00	44.0%
750,000.01	1,000,000.00	300,324.00	45.6%
1.000,000.01	1,250.000.00	414,324.00	47.2%
1,250,000.01	1,500,000.00	532,324.00	49.1%
1,500,000.01	1,750,000.00	655,074.00	51.0%
1,750,000.01	2,000,000.00	782,574.00	53.0%
2,000,000.01 and higher		915,074.00	55.0%

Tax on Excess Profits:

This subjects to tax individuals or juridical persons (national or foreign) whose annual income, as assessed under schedule I, II, III, is higher than 300.000 and whose yearly taxable income is higher than 15% of the working capital. The applicable tax on the above annual taxable income is as follows:

Taxable income up to 15% of the working capital	Exempt
between 15% and 20% of the working capital	5%
between 20% and 30% of the working capital	10%
between 30% and 40% of the working capital	15%
between 40% and 50% of the working capital	20%
over 50%	25%

This tax may not exceed 10% of the taxable income under schedules I, II, or III.

Tax on accumulated income:

This subjects to tax the individuals (national or foreign) who have a yearly income greater than 180,000 and who must pay tax under two or more schedules.

The taxable income is the sum of all taxable income under the various schedules. The tax is levied as follows:

Up to 275,000.000				3%
from	275,000.01	to	300,000.00	3.25%
	300,000.01		325,000.00	3.50%
	325.000.01		350,000.00	3.75%
	350,000.01		375,000.00	4.00%
	375,000.01		400,000.00	4.25%
	400,000.01		425,000.00	4.50%
	425,000.01		450,000.00	4.75%
	450,000.01		475,000.00	5,00%
	475,000.01		500,000.00	5.25%
	500,000.01		525,000.00	5.50%
	525,000.01		550,000.00	5.75%
	550,000.01		575,000.00	6.00%
	575,000.01		600,000.00	6.25%
	600,000.01		625,000.00	6.50%
	625,000.01		650,000.00	6.75%
	650,000.01		675,000.00	7.00%
	675,000.01		700,000.00	7.25%
	700,000.01		725,000.00	7.50%
	725,000.01		750,000.00	7.75%
	750,000.01		775,000.00	8.00%
	775,000.01		800,000.00	8.25%
	800,000.01		825,000.00	8.50%
	825,000.01		850,000.00	8.75%
	850,000.01		875,000.00	9.00%
	875,000.01		900,000.00	9.25%
	900,000.01		925,000.00	9.50%
	925,000.01		950,000.00	9.75%
	950.000.01		975,000.00	10.00%

from	975,000.01	to	1,000,000.00	10.25%
	1,000,000.01		1,025,000.00	10.50%
	1,025,000.01		1,050,000.00	10.75%
	1,050,000.01		1,075,000.00	11.00%
	1,075,000.01		1,100,000.00	11.25%
	1,100,000.01		1,125,000.00	11.50%
	1,125,000.01		1,150,00.00	11.75%
	1,150,000.01		1,175.000.00	12.00%
	1,175,000.01		1,200,000.00	12.25%
	1,200,000.01		1,225,000.00	12.50%
	1,225,000.01		1,250,000.00	12.75%
	1,250,000.01		1,275,000.00	13.00%
	1,275,000.01		1,300,000.00	13.25%
	1,300,000.01		1,325,000.00	13.50%
	1,325.000.01		1,350,000.00	13.75%
	1,350,000.01		1,375,000.00	14.00%
	1,375,000.01		1,400,000.00	14.25%
	1,400,000.01		1,425,000.00	14.50%
	1,425,000.01		1,450,000.00	14.75%
	1,450,000.01 and higher			15.00%

Additional Tax on the Renumeration for Personal Service. This tax is levied at 1% of the gross income, only when the income is subject to tax under Schedules IV or V.

Reported by: Roberto Casas, Abogado, Avenue Hidalgo 5, Mexico - D.F.

BIBLIOGRAPHY

Revista Fiscal y Financiera, December 1963, contains an article by H. Briseno Sierra about:

La participación de utilidades y el Impuesto sobre la renta.

This is a study of the income tax consequences for employees participating in company profits.

Derecho Procesal Fiscal, Humberto Briseno Sierra, México, Antigua Libreria Robredo, 1964, 701 pp.

This is a study of the tax procedures utilized when tax claims are submitted to the courts. References are made to the theory and jurisprudence concerning such procedures; also included are historical precedents and administrative procedures.

Conozca sus Obligaciones Fiscales, release March 1964, Daniel Albareda.

Survey of recent minor reforms in the Mexican individual income tax. As in previous releases, examples are used to explain each of the topics.

Jurisprudencia de la Suprema Corte de la Nacion y del Tribunal Fiscal de la Federacion en materia de la Ley del Impuesto sobre la Renta.
México, Secretaria de Hacienda y Crédito Publico.
Income tax matters on case law decided by the High Court and the Federal Tax Tribunal of Mexico.

Codificacion de la Legislacion de las Resoluciones Jurisdiccionales en materia del Impuesto Federal sobre Ingresos Mercantiles.
México, Secretaria de Hacienda y Crédito Publico, 1959, 578 pp.
Legislation and case law on the Federal receipts tax (type of turnover tax).

NEW ZEALAND

TAX NEWS

Brief summary of the main provisions of the Land and income Tax Amendment Act (No. 2), 1963.

1. An investment allowance of 10% in addition to existing ordinary and special depreciation for plant and machinery for manufacturing or farming purposes.
2. A special tax allowance of 50% for increased use of fertilizer over and above a preceding period and full deduction for several types of expenditure on farm improvement which normally are considered capital expenditure.
3. A tax allowance for increased exports of manufactured goods by exempting from income tax that portion of the income of an exporter which bears the same proportion to his total income as his increase in export turnover over three preceding base years bears to his total turnover.
   The definition of manufacture excludes animal products and bi-products, forest products, newsprint and minerals.
4. The existing additional allowable deduction for export marketing development expenditure has been extended to research expenditure and to expenditure for tourist promotion.

According to an announcement made by the Minister of Finance in November, 1963, to be entitled to special depreciation on plant and machinery a company is not required to actually write down in its accounts the amount of depreciation claimed. This has the advantage from a dividend policy point of view that companies with heavy new capital investment do not have to show substantially reduced profits owing to special depreciation.

Reported by: Dr. G.A. Lau, Wellington, 117, Customhouse Quay.

PERU

Research Editor's Survey

Major summaries of taxation of companies in Peru

DOMESTIC COMPANIES

1. *Business license fee*
According to the business capital and varies with the location of the business.

2. *Business income tax*
taxable base: net income from activities carried on in Peru

Tax rates: progressive from	5-35%
Surtax: unemployment tax:	2%

FOREIGN COMPANIES

1. *Business license fee:* the same as for national companies
2. *Business income tax:* the same as for national companies
3. *Income tax on non-residents*
taxable base: the base for the business income tax less the amount of the business tax paid.

Tax rate:	15 + 1%

TAX ON DIVIDENDS

Bearer shares	25 + 1%
Nominative shares of non-residents	19 + 1%

TAX ON INTEREST

Interest on bearer bonds	16%
interest paid to parent company	19 + 1%
Other interest	12 — 19% + 1%

ROYALTIES

Patents and similar	15 + 1%
"know how"	19 + 1%

With the object of stimulating investment activity in the unexplored rich, and scarcely inhabited regions east of the Andes, the Government has decreed tax exemptions for a period of ten years from all major taxes in an area approximately half the size of the entire country. Exemptions are provided from import duties for items to be used exclusively within this zone, and from duties, stamp taxes, business income tax, personal and business surtaxes, banking taxes on interest and overdrafts, etc.

Pursuing the policy of the developing of the industry, the following incentives have recently been granted:

1. Decree number 53 grants an exemption from import and stamp duties for machinery used in the preservation and transportation of fish for consumption. It also contains an exemption from the income tax for profits reinvested in the fishing or fish preservation industries, as well as certain other minor incentives for such industries.
2. Decree number 1 of 1964 grants similar exemptions for food preservation industries.

Decree of January 10, 1964 reduces again import taxes on merchandise from the countries associated with the Latin-American Association of Free Trade (Argentina, Brazil, Columbia, Chile, Ecuador, Mexico, Paraguay and Uruguay).

SAUDI ARABIA

TAX NEWS

Tax exemptions

The new Saudi Arabian Foreign Capital Investment Code, issued on February 25, 1964, contains several features which make foreign investment in the Kingdom more attractive.

Under the new law the enterprise in which foreign capital is to be invested shall be exempt from income and company taxation for 5 years, commencing with the beginning of production. This exemption is given on the condition that Saudi capital shall participate in the project with at least 25% of the total capital and shall remain in the enterprise during the period of exemption.

Furthermore, the exemption from customs duties enjoyed by Saudi capital under the Ordinance for the Protection and Encouragement of National Industries will be extended to foreign capital.

The 2 limitations to the new code are that foreign capital cannot be invested in petroleum or mineral enterprises and that the project must be approved by the Office of Foreign Capital Investment. The main criterion for approval of an enterprise is that the project contribute to the economic development of Saudi Arabia.

This code does not apply to foreign investment projects in existence before the promulgation of this law.

This new foreign investment law replaces the 1957 law, which required majority participation of Saudi capital.

Source: International Commerce, April 6, 1964.

SPAIN

BIBLIOGRAPHY

Ley General Tributari, Boletin Oficial del Ministerio de Hacienda, Madrid, 1964, pp. 110.

This special issue of the General Tax Law contains information on taxable transactions, fiscal domicile, determination of the tax base, tax collection, defaults and various administrative procedures.

Memoria correspondiente al Ejercicio 1962, Dirección General de Tributos Especiales, Madrid, 1963, pp. 271.

Annual report of the General Direction of Special Taxes, summarizing the organization and its procedure for the collection of special taxes.

Boletines del Gabinete de Estudios Financieros, Contables, Tributarios y de Organización Administrativa, release number 60, Madrid, pp. 30.

This bulletin discusses the taxation of cooperatives and recent legislation.

Notas sobre los principios generales del orden tributario, Boletin Informativo de Legislación Fiscal, Instituto de Contabilidad de Madrid.

This is a study of the new Spanish General Tax, with emphasis on the practicality of its provisions.

SOUTH-AFRICA

TAX NEWS

Tax Changes

The South African Budget includes the following proposed tax changes according to information supplied by the Board of Inland Revenue Library (Foreign Section).

Rates of tax

The rate for companies remains at 30 per cent; for other persons the new scales are:

R. R.	*Married persons* per cent	*Others* per cent
First 600	6	7½
600– 1,000	7	9
1,000– 2,400	8	9
2,400– 3,000	8	10
3,000– 4,600	9	11
4,600– 5,000	10	12
5,000– 6,000	20	21
6,000– 7,000	29	30
7,000– 8,000	32	33
8,000– 9,000	34	35
9,000–10,000	38	39
10,000–12,000	39	41
12,000–14,000	40	42
14,000–16,000	44	45
16,000–18,000	47	48
Over 18,000	40	50

As for 1962-63, the tax so computed and after deduction of rebates is subject to a 5 per cent discount.

Source: Taxation, 25 April, 1964.

UNITED STATES

TAX INFORMATION

Starting with the next issue the BULLETIN will present an article each month on some aspect of United States taxation which may be of interest to our subscribers outside of the United States. This is being instituted because of the interest shown by so many of our subscribers. These articles will be presented by various United States attorneys. Those of our readers who may be interested in a certain aspect of United States taxes should communicate directly with the United States Editor of the BULLETIN, International Bureau of Fiscal Documentation, Sarphatistraat 124, Amsterdam, Holland.

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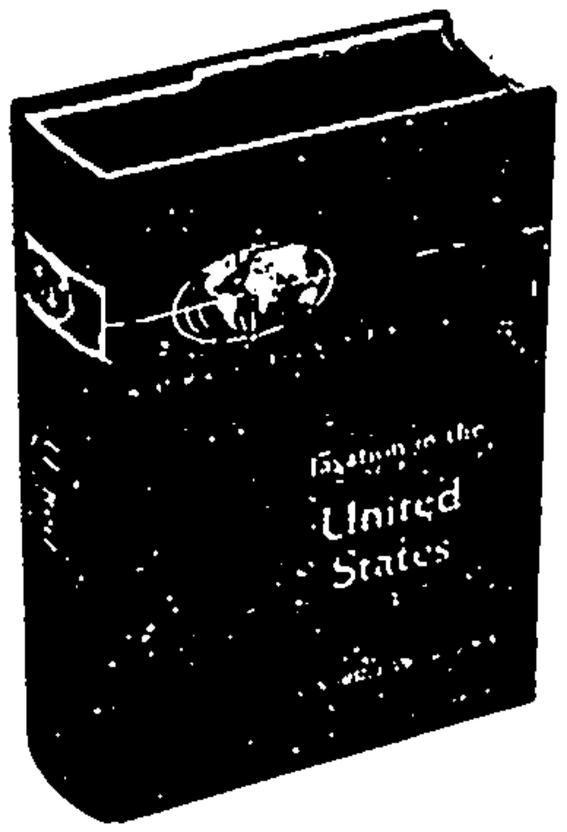

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III

TREATIES

CONVENTION ENTRE LA FRANCE ET ISRAEL

TENDANT À ÉVITER LES DOUBLES IMPOSITIONS ET À ÉTABLIR DES RÈGLES D'ASSISTANCE ADMINISTRATIVE RÉCIPROQUE EN MATIÈRE D'IMPOTS SUR LE REVENU

Le Gouvernement de la République française et le Gouvernement de l'Etat d'Israël, désireux d'éviter les doubles impositions en matière d'impôts sur les revenus, notamment pour encourager le commerce et les investissements internationaux, et d'établir des règles d'assistance administrative, sont convenus à cet effet des dispositions suivantes:

ARTICLE PREMIER

(1) Les impôts actuels auxquels s'applique le présente convention sont:

A. En ce qui concerne la France:
   1° l'impôt sur le revenu des personnes physiques;
   2° la taxe complémentaire;
   3° l'impôt sur les bénéfices des sociétés et autres personnes morales.

B. En ce qui concerne Israël:
   1° l'impôt sur le revenu:
   2° l'impôt sur les sociétés:
   3° l'impôt sur les gains provenant de la vente des terres perçu en vertu de la loi portant imposition de la plus-value des terres.

(2) La convention s'appliquera aussi aux impôts futurs de nature identique ou analogue qui s'ajouteraient aux impôts actuels ou qui les remplaceraient. Les autorités compétentes des Etats contractants se communiqueront, à la fin de chaque exercice budgétaire, les modifications apportées à leur législation fiscale.

(3) Les autorités compétentes des deux Etats se concerteront dans le cas où des modifications affectant sensiblement la nature, le caractère ou le taux des impôts visés au paragraphe 1 du présent article seraient apportées à la législation fiscale de l'un ou de l'autre Etat.

ARTICLE 2

(1) Pour l'application de la présente convention:

1. Le terme «France» désigne la France métropolitaine et les départements d'outremer (Guadeloupe, Guyane, Martinique, Réunion).

Le terme «Israël» désigne l'Etat d'Israël.

2. Le terme «personne» désigne:
a) les personnes physiques;
b) les personnes morales;
c) les groupements de personnes physiques n'ayant pas la personnalité morale.

3. *a*) Au sens de la présente convention, on entend par «résident d'un Etat contractant» toute personne qui, en vertu de la législation dudit Etat, est assujettie à l'impôt dans cet Etat, en raison de son domicile, de sa résidence, de son siège de direction ou de tout autre critère analogue.

b) Lorsque, selon la disposition de l'alinéa (a) ci-dessus, une personne physique est considérée comme résident de chacun des Etats contractants, le cas est résolu d'après les règles énoncées ci-dessous:

(aa) Cette personne est réputée résident de l'Etat contractant où elle dispose d'un foyer d'habitation permanent. Lorsqu'elle dispose d'un foyer d'habitation permanent dans chacun des Etats contractants, elle est considérée comme résident de l'Etat contractant avec lequel ses liens personnels et économiques sont les plus étroits (centre des intérêts vitaux);

(bb) Si l'Etat contractant où cette personne a le centre de ses intérêts vitaux ne peut pas être déterminé, ou si elle ne dispose d'un foyer d'habitation permanent dans aucun des Etats contractants, elle est considérée comme résident de l'Etat contractant oú elle séjourne de façon habituelle;

(cc) Si cette personne séjourne de façon habituelle dans chacun des Etats contractants ou si elle ne séjourne de façon habituelle dans aucun d'eux, les autorités competentes des Etats contractants tranchent la question d'un commun accord.

c) Lorsque, selon la disposition de l'alinéa (a) ci-dessus, une personne morale est résident de chacun des Etats contractants, elle est réputée résident de l'Etat contractant où se trouve son siège de direction effective. Il en est de même des sociétés de personnes et des associations qui, selon les lois nationales qui les régissent, n'ont pas la personnalité juridique.

4. Le siège de direction effective d'une entreprise, au sens de la présente convention, est le lieu où se trouve le centre de la direction générale de l'affaire.

5. Le terme «entreprise française» désigne une entreprise industrielle ou commerciale exploitée par un résident de la République française.

Le terme «entreprise israélienne» désigne une entreprise industrielle ou commerciale exploitée par un résident d'Israël.

Les expressions «entreprise d'un Etat contractant» et «entreprise de l'autre

Etat contractant» désignent une entreprise française ou une entreprise israélienne, selon les exigences du contexte.

6. Le terme «établissement stable» désigne une installation fixe d'affaires où l'entreprise exerce tout ou partie de son activité.

a) Constituent notamment des établissements stables:

(aa) un siège de direction;

(bb) une succursale;

(cc) un bureau;

(dd) une usine;

(ee) un atelier;

(ff) une mine, carrière ou autre lieu d'extraction de ressources naturelles;

(gg) un chantier de construction ou de montage dont la durée dépasse douze mois.

b) On ne considère pas qu'il y a établissement stable si:

(aa) il est fait usage d'installations aux seules fins de stockage, d'exposition ou de livraison de marchandises appartenant à l'entreprise;

(bb) des marchandises appartenant à l'entreprise sont entreposées aux seules fins de stockage, d'exposition ou de livraison;

(cc) des marchandises appartenant à l'entreprise sont entreposées aux seules fins de transformation par une autre entreprise;

(dd) une installation fixe d'affaires est utilisée aux seules fins d'acheter des marchandises ou de réunir des informations pour l'entreprise;

(ee) une installation fixe d'affaires est utilisée aux seules fins de publicité, de fourniture d'informations, de recherche scientifique ou d'activités analogues qui ont pour l'entreprise un caractère préparatoire ou auxiliaire.

c) Une personne agissant dans un Etat contractant pour le compte d'une entreprise de l'autre Etat contractant — autre qu'un agent jouissant d'un statut indépendant, visé à l'alinéa (e) ci-après — est considérée comme «établissement stable» dans le premier Etat si elle dispose dans cet Etat de pouvoirs qu'elle y exerce habituellement lui permettant de conclure des contrats au nom de l'entreprise, à moins que l'activité de cette personne soit limitée à l'achat de marchandises pour l'entreprise.

d) Une entreprise d'assurance de l'un des Etats contractants est considérée comme ayant un établissement stable dans l'autre Etat dès l'instant que, par l'intermédiaire d'un représentant n'entrant pas dans la catégorie des personnes visées à l'alinéa (e) ci-après, elle perçoit des primes sur le territoire dudit Etat ou assure des risques situées sur ce territoire.

e) On ne considère pas qu'une entreprise d'un Etat contractant a un établissement stable dans l'autre Etat contractant du seul fait qu'elle y effectue des opérations commerciales par l'entremise d'un courtier, d'un commissionnaire général

ou de tout autre intermédiaire jouissant d'un statut indépendant, à condition que ces personnes agissent dans le cadre ordinaire de leur activité.

f) Le fait qu'une société résident d'un Etat contractant contrôle ou est contrôlée par une société qui est résident de l'autre Etat contractant ou qui y effectue des opérations commerciales (que ce soit par l'intermédiaire d'un établissement stable ou non) ne suffit pas, en lui-même, à faire de l'une quelconque de ces deux sociétés un établissement stable de l'autre.

7. (1) L'expression «autorités compétentes» désigne: dans le cas d'Israël, le Ministre des Finances; dans le cas de la France, le Ministre des Finances et des Affaires économiques, ou leurs représentants dûment autorisés.

(2) Pour l'application de la présente convention par l'un des Etats contractants, tout terme non défini dans cette convention recevra, à moins que le contexte ne l'exige autrement, la signification que lui donnent les lois en vigueur dans l'Etat considéré, en ce qui concerne les impôts visés dans cette convention.

ARTICLE 3

(1) Les revenus provenant de biens immobiliers ne sont imposables que dans l'Etat contractant où ces biens sont situés.

(2) L'expression «biens immobiliers» est définie conformément au droit de l'Etat contractant où les biens considérés sont situés. L'expression englobe en tout cas les accessoires, le cheptel mort ou vif des entreprises agricoles et forestières, les droits auxquels s'appliquent les dispositions du droit privé concernant la propriété foncière, l'usufruit des biens immobiliers et les droits à des redevances variables ou fices pour l'exploitation de gisements minéraux, sources et autres richesses du sol; les navires, bateaux et aéronefs ne sont pas considérés comme biens immobiliers.

(3) Les dispositions des paragraphs (1) et (2) ci-dessus s'appliquent aux revenus provenant de l'exploitation directe, de la location ou de l'affermage, ainsi que de toute autre forme d'exploitation de biens immobiliers, y compris les revenus provenant des entreprises agricoles ou forestières. Elles s'appliquent également aux bénéfices provenant de l'aliénation de biens immobiliers.

(4) Les dispositions des paragraphes (1) à (3) ci-dessus s'appliquent également aux revenus provenant des biens immobiliers d'entreprises autres que les entreprises agricoles et forestières ainsi qu'aux revenus des biens immobiliers servant à l'exercice d'une profession libérale.

ARTICLE 4

(1) Les bénéfices d'une entreprise d'un Etat contractant ne sont imposables que dans cet Etat, à moins que l'entreprise n'exerce une activité industrielle ou

commerciale dans l'autre Etat par l'intermédiaire d'un établissement stable qui y est situé. Si l'entreprise exerce une telle activité, l'impôt peut étre perçu dans l'autre Etat sur les bénéfices de l'entreprise, mais uniquement dans la mesure où ces bénéfices sont imputables audit établissement stable.

(2) Lorsqu'une entreprise d'un Etat contractant exerce une activité industrielle ou commerciale dans l'autre Etat par l'intermédiaire d'un etablissement stable qui y est situé, il est imputé, dans chacun des deux Etats, à cet établissement stable les bénéfices qu'il aurait pu réaliser s'il avait constitué une entreprise distincte et séparée exerçant des activités identiques ou analogues dans des conditions identiques ou analogues et traitant en toute indépendance avec l'entreprise dont il constitue un établissement stable.

(3) Dans le calcul des bénéfices d'un établissement stable, sont admises en déduction les dépenses exposées aux fins poursuivies par cet établissement stable y compris les dépenses de direction et les frais généraux d'administration ainsi exposés, soit dans l'Etat où est situé cet etablissement stable soit ailleurs.

(4) S'il est d'usage, dans un Etat contractant, de déterminer les bénéfices imputables à un établissement stable sur le base d'une répartition des bénefices totaux de l'entreprise entre ses diverse parties, aucune disposition du paragraphe 2 du présent article n'empêche cet Etat contractant de déterminer les bénéfices imposables selon la répartition en usage; la méthode de répartition adoptée doit cependant être telle que le résultat obtenu soit conforme aux principes énoncés dans le présent article.

(5) Aucun bénéfice n'est imputé à un établissement stable du fait que cet établissement stable a simplement acheté des marchandises pour l'entreprise.

(6) Aux fins des paragraphes précédents, les bénéfices à imputer à l'etablissement stable sont calculés chaque année selon la même méthode, à moins qu'il n'existe des motifs valables et suffisants de procéder autrement.

ARTICLE 5

Lorsque:

a) une entreprise d'un Etat contractant participe directement ou indirectement à la direction, au contrôle ou au capital d'une entreprise de l'autre Etat contractant, ou que

b) les mêmes personnes participent directement ou indirectement à la direction, au contrôle ou au capital d'une entreprise d'un Etat contractant et d'une entreprise de l'autre Etat contractant,

et que, dans l'un et l'autre cas, les deux entreprises sont, dans leurs relations commerciales ou financières, liées par des conditions acceptées ou imposées, qui different de celles qui seraient conclues entre des entreprises indépendantes, les bénéfices qui, sans ces conditions, auraient été obtenus par l'une des entre-

prises mais n'ont pu d'être en fait à cause de ces conditions, peuvent être inclus dans les bénéfices de cette entreprise et imposés en conséquence.

ARTICLE 6

Les bénéfices de l'exploitation, en trafic international, de navires ou d'aéronefs ne sont imposables que dans l'Etat contractant où se trouve le siège de la direction effective de l'entreprise.

ARTICLE 7

(1) Les revenus provenant de la cession d'une participation dans une société de capitaux ne sont imposables que dans l'Etat contractant dont le cédant est le résident.

(2) Le paragraphe (1) ne s'applique pas quand la participation cédée fait partie de lijactif d'u établissement stable que le cédant possède dans l'autre Etat. Dans ce cas, l'article 4 est applicable.

ARTICLE 8

(1) Les sociétes résidentes d'Israel qui possèdent un établissement stable en France, restent soumises en France, en ce qui concerne les répartitions de bénéfices qu'elles effectuent, à l'application, au titre de l'impôt sur le revenu des personnes physiques, d'une retenue à la source, dans les conditions prévues à l'article 109-2 du Code général des impôts.

Toutefois, la fraction des répartitions de bénéfices effectivement passible de la retenue susvisée ne peut dépasser le montant des bénéfices réalisés par l'établissement stable français tel que ce montant est retenu pour l'assiette de l'impôt qui frappe les bénéfices réalisés par cet établissement dans les conditions prévues par les dispositions de la présente convention.

(2) Une société résidente d'Israël ne peut être soumise en France à la retenue visée au paragraphe (1) ci-dessus en raison de sa participation dans la gestion ou dans le capital d'une société résidente de France ou à cause de tout autre rapport avec cette société, mais les bénéfices distribués par cette dernière société et passibles de cette retenue sont, le cas échéant, augmentés pour l'assiette de ladite retenue de tous les bénéfices ou avantages que la société résidente d'Israël aurait indirectement retirés de la société résidente de France dans les conditions prévues à l'article 5 ci-dessus, la double imposition étant évitée en ce qui concerne ces bénéfices et avantages conformément aux dispositions de l'article 20.

ARTICLE 9

(1) En ce qui concerne la France, le taux de la retenue à la source appliquée, au titre de l'impôt sur le revenu des personnes physiques, aux revenus de valeurs

mobilières définis au paragraphe 3 ci-après, ne peut excéder 15 % lorsque ces revenus bénéficient à un résident d'Israël ne possédant pas en France un établissement stable auquel se rattachent les participations productives desdits revenus.

Toutefois, ce taux ne peut excéder 10 % sur les dividendes distribués par une société résident de France à une société résident d'Israël qui possède depuis un an, sous la forme nominative, des actions ou parts d'intérêt représentant au moins 50 % du capital de la première société, à moins que ces actions ou parts ne se rattachent à l'exploitation d'un établissement stable que la société bénéficiaire des dividendes posséderait en France.

(2) Les revenus de valeurs mobilières tirés de sources israéliennes par un résident de France ne possédant pas en Israël un établissement stable auquel se rattachent les participations productives de ces revenus sont exonérés en France de la retenue à la source appliquée, au titre de l'impôt sur le revenu des personnes physiques, aux revenus de valeurs mobilières définis au paragraphe 3 ci-après, lorsqu'ils ont supporté l'impôt israélien sur le revenu. Ils sont également exonérés de cette retenue lorsqu'ils sont affranchis de l'impôt israélien sur le revenu en application des articles 11 et 15 de la loi israélienne modifiée 5710-1950 ou des articles 46, 47, 47 A, 48 et 53 de la loi israélienne modifiée 5719-1959, tendant à encourager les investissements de capitaux.

(3) Sont considérés comme «revenus de valeurs mobilières» les produits d'actions, de parts de fondateur et de parts bénéficiaires, ainsi que les parts de société à responsabilité limitée. Sont également considérés comme «revenus de valeurs mobilières», du côté français, les produits de parts de commandite dans les sociétés en commandite simple.

ARTICLE 10

(1) Les intérêts provenant d'un Etat contractant et payés à un résident de l'autre Etat contractant sont imposables dans cet autre Etat.

(2) Toutefois, l'Etat contractant d'où proviennent les intérêts qui sont payés à un résident de l'autre Etat contractant conserve le droit d'imposer ces intérêts. S'il use de ce droit, le taux de l'imposition qu'il établit ne peut excéder 15 % du montant des intérêts. Les autorités compétentes des deux Etats s'entendent sur les modalités d'application de cette limitation.

(3) Le terme «intérêts» employé dans le présent article désigne les revenus des fonds publics, des obligations d'emprunt, assorties ou non de garanties hypothécaires ou d'une clause de participation aux bénéfices, et des créances de toute nature, ainsi que tous autres produits assimilés par la législation fiscale aux revenus de sommes prêtées.

(4) Les dispositions des paragraphes précédents ne s'appliquent pas lorsque le bénéficiaire des intérêts, résident d'un Etat contractant, a, dans l'autre Etat

contractant d'où proviennent ces intérêts, un établissement stable auquel se rattache effectivement la créance qui les produit. Dans ce cas, l'article 4 concernant l'imputation des bénéfices aux établissements stables est applicable.

(5) Les intérêts sont considérés comme provenant d'un Etat contractant lorsque le débiteur est cet Etat lui même, une subdivision politique, une collectivité locale ou un résident dudit Etat. Toutefois, lorsque le débiteur des intérêts, qu'il soit ou non résident d'un Etat contractant, possède dans un Etat contractant un établissement stable pour les besoins duquel a été réalisé l'emprunt productif des intérêts et qui supporte la charge de ces intérêts, lesdits intérêts sont réputés provenir de l'Etat contractant où l'établissement stable est situé.

(6) Si, par suite de relations spéciales existant entre le débiteur et le créancier ou que l'un et l'autre entretiennent avec de tierces personnes, le montant de l'intérêt payé, compte tenu de la créance pour laquelle il est versé, excède celui dont seraient convenus le débiteur et le créancier en l'absence de pareilles relations, les dispositions du présent article ne s'appliquent qu'à ce dernier montant. En ce cas, la partie excédentaire de l'intérêt reste imposable conformément aux législations nationales des Etats contractants et compte tenu des autres dispositions de la présente convention.

ARTICLE II

(1) Les redevances et autres rémunérations pour l'usage ou le droit à l'usage de brevets, de marques de fabrique ou de commerce, de dessins ou de modèles, de plans, de procédés ou de formules secrets ou de tous biens ou droits analogues provenant de sources situées sur le territoire d'un des Etats contractants à un résident de l'autre Etat sont imposées dans le premier Etat à un taux qui ne peut excéder 10 %.

(2) Sont traitées comme les redevances visées à l'alinéa précédent, les sommes payées pour la location ou le droit d'utilisation des films cinématographiques, les droits de location et rémunérations analogues pour l'usage ou le droit à usage d'équipements industriels, commerciaux ou scientifiques et pour la fourniture d'informations concernant des expériences d'ordre industriel, commercial ou scientifique.

(3) Les redevances versées en contrepartie de l'usage ou du droit à l'usage de droits d'auteur sur des oeuvres littéraires, artistiques ou scientifiques, non compris les films cinématographiques, ne sont imposables que dans l'Etat dont les bénéficiaires des redevances sont les résidents.

(4) Les paragraphes 1 à 3 s'appliquent également aux bénéfices provenant de l'aliénation des biens et droits mentionnés auxdits paragraphes.

(5) Les dispositions des paragraphes 1 à 3 ne s'appliquent pas lorsque le bénéficiaire des redevances ou autres rémunérations entretient dans l'Etat

contractant d'où proviennent ces revenus un établissement stable ou une installation fixe d'affaires servant à l'exercice d'une profession libérale ou d'une autre activité indépendante et que ces redevances ou autres rémunérations sont à attribuer à cet établissement stable ou à cette installation fixe d'affaires. Dans ce cas, ledit Etat a le droit d'imposer ces revenus conformément à sa législation.

ARTICLE 12

Les revenus qu'un résident d'un Etat contractant retire d'une profession libérale ou d'autres activités indépendantes de caractère analogue ne sont imposables que dans cet Etat, à moins que ce résident ne dispose de façon habituelle dans l'autre Etat contractant d'une base fixe pour l'exercice de ses activités. S'il dispose d'une telle base, la partie des revenus qui peut être attribuée à cette base est imposable dans cet autre Etat.

ARTICLE 13

(1) Sous réserve des dispositions des articles 14, 15, 16 et 17, les salaires, traitements et autres rémunérations similaires qu'un résident d'un Etat contractant reçoit au titre d'un emploi salarié ne sont imposables que dans cet Etat, à moins que l'emploi ne soit exercé dans l'autre Etat contractant. Si l'emploi y est exercé, les rémunérations reçues à ce titre sont imposables dans cet autre Etat.

(2) Nonobstant les dispositions du paragraphe 1 ci-dessus, les rémunérations qu'un resident d'un Etat contactant reçoit au titre d'un emploi salarié exercé dans l'autre Etat contractant ne sont imposables que dans le premier Etat si:

a) le bénéficiaire séjourne dans l'autre Etat pendant une période ou des périodes n'excédant pas au total 183 jours au cours de l'année fiscale considérée;

b) les rémunérations sont payées par un employeur ou au nom d'un employeur qui n'est pas résident de l'autre Etat; et

c) les rémunérations ne sont pas déduites des bénéfices d'un établissement stable ou d'une base fixe que l'employeur a dans l'autre Etat.

(3) Nonobstant les dispositions précédentes du présent article, 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 de l'entreprise est situé.

ARTICLE 14

(1) Les rémunérations, y compris les pensions, versées directement ou par prélèvement sur des fonds constitués par un Etat contractant ou l'une de ses subdivisions politiques ou collectivités locales, à une personne physique au titre de services rendus à cet Etat ou à cette subdivision ou collectivité dans l'excercice de fonctions de caractère public, ne sont imposables que dans cet Etat.

Toutefois, cette disposition ne trouve pas a s'appliquer si le bénéficiaire des rémunérations n'a pas la nationalité dudit Etat.

(2) Les dispositions des articles 13, 15 et 16 s'appliquent aux rémunérations et pensions versées au titre de services ayant trait à l'excercice d'une activité commerciale ou industrielle par l'un des Etats contractants ou l'une de ses subdivisions, politiques ou collectivités locales.

ARTICLE 15

Les tantièmes, jetons de présence et autres rétributions similaires qu'un résident d'un Etat contractant reçoit en sa qualité de membre du conseil d'administration ou de surveillance d'une société qui est résidente de l'autre Etat contractant ne sont imposables que dans cet autre Etat.

ARTICLE 16

Sous réserve des dispositions du paragraphe 1 de l'article 14, les pensions, les rentes viagères et autres allocations similaires ne sont imposables que dans l'Etat contractant dont le bénéficiaire est résident.

ARTICLE 17

Nonobstant les dispositions de la présente convention, les revenus que les professionnels du spectacle, tels les artistes de théâtre, de cinéma, de la radio ou de la télévision et les musiciens, ainsi que les sportifs retirent de leurs activités personnelles en cette qualité ne sont imposables que dans l'Etat contractant ou ces activités, sont exercées.

ARTICLE 18

Les sommes qu'un étudiant ou un stagiaire de l'un des Etats contractants, séjournant dans l'autre Etat contractant à seule fin d'y poursuivre ses études ou sa formation, reçoit pour couvrir ses frais d'entretien, d'études ou de formation ne sont pas imposables dans cet autre Etat, à condition qu'elles proviennent de sources situées en dehors de cet autre Etat.

ARTICLE 19

Les professeurs ou instituteurs résidents de l'un des Etats contractants qui, au cours d'un séjour provisoire d'un maximum de deux ans, perçoivent une rémunération pour une activité pédagogique exercée dans une université, une école supérieure, une école ou un autre établissement d'enseignement dans l'autre Etat ne sont imposables au titre de cette rémunération que dans le premier Etat.

ARTICLE 20

Il est entendu que la double imposition sera évitée de la manière suivante:

A. — En ce qui concerne la France:

1. Les revenus autres que ceux visés aux paragraphes 3 à 5 ci-après sont exonérés des impôts français mentionnés à l'article 1, paragraphe (1), A de la présente convention lorsque l'imposition en est attribuée exclusivement à l'Etat d'Israël.

2. Nonobstant les dispositions du paragraphe 1 ci-dessus, les impôts français visés à ce paragraphe peuvent être calculés sur les revenus imposables en France en vertu de la présente convention, au taux correspondant à l'ensemble des revenus imposables d'après la législation française.

3. Les revenus visés au paragraphe 2 de l'article 9 de la présente convention tirés par des résidents de France de sources israéliennes sont imposables en France, conformément à la législation interne et compte tenu des dispositions dudit paragraphe.

Pour cette imposition, la retenue à la source dont l'exonération est prévue à ce paragraphe en ce qui concerne les revenus affranchis de l'impôt israélien en application des dispositions légales qui s'y trouvent visées, sera considérée comme ayant été effectivement opérée.

4. Pour l'imposition des intérêts visés à l'article 10, provenant de sources israéliennes et qui ont supporté l'impôt israélien dans les conditions prévues au paragraphe 2 de cet article, la France accorde l'imputation de ce dernier impôt:

— s'il s'agit d'intérets d'obligations et autres titres d'emprunts négociables, sur la retenue à la source à laquelle le bénéficiaire des intérêts est assujetti en application des règles du droit commun;

— s'il s'agit des intérêts de tous autres emprunts, soit sur la taxe complémentaire et, le cas échéant, sur l'impôt sur le revenu des personnes physiques, soit sur l'impôt sur les sociétés dont le bénéficiaire des intérêts est redevable sur les mêmes revenus.

Pour cette imputation, les intérêts affranchis de l'impôt israélien en application de l'article 47 A de la loi israélienne modifiée 5719-1959 tendant à encourager les investissements de capitaux, seront considérés comme ayant effectivement supporté l'impôt israélien dans les conditions prévues au paragraphe 2 de l'article 10 de la présente convention.

5. Les revenus visés à l'article 11 de la présente convention provenant à des résidents de France de sources israéliénnes sont imposables en France conformément à la législation interne.

Toutefois, la France accorde au bénéficiaire de ces redevances un crédit d'impôt correspondant au montant de l'impôt israélien et imputable soit sur la

taxe complémentaire et, le cas échéant, sur l'impôt sur le revenu des personnes physiques, soit sur l'impôt sur les sociétés dont ce bénéficiaire est redevable sur les mêmes revenus.

B. — En ce qui concerne Israël:

Nonobstant toute autre disposition de la présente convention, Israël, en déterminant les impôts incombant à ses résidents, sociétés ou autres collectivités, peut comprendre dans les bases de ces impôts toutes les catégories de revenus imposables en vertu de la législation fiscale israélienne, comme si la présente convention n'existait pas. Toutefois, Israël déduira des impôts ainsi calculés le montant de l'impôt français frappant les revenus ayant leur source en France et qui sont compris dans les bases d'imposition des deux Etats contractants, cette imputation étant cependant limitée à la fraction de l'impôt israélien correspondant au rapport existant entre les revenus en question et le revenu global imposable en Israël.

ARTICLE 21

(1) Les nationaux d'un Etat centractant ne sont soumis dans l'autre Etat contractant à aucune imposition ou obligation y relative, qui est autre ou plus lourde que les impositions et les obligations y rélatives auxquelles sont ou pourront être assujettis les nationaux de cet autre Etat se trouvant dans la même situation.

(2) Le terme «nationaux» désigne:

1. En ce qui concerne la France, toutes les personnes physiques qui possèdent la nationalité française;

2. En ce qui concerne Israël, tous les citoyens israéliens;

3. Toutes les personnes morales, société de personnes et associations constituées conformément à la législation en vigueur dans un Etat contractant.

(3) Les apatrides ne sont soumis dans un Etat contractant à aucune imposition ou obligation y relative, qui est autre ou plus lourde que les impositions et les obligations y relatives auxquelles sont ou pourront étre assujettis les nationaux de cet Etat se trouvant dans la même situation.

(4) L'imposition d'un établissement stable qu'une entreprise d'un Etat contractant a dans l'autre Etat contractant n'est pas établie dans cet autre Etat d'une façon moins favorable que l'imposition des entreprises de cet autre Etat qui exercent la méme activité dans les mêmes conditions.

Cette disposition ne peut être interprétée comme obligeant un Etat contractant à accorder aux résidents de l'autre Etat contractant les déductions personnel-

les, abattements et réductions d'impôt en fonction de la situation ou des charges de famille qu'il accorde à ses propres résidents.

(5) Les entreprises d'un Etat contractant, dont le capital est en totalité ou en partie, directement ou indirectement, détenu ou contrôlé par un ou plusieurs résidents de l'autre Etat contractant, ne sont soumises dans le premier Etat contractant à aucune imposition ou obligation y relative, qui est autre ou plus lourde que les impositions et les obligations y relatives auxquelles sont ou pourront être assujetties les autres entreprises de même nature de ce premier Etat.

(6) Le terme «imposition» désigne dans le présent article les impôts de toute nature et dénomination.

ARTICLE 22

(1) Les autorités compétentes des deux Etats contractants se communiqueront tous les renseignements dont elles disposent ou qu'elles peuvent obtenir et qui seront nécessaires pour appliquer les dispositions de la présente convention et assurer l'exacte perception des impôts qui en font l'objet.

(2) Tous renseignements ainsi échangés devront être tenus secrets et ne pourront être révélés, en dehors du contribuable ou de son mandataire, à aucune personne autre que celles qui s'occupent de l'établissement et du recouvrement des impôts visés à la présente convention, aini que des réclamations et recours relatifs à ces impôts.

(3) Les dispositions du présent article ne peuvent avoir pour effet d'imposer aux autorités fiscales de l'un des deux Etats l'obligation de communiquer soit des renseignements qui, en raison de leur nature, ne peuvent être obtenus d'après sa propre législation fiscale ou d'après celle de l'autre Etat, soit des renseignements dont elles estimeraient que la communication impliquerait la violation d'un secret industriel, commercial ou professionnel. Ces dispositions ne peuvent, non plus, être considérees comme imposant aux autorités fiscales de l'un des deux Etats l'obligation d'accomplir des actes qui ne seraient pas conformes à sa réglementation ou à ses pratiques administratives. L'assistance pourra également être refusée lorsque l'Etat requis considérera qu'elle serait de nature à mettre en danger sa souveraineté ou sa sécurité ou qu'elle porterait atteinte à ses intérêts généraux.

(4) L'échange des renseignements aura lieu d'office ou sur demande visant des cas concrets. Les autorités compétentes des deux Etats s'entendront pour déterminer la liste des informations qui seront fournies d'office.

ARTICLE 23

(1) Lorsqu'un résident d'un Etat contractant estime que les mesures prises

par l'un des Etats contractants ou par les deux entrainent ou entraineront pour lui une imposition non conforme à la présente convention, il peut, indépendamment des recours prévus par la législation nationale de ces Etats, soumettre son cas à l'autorité compétente de l'Etat contractant dont il est résident.

(2) Cette autorité compétente s'efforcera, si la réclamation lui parait fondée et si elle n'est pas elle-même en mesure d'apporter une solution satisfaisante, de régler la question par voie d'accord amiable avec l'autorité compétente de l'autre Etat contractant, en vue d'éviter une imposition non conforme à la présente convention.

(3) Les autorités compétentes des Etats contractants s'efforcent par voie d'accord amiable de résoudre les difficultés ou de dissiper les doutes auxquels peuvent donner lieu l'interprétation ou l'application de la présente convention. Elles peuvent aussi se concerter en vue d'éviter la double imposition dans les cas non prévus par la présente convention.

(4) Les autorités compétentes des Etats contractants communiquent directement entre elles en vue de parvenir à un accord comme il est indiqué aux paragraphes précédents. Si des échanges de vues oraux semblent devoir faciliter cet accord, ces échanges de vues peuvent avoir lieu au sein d'une commission mixte composée de représentants des autorités compétentes des Etats contractants.

ARTICLE 24

(1) La présente convention peut être étendue, telle quelle ou avec les modifications nécessaires, aux Territoires d'Outre-Mer de la République française ou à l'un ou plusieurs d'entre eux, à condition qu'ils perçoivent des impôts de caractère analogue à ceux auxquels s'applique ladite convention. Une telle extension prend effet à partir de la date, avec les modifications et dans les conditions (y compris celles relatives à la cessation d'application) qui sont fixées d'un commun accord entre les Etats contractants par échange de notes diplomatiques ou selon toute autre procédure conforme aux dispositions constitutionnelles de cet Etats.

(2) A moins que les Etats contractants n'en soient convenus autrement, la dénonciation de la présente convention en vertu de l'article 28 ci-après par l'un deux met fin à l'application de ses dispositions à tout territoire auquel elle a été étendue conformément au présent article.

ARTICLE 25

Les autorités compétentes des deux Etats contractants se concerteront pour déterminer d'une commune entente, dans la mesure nécessaire, les modalités d'application de la présente convention.

ARTICLE 26

La présente convention remplace l'accord conclu entre les Etats contractants le 24 janvier 1952 pour l'exonération réciproque de la double imposition en faveur des entreprises de navigation maritime et aérienne.

ARTICLE 27

(1) La présente convention sera approuvée conformément aux dispositions constitutionnelles en vigueur dans chacun des deux pays.

(2) Elle entrera en vigueur le premier jour du mois qui suivra l'échange des notifications constatant que de part et d'autre il a été satisfait à ces dispositions, et s'appliquera pour la première fois:

a) aux impôts perçus par voie de retenue à la source sur les revenus de capitaux mobiliers mis en paiement après l'expiration d'un délai de trois mois suivant l'entrée en vigueur de la convention;

b) aux autres impôts établis au titre de l'année d'imposition au cours de laquelle interviendra l'échange des instruments de ratification.

ARTICLE 28

La présente convention restera en vigueur pendant une période indéterminée. Cependant, après l'expiration d'une période de cinq ans à compter de la date à laquelle elle sera entrée en vigueur, chacun des Etats contractants pourra, moyennant un préavis de six mois, notifier à l'autre Etat contractant son intention d'y mettre fin, et, dans ce cas, la présente convention cessera de produire ses effets à partie du premier jour de l'exercice budgétaire suivant la notification. Ses dispositions cesseront alors d'être appliquées:

a) en ce qui concerne les impôts perçus par voie de retenue à la source sur les revenus de capitaux mobiliers, aux revenus dont la mise en paiement interviendra après l'expiration de l'exercice budgétaire pour la fin duquel la dénonciation aura été notifiée;

b) en ce qui concerne les autres impôts, pour les années d'imposition commençant le ou après le premier jour de l'exercice budgétaire suivant immédiatement celui au cours duquel la convention aura été dénoncée.

Fait à Paris, le vingt août mil neuf cent soixante-trois, en deux originaux, dont l'un en français et l'autre en hébreu, les deux textes faisant également foi.

Pour le Gouvernement
de la République francaise,
Signé: CARBONNEL.

Pour le Gouvernement
de l'Etat d'Isaël,
Signé: W. EYTAN.

INTERNATIONAL BUREAU OF FISCAL DOCUMENTATION

HISTORY

Since its establishment in 1938, the International Bureau of Fiscal Documentation has served as an independent source of tax information and advice. After World War II its functions were broadened beyond mere simple fiscal documentation and assumed the character of supplying factual data on the tax systems of countries around the world in response to requests from various governmental and business organisations.

In 1946, the Bureau began publication of the *Bulletin for International Fiscal Documentation,* the official organ of the International Fiscal Association. This publication has been supplemented by various special publications. In 1961, the Bureau published the first issue of *European Taxation,* a fortnightly English language review of tax developments on the European Continent, in the United Kingdom and in Ireland, followed in 1963 by two loose-leaf services, *Supplementary Service to European Taxation* and *The Taxation of Patent Royalties, Dividends and Interest in Europe.* During that time span the Bureau also published the Germany original of the well-known book by Dr. Albert J. Rädler about taxation in the common market countries. The Bureau continuously assisted in translating and preparing tax materials for other publications. Additionally, its library was greatly expanded and now contains well over 7000 volumes on national and international tax matters, as well as more than 250 selected periodicals; many visiting researchers make use of these library facilities.

GOALS

The overriding goal of the Bureau is to serve the International community by collecting, evaluating and disseminating tax data in a manner which combines scientific objectivity with practical realism.

Organization

The Bureau is a public non-profit foundation established under Dutch law. Its policies are determined by a "Curatorium", or board of trustees, composed of outstanding representatives of the government, business and academic communities in various countries. A managing director is responsible for carrying out the goals articulated by the Curatorium.

The Bureau is separated into four divisions: Library and Documentation, which is responsible for acquisition and maintenance of tax materials; International Tax Service, which prepares reports for governmental, business and scholarly purposes; Publications Department, which is responsible for the whole gamma of the Bureau's publications; and the Administrative arm, which plans and coordinates Bureau activities.

Correspondents

Apart from its own Associates, who represent several nationalities, the Bureau avails itself of the coopeative services of a large number of expert correspondents throughout the world.

The program

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The Bureau seeks to prepare young lawyers and economists to meet the growing demand for international tax experts and offers to young post-graduates from developed and developing countries the opportunity to work with the Bureau.

2. *Research*

The Bureau is focusing its research efforts upon a significant contemporary problem—the relationship between capital exporting nations and developing countries. Other important research projects include studies of the tax aspects of economic integration and of the influence of tax incentives on economic growth.

3. *Education*

The Bureau seeks to stimulate, and participate in, seminars and discussion groups, lectures and publications.

4. *Library and Documentation*

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5. *Reports*

The Bureau prepares reports containing factual data and legal appraisals relating to countries other than the country of residence of the organization or individual who requests a report.

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I

UNITED STATES

THE TRUST[1] IN AVOIDING ESTATE TAXES FOR MORE THAN ONE GENERATION

BY

PAUL B. LICHTMAN[2]

Chapter 11 of the Internal Revenue Code of 1954 imposes a Federal Estate Tax. Upon the decedent's death, the value of the gross estate is determined by the executor, unless the executor chooses the alternate valuation method. The includible property interests are:

(a) interests of the decedent at the time of his death,
(b) dower, courtesy and other marital interests,
(c) transactions in contemplation of death,
(d) incomplete lifetime transfers,
(e) transfers with income retained,
(f) transfers taking effect at death,
(g) transfers with reserved power over the transferred property or the income therefrom,
(h) annuity or similar contracts,
(i) joint interests,
(j) powers of appointment,
(k) life insurance. (See § 2033 *et seq*).

The trust instrument can be used to remove the above interests from the decedent's gross estate.

The use of trusts in avoidance of estate taxes presents many tangential problems, to wit, the trust for marital deduction, the trust for support of a minor, etc. However, even though these problems are quite interesting in their own right, a discussion of all which concern the trust in its relation

[1]) Since estate taxes in the United States may be considerable, the trust is an instrument used to bring about savings not only in the Federal Estate Tax but also in the various States estate taxes.

[2]) The author is an attorney-at-law with the International Bureau of Fiscal Documentation, member of the New York Bar and a graduate of Columbia University Law School in New York. Presently he is an editor of the Bulletin for International Fiscal Documentation and of the Supplementary Service to European Taxation.

to the estate would necessarily be voluminous and examination of them must be left to another discourse on the subject.

Specifically, then, this paper will investigate the significance of the trust as employed to eliminate estate taxes for succeeding generations. To this end, the discussion will incorporate an analysis of the British Death Duty and how it serves to prevent such bypassing of estate tax.

The trust had its beginnings prior to 1300 in England. The concept involved is actually rather simple. Whenever an interest in property is split as to management and benefit, a trust is created. The trustee, having legal title to interest, manages it for the benefit of the beneficiary who has an equitable interest in the property. Aside from any tax advantage that may ensue from establishing a trust, there are other cogent reasons why a settlor would want to institute a trust for his family:

(1) Protection of his family against their own improvidence and inability to take proper care of money.
(2) Protection of his family against economic depression by allowing rapid shifts in holdings and by providing flexible benefits.
(3) To benefit the family while utilizing specialized talent to manage and invest the principal.
(4) To avoid estate taxes for several generations of his descendents.

The use of the trust to pass over generations in the payment of estate tax can produce rather significant results. For example, if a husband leaves a taxable estate of $1,000,000 outright to his wife, and she in turn left the estate outright to her son, who in turn left the estate outright to his son, the ultimate beneficiary, the grandson, would receive only $409,000, since estate tax had to be paid three times. On the other hand, if the husband had put the property in trust, upon his death his wife and son could have received a life estate and the ultimate beneficiary would have received $675,000, the estate tax being paid only once, i.e., upon the husband's death.

The settling of the trust, although not exceedingly difficult, can raise many problems that good draftsmanship could have avoided. But despite the significance of these problems in themselves, this paper will deal with them only as they relate specifically to the problems of alleviating succeeding generations from the estate tax obligation. In this respect, a nodding acquaintance with the procedure for settling trusts will be useful.

Manifestation of intent to create the trust must be made by the settlor, and this intent must be provable within the evidentiary framework. The absence of the word "trust" does not preclude the court from finding the requisite intent to create a trust, nor does the inclusion of the word "trust" compel the finding of a trust. Furthermore, the language of intent must not be precatory, advisory, or related to future purposes, plans, designs or intention. If the settling language is coupled with extensive control over the management of the property, and if the trust created was an intervivos transaction, the trust will be included in the settlor's estate since many courts regard extensive control by the settlor as manifesting an intent to create a revocable agency, this agency terminating upon death. Although the settlor may want to retain broad powers over the trust and, in fact, may be able to retain broad powers under local law, he would be most unwise to do so if his object in creating the trust is to lessen his estate tax.

The states have various requirements concerning the selection of the trustee. The trustee may be a corporate fiduciary, a national bank, or an individual. Where the settlor neglects to name the trustee and the courts find the requisite intent to create the trust, the court may designate a trustee.

The trust also requires a res, and this must be property in existence which could be the subject of a trust. A mere promise to obtain money and hold it in trust is not sufficient to create the trust. However, since we are dealing here with an individual who is trying to avoid successive estate taxes, he must, obviously, have some cognizable res.

Under common law there cannot be a valid bequest in trust to an indefinite person. There must be a beneficiary or class of beneficiaries capable of coming into court and claiming the benefit of the bequest.

The beneficiary can be a class, but the class must be capable of delimitation, i.e., brother, sister, wife, children, issue, etc. The courts will permit a man to set up a trust for an unborn child if a third party is a trustee, for the legal and equitable interests are separated. An express trust springs up when the child is born. Should the settlor wish to avoid estate tax on such an irrevocable trust, he should select alternate beneficiaries capable of taking should he die without issue. If he neglects to select such beneficiaries he will have a reversion capable of being included in his gross estate.

One restriction on the trust before the trust skeleton can be completed is that the trust must not be set up for an illegal purpose.

The trust basically may be intervivos or testamentary. The intervivos

trust is created by a transfer of a res to a trustee during the settlor's lifetime. This type of trust may be either revocable or irrevocable. The judicially evolved rule in most jurisdictions is that the settlor's power to revoke is limited to the extent that he reserved such power in the agreement. Other states take the position that all voluntary trusts are revocable unless made irrevocable in the agreement. Needless to say, if the trust contains a power to revoke by the settlor, the gross estate upon the settlor's death will include the trust. Of course, the testamentary trust will not circumvent the settlor's estate tax.

If the settlor sets up an intervivos trust, as opposed to a testamentary trust, the basic taxing section on transfers will be imposed. See IRC 1954, § 2501. This section will apply even though the transfer is in trust. IRC § 2511 (a). It is only the irrevocable trust that is subject to the immediate gift tax. Revocable trusts are not subject to the immediate gift tax, but will be subject to the estate tax. See § 2038. The tax advantages of an intervivos irrevocable trust are numerous:

(1) the gift tax rates are only 75% of the estate tax rates;
(2) property given in trust is removed from the high estate tax bracket to the lower gift tax bracket;
(3) the estate tax is not deducted from the estate tax base, while money used to pay the gift tax will not be subject to gift or estate tax;
(4) the settlor may utilize his lifetime gift tax exemption of $30,000 aside from his estate tax exemption of $60,000;
(5) the grantor is allowed a yearly exclusion of $3,000 per donee, except that $6,000 may be given to a spouse. This includes all gifts except future interests.

As noted under (5), the exclusion is not allowed for gifts of future interests. In order for the gift not to be considered a future interest the donee must be unconditionally entitled to the present use and enjoyment of the transferred property. If the trust income is payable currently to a beneficiary during his life, the present value of the life interest is deemed a present interest, but the succeeding beneficial interests are future interests.

A disadvantage in creating the intervivos trust is that the gift tax must be paid immediately. This results in a loss of income which the gift tax money could have produced.

In settling an intervivos trust the grantor should be extremely careful

lest the trust be thrown back into his estate. One such case would arise if the grantor reserved for himself a life income in the trust. See IRC § 2036. There would be a similar result if there were a reservation of income for a period not ascertainable without reference to his death, or for a period which does not in fact end before his death. See § 2037. There are many other tax pitfalls that the grantor should be aware of, such as, reversionary interest, trust for support of legal dependents, power to control beneficial enjoyment, etc. These problems must be discussed elsewhere, for the present concern is with the attempt of the grantor to skip estate taxes for several succeeding generations.

To be able to circumvent successive estate taxes a trust should run as long as the law will allow, i.e., for as long as the local Rule against Perpetuities will allow. After the initial gift or estate tax is paid on an intervivos or testamentary trust, the descendants of the settlor will pay no further tax until the death of those who take the remainder when the trust terminates. The Rule against Perpetuities exerts a substantial restrictive force upon the creation of trusts. The trust will usually provide for successive interests and the Rule forbids any interest except within the restrictions as to futurity and non-vestedness. The attempted trust will fail to the same extent that the beneficial interests are declared invalid. An examination of the Rule and its effect upon such trusts is now in order.

Powell's statement of the Rule is quite clear and comprehensive. He states:

> Under the common law Rule against Perpetuities the maximum permissible period is (a) lives of persons who are (i) in being at the commencement of such period and (ii) neither so numerous nor so situated that evidence of their death is likely to be unreasonably difficult to obtain; and (b) twenty-one years; and (c) any period or periods of gestation involved in the situations to which the limitation applies. (Powell, Vol. 5, § 766 *et seq*).

Therefore, any interest that will not vest within the above-described limit will be invalid for contravening the Rule against Perpetuities. The Rule is spearheaded against the inconvenient fettering of the alienability of property. Furthermore, future interests sometimes suspend the power of alienation and if such suspension is longer than the permissible period, the limitation is ineffective. For example:

A to T in intervivos trust to pay B the income for life; remainder to the first grandson of B.

The grandson has a contingent remainder which, in this case, is void under the Rule. It is not certain that the grandchild will have been born before B dies, or even in the lifetime of B's children already conceived. Had the grantor stipulated the "first grandchild to be born to X, Y, or Z", who are B's children already in existence, the remainder would have been valid because X, Y and Z were lives in being and the first grandchild has his interest vested with lives in being.

Some future interests are invalidated even though the power of alienation is not suspended or is not suspended for a period greater than that to which the Rule speaks. In these cases, the ascertainment of the ultimate taker is too long postponed. For example:

A to that one of his grandchildren who first attains the age of twenty-five.

When A dies, all of his children have been conceived. Therefore all of A's grandchildren are certain to have been conceived by the end of lives in being plus twenty-one years. There is no suspension of the power of alienation because there are in existence persons who by joining, can convey complete ownership of the interest. But the one grandchild to whom the property is limited may remain uncertain for 25 years after the death of the last child of A.

If the future interest remains completely destructible, the interest will not be in violation of the Rule. This destructibility can come about either by granting a general power of appointment or a power to revoke. If the former is used, the interest will not escape the estate tax when the holder of the general power dies. See IRC § 2041. However, if a power to revoke the trust and turn it over to a named person or his heirs is incorporated, it is probable that this power will be sufficient to prevent the application of the Rule.

The problem of the Rule manifests itself when the settlor attempts to leave an interest to a class of individuals, except if under the terms of the gift there can be no fluctuation in the membership of the class subsequent to the time at which the instrument containing the limitation speaks and

the entire class gift is not subject to a remote contingency. Invalidity under the Rule can result from the ability of the class involved to increase in membership for a period longer than the Rule permits (this ability to increase may exist even though there is no ability of the class to decrease, or decrease within the permissible period.) Similarly, if the class can decrease beyond the period allowed by the Rule, invalidity results, as it also does, of course, if the class gift is dependent upon a contingency which may not be resolved within the period of the Rule. Thus, the Rule operates to strike out gifts that will not vest within the prescribed period.

As a practical matter, how many generations will the settlor be able to alleviate from the estate tax? Assume an extremely hardy and virile individual who sires a child when he is only fifteen years of age. Assume, also, that his descendants each sire a child when they are fifteen years of age. By the time the settlor is sixty he is a great-great-grandfather. At the age of sixty he settles a trust to give a life income to his wife; upon her death a life income to his named children; upon their deaths to his named grandchildren for life; upon their deaths to his named great-grandchildren for life; upon their deaths to his named great-great-grandchildren for their lives with *remainder in fee to their children who are living twenty-one years after the death of the last surviving great-great-grandchild.* Here the settlor is able to circumvent the estate tax for four generations by his intervivos trust for which he paid an initial gift tax amounting to three-quarters of the estate tax. This, of course, is an extreme example of how a trust may be created to benefit one's family without an estate tax being paid until the fifth generation dies—in this instance, approximately 136 years after the settling of the trust. The postponement of the estate tax for five generations will be valid under the Rule because the settlor was able to name four generations in the trust instrument.

The duration of the trust is not usually subject to the Rule against Perpetuities. Of course, a particular interest of the trust may be invalid because the ultimate taker or takers will not be determined within the Rule; nevertheless, the duration of the trust will not come under the Rule except in an area such as New York. Powell, in Powell on Real Property, Vol. 5, sec. 772, states that duration of trusts has been upheld where

(a) the trusts were created to last for a period measured by lives of persons who were not in being at the commencement of the trust;

(b) trusts were created to last for a period of more than 21 years after lives in being;
(c) trusts were to last for an indefinite period after lives in being;
(d) trusts were created so as to last for an indefinite period;
(e) trusts were created so as to last for a period of more than 21 years.

There is justification for not applying the Rule to trust duration. The frequency of trusts of long duration is curtailed by liberally interpreted rules regarding the terminability of trusts. Under these rules the beneficiaries of a trust, once they are ascertained and *sui juris*, have power to terminate that trust provided the continuance of the trust is not needed to carry out a principal purpose of the trust. The settlor cannot inject perpetual indestructibility into the trust since somewhere the property must vest absolutely. Moreover, at common law the interest of the beneficiary is alienable unless his interest is made inalienable by the trust instrument or statute. For the most part, these are the reasons why the courts take the position that the Rule against Perpetuities is not operative upon the duration of trusts.

In New York, where the beneficiary's interest in a trust is made inalienable by statute (see New York Real Property Law § 103), the Rule is applicable to the duration of the trust. Even though the New York Legislature changed the Rule to the accepted common law Rule in 1960, the legislation left unaffected the inalienability of the beneficiary's interest and the Rule vis-à-vis trust duration. See Powell, Vol. 5, § 793 *et seq.* On the other hand, California has a statute that specifically reaffirms the non-applicability of the Rule to trust duration. See Cal. Laws 1959, c. 470, Cal. Civ. Code § 771 (Deering 1960). Therefore, in settling a trust in New York, caution must be taken not to have the trust endure for a period greater than the Rule. If the trust is declared invalid there will be no circumventing the estate tax for any number of generations.

Another way of postponing the payment of estate taxes through a trust would be by a power of appointment. The power of appointment given must not be a general power because then it will be included in the gross estate of the donee. See IRC § 2041. But, if the donee of the power has a special power, to wit, in the power he does not have the practical equivalent of ownership (cannot appoint to himself or his creditors), he may postpone his estate tax. With a special power, the donee is treated as acting for the donor

and the validity of the power is read back from its creation by the donor. Delaware measures the Rule from the *exercise* of the power, but no advantage taxwise is realized because the power will be specifically captured by IRC § 2041 (a) (3).

If the settlor were out to postpone the payment of estate taxes for a great length of time, he could do so for about 160 years by having a testamentary trust. The measuring lives he would choose would be those of the last three children born in St. Luke's Hospital on the day of his death. Twenty-one years after the death of the longest lived of the three children the property is to vest absolutely in the settlor's youngest descendant, who, for the sake of argument, is one week old. One of the three measuring lives is likely to last until seventy years of age to which twenty-one years must be added. After the property vests the descendent child might live to be sixty-eight (present life expectancy). Upon his death, the estate tax will be paid, in other words, after a postponement approximating 160 years. To eliminate any problem of accumulation, the income is to be paid to the settlor's descendants for the duration of the trust. Interests in the property can thereby be enjoyed without the payment of estate taxes for nearly 160 years.

There has been some suggestion that in order to prevent the circumvention of estate taxes for a great length of time an adoption of the British Estate Duty would be in order. Under the British system of estate taxation (see Halsbury's Laws of England, Vol. 15), for any death occurring after August 1, 1894, estate duty is leviable, with exception, upon the principal value of all property passing on death whether settled or not. Settled property is property comprised in a settlement, which, in effect, is property limited by trust to any person. It may be real or personal. (It may be noted here that in England there is no effective gift tax.) Certain property that does not pass on death is "deemed" to pass, and the two are mutually exclusive.

Property passing on death denotes some actual change in the title or possession of the property. It is immaterial from, or to whom, the property passes. The liability for the estate tax depends on whether or not it has passed at all. The mere changing of title will not, however, be considered a passing where there is no change in the enjoyment of the property. To ascertain whether property has passed, a comparison must be made between persons beneficially interested before death and persons beneficially in-

terested the moment after death. The transformation of a contingent interest into a vested interest, or a defeasible interest into an indefeasible interest, is not, per se, a passing of property.

Property which the deceased was competent to dispose of at his death is deemed to pass on his death. A person is regarded as competent to dispose of property if he has such an interest or power over the property that if he were *sui juris* he would be able to dispose of it as he thought fit.

Property in which the deceased or any other person had an interest ceasing on the deceased's death is deemed to pass to the extent to which a benefit accrues or arises by the cessation of the interest. Needless to say, the ordinary life estate is caught here for estate duty.

An annuitant under a will has an interest in the residuary estate out of which his annuity is payable so that the value of the annuity is also includible for estate tax.

When the income of property is divided in equal shares among two or more beneficiaries during their lives with the benefit of survivorship, a proportionate share of the capital passes on the death of each life tenant. The life tenant cannot give away or dispose of his estate and thereby avoid duty. Where an interest in possession is to cease upon death and the decedent has disposed of the property in which he had an interest before his death, the property is deemed to have passed upon his death. This disposition by the life tenant may have been by surrender, divesting, forfeiture, or in any other manner. However, if the disposition was made five years before death (one year if the disposition is a charitable one) and bona fide enjoyment of the property was immediately assumed by the recipient, and no benefit from the property accrues to the donor, no estate duty need be paid on the property.

A person entitled to an absolute interest in expectancy under a trust who resettles his interest, reserving to himself a life interest, is deemed to have been competent to dispose of his interest during the settlement and thus subjects himself to estate tax.

There is, on the other hand, one escape valve when it comes to settlements to a spouse. If estate duty has already been paid and the property is now settled on the surviving spouse, the estate duty will not be imposed upon the death of the latter if he or she, at the time of death, was not competent to dispose of the property. It is thus possible for a husband to leave a testamentary trust to pay the income to his wife for her life with a

remainder in fee to his son, and no estate duty will be levied when the wife dies.

Surrey, in 38 Calif. L. Rev. 1 (1950), states that from statistics compiled by the U.S. Treasury in 1945 on property put in trust, it was shown that in 28% of the cases the estate tax fell due at the children's death, no generation escaping estate tax; in 50%, at the grandchildren's death, one generation bypassing estate tax; and in 21%, at the great-grandchildren's death, two generations being skipped for estate tax. It must be kept in mind, however, that these statistics are nearly twenty years old. Since the life expectancy has increased since 1945, it is quite likely that more trusts will skip one and two generations, as the settlor can bestow substantial benefits by giving the succeeding generations life estates.

ADDENDUM[3]

SUSPENSION OF POWER OF ALIENATION

The absolute power of alienation is suspended, when there are no persons in being by whom an absolute fee in possession can be conveyed. Every future estate shall be void in its creation, which shall suspend the absolute power of alienation, by any limitation or condition whatever, for a longer period than during the continuance of not more than two lives in being at the creation of the estate; except that a contingent remainder in fee may be created on a prior remainder in fee, to take effect in the event that the persons to whom the first remainder is limited, die under the age of twenty-one years, or on any other contingency by which the estate of such persons may be determined before they attain full age. For the purposes of this section, a minority is deemed a part of a life, and not an absolute term equal to the possible duration of such minority Lives in being or a minority in being shall include a child begotten before the creation of the estate but born thereafter.

3) The following are good examples of typical state statutes which one may encounter in setting up a trust in some of the States.

SUSPENSION OF OWNERSHIP

The absolute ownership of personal property shall not be suspended by any limitation or condition, for a longer period than during the continuance and until the termination of not more than two lives in being at the date of the instrument containing such limitation or condition, or, if such instrument be a last will and testament, for not more than two lives in being at the death of the testator; except that a contingent gift in remainder may be made on a prior gift in remainder, to take effect in the event that the persons to whom the first remainder is limited die under the age of twenty-one years, or on any other contingency by which the interest of such persons may be determined before they attain full age. For the purposes of this section, a minority is deemed a part of a life, and not an absolute term equal to the possible duration of such minority. Lives in being or a minority in being shall include a child begotten before the creation of the estate but born thereafter. In other respects limitations of future or contingent interests in personal property are subject to the rules prescribed in relation to future estates in real property.

The period could not extend for more than two lives in being at the time the instrument spoke. In 1960 the statute was amended to adopt the common law rule of lives in being plus twenty-one years. The pertinent sections are set forth below:

SUSPENSION OF POWER OF ALIENATION

The absolute power of alienation is suspended, when there are no persons in being by whom an absolute fee in possession can be conveyed. Every future estate shall be void in its creation, which shall suspend the absolute power of alienation, by any limitation or condition whatever, for a longer period than during the continuance of lives in being at the creation of the estate and a term of not more than twenty-one years. Lives in being shall include a child begotten before the creation of the estate but born thereafter. In no case shall the lives measuring the permissible period be so designated or so numerous as to make proof of their end unreasonably difficult.

SUSPENSION OF OWNERSHIP

The absolute ownership of personal property shall not be suspended by any limitation or condition, for a longer period than during the continuance and until the termination of lives in being at the date of the instrument containing such limitation or condition, or, if such instrument be a last will and testament, for lives in being at the death of the testator, and a term of not more than twenty-one years. Lives in being shall include a child begotten before the creation of the estate but born thereafter. In no case shall the lives measuring the permissible period be so designated or so numerous as to make proof of their end unreasonably difficult. In other respects limitations of future or contingent interests in personal property, are subject to the rules prescribed in relation to future estates in real property.

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INDONESIA

FOREIGN INVESTMENT POLICY AND TAXATION IN INDONESIA

by

K. S. JAP

*of the International Bureau of Fiscal Documentation**)

FOREIGN INVESTMENT POLICY

Introduction

This discourse will present an historical outline of the past and present foreign investment policy in Indonesia. Elucidation of this policy necessitates a review of Indonesia's history because its foreign investment policy for centuries has been linked to the political powers exerting their influence.

General documentation on territory, population, resources and general economic situation

The territory of the Indonesian Republic has a total area of 1,903,695 sq. kilometres.

A population census has not been taken since 1930 and the registration of births and deaths is not obligatory. The estimated total population in 1954 was 82.5 million and in 1963 100 million.

The Indonesian economy is agriculture oriented. The production and export of the principal agricultural products—e.g. copra, tea, coffee, sugar, palm oil, palm kernels, quinine, etc.—remain appreciably below the 1938 level, as is the case with most other vegetable export products, e.g. cocoa, tobacco, pepper, constructional timber, copal, dammar, rattan, etc.

The production and export of oil has developed considerably but this has not been the trend with other mining products, i.e. tin, bauxite, coal, magnesium and salt.

The development of principal industries viz. foodstuffs and beverages, textiles, tobacco, building materials, household wares, chemical and pharmaceutical products, industrial and transport equipment, etc.—has been hampered by an irregularity in the importation of supplies which was brought about by a shortage of high valued foreign currency, low productivity, rising labour costs, shortage of capital and technical personnel, and by transport difficulties.

Air transport is operated by the Garuda Indonesian Airways, the capital stock of which has been State property since March 24, 1954. The inflation evident for many years has led to complicated regulations and has given rise to an extensive "black market" for all imported products. Also, it imperils the existence of

*) Opinions and conclusions in this article are those of the author.

economically sound enterprises and discourages investment in long range projects.

The Eight-Year Plan for economic development is not likely to reach its goals. This Plan encompasses the establishment of heavy industry (iron and steel).

The United States, the Soviet Union, Japan and Czechoslovakia render economic assistance for Indonesia's development.

Short history of Indonesia's political powers

The struggle for freedom—both from external and internal domination—is as old as Indonesia. Indian princes invaded Indonesia as early as 500 A.D. Indonesian kingdoms fought Ceylon and China, as well as India. When not fighting invaders they fought amongst themselves.

From the eighth to the fourteenth century, when the Indonesian Hindu civilization was at its height and the great Hindu-Bhuddist movement was thriving, two Indonesian empires were predominant, i.e. the Shrivijaya Empire of South Sumatra and the Singosari Empire of East Java. In the latter part of the 14th century the Prime Minister of the East Javanese Empire, Gadja Mada, succeeded in uniting the two empires into one, the Empire of Madjapahit. This union lasted until his death.

From the 15th century on, the Portuguese, the Spanish, the Dutch and the English appeared in the Indonesian Archipelago. Of the aforementioned nations the Dutch succeeded in gradually submitting the divided Indonesian kingdoms to its domination.

Indonesia has for centuries been ruled by the Dutch whose penetration into the Indonesian Archipelago was primarily economically directed. For centuries the Northern Netherlands would buy the Far Eastern spice in the ports of the Iberian peninsula and sell it profitably elsewhere. This ceased at the end of the 16th century. Many reasons motivated the Dutch to journey to the East Indies; the most important was the exclusion of any commercial activity in Spanish ports in 1585. This declaration by King Philip II of Spain was thought to hamper Dutch resistance to his armies commanded by Parma in the Low Lands.

In addition the Dutch were compelled to go and obtain the desired products from their lands of origin. Initially these voyages to the Far East were undertaken by several commercial companies which were unable to withstand the Portuguese and Spanish battleships. The establishment of the Verenigde Oost-Indische Compagnie (V.O.C.) or United East Indian Company on March 20, 1606, merging the competing companies, met with some success in fighting the united Portuguese and Spanish fleet (united under one command since 1580). Subsequent endeavours by the English to obtain access to the Archipelago were successfully defied by the V.O.C.

The fortified trading stations, built to function as warehouses for the desired products, were often attacked by the natives. Nevertheless the Archipelago was gradually submitted under Dutch East Indian Government. From the beginning of the 20th century Indonesia has been ruled completely by the Dutch East Indian Government.

During World War II the Indonesian Archipelago was occupied by Japanese forces. At the close of the war the Indonesian struggle for independence was aroused and on August 17, 1945 a Declaration of Independence was declared. However, not until 1949 did the Dutch recognize this Indonesian independence.

It is self evident that foreign investments were linked to political and economic external forces.

Brief historical review of foreign investment policy

The early foreign investment policy is reflected in Indonesia's tax history. Prior to the Dutch colonial administration the tax history of Indonesia is unknown. W.F. Prins, an authority on the Indonesian tax system, has separated Indonesia's tax history under Dutch colonial administration (1620-1945) into four major periods.

The first period (1620-1800) reflects the years in which the East Indian Company was operative. The second period (1800-1870) encompasses the compulsory cultivation (cultuurstelsel) and the third period (1870-1920) concerns itself with the penetration of private capital into Indonesia.

The fourth period (1920-1945) characterizes the uniform tax treatment of different nationalities.[1] This division of Indonesia's tax system may be extended further to recent years. These later years will be discussed more fully *infra*. Analysis will be directed to the first four periods of Indonesia's tax development.

The years when the V.O.C. had exclusive economic control of the Dutch East Indies comprise the first period (1620-1800). All taxes were minimized in this period, the government income being largely limited to the light taxation of commercial profits. However, the Company imposed heavy levies on the native population through the "quota and supply system" (stelsel van contingenten en leverantiën), whereby the natives worked without compensation for crops that were exported. Through this system the Company introduced export crops and retained the income from these crops.

The second period (1800-1870) initiated the land taxation (e.g. landrente en verpanding) which was introduced by Raffles, the British colonial administrator

[1]) Cf. W.F. Prins: Het belastingrecht van Indonesië; published by J.B. Wolters, Groningen, Djakarta, 1951, pp. 131-146. (The tax law in Indonesia.)

during the Napoleonic wars (1811-1816). The land tax (landrente) was levied on the cultivated land of the natives.

The Company, and later the Government, sold land to private persons, and the tenants living on these lands had to pay a tax (tiendheffing or chukai) to the private owners. Individuals (natives) not deriving any income from the land were liable for tenant-tax on the plots upon which their houses were built. Also, taxes were levied on plantations (viz. tea, quinine, coffee, rubber and tobacco) and on dwelling plots owned by foreigners.

By 1830 inherent difficulties in administering the land tax produced fiscal problems and mounting colonial debt. These difficulties prompted the introduction of the "compulsory cultivation" system (cultuurstelsel), under which the monetary land revenue was replaced by collections of produce (primarily export crops, viz. coffee, sugar and indigo).

The compulsory cultivation system consisted of a combination of compulsory measures, to wit, labour services, providing land for government sponsored products and land taxation. One fifth of the cultivated land was to be allocated to producing export crops (viz. coffee and indigo) for the government. However, in reality government officials often extracted a much higher percentage.[2]

The government collection agencies also enforced the compulsory sale of export crops at low prices. This system proved so lucrative that Dutch private enterprises agitated for the adoption of a policy which would permit private investment in Indonesian plantations.

After twenty years of intensive controversy on the issue, the "liberal system", which allowed private capital to enter Indonesia in 1870 became a reality.

Private enterprise began to assume a dominant role in plantation production. Private planters took over the government managed plantations and augmented these by their own with the result that private enterprise tended to be more oppressive than state enterprise.[3]

However, the government followed a policy of protecting the population from the oppressiveness of (foreign) enterprises.

The Agrarian Law (Agrarische Wet) of April 9, 1870 prohibited the planters from purchasing village land or acquiring it in any other manner than on an annual lease basis; but waste land could be obtained from the government on long term leases, not exceeding 75 years.

During the third period (1870-1920) when private enterprises entered the economic structure, the finances of the government were centered around the land tax.

2) J.S. Furnivall; Netherlands India: A study of Plural Economy, Cambridge University Press, Cambridge, 1939, p. 137.
3) J.S. Furnivall; Colonial Policy and Practise, Cambridge University Press, Cambridge, 1948, p. 223.

The scope of taxes included foreign enterprises and they became subject to an enterprise and business license tax. This business license tax (1878) was in fact a profits tax from which Dutch enterprises operating in the Dutch East Indies were exempt. This was due to the fact that a business license tax (patentbelasting) was due in the Netherlands on the world wide income. Not until 1906 was the Dutch East Indian Government free to impose a tax on Dutch companies operating in the East Indies.[4]

An enterprise tax was payable on the income from non-European enterprises and professions. The tax inequality between European and non-European nationalities in the Dutch East Indies was characteristic of this period.[5] In the fourth period (1920-1945) a shifting from the taxation of land to the taxation of capital took place. It appears that this trend was well under way prior to 1920 but was accelerated by the introduction of the so-called "ethical policy" in the first decade of the 20th century.[6]

A characteristic of this period was a drive to abolish the different tax treatment between groups. In the years after World War II the tax burden shifted from direct taxes towards indirect taxes, because of the deteriorated position of the tax administration and the desirability not to hamper private enterprise.[7]

The shift in the Indonesian tax structure toward the capital sector of the economy was boosted in 1925 by the introduction of a tax on profits (company tax).

The trend in the 19th century to the taxation of capital may be seen in chart I and II *infra*.

Chart I — *Tax structure.* Selected years 1867-1928 in percentage of total tax receipts.

TAX	1867	1897	1913	1928
Land revenue and poll tax	49	39	25	10
Income tax, profits tax, etc.	—	—	11	32
Customs and excise duties	30	30	39	39
Other taxes	21	31	25	19
Total	100	100	100	100

Source: *Furnivall, Netherlands-India; A Study of Plural Economy*; p. 341.

[4]) B.J. de Leeuw; De hoofdlijnen van het belastingstelsel in Nederlandsch Indië. Weekblad der Directe Belastingen, Invoerrechten en Accijnzen, Batavia, Nos 18, 25 December, 1926 and Nos 1, 6 January, 1927. (An outline of the tax system in the Dutch East Indies.)

[5]) W.F. Prins; Het belastingrecht van Indonesia. (The tax law in Indonesia.) J.B. Wolters, Groningen, Djakarta, 1951, p. 134.

[6]) D.S. Paauw, Financing Economic Development. The Indonesian Case. The Center for International Studies, Massachusetts Institute of Technology. The Free Press, Glencoe, Illinois, 1960, p. 175.

[7]) W.F. Prins, Het Belastingrecht van Indonesia; Groningen-Djakarta 1951, p. 145.

Chart I shows the shift in tax burden on land in relation to other levies. Government revenue in the earlier period aside from the land tax, was composed of various government enterprises including monopolies (viz. opium regie, salt regie and pawnbrokers' houses).

Chart II, *infra*, shows the growth of net government income by major types of revenue. The revenue of monopolies and government enterprises gradually diminished and the primary source of revenue shifted to taxation.

Chart II — Growth of net government income by major types of receipts (percentage of total revenue) Selected years 1867-1932

REVENUE	1867	1897	1913	1928	1932
Taxation	33	58	54	66	75
Products	50	11	18	10	3
Monopolies	18	27	19	9	9
Enterprises	−1	4	6	9	7
Miscellaneous	—	—	3	6	6
Total	100	100	100	100	100

Source: *J.S. Furnivall: Netherlands India; A Study of Plural Economy*, p. 341.

As the revenue from government enterprise decreased in relation to the total government receipts, income from taxes increased. The post-war figures available indicate that the contribution to revenue by direct taxes exceeded the revenue brought about by indirect taxes. Sufficient data is available for the pre World War II period; but data from the war years is not available and the accuracy of post war data is dubious. Sufficient data is available 1951-1953.

Chart III, *infra*, shows the revenue from direct and indirect taxes. Note that the major portion of the revenue is from indirect taxes.

Chart III — Tax structure between direct and indirect taxes (percentage of total revenue) Selected years 1941-1953

REVENUE	1941	1948	1949	1950	1951	1952	1953
Direct taxes	55	66	49	37	27	23	25
Indirect taxes	45	34	51	63	73	77	75
	100	100	100	100	100	100	100

Source: *Sumitro Djojohadikusomo: Persoalan Ekonomi di Indonesia*, 1953, p. 273. (The economic problem in Indonesia).

The tax burden in the fifth period (1949-1958) evidently shows a shift from direct taxes to indirect taxes (especially import and export taxes). Since independence, direct income taxation has produced a considerably smaller percentage of the total tax revenue than in the period 1929-1939. If import and export taxes are considered indirect taxes upon ultimate consumers we find that, during the period 1951-1953, indirect taxes produced about three-fourths of total tax revenues. The increase of Indonesian exports, producing high income, was the direct result of stock piling of basic materials by Western countries during the Korean War.

Indonesia's economy is very dependent on the world prices for its export products.

Export and import taxes since 1950 tended to raise revenues from the surcharges levied on foreign exchange but this generated a general increase in domestic price level. The tax burden from indirect taxes and especially on the customs and excise duties may be seen in Chart IV, *infra*.

Chart IV — Tax structure between direct and indirect taxes (selected years 1939-1955) in percentage of total tax revenue

REVENUE	1939	1952	1953	1954	1955
Direct taxes	28	23	27	34	37
Indirect taxes	22	14	14	16	13
Customs duties	50	63	59	50	50
	100	100	100	100	100

Source: *M.D. Dris, Taxation in Indonesia, Ekonomi dan Kenangan Indonesia* (*Economics and Finance in Indonesia*) Vol. II No. 8/9, August/September 1958, p. 417.

Income earned in the rural or non-Western sector was explicitely exempt from the individual income and wage tax during the Dutch colonial period. An income tax was enforced in the agricultural sector of the economy where western agricultural estates existed (verpanding). Agricultural income from land cultivated by the natives was reached by the land tax (landrente), but revenues from this source declined sharply in the last decades of Dutch control.

Shortly after the transfer of sovereignty the land tax levied on the net proceeds of certain rice plantations and on the value of other types of property was abolished (January 1, 1951) and, substituted in its place was a rural income tax designed to extend income taxation to sectors not reached during the colonial period. The Government does not have the administrative resources to extend direct income taxation to the rural sector of the economy. The income tax as well as the indirect tax fall primarily on the capital sector; even relatively high incomes in the rural sector escape income taxation.

The fact that tax evasion was prevalent and also the fact that the land tax is

common in other Asian countries e.g. India, Pakistan, Burma and Thailand, in January 1, 1960, stimulated the authorities to once again impose a land tax on the net proceeds of cultivated land; however, at a lesser percentage than the former land tax.

From March 2, 1954, a transfer tax (or exchange surcharge) was levied on transfers of foreign currency. Exemptions from this tax were allowed on government payments for services, transfer of profits earned by companies established in 1954 or after with foreign capital, and on pensions and certain allowances granted to persons employed in Indonesia with families living abroad.

The company tax is based on the Netherlands Ordinance of 1925 as amended. This tax is levied on the net profits of limited liability companies and other specified forms of business organizations (e.g. limited partnerships, cooperatives and mutual insurance companies); and applies uniformly to foreign and domestic enterprises operating in Indonesia.

Since independence, revenue from the company tax has increased, until in 1956 a sharp decline in revenues was encountered. In 1957, due to the nationalization of the Dutch enterprises, the revenue from the company tax declined. The company tax had been levied at increasingly high rates since its introduction. With the exception of newly established firms, the company tax was levied, since 1951, at rates ranging from 40 per cent on net profits below Rp. 500,000 to 52.5 per cent on profits above Rp. 2,500,000.

Firms established after January 1, 1950 and earning a net profit which is less than Rp. 500,000 are taxed progressively from 25 per cent to 40 per cent during their first five years.

Accurate data is unavailable for years subsequent to 1958 because of the increase in "barter trade" and tax evasions. "Barter trade" is the Indonesian euphemism for the exchange of smuggled exports for smuggled imports.

After 1958 the proceeds from indirect taxes continue to exceed that of direct taxes. Conditions in Indonesia presently justify a fairly wide use of indirect taxes since they can be levied and administered with ease and at relatively little cost.

Chart v — Tax structure between direct and indirect taxes in percentage of total tax revenue (selected years 1960-1962)

REVENUE	1960	1961	1962
Direct taxes	33	37	41
Indirect taxes	67	63	59
	100	100	100

Source: *Indonesian tax delegation at the special meeting of the Japan Tax Association held on April 9, 1963 in Japan.*

Although the present fiscal policy is to increase the revenue from direct taxes to a considerable extent, indirect taxes will undoubtedly continue to be a major source of revenue.

The sixth period (1958-1962) begins with the nationalization of Dutch enterprises and the departure of Dutch civilians, producing a severe shortage of administrators and technicians.

Since independence some Indonesian leaders shared with the leaders of other developing countries a vague mistrust of foreign capital, a mistrust rooted in their history. They were suspicious that after the withdrawal of foreign political powers an attempt may be made to infiltrate Indonesia economically. Available capital for investment in Indonesia is insufficient, so it is considered advantageous to invite capital to be invested in Indonesia. This necessitated giving a clear definition of the situation in order to avoid doubts on the part of foreign investors on the one hand and mistrust by the government of foreign capital as an attempt to economic "penetration" on the other hand.

The first law governing the treatment of foreign investment in Indonesia passed Parliament on September 15, 1958; although providing certain guarantees for foreign investors, the law establishes safeguards for Indonesian interests. By virtue of this law several enterprises are closed to foreign capital e.g. railways, telecommunication, national shipping, aviation, generation of electric power, mining of vital materials, irrigation and watersupply, manufacture of arms and ammunition, generation of atomic energy, etc. The law also provides for the transfer of profits after taxation and indicates that international agreements may be effected to avoid double taxation. Repatriation of capital is to be permitted after a fixed period and only in accordance with regulations which have yet to be established. Interpretation and implementation of the general provisions will rest entirely with a Foreign Investment Council. Requests for a joint venture operations are given priority.

The Foreign Investment Council was officially installed in January 1959 with the Minister of Industry, chairman.

In January 1959 a Foreign Capital Inquiry Committee of Parliament announced preliminary working plans for an investigation to obtain information on the amount, composition and origin of foreign capital already invested in Indonesia. This investigation included information on capital turnover profits during the last five years, composition of the enterprises and, where transfers are permitted, the amount and countries to which remittances have been made. Until this time non-residents were not subject to taxation on dividends, interest (other than mortgage interest), royalties, or similar payments on capital which accrue to them in Indonesia in the form of shares in Indonesian companies, or of loans, advances,

credits, grants of patent rights, manufacturing processes, trade marks, film rights, etc.

A dividend withholding tax was enacted in 1959 and dividends transferred to non-resident companies were subject to a flat withholding rate of 20 per cent. A tax on foreign residents announced late in 1957, but retroactive to January 1, 1957, imposed a heavy levy on all foreigners. Rates were set at Rp. 1,000 (1963: Rp. 1,500) for the head of each family; Rp. 750 (1963: Rp. 750) for wives and adult members of a family and Rp. 350 (1963: Rp. 375) for children.

Indonesia's investment climate had not changed basically since 1959. The foreign investment law, however, does leave open certain opportunities to invest in Indonesia, but it is generally not considered attractive to foreign capital. Due to the country's unsettled political and economic conditions, potential investors showed extreme caution in 1959 in entering Indonesia with proposed investment opportunities.

Legislation on mining and petroleum operations failed to be materialized in 1959. Debates on proposed legislation for mining and petroleum indicated an interest in changing the (draft) bills to further restrict participation by foreign capital. However, Stanvac, completed a lubricating oil plant in Jakarta harbor area, and Shell began the construction of a 25 million rupiah pipeline in Kalimantan.

No important actions were taken by the Foreign Investment Council in the first half of 1960. Foreign capital investments on the whole declined slightly because potential investors remained wary of the country's economic and political problems.

One uncertain factor is the delineation of the respective roles of the state and private enterprise in the economy.[8]

Since 1954 incoming and outgoing transfers of capital in payment for private foreign travel and business agents located abroad, transfers of patent fees and royalties and transfers from non-resident rupiah accounts etc. were all subject to an increased exchange surcharge on the official exchange rate and this made foreign investment less attractive.

Revision of this surcharge became effective on August 29, 1960 (after the exchange reform of August 25, 1959) abolishing the 20 per cent exchange surcharge of all receipts from the above payments. With the removal of the 20 per cent exchange surcharge on incoming transfers of capital, all capital transfers will be

8) Foreign Commerce Weekly, September 12, 1960. Vol. 64, No. 11, p. 40.

made at the official rate, *except for outgoing transfers from non-resident capital accounts and transfers by Indonesian subsidiaries of foreign companies abroad.* These will be subject to new 100 per cent transfer surcharge, making an effective rate of 90 rupiah (official rate then 45 Rp. to US Dollar.)[9]

Indonesia's investment climate remained unattractive in the second half of 1960 because of the continued uncertainty regarding the future of private entrepreneurs. The Government clearly plans to increase its role in the economy and, to a great extent, replace private enterprise with cooperatives. Two new laws enacted during 1960 (the petroleum law and the basic agrarian law) serve to further restrict the role of foreign investment. On the other hand in 1961 the Government launched an Eight Year Plan to develop new projects. Although a large part of the financing for these new projects came from the Soviet bloc, the United States also participated with financial aid.

In general private entrepeneurs remain cautious about investing in Indonesia due to its uncertain position. It is apparent that private foreign capital is not encouraged in any capital investment. Generally, the policy for the future seems to be that new private foreign interests are to be allowed to participate only on the basis of contractual arrangements with Government companies. The arrangement which has the greatest appeal to the Indonesian Government is of the type which was negotiated in 1960 between the Government owned Permina Oil Company and Japanese interests. This involves a Japanese line of credit for oil field equipment and exploration activities with the investment to be recovered from an allocation of a share of the production. The contract is for a specified period of years after which title to all equipment reverts to Indonesia. Japanese enterprise made a similar arrangement in July 1961 for the exploitation of nickel ore in Sulawesi.[10]

During 1961 the Japanese appeared to be interested in production-sharing arrangements in enterprises for minerals, forestry products, and fisheries. The 5,3 billion Dollar (U.S.) 8-year development plan began in January 1961 and only slight progress has been made. Contributing to the delay are the deterioration in the balance-of-payments position and the decrease in Government revenues from customs and heavy military expenditures.[11]

Foreign private investment has been hampered by three basic problems.

1. inadequate foreign exchange resources so that foreign investors are unable to convert their earnings and repayments on initial investments into foreign currency.

9) Foreign Commerce Weekly, October 24, 1960. Vol. 64, No. 17, p. 8.
10) Foreign Commerce Weekly, October 16, 1961. Vol. 66, No. 16, p. 40.
11) Foreign Commerce Weekly, December 25, 1961. Vol. 66, No. 26, p. 40.

2. inflationary conditions which have brought serious losses due to the deterioration of the exchange, even where convertibility of earnings and repayments is possible.
3. insistence by the Government that full equity control in local enterprises be retained by nationals or by the Government itself.

It has been realized that new funds are badly needed if the nation is to move forward economically. Efforts were made to fund development cost with foreign credits but such financing, together with heavy borrowing abroad for armaments needed for the West-New Guinea campaign, soon resulted in an excessive debt-burden.

Foreign private capital was attracted by introducing the production-sharing plan. The concept of production-sharing may be described briefly as follows: a foreign investor acts as a contractor to an Indonesian entity and agrees to set up and operate industrial facility, usually a facility connected with the export industries.

The contractor's installed equipment and all services are paid for by allocating to him an agreed share of the product.

The Indonesian entity may be a Government corporation, a private concern or a combination of the two.

The areas of investment within which the Indonesian Government particularly desires production-sharing agreements are export-promoting enterprises which increase the amount of foreign high valued currencies.

The Government guarantees the implementation of each production-sharing agreement by assuming full responsibility for carrying out the terms of agreement by the Indonesian entity. The Indonesian entity supplies all local currency financing, the foreign investor is not required to convert foreign currency into local currency to meet local construction costs and working capital requirements.

The principal advantages offered by production-sharing for the foreign investor may be described briefly as follows:

1. the probability of nationalization is decreased since the local organization would be Indonesian and not foreign;
2. the investor is protected by the fact that he will receive the agreed share of the product until his actual investment, plus interest has been paid off;
3. by providing not only for the initial capital investment but also for the continuing requirements for imported supplies and spare parts;
payments for the supplies and parts is given by appropriate increases in the share of the production or an extension of the production sharing period;
4. since the Indonesian entity supplies the rupiah and since the Indonesian Government assumes full responsibility for carrying out the terms of an agree-

ment, the foreign investor is not concerned with problems relating to operating costs and taxation.

For the standpoint of Indonesia the advantages of this type of arrangement are as set forth below:

1. it avoids what Indonesia considers the principal disadvantage of foreign investment in its traditional form, i.e. foreign ownership with which Indonesia associates political control;
2. it provides a means for securing private foreign capital and know-how;
3. it avoids the fixed foreign obligation of ordinary foreign loans;
4. it has some of the important advantages of equity investment compared to straight loans, because the manner of repayment involves the success of the enterprise.[12]

Indonesia has been particularly interested in promoting production-sharing agreements with foreign investors. Foreign firms which have so far invested in Indonesia on a production-sharing basis include Japanese companies (petroleum and nickel mining), a Canadian firm (petroleum) and an American firm (commercial fishing).[13]

On August 3, 1962, the President of Indonesia endorsed the idea of production-sharing to attract foreign private capital. This is the entrance into the seventh period of foreign investment policy in Indonesia (1962).

To achieve price stability various economic measures were announced in May 27, 1963 increasing the amount of goods available for purchase, reducing deficit spending and imposing stricter controls on commercial credit. To finance needed imports and improve its balance-of-payments position, Indonesia has been seeking assistance from several foreign governments in the form of new credits and a rescheduling of existing debts. The development policy of the Indonesian government is to concentrate on export industries, and those industries which will yield quick returns. Many of these plans depend on Indonesia's ability to obtain foreign aid. Also the Government has renewed its efforts to obtain deferred payment terms from foreign private and foreign government sources to finance imports needed to re-equip existing industries and rebuild deteriorated transport facilities.

Efforts have also been renewed to obtain West European interest in production sharing arrangements.

12) Cf. J.A. van Swearingen: Foreign investors active in Indonesia through new production-sharing plan. International Commerce, Vol. 68, No. 21, November 5, 1962, p. 6.
13) Cf. Benefits of production-sharing cited; developing countries seek additional enterprises. International Commerce, Vol. 68. No. 5, July 16, 1962, p. 37.
Indonesian Borneo timber resources to be exploited; production-sharing opportunities exist for U.S. firms. International Commerce, Vol. 68. Nr. 19 October 22, 1962.

The anti Malaysia policy of the Indonesian Government (protesting the formation of Malaysia) placed in serious jeopardy the economic stabilization program announced in May of 1963. Talks for new economic aid from some foreign countries were suspended until the Government's attitude toward Malaysia was clarified.

The economic and financial measures announced in May 1963 had to be revised because their goals were unlikely to be achieved, since the expected foreign aid has not materialized in 1963. In addition the production sharing arrangements fell short of the expectations.

Since the renewal of diplomatic relations between the Netherlands and the Republic of Indonesia, after the solution of the West New Guinea problem, several Dutch enterprises have concluded business agreements with Indonesian entities. So far the most important agreement concluded between the two countries is that between the Dutch concern N.V. Philips and the Indonesian company Ralin (a former branch of N.V. Philips which was nationalized). The agreements concluded have been kept secret.

The terms of production sharing arrangements are negotiated on a case by case basis. The two fundamental objectives of this system are:

1) to prevent foreigners from obtaining any control of economic resources in Indonesia;

2) to compensate the foreign investment (capital goods or know-how) by repayment in physical shares of the output.

In order to attract more foreign capital to Indonesian investment projects the Government and the Bank of Indonesia seem willing to guarantee the repayment of credit in foreign currency if this will promote satisfying agreements. This means that the fundamental idea of the Indonesian production-sharing plan collapses, i.e. the repayment by products. The Indonesian Economic Mission to Europe, at the end of 1963, succeeded in concluding joint venture enterprise for export promotion with some Dutch entities.

The slow progress of foreign investment and the growing realization of the obstacles hindering foreign private investment in Indonesia on a mutually satisfactory basis have so far not diminished the drive of economic planners to find new approaches to accomplish their objectives.

In August of 1964 President Sukarno stated that Indonesian economic policy would be to achieve self-suffiency in the production of food, clothing and other necessities. Any foreign exchange that is to be earned from exports would be used to purchase capital goods.

TAXATION OF FOREIGN COMPANIES

A *Introduction*

The existing tax system in Indonesia is, for the time being, one which is taken from the preceding Netherlands Indies Government. The implementation of the statutory provisions is to be in accordance with the principles, laid down by the Indonesian government.

Foreign companies may carry on business in Indonesia through a domestic company or through an Indonesian permanent establishment. The subject of this discourse is the taxation of foreign companies doing business in Indonesia. The provisions enumerated, *infra,* are as stipulated in the Indonesian Tax Code.[1] Possibilities exist for taxes being exempt when derived from royalties or technical assistance which stipulate that all taxes will be borne by the Indonesian Government.[2]

B *Corporation tax*

Foreign companies or non-resident companies are defined, for tax purpose, as companies having neither their centre of operation nor their management located within Indonesia.

Foreign companies are subject to the Indonesian corporate tax (padjak perseroan) levied on income obtained from Indonesian sources such as:

1. a permanent establishment domiciled in Indonesia;
2. immovable property located in Indonesia;
3. debts secured by Indonesia situs immovables.

Foreign companies not domiciled in Indonesia are deemed to have a permanent establishment within Indonesia if:

1. they carry on a business in a fixed place such as a branch, sub-branch, office, factory, warehouse etc.;
2. they carry on business through an agent who has the full authority to enter into contracts on behalf of foreign companies.

Permanent establishment of non-residing entities, executing international shipping and aviation undertakings between ports or airports located within and without Indonesia are not deemed to be carrying on business if a similar exemption from

[1]) Soemitro R.R. and B. Usman. Perundang-undangan Padjak Indonesia. Bandung, 1962, 3rd edition (A loose-leaf service of Indonesian taxes.)

[2]) Cf. p. 93. Proceedings of the Special Meeting of Japan Tax Association on Tax System and Administration in Asian Countries. (The Indonesian tax delegation.) Published by the Japan Tax Association, February 1964.

tax is granted by the other country concerned. The question whether a company is domiciled or resident in Indonesia is decided "in the light of circumstances".

To compute the profit subject to the corporate tax, business expenses are deductible from total income received from Indonesian sources. There is no prescribed method for computing the profit of a business. The law requires it to be computed in a consistent manner and according to sound commercial practice. Assets with a useful life of more than a year may be depreciated on the straight line method based upon the expenditure.

Taxes paid on earned income accrued in Indonesia and taxes paid abroad on profit earned within Indonesia are not deductible.

Profits from Indonesian permanent establishments are to be determined on a negotiated basis with the Ministry of Finance. In practice, the method of determining the profit of a permanent establishment in Indonesia is carried out by apportioning the enterprise and/or apportioning the profit (fractional apportionment method).

The method of apportioning enterprises means that the local establishments should be taxed on a separate account basis and treated, as far as possible as though they were independent enterprises.

The method of fractional apportionment means that the enterprise is an entire entity, and consequently the tax should be assessed on that part of the enterprises total net income which corresponds to the economic importance of the local establishment.

The determination of profits of permanent establishments of life insurance companies is set forth in Article 6 of the Corporation Tax Ordinance 1925, as amended. This method is one of a fractional apportionment basis. The profits are to be determined in either of the following ways:

1. the profits of permanent establishment of life insurance companies are deemed to be 5 per cent. of the amount of the premiums received from insureds who are resident or domiciled in Indonesia. For other insurance companies it is 10 per cent;
2. the profits of an Indonesian permanent establishment (for all insurance companies) are equal to:

$$\frac{\text{amount of premiums and capital received in the same year in Indonesia}}{\text{the entire amount of premium and capital received in in the same year from the parties insured}} \text{ the entire profit of the insurance company.}$$

The determination of the profits of shipping/aviation companies domiciled abroad, which are not exempted because they do not meet the condition of reciprocity are also computed by dividing profits or "fractional apportionment."

The profits of Indonesian permanent establishments concerned are determined by the formula:

$$\text{Indonesian profit} = \frac{0.5 \times \text{loading and passengers from and to Indonesia}}{\text{entire loading and passengers}} \times \text{entire profit.}$$

Foreign companies are taxed as domestic companies at the ordinary tax rate. The corporate tax is levied on a variable rate system. The rate is levied at 40 per cent of the profit up to Rp. 500,000, to a maximum rate of 52,5 per cent for profits exceeding Rp. 8,000,000.

C *Dividend tax*

Foreign companies not having a permanent establishment in Indonesia are subject to the Indonesian withholding tax, known as a dividend tax (padjak dividen), on income received from a domestic company:

1. dividends from domestic companies;
2. interest from bonds (including profit sharing bonds, bonus shares, founder's shares) paid by domestic companies;
3. any other type of income accrued or derived from domestic companies under a provision for profit sharing.

The type of income is not limited by anything in the Tax Code. The withholding tax is 20 to 30 per cent on the gross amount. This is a final tax with respect to foreign companies not having a permanent establishment in Indonesia. For foreign companies having a permanent establishment in Indonesia, the dividend withholding tax is an advance payment of the corporate tax.

D *Corporate net worth tax*

Foreign companies are subject to the Indonesian net worth tax (padjak kekajaan) on properties located in Indonesia viz.:

1. immovable property located in Indonesia;
2. debts secured by mortgages on immovable property located in Indonesia;
3. partnership interest in an undertaking or occupation carried on in Indonesia;
4. the net worth of a foreign owned Indonesian permanent establishment;
5. any interest in the proceeds of an undertaking or occupation carried on in Indonesia other than an interest arising from an ordinary labour contract.

An undertaking carried on temporarily for less than three consecutive months is not deemed to be carried on in Indonesia.

Debts secured by mortgages on immovables with a situs in Indonesia and other debts incurred for an undertaking or occupation carried on in Indonesia are deductible items in computing the corporate net worth.

Net worth tax is 0,5 per cent of net worth over Rp. 500,000 with additional regional levies with a maximum of 25 per cent on tax incurred.

It should be noted that domestic companies are not subject to a corporate net worth tax. The net worth tax (padjak kekajaan) is in principle a tax levied on properties possessed by individuals.

E *Foreign Exchange Tax (known in Indonesia as Transfer Tax)*

Payment in foreign currency of patent fees, royalties, dividends etc. by Indonesian subsidiaries and permanent establishments of foreign companies are subject to a 100 per cent transfer tax (padjak transfer) on the total transferable amount. Therefore the Indonesian Rupiah has an effective rate of twice the official exchange rate for the foreign currency involved.

Example: An Indonesian company (or permanent establishment of a foreign enterprise) intends to declare a dividend to a foreign company in the U.S. of $ 5.00. The withholding tax on dividends is 20 per cent of the gross amount. Therefore the transferable amount subject to the transfer tax is $ 4.00. The official rate of exchange is $ 1.00 = 45 Rp. However, when one wishes to convert Rupiahs to dollars surcharges are levied making the rate 540 Rupiahs for one dollar. If it is desired to have dollars leave Indonesia a permit is necessary and in addition, the surcharges added to the conversion rate effect a rate equal to 1600 Rupiahs for one dollar. As of June 15, 1964 the above was the conversion rate. However, this may vary drastically.

F *Other taxes*

A single-point ad valorem sales tax (padjak pendjualan) is levied on certain deliveries of tangible goods and/or services rendered, by entrepeneurs. The sales tax (including luxury tax) is levied either on the manufacturer at the time of delivery to his customers or on the importer upon entry of the goods into the customs territory (padjak masuk). The sales tax rate is 5 per cent for necessities (food exempted), 10 per cent for produced goods and services and 20 per cent on luxury goods (padjak kemewahan). Rental income from foreign made cinema films is subject to a 5 per cent rate.

A tax (padjak bangsa asing) is levied on aliens residing in Indonesia. The annual tax is Rp. 1,500 for the family head, Rp. 750 for wives and adult members of a family and Rp. 375 for children under the age of 21.

In certain regions a land tax (verponding and Verponding Indonesia) is levied on various types of immovable property such as premises and land.

When ownership of immovables is transferred, a transfer duty (bea balik nama) of 7.5 to 10 per cent of sales value, including liabilities is levied.

There are no other significant levies on income derived from Indonesian permanent establishments and income from immovables with a situs in Indonesia.

G *Treaties*

Up to the present day Indonesia has never ratified any tax convention with other countries for the avoidance of double taxation on income and capital. In 1949 a draft tax convention with the United Kingdom was drawn up and in 1954 one was concluded with the Netherlands; however none of the two drafts have ever been ratified by the governments concerned.

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III

TREATIES

FRANCE-MONACO

CONVENTION FISCALE ENTRE LA FRANCE ET LA PRINCIPAUTÉ DE MONACO

Le Gouvernement de la République française et Son Altesse Sérénissime le prince de Monaco, se référant au Traité du 17 juillet 1918, et plus particulièrement à son article 6, sont convenus des dispositions suivantes:

TITRE PREMIER

Dispositions applicables aux sociétés et entreprises monégasques

ARTICLE 1

Le Gouvernement de S.A.S. le prince de Monaco s'engage à instituer dans la Principauté un impôt sur les bénéfices réalisés à partir du 1er janvier 1963 par les entreprises visées à l'article 2 ci-après.

Sous réserve des dispositions des articles 3 à 6 et 9 de la présente convention et des adaptations qui seraient jugées nécessaires d'un commun accord du fait de la situation particulière de la Principauté, cet impôt est établi et recouvré dans les mêmes conditions que l'impôt français frappant les bénéfices des sociétés et autres personnes morales.

L'établissement, le recouvrement et le contentieux de cet impôt sont de la compétence exclusive de l'Administration monégasque. Le produit dudit impôt est intégralement acquis au Trésor princier.

ARTICLE 2

Sont assujetties à l'impôt institué en vertu de l'article 1er:

a) Les entreprises, quelle que soit leur forme, qui exercent sur le territoire monégasque une activité industrielle ou commerciale, lorsque leur chiffre d'affaires provient, à concurrence de 25% au moins, d'opérations faites directement ou par personne interposée en dehors de Monaco.

b) Les sociétés, quelles qu'elles soient, dont l'activité consiste à percevoir:
—soit des produits provenant de la cession ou de la concession de brevets, marques de fabrique, procédés ou formules de fabrication;
—soit des produits de droits de propriété littéraire ou artistique.

ARTICLE 3

1 Pour l'assiette de l'impôt sur les bénéfices institué par l'article 1er, la rémunération

du dirigeant ou du cadre le mieux rétribué n'est admise en déduction des bénéfices imposables que dans la mesure où elle correspond à un travail effectif à concurrence, au maximum, dans les entreprises et sociétés dont le chiffre d'affaires n'excède pas 500.000 F pour les prestataires de services et 1 million de francs pour les autres entreprises, d'un montant égal à deux fois et demi le salaire plafond servant de base au calcul des cotisations de Sécurité sociale.

Pour les entreprises dont le chiffre d'affaires dépasse les chiffres de 500.000 F ou de 1 million de francs suivant la distinction ci-dessus, la rémunération déductible est augmentée par tranche ou fraction de tranche de 500.000 F de chiffre d'affaires pour les prestataires de services et de 1 million de F de chiffre d'affaires pour les autres entreprises:
—d'une somme égale à la moitié dudit salaire plafond pour les sept premières tranches ou fractions de tranches;
—d'une somme égale aux trois quarts dudit salaire plafond pour chaque tranche supplémentaire ou fraction de tranche supplémentaire à partir de la huitième.

Ce montant peut en outre être majoré dans la limite de 15% pour tenir compte forfaitairement des frais supportés personnellement par l'intéressé à l'occasion de ses fonctions.

2 La rémunération déductible des autres dirigeants ou cadres ne peut en aucun cas excéder 75% de la rémunération et des frais forfaitaires visés au paragraphe 1.

3 Sont considérés comme dirigeants pour l'application des dispositions qui précèdent:
—dans les exploitations individuelles, l'exploitant lui-même;
—dans les sociétés de personnes, les associés en nom;
—dans les associations en participation, les coparticipants, qu'ils soient ou non gérants, même s'ils ne sont pas indéfiniment responsables;
—dans les sociétés à responsabilité limitée et dans les sociétés en commandite par actions, les gérants;
—dans les sociétés anonymes, le président du conseil d'administration, le directeur général, l'administrateur provisoirement délégué et tout administrateur chargé de fonctions spéciales.
Sons considérés comme cadres au sens des mêmes dispositions les membres du personnel occupant des fonctions de direction ou d'administration impliquant la prise de responsabilité ou laissant une certaine part à l'initiative personnelle.

ARTICLE 4

Les versements faits à des personnes résidant à Monaco à titre d'honoraires, de redevances, de courtages, de commissions n'ayant pas le caractère de salaires, de droits de propriété littéraire ou artistique, ne sont admis en déduction pour l'assiette de l'impôt qu'à la double condition:

1° Qu'il n'existe aucun rapport de dépendance entre le bénéficiaire et l'entreprise versante;

2° Que cette dernière apporte des justifications suffisantes pour établir que l'acte ou

l'engagement en vertu duquel ces versements sont effectués est sincère et ne peut pas être considéré comme dissimulant une réalisation ou un transfert de bénéfices.

ARTICLE 5

1 Le taux de l'impôt sur les bénéfices institué par l'article 1er sera fixé à 25% la première année, à 30% la deuxième année, à 36% la troisième année et à 40% à partir de la quatrième année.

2 Toutefois, lorsque les résultats de l'application du taux de 35% seront connus, une commission spécialement constituée à cet effet on examinera les incidences sur l'économie monégasque en vue d'apprécier les conséquences qu'entraînerait le passage aux taux de 40%.

Cette commission comprendra un nombre égal de délégués des deux Gouvernements. Les présidents des deux délégations désigneront, s'il y a lieu, un expert choisi en commun pour établir un rapport sur les problèmes soumis à l'examen de la commission mixte.

ARTICLE 6

1 Le droit de sortie compensateur institué par l'ordonnance souveraine no 120 du 24 décembre 1949 continuera à être perçu dans les conditions prévues par ladite ordonnance, mais il sera étendu, à compter du 1er mars 1963, à toutes les prestations de services rendus ou utilisés en dehors de Monaco.

Par contre, il ne sera plus perçu sur les entreprises qui ont effectué en 1962, hors de Monaco, moins de 25% de leur chiffre d'affaires et qui ne deviennent pas passibles de l'impôt visé à l'article 1er.

2 Le droit de sortie compensateur payé pendant un exercice sera considéré comme un acompte à valoir sur le montant de l'impôt frappant les bénéfices réalisés au cours de cet exercice dans la mesure où il frappera les opérations effectuées par des entreprises entrant dans le champ d'application de l'impôt institué par l'article 1er.

Lorsque les sommes payées au titre du droit de sortie compensateur seront supérieures au montant des sommes dues au titre de l'impôt sur les bénéfices, l'excédent ne sera pas restitué au contribuable, mais il constituera un crédit imputable, le cas échéant, sur l'impôt sur les bénéfices dû pour les cinq exercices suivants.

TITRE II

Dispositions applicables aux personnes physiques et morales françaises

ARTICLE 7

1 Les personnes physiques de nationalité française qui transporteront à Monaco leur domicile ou leur résidence—ou qui ne peuvent pas justifier de cinq ans de résidence habituelle à Monaco à la date du 13 octobre 1962—seront assujetties en France à l'impôt

sur le revenu des personnes physiques et à la taxe complémentaire dans les mêmes conditions que si elles avaient leur domicile ou leur résidence en France.

Toutefois, sont exclus de l'application des dispositions de l'alinéa qui précède:

a) Les personnes faisant partie ou relevant de la maison souveraine;

b) Les fonctionnaires, agents et employés des services publics de la principauté qui ont établi leur résidence habituelle à Monaco antérieurement au 13 octobre 1962.

2 Par dérogation aux dispositions du paragraphe 1 ci-dessus, les personnes physiques de nationalité française précédemment domiciliées hors de la France métropolitaine et ayant leur résidence habituelle à Monaco depuis moins de cinq ans au 13 octobre 1962, ne seront imposables pour la première fois en France à l'impôt sur le revenu des personnes physiques et, le cas échéant, à la taxe complémentaire que sur leurs revenus de 1965.

ARTICLE 8

Les versements de la nature de ceux visés à l'article 4 effectués par des personnes physiques ou morales imposables en France à des personnes physiques ou morales résidant ou établies à Monaco ne sont admis en déduction des bénéfices imposables pour l'assiette de l'impôt français que dans les conditions prévues audit article 4.

TITRE III

Mesures tendant à éviter les doubles impositions et à réprimer la fraude

ARTICLE 9

1 Lorsque les conditions fixées dans les relations commerciales ou financières qu'une entreprise française entretient avec toute personne physique ou morale résidant ou établie à Monaco ne peuvent être considérées comme normales, les opérations sont rétablies dans la comptabilité de l'entreprise française telles qu'elles auraient dû y figurer régulièrement, pour l'assiette des taxes sur le chiffre d'affaires et de l'impôt sur le revenu des personnes physiques ou de l'impôt sur les sociétés ainsi que de tous autres impôts qui pourraient être exigibles. Il en est ainsi notamment lorsque l'entreprise française consent ou impose à une entreprise monégasque, au capital ou à la gestion de laquelle elle participe, des conditions différentes de celles qui résulteraient du jeu normal du marché ou de l'application des tarifs habituels en matière de prestations de services.

2 Lorsque les conditions fixées dans les relations commerciales ou financières qu'une entreprise monégasque entretient avec toute personne physique ou morale résidant ou établie en France ne peuvent être considérées comme normales, les opérations sont rétablies dans la comptabilité de l'entreprise monégasque telles qu'elles auraient dû y figurer régulièrement pour l'assiette de l'impôt sur les bénéfices, des taxes sur le chiffre d'affaires, du droit de sortie compensateur ou de tous autres impôts. Il en est ainsi notamment lorsque l'entreprise monégasque consent ou impose à une entreprise française au capital ou à la gestion de laquelle elle participe des conditions différentes de

celles qui résulteraient du jeu normal du marché ou de l'application des tarifs habituels en matière de prestations de services.

ARTICLE 10

1 Sur justifications, le montant de la retenue à la source à laquelle ont donné lieu en France les revenus de valeurs mobilières et les produits de la propriété industrielle, littéraire et artistique perçus par les entreprises et sociétés visées à l'article 2 ci-dessus est imputé sur le montant de l'impôt monégasque sur les bénéfices afférents à ces revenus.

2 Lorsque des intérêts de créances hypothécaires au profit du porteur de la grosse grevant des immeubles situés sur le territoire français sont perçus par une entreprise ou une société monégasque, l'impôt perçu en France par application de l'article 13 ci-après est imputé, sous réserve des justifications nécessaires, sur le montant de l'impôt sur les bénéfices afférent à ces intérêts.

ARTICLE 11

1 Lorsque des personnes domiciliées en France sont soumises, à raison de bénéfices réalisés à Monaco, à l'impôt institué en principauté en vertu de l'article 1er de la présente convention, le montant de ce dernier impôt est considéré comme un crédit déductible de l'impôt français sur le revenu des personnes physiques afférent auxdits bénéfices.

2 Les dispositions de l'alinéa qui precède sont également applicables à l'égare des personnes visées au paragraphe 1 (premier alinéa) de l'article 7.

ARTICLE 12

En vue de permettre aux salariés et aux pensionnés de Monaco résidant en France de bénéficier pour le calcul de l'impôt sur le revenu des personnes physiques du crédit auquel ils auraient droit s'ils travaillaient sur le territoire français ou si leur retraite était de source française et une contrepartie du versement forfaitaire prévu à l'article 231 du Code général des Impôts français dont les employeurs et débirentiers monégasques ne sont pas redevables, le Gouvernement princier verse annuellement au Trésor français une somme forfaitairement fixée à 900.000 F.

Le versement de cette indemnité sera effectué globalement pour l'année 1962. A partir de 1963, il interviendra trimestriellement à raison de 225.000 F par trimestre échu.

ARTICLE 13

L'impôt sur le revenu des personnes physiques est exigible en France sur les intérêts des créances hypothécaires au profit du porteur de la grosse, grevant des immeubles situés sur le territoire français, lors même que le porteur aurait son domicile ou sa résidence habituelle à Monaco.

ARTICLE 14

Les personnes physiques ressortissant de l'un des deux Etats bénéficient sur le ter-

ritoire de l'autre, pour l'application de la législation fiscale, des mêmes avantages pour situation et charges de famille que les nationaux de ce dernier Etat.

TITRE IV

Dispositions diverses

ARTICLE 15

Les taxes sur le chiffre d'affaires et les taxes de remplaçement sont appliquées dans la principauté sur les mêmes bases et aux mêmes tarifs qu'en France.

ARTICLE 16

Les alcools, les vins, cidres, poirés et hydromels ainsi que les vendanges, fruits à cidre et à poiré sont soumis, dans la principauté, à une réglementation identique à quelle qui leur est appliquée en France; ils y sont imposés sur les mêmes bases et aux mêmes tarifs.

Les produits imposables expédiés de France à Monaco ou de Monaco vers la France circulent sous le couvert de titres de mouvements délivrés selon les règles applicables pour la circulation en France de ces produits.

Au regard du régime économique de l'alcool, la réglementation monégasque est identique à la réglementation française.

ARTICLE 17

Le produit total des perceptions opérées, dans les deux Etats contractants, au titre des taxes sur le chiffre d'affaires, des taxes de remplacement et des impôts sur les boissons visés aux articles 15 et 16 ci-dessus, à l'exception de la part de ce produit représentative de taxes locales, est réparti entre les deux gouvernements, selon les modalités fixées entre eux, d'un commun accord.

ARTICLE 18

La réglementation française de la garantie des ouvrages ouvrés ou non ouvrés d'or, d'argent ou de platine est applicable dans la principauté de Monaco.

Le bureau de la ville française de Nice est chargé de toutes les opérations d'essai, de poinçonnage et de contrôle.

Les ouvrages de la principauté sont présentés à ce bureau, pour y être marqués, après reconnaissance du titre, des poinçons et vigueur en France, mais pòrtant un signe distinctif ou différent, spécial auxdits ouvrages. Le différent choisi pour le bureau de Monaco est le signe.

Les droits de garantie sont perçus par le receveur du bureau de Nice, au profit du Trésor princier. Quant aux droits dus pour les essais, ils sont encaissés pour le compte de l'administration française, comme s'il s'agissait d'ouvrages destinés à la consommation en France.

Les ouvrages d'or, de platine ou d'argent portant le différent de Monaco ne pourront, en cas d'envoi dans d'autres pays, donner lieu au remboursement du droit de garantie que si les formalités prévues en pareil cas sont remplies au bureau de Nice. Dans ce cas, le remboursement sera effectué sur le compte du Trésor monégasque.

TITRE V

Assistance administrative

ARTICLE 19

Pour l'application de l'article 9 ci-dessus, les Autorités compétentes des deux Etats contractants auront à se concerter au sujet de chaque cas d'espèce, chaque gouvernement s'engageant au surplus à autoriser, sur demande de l'administration de l'autre Etat, la poursuite sur son propre territoire des vérifications entreprises sur le territoire de ce dernier Etat.

Les vérifications dont il s'agit seront effectuées sous le couvert et avec le concours de l'administration fiscale de l'Etat dans lequel elles auront lieu.

ARTICLE 20

En vue d'assurer l'exacte application des impôts français sur le revenu des personnes physiques et sur les sociétés ainsi que de l'impôt sur les bénéfices perçus dans la principauté, les Etats contractants conviennent que leurs administrations fiscales échangeront tous les renseignements qu'elles détiennent ou pourront se procurer conformément à leur législation respective et dont la communication réciproque leur paraîtra nécessaire aux fins sus-indiquées.

Ces échanges de renseignements s'effectueront d'office ou sur demande.

La communication des renseignements ci-dessus ainsi que les correspondances y relatives seront échangées entre, d'une part, la direction des services fiscaux de la principauté et, d'autre part, la direction générale des impôts ou, suivant les cas, les chefs des services fiscaux et les directeurs des impôts des départements intéressés.

ARTICLE 21

En exécution de l'article précédent et pour faciliter à l'administration française le contrôle des déclarations souscrites en ce qui concerne les impôts sur le revenu des personnes physiques et sur les sociétés par des personnes physiques ou morales domiciliées en France, le Gouvernement princier s'engage à renseigner d'office cette administration;

1° D'après les comptes ouverts au répertoire général sur les immeubles possédés à Monaco par les personnes en cause, tant en ce qui concerne la valeur vénale résultant du prix d'acquisition qu'en ce qui concerne le revenu locatif résultant de taux enregistrés ainsi que sur les biens meubles, corporels ou incorporels possédés par les mêmes personnes;

2° Sur le montant sur chiffre d'affaires déclaré par les personnes susvisées ou constaté par les services fiscaux de la principauté;

3° Sur les sommes touchées par les mêmes personnes à titre de traitements, salaires, appointements fixes ou proportionnels, remises, participations aux bénéfices, courtages, commissions, pensions, rentes viagères, redevances, droits d'auteurs, tantièmes, dividendes, intérêts, revenus et produits.

De son côté, le Gouvernement français, pour faciliter l'application à Monaco de l'impôt sur les bénéfices, s'engage à renseigner d'office l'administration monégasque;

1° Sur le montant des affaires traitées entre ressortissants monégasques et ressortissants français dont l'administration fiscale française aurait connaissance;

2° Sur les sommes touchées par les entreprises industrielles ou commerciales et les sociétés dont l'activité consiste à percevoir des produits de la propriété industrielle, littéraire ou artistique qui sont établies ou ont leur siège à Monaco à titre de remises, participations aux bénéfices, courtages, commissions redevances, droits d'auteurs, tantièmes, dividendes, intérêts, revenus et produits.

ARTICLE 22

1 Le Gouvernement princier renseignera d'office l'administration française sur le montant des produits de toute nature de valeurs mobilières monégasques, françaises ou étrangères, ainsi que des créances, dépôts et cautionnements, touchés ou encaissés à Monaco, par des personnes domiciliées en France, auprès de particuliers ou de collectivités qui font profession, à titre principal ou accessoire, de payer ces produits. Il en est de même en ce qui concerne les produits de valeurs mobilières, créances, dépôts et cautionnements payés directement par les sociétés monégasques à leurs membres obligataires ou porteurs de parts domiciliés en France.

Des relevés individuels mentionnant les nom, prénoms et domicile réel des personnes visées à l'alinéa précédent, le montant net des produits touchés par elles, la nature et le nombre des valeurs auxquelles s'appliquent ces produits ainsi que la date de l'opération et la désignation de l'établissement payeur seront adressés annuellement par la direction monégasque des services fiscaux à l'administration française.

Le Gouvernement princier fournira les mêmes renseignements en ce qui concerne les produits de valeurs mobilières, créances, dépôts et cautionnements inscrits au crédit de comptes ouverts au nom des mêmes personnes.

Il signalera à l'administration française les infractions commises à l'égard des obligations leur incombant pour l'application des dispositions qui précèdent, par les personnes et sociétés se livrant à Monaco à des opérations de banque ou de crédits et qui ont en France leur siège principal.

2 Le Gouvernement français fournira dans les mêmes conditions à l'administration monégasque les renseignements qu'il possède touchant l'encaissement ou l'inscription en compte, en France, au profit d'entreprises établies à Monaco de revenus de la nature de ceux visés aux premier et troisième alinéas du paragraphe 1 ci-dessus.

3 Le Gouvernement princier procédera avant le 1er juillet 1963, en liaison avec l'administration française, à la revision de la situation des Français titulaires d'un certifi-

cat de domicile, délivré en application de la Convention du 23 décembre 1951, afin de vérifier si les intéressés ont bien conservé leur résidence habituelle à Monaco. La validité du certificat de domicile sera désormais limitée à trois ans. Il appartiendra à chaque détenteur d'en faire prolonger la durée par l'administration monégasque en apportant la preuve de sa résidence à Monaco.

En outre, si l'administration française recueille des renseignements lui permettant de penser qu'un titulaire dudit certificat de domicile n'a plus effectivement à Monaco sa résidence habituelle, elle peut demander à l'administration monégasque de mettre l'intéressé en demeure de justifier de cette résidence et, à défaut, de lui retirer son certificat, au besoin avec effet du jour où cette condition a cessé d'être remplie.

ARTICLE 23

Les deux Gouvernements s'engagent, sur la base de la réciprocité, à se prêter concours et assistance pour le recouvrement de tous impôts en principal, additionnel, intérêts, frais et amendes suivant les règles propres à leur législation.

Les significations, poursuites et mesures d'exécution ont lieu sur la production d'une copie officielle des titres exécutoires accompagnée éventuellement des décisions passées en force de chose jugée. Les créances fiscales à recouvrer bénéficient dans le pays de recouvrement des garanties et privilèges prévus pour les créances fiscales de ce pays.

En ce qui concerne les créances fiscales ayant fait l'objet de réclamations contentieuses régulières en la forme, l'administration fiscale du pays créancier peut demander, sur production d'un titre exécutoire, à l'administration fiscale de l'autre pays de prendre des mesures conservatoires que la législation de ce pays requis autorise.

ARTICLE 24

L'administration fiscale française et l'administration fiscale monégasque s'entendent pour supprimer la double imposition dans les cas non réglés par la présente Convention ainsi que dans les cas ou l'interprétation ou l'application de la Convention donnerait lieu à des difficultés ou à des doutes.

A défaut d'entente, l'affaire sera soumise, à la demande de l'une des Parties, à la commission consultative mixte prévue à l'article suivant.

ARTICLE 25

Les Parties constitueront une commission consultative mixte qui se réunira à la demande de l'une ou l'autre d'entre elles.

Cette commission sera composée de représentants des administrations intéressées de chaque Etat.

La commission aura pour mission d'examiner les difficultés que pourrait poser l'interprétation ou l'application de la présente Convention qui n'auraient pu être réglées par la voie diplomatique et de proposer une solution aux Parties.

ARTICLE 26

La présente Convention sera approuvée conformément aux dispositions constitutionnelles en vigueur dans chacun des deux pays. Elle entrera en vigueur le premier jour du mois qui suivra l'échange des notifications constatant que, de part et d'autre, il a été satisfait à ces dispositions.

Sous réserve des dispositions particulières qu'elle prévoit expressément à cet égard, elle produira ses effets rétroactivement à la date du 13 octobre 1962, de telle manière qu'il n'existe aucune solution de continuité pour le règlement de la situation fiscale des contribuables et de toutes autres questions faisant l'objet des titres II et III de la précédente Convention du 23 décembre 1951.

La présente Convention demeurera en vigueur aussi longtemps qu'elle n'aura pas été dénoncée par l'une des Parties contractantes avec un préavis de six mois.

Fait à Paris, en double exemplaire, le 18 mai 1963.

PROTOCOLE DE SIGNATURE

Au moment de procéder à la signature de la Convention fiscale en date de ce jour, les signatures ont fait la déclaration concordante suivante qui fait partie intégrante de la Convention :

I

Entrent dans le champ d'application de l'article 2, *a*:

1° La vente de tous biens, marchandises ou produits, y compris les cessions quelconques d'éléments d'actif, effectuée par une entreprise établie à Monaco, hors du territoire monégasque ou à destination soit de la France soit d'un pays tiers, que la livraison ait lieu sur le territoire ou en dehors du territoire de la principauté.

Toutefois, ne sont en aucun cas considérées comme faites en dehors de Monaco, au sens de l'article 2, *a,* les ventes effectuées à Monaco, sur place, au détail et au comptant;

2° Les autres opérations réalisées par une entreprise établie à Monaco lorsque le service rendu, le droit cédé ou l'objet loué est utilisé ou exploité hors de Monaco.

Doivent notamment être considérés comme réalisés en dehors du territoire monégasque;

L'assurance de risques situés en France ou à l'étranger;

Les opérations de financement, de banque ou de crédit lorsque le service rendu est utilisé en France ou à l'étranger;

Les transports à destination ou en provenance de France ou de l'étranger;

L'exploitation, concession, location, dans les mêmes pays d'éléments corporels ou incorporels d'actif tels que matériel, cutillage, brevets, droits, formules, inventions, marques de commerce ou de fabrique.

II

Est notamment considérée comme personne interposée, pour l'application de l'article 2, toute personne physique ou morale qui livre en l'état hors de la principauté des produits fabriqués sur le territoire monégasque.

III

Sont considérées comme domiciliées en France pour l'application des articles 21 et 22 les personnes physiques qui bien que résidant à Monaco sont, en application de l'article 7, réputées avoir leur domicile fiscal en France.

IV

Les taxes sur le chiffre d'affaires visées à l'article 15 s'entendent actuellement;
De la taxe sur la valeur ajoutée;
De la taxe sur les prestations de services;
De la taxe locale sur le chiffre l'affaires.

D'autre part, le Gouvernement français prend acte de ce que le Gouvernement monégasque lui a fait connaître:

1° Qu'il a entrepris:

a) Le renforcement du contrôle des sociétés anonymes ainsi que des sociétés civiles, notamment par une réforme des règles de constitution et de fonctionnement de ces sociétés, celle-ci devant être réalisée avant le 31 décembre 1963.

b) Un recensement complet des sociétés civiles ayant leur siège à Monaco qui sera terminé le 1er septembre 1963.

Les administrations fiscales des deux pays se concerteront pour déterminer les échanges de renseignements qu'il y aura lieu d'instituer à ce sujet;

2° Qu'il est disposé à exiger la création matérielle des titres émis par les sociétés monégasques par actions et à réglementer étroitement la cession des titres pendant la période qui précédera leur création matérielle;

3° Qu'il a adopté de nouvelles mesures de contrôle relatives à l'immatriculation des voitures automobiles à Monaco.

Fait à Paris, en double exemplaire 18 mai 1963.

INTERNATIONAL BUREAU OF FISCAL DOCUMENTATION

HISTORY

Since its establishment in 1938, the International Bureau of Fiscal Documentation has served as an independent source of tax information and advice. After World War II its functions were broadened beyond mere simple fiscal documentation and assumed the character of supplying factual data on the tax systems of countries around the world in response to requests from various governmental and business organisations.

In 1946, the Bureau began publication of the *Bulletin for International Fiscal Documentation,* the official organ of the International Fiscal Association. This publication has been supplemented by various special publications. In 1961, the Bureau published the first issue of *European Taxation,* a fortnightly English language review of tax developments on the European Continent, in the United Kingdom and in Ireland, followed in 1963 by two loose-leaf services, *Supplementary Service to European Taxation* and *The Taxation of Patent Royalties, Dividends and Interest in Europe.* During that time span the Bureau also published the Germany original of the well-known book by Dr. Albert J. Rädler about taxation in the common market countries. The Bureau continuously assisted in translating and preparing tax materials for other publications. Additionally, its library was greatly expanded and now contains well over 7000 volumes on national and international tax matters, as well as more than 250 selected periodicals; many visiting researchers make use of these library facilities.

GOALS

The overriding goal of the Bureau is to serve the International community by collecting, evaluating and disseminating tax data in a manner which combines scientific objectivity with practical realism.

Organization

The Bureau is a public non-profit foundation established under Dutch law. Its policies are determined by a "Curatorium", or board of trustees, composed of outstanding representatives of the government, business and academic communities in various countries. A managing director is responsible for carrying out the goals articulated by the Curatorium.

The Bureau is separated into four divisions: Library and Documentation, which is responsible for acquisition and maintenance of tax materials; International Tax Service, which prepares reports for governmental, business and scholarly purposes; Publications Department, which is responsible for the whole gamma of the Bureau's publications; and the Administrative arm, which plans and coordinates Bureau activities.

Correspondents

Apart from its own Associates, who represent several nationalities, the Bureau avails itself of the coopeative services of a large number of expert correspondents throughout the world.

The program

1. *Training*

The Bureau seeks to prepare young lawyers and economists to meet the growing demand for international tax experts and offers to young post-graduates from developed and developing countries the opportunity to work with the Bureau.

2. *Research*

The Bureau is focusing its research efforts upon a significant contemporary problem—the relationship between capital exporting nations and developing countries. Other important research projects include studies of the tax aspects of economic integration and of the influence of tax incentives on economic growth.

3. *Education*

The Bureau seeks to stimulate, and participate in, seminars and discussion groups, lectures and publications.

4. *Library and Documentation*

The Bureau's program of cataloguing and completing its set of materials will be continued in the framework of its library facilities which were much improved as a result of the move in 1963 to new quarters in an old city gate of Amsterdam.

5. *Reports*

The Bureau prepares reports containing factual data and legal appraisals relating to countries other than the country of residence of the organization or individual who requests a report.

A. J. Guépin †

With sincere and deep regret the International Bureau of Fiscal Documentation has learned of the tragic death of Mr. A.J. Guépin on August 13, 1964. Mr. Guépin, formerly Vice President of Philips Electrical Industries Ltd. was a member of the Board of Trustees of the Bureau for nearly a quarter of a century.

Mr. Guépin's association with the Bureau dates back to shortly before the Second World War, at a time when international tax problems were of far less general significance than they are today. With his great interest in matters of science, education and art, Mr. Guépin foresaw the need of an international research institute on taxation. As a top executive of one of the world's largest companies, he knew that business would become more international in scope and that it would be faced with a great variety of tax problems. Thus, Mr. Guépin strongly supported the Bureau's efforts to expand its services to meet the requirements of the international fiscal community.

With great appreciation for Mr. Guépin's invaluable and stimulating contributions to the Bureau's development, the Trustees, the Director, and the Staff of the Bureau hope to expand the Bureau's programme in his spirit.

I

AN EXPENDITURE TAX IN INDIA

by

K. C. KHANNA*

Over eight years ago Professor Nicholas Kaldor of Cambridge University was invited by the Government of India to make an investigation of the Indian tax system (based mainly on the British tax system) in the light of the revenue requirements of the Second Five Year Plan. In March 1956, Professor Kaldor submitted a report which was regarded as a thought provoking document on a subject of vital importance. In his report Professor Kalder stated: "The present system of direct taxation in India is both inefficient and inequitable. It is inefficient because the present base of taxation "income" (as statutorily defined) is defective and biased (as a measure of taxable capacity) and is capable of being manipulated by certain classes of taxpayers. It is inequitable because the limited character of the information furnished by the taxpayers and the absence of any comprehensive reporting system on property transactions and property income make large-scale evasion through concealment or understatement of profits and property income relatively easy." He, therefore, suggested the introduction of an integrated system of taxation which aimed at broadening the tax base through the levy of five taxes, namely income-tax, capital gains tax, annual wealth-tax, gift-tax and a personal expenditure-tax.

With certain modifications, the Government of India accepted most of the Professor's proposals in principle with the result that in addition to the traditional tax on income, the Finance Minister levied, with effect from 1st April, 1958, a tax on expenditure. While introducing this measure, the Finance Minister observed as under:

"The other proposal I make is the introduction of a tax on expenditure. This is a form of taxation which has no backing as yet of historical experience. It is however, a tax which, given effective administrative arrangements, can be a potent instrument for restraining ostentatious expenditure and for promoting savings. In the present circumstances, I think all we can do is to make a small beginning. I propose to levy this tax only on individuals and Hindu undivided families. The tax will be imposed on all expenditure incurred from whatever source it may be, in excess of certain sums which will vary with the size of the family.

* The author is a member of the Institute of Chartered Accountants of India; Member of the Seven Man Study Group of the International Fiscal Association.

The rate of tax will be based on a slab system, the rate for each slab increasing progressively with the increase in the level of expenditure. Administrative set up for assessment and appellate procedure will be the same as for income-tax."

Charge of tax

Accordingly, the Expenditure Tax Act, 1957 was enacted and was brought into force from the assessment year 1958/59. Section 3 of the Act provided that "there shall be charged for every financial year commencing on and from the first day of April, 1958, a tax (hereinafter referred to as expenditure-tax) at the rate or rates specified in the Schedule in respect of the expenditure incurred by any individual or Hindu undivided family in the previous year."

Expenditure was defined as any sum in money or money's worth, spent or disbursed or for the spending or disbursing of which a liability had been incurred by an assessee, and included

(a) any expenditure in excess of Rs.5000 incurred by any person other than the assessee in respect of any obligation or personal requirements of the assessee or any of his dependants which, but for the expenditure having been incurred by that other person, would have been incurred by the assessee; and

(b) any expenditure incurred by any dependant of the assessee for the benefit of the assessee or any of his dependants out of funds given by the assessee, whether directly or indirectly.

Two limits had to be crossed before an individual became liable to expenditure-tax. These limits were calculated both with reference to the individual's income and to his expenditure during the relevant previous year. Thus the liability to expenditure-tax could be incurred only if the individual exceeded *both* the following limits:

(a) Income limit
His income from all sources, whether taxable or not, during the relevant previous year, as reduced by the amount of taxes to which such income was liable under any other law for the time being in force, exceeded Rs.36,000; and

(b) Expenditure limit
His basic expenditure during the said previous year exceeded Rs.30,000 (In the case of an individual who was not a citizen of India but was resident of India, an additional amount up to Rs.10,000 — was allowed in respect of expenditure incurred outside India, raising the total basic expenditure allowance in such a case to Rs.40,000).

Expenditure outside India

All expenditure incurred within India was liable to tax. With regard to expenditure

incurred outside India the liability depended on whether the assessee was a resident or non-resident and whether he was a citizen of India or a foreigner. Non-resident foreigners were entirely exempt from tax on such expenditure whereas resident foreigners were charged to expenditure tax only on expenditure incurred from Indian sources. Citizens of India, who were non-resident, were liable to expenditure tax on all expenditure incurred from Indian sources even if the amount was spent outside India. The result of the relevant provision may be summarised thus:

Status of assessee	*Expenditure incurred outside India.*	
	From foreign sources	*From Indian sources*
1. Foreigners:		
(a) non-resident	exempt	exempt
(b) resident	exempt	exempt up to Rs10,000 only.
2. Citizens:		
(a) non-resident	exempt	not exempt
(b) resident	not exempt	not exempt

Exemptions from tax

Apart from the basic allowances of Rs.30,000 referred to above, (Rs.40,000 in the case of a resident foreigner) further exemptions and deduction were allowed by the Act of 1957. Thus the following items of expenditure were exempt:

(a) any exependiture, whether revenue or capital, incurred by the assesses wholly and exclusively for the purposes of his business, profession or vocation or for the purpose of earning income from any other source;

(b) expenditure incurred by the assessee, or on his behalf by his employer, wholly and necessarily in connection with the discharge of duties of employment;

(c) any expenditure incurred on behalf of the assessee by way of passage concessions and travel facilities granted by the employer;

(d) any expenditure incurred by the assessee in connection with the acquisition of immovable property or in the construction, repair, maintenance or improvement of such property belonging to him;

(e) any expenditure incurred by the assessee by way of investment in deposits, loans, shares and securities or in bullion, precious stones or jewellery;

(f) any expenditure incurred by the assessee in the purchase of books, products of cottage industry in India or works of art;

(g) any expenditure incurred by the assessee by way of contribution as capital to a firm in consideration of a share in the firm's profits;
(h) any expenditure incurred by the assessee by way of repayment of loan or other borrowing or by way of payment of interest thereon, not being interest on any loan or other borrowing utilised for incurring expenditure liable to tax;
(i) any expenditure incurred by the assessee by way of, or in respect of any gift, donation or settlement on trust or otherwise for the benefit of any other person;
(j) any expenditure incurred by the assessee for paying premiums on insurance on life of the assessee or his dependants or on insurance of education or marriage of dependants or insurance of property (other than aircraft, motor and other transport vehicles) against fire or theft;
(k) any expenditure incurred by the assessee for the purchase or maintenance of live-stock;
(l) any expenditure incurred by the assessee for any public purpose of a charitable or religious nature;
(m) any expenditure incurred by way of contribution to provident, thrift or superannuation fund;
(n) any expenditure incurred by the assessee or any of his dependants in connection with any election to any legislative, municipal or other public authority in India for which the assessee or the dependant was a candidate, subject to prescribed limits.

Deductions from taxable Expenditure

In addition to the above exemptions, the undernoted deductions from taxable expenditure were also allowed:

(i) taxes or fees regarding any conveyance intended for the personal use of the assessee;
(ii) any expenditure lawfully incurred by the assessee in respect of civil or criminal proceedings to which he was a party;
(iii) any expenditure incurred outside India by a resident foreigner subject to a maximum of Rs.10,000 (included in basic allowance of Rs.40,000);
(iv) expenditure incurred in connection with the assessee's own marriage or the marriage of any of his dependants subject to a maximum of R2.5000 for each marriage;
(v) four-fifths of any expenditure incurred by way of capital expenditure on the purchase of furniture and other household goods, motor cars and other conveyances for the personal use of the assessee and his dependants. But one-fifth of such expenditure was added back in each of the succeeding four years;

(vi) any expenditure incurred by the assessee on the maintenance of his parents subject to a maximum of Rs.4,000;

(vii) any expenditure incurred by the assessee on his own medical treatment or treatment of his dependants subject to a maximum of Rs.5000 with the right to carry forward to the next year the unexpended balance;

(viii) any expenditure incurred by the assessee on the education of himself or any of his dependants in a country outside India subject to a maximum of Rs.8000 per year;

(ix) a basic allowance of Rs.30,000 in the case of an individual and in the case of a Hindu undivided family an allowance of Rs.30,000 for the Manager, his wife and children and a further sum of Rs 3000 for each additional coparcener subject to a maximum of Rs.60,000.

Rates of Tax

After excluding the basic allowance of Rs.30,000 (Rs.40,000 in the case of a resident foreigner) and after giving the various deductions, allowances and exemptions to the extents permissible, the amount of expenditure liable to tax was arrived at. This "taxable expenditure" was then charged to tax on the basis of a slab system at the rates mentioned below:

In the case of every individual and Hindu undivided family, on that portion of the taxable expenditure:

(i)	which did not exceed Rs.10,000	— 10%
(ii)	which exceeded Rs.10,000 but did not exceed Rs.20,000	— 20%
(iii)	which exceeded Rs.20,000 but did not exceed Rs.30,000	— 40%
(iv)	which exceeded Rs.30,000 but did not exceed Rs.40,000	— 60%
(v)	which exceeded Rs.40,000 but did not exceed Rs.50,000	— 80%
(vi)	which exceeded Rs.50,000	—100%

Illustration

The following example shows the method of computing taxable expenditure and the calculations of tax thereon:

Salaried Employee—Expenditure-tax

Liability 1958/59—*An Illustration*

Salary, Allowances, Bonus, Commission etc.		Rs. 289,500
Perquisites:		
(a) Rent-free quarters valued at Rs.750/— p.m.	Rs.9000	
(b) Free transport for personal use valued at Rs125/ p.m.	Rs.1500	Rs. 10,500
Taxable income		Rs.300,000

Less: Income & Super tax	Rs.205,471	
	Rs. 94,529	
Add.: Other income e.g. Home leave passages ...	Rs. 10,000	
Total income from alle sources	Rs.104,529	
Salary, Allowances, Bonus, Commission etc. as shown above (in page 6)		Rs.289,500
Less: Income and Super tax		Rs.205,471
Net payment to Bank		Rs. 84,029
Deduct Cash Expenditure as shown below		Rs. 84,000
Balance in Bank		Rs. 29

Total Expenditure incurred during the year as under:

(a) *Cash Expenditure incurred by the Employee*

(1)	Gifts to friends	Rs. 2,000	
(2)	Shares and Securities purchased ..	Rs. 5,000	
(3)	Jewellery and Ornaments purchased	Rs. 5,000	
(4)	Household goods and furniture purchased	Rs. 5,000	
(5)	Expenditure incurred on maintenance of riding horses.....	Rs. 5,000	
(6)	Expenditure incurred on maintenance of parents	Rs. 5,000	
(7)	Life Insurance Premia paid	Rs. 6,000	
(8)	Contributions to Provident and Pension Fund	Rs. 6,000	
(9)	Educational Expenses incurred overseas	Rs. 9,000	
(10)	Other personal and domestic expenditure at Rs.3000 per month	Rs.36,000	Rs. 84,000

(b) Expenditure incurred by the Employer *on behalf of the Employee* —

(1)	Home Leave passages paid	Rs.10,000	
(2)	Travelling and Entertainment Expenses incurred in the performance of duties (Rs.5000 each)	Rs.10,000	
(3)	House Rents etc., paid.....	Rs. 9,000	
(4)	Medical Expenses	Rs. 5,500	
(5)	Transport expenses —free use of motor car for personal requirements	Rs. 1,500	Rs. 36,000
Total Expenditure			Rs.120,000

Less: Deductions and Exemptions allowed as under:			
(a) Expenditure incurred by the Employer on behalf of the Employee subject to a maximum of			Rs. 5000
Exemptions			
(1) Gifts to friends	Rs. 2,000		
(2) Shares and Securities purchased	Rs. 5,000		
(3) Jewellery and Ornaments purchased.	Rs. 5,000		
(4) Expenditure incurred on maintenance of riding horses	Rs. 5,000		
(5) Life Insurance premia ..	Rs. 6,000		
(6) Contributions to Provident & Pensions Fund	Rs. 6,000		
(7) Home Leave Passages	Rs.10,000		
(8) Travelling & Entertainment Expenses incurred in the performance of duties.	Rs.10,000	Rs.49,000	Rs. 54,000
Gross Expenditure			Rs. 66,000
(c) *Deductions*			
(1) 4/5 of the expenditure incurred on the purchase of household goods and furniture. ..	Rs. 4,000		
(2) Expenditure incurred on maintenance of parents Rs.5000; maximum allowable.	Rs. 4,000		
(3) Medical Expenses incurred Rs.5500; maximum allowable. ..	Rs. 5,000		
(4) Educational Expenses incurred overseas Rs.9000; maximum allowable.	Rs. 8,000		
(5) Basic Allowance	Rs.30,000		Rs. 51,000
Taxable Expenditure			Rs. 15,000

Expenditure Tax payable:

On first Rs.10,000 at 10%	Rs.1,000
On next Rs.5,000 at 20%	Rs.1,000
Total Tax payable	Rs.2,000

Withdrawal of Expenditure Tax

The imposition of expenditure-tax was the subject of considerable public controversy and aroused strong opposition. The Select Committee had to provide numerous exemptions and allowances listed above before passing the final law. This led to an erosion of the tax base as is evident from the illustration given and in spite of very high rates of tax the burden was low and collection poor. The total tax collected (in crores of rupees) during the unternoted four years was:

Financial Year	*Total Tax Revenue*	*Yield from Expenditure Tax*
1958/59	553.1	0.6
1959/60	642.4	0.8
1960/61	805.2	0.9
1961/62	823.1	0.8

It would be obvious that expenditure-tax in the form in which it was levied had proved ineffective as a deterrent to extravagant living and that it had failed to justify the expense and harassment involved in its meagre collection. Moreover, there were numerous anomalies and inequities in the Statute which created insurmountable difficulties and problems in its implementation and practical working. Following the appointment of a new Finance Minister fresh thinking took place and in 1962, while introducing his Budget proposals for the year 1962/63, the said Finance Minister announced the abolition of expenditure-tax for the following reasons:

"I propose to abolish the five year old expenditure-tax with effect from the current year. When it was introduced in 1957, it was realised that it had no backing of historical experience. It was, however, hoped that the tax would be a potent instrument for restraining ostentatious expenditure and for promoting savings. While these are very desirable objectives, experience has shown that the existence of the expenditure-tax has contributed little to them. The revenue from this source has remained conspicuously small. It has been argued that the incorporation of an expenditure-tax in the tax structure would make the administration of income-tax a great deal more effective and would enable the rates of income-tax to be lowered suitably. Experience has not shown this to be the case. If the working of this tax had shown some promising results, it would have been worthwhile to continue and extend it; but with the present experience it is considered best not to continue the measure, which, as a source of economic restraint has been ineffective and as a source of revenue, unattractive."

Reimposition of Expenditure Tax

The whithdrawal of expenditure-tax was welcomed in all quarters but the joy was short-lived. With the return to Government last year of the former Finance Minister who imposed the tax in 1957, the expenditure-tax too has staged a come-back with effect from April this year. The Finance Minister's justification for reintroduction of the tax is given best in his own words:

"In order to discourage spending I think it is necessary to reintroduce expenditure-tax. I have carefully considered the circumstances and difficulties which made by predecessor suspend the collection of this tax. It seems to me that these difficulties arose on account of too many exemptions and the high rates of tax. Besides, the wording of the charging section of the Act was highly defective and considerably limited the scope of the operation of the tax. This clause has now been redrafted so as to attract expenditure-tax on all expenditure above Rs.36,000 per annum no matter from which source the money for expenditure came. It is also necessary to harmonise the process of lowering of the rates of income-tax with the imposition and changes in expenditure-tax with reduced rates. I, therefore, propose to reduce the exemptions and exceptions to the minimum and to have the rates rising from 5% to 20% on successive slabs of Rs.12,000."

Amendments to Act of 1957

With the above objectives in view the Finance Minister has levied expenditure-tax again with effect from the current assessment year 1964/65, beginning 1st April, 1964. The basic scheme of the Act remains the same as in 1957 but the following important changes may be noted:

(i) Previously liability to expenditure-tax was attracted only if both the income and the expenditure during the relevant year exceeded specified limits. Under the amended law the reference to income has been omitted with the result that an individual who does not have any income will still be liable to expenditure-tax in case his expenditure exceeds the prescribed tax free limit.

(ii) The next important change is the withdrawal of certain exemptions and deductions which were previously allowed. These are

(a) expenditure on the purchase of products of cottage industry in India or any works of art,

(b) taxes and duties on purchase or import of personal effects,

(c) expenditure on maintenance of assessee's parents,

(d) expenditure on purchase and maintenance of live-stock,

(e) expenditure on purchase of household goods, furniture etc.,

(f) expenditure on education in any country outside India,

(g) expenditure on medical treatment,

(h) expenditure on marriage,
(i) expenditure on entertainment out of any entertainment allowance given by the employer.

Expenditure on acquisition of precious stones, bullion and jewellery is now spread over a period of five years for purposes of charge to tax. The basic allowance of Rs.30,000 has been withdrawn but the tax payable on the first slab of Rs.36,000 of taxable expenditure is NIL.

Revised rates of tax

The rates of tax have been lowered and the revised rates are:

In the case of every individual and Hindu undivided family, on that portion of the taxable expenditure:

(i) which does not exceed Rs.36,000	Nil
(ii) which exceeds Rs.36,000 but does not exceed Rs.48,000	5%
(iii) which exceeds Rs.48,000 but does not exceed Rs.60,000	7.5%
(iv) which exceeds Rs.60,000 but does not exceed Rs.72,000	10%
(v) which exceeds Rs. 72,000 but does not exceed Rs.84,000	15%
(vi) which exceeds Rs.84,000	20%

However, in respect of any assessment for the financial year commencing on the 1st day of April 1964 or 1965, the maximum rate of 15% only will apply to expenditure in excess of Rs.72,000.

Enhancement of tax liability

As a result of the amendments to the Act of 1957 the tax base has been considerably enlarged with consequential enhancement of tax liability. The effect of the changes made may be illustrated best by reference to the figures shown in the example given earlier in this article.

Taxable expenditure as per Illustration		Rs.15,000
Add: Expenditure disallowed by the amendments.		
(a) 1/5 of expenditure on jewellery and ornaments	Rs. 1,000	
(b) expenditure on maintenance of riding horses	Rs. 5,000	
(c) entertainment expenses	Rs. 5,000	
(d) expenditure on household goods and furniture	Rs. 4,000	
(e) expenditure on maintenance of parents	Rs. 4,000	
(f) medical expenses	Rs. 5,000	
(g) educational expenses	Rs. 8,000	
(h) basic allowance	Rs.30,000	Rs.62,000
Taxable expenditure		Rs.77,000

Thus the taxable expenditure will go up from Rs.15,000 to Rs.77,000 and the tax payable thereon will be determined as under:

On the first Rs.36,000 of taxable expenditure	Nil.
On the next Rs.12,000 of taxable expenditure at 5%	600
On the next Rs.12,000 of taxable expenditure at 7.5%	900
On the next Rs.12,000 of taxable expenditure at 10%	1200
On the next Rs.5,000 of taxable expenditure at 15%	750
	Rs.3450

The increase in tax will be from Rs.3,000 to Rs.3,450, a rise of about 70% on the original liability. But the average rate of tax on the total expenditure incurred will amount to about 4% on the basis of figures used in the example.

Whether the revised version of the expenditure-tax will achieve the objectives underlined by the Finance Minister remains open to serious doubt. One point, however, seems certain; in the context of India's developing economy and the intended socialistic pattern of its society, the field of fiscal legislation in this country and the comparatively inarticulate Indian taxpayer apparently provide good material for experiment and research by foreign tax experts.

Erschienen: PROF. DR. OTTMAR BÜHLER

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Die Entwicklung der Wirtschaft in den letzten Jahren hat mehr und mehr zur Entstehung von immer umfangreicheren Unternehmenszusammenschlüssen geführt. Gleichzeitig haben auch die internationalen Verflechtungen der grossen Gesellschaften in allen fünf Weltteilen stark zugenommen und sind noch immer im Wachsen begriffen. Diese zunehmenden Verflechtungen hatten ihre steuerlichen Konsequenzen auf dem Gebiete des internationalen Steuerrechts. Ausserdem gab es in zunehmendem Masse internationale Festsetzungen über die steuerliche Behandlung der Entwicklungshilfe.
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Dieser Versuch wird hier von einem bewährten Vertreter des Steuerrechts unternommen und nach 10-jähriger Arbeit der Öffentlichkeit vorgelegt. Die komprimierte Form der Darstellung die den umfangreichen Stoff auf 260 Seiten zu meistern versucht, wird von den sehr vielen Interessenten an dieser im internationalen Wirtschaftsleben hochwertig gewordenen Materie als grosse Erleichterung zum Eindringen in die schwierige Problematik empfunden werden.

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UNITED STATES

The Taxation of non-resident Aliens in the United States
Consideration of the terms "non-resident Alien"
and "engaged in trade or business"

by

PAUL B. LICHTMAN*

The United States asserts tax jurisdiction over the entire world-wide income of its citizens and resident-aliens.

If one is deemed to be a non-resident alien then he will be taxed only on his U.S. source income while a resident of the U.S. will be taxed on his entire income. Also if one is deemed to be a non-resident alien, certain tax disadvantages arise. A non-resident alien

(1) may not file a joint return[1]
(2) does not qualify for the special tax rate applicable to the head of the household
(3) may not claim the standard deduction
(4) may not use the optional tax table
(5) may not take credit for retirement income
(6) where a partnership has a non-resident alien as a partner, it may not elect to be taxed as a corporation under Sub. R (§1361(b)(3))
(7) a non-resident alien may not use the income averaging provisions (I.R.C. §1301)
(8) where a corporation has a non-resident alien as a shareholder it may not elect to be taxed under Sub. S (§ 1371)

The taxation of non-resident aliens (outside of Puerto Rico) may be subdivided into three classes:

1. Non-resident alien individuals *not engaged in trade or business* in the U.S. and receiving in the aggregate *not more than* $19.000 gross income for the taxable year beginning in 1964 ($21.200 for the taxable year beginning in 1965) from sources within the United States are taxed at the flat rate of 30% on incomes from dividends, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments or other determinable annual incomes, see I.R.C. 871(a)(1); and 30% on any gain from the sale or exchange of capital assets. With reference to the latter tax, if the alien is present in the United States for a period aggregating less than 90 days during the taxable year then he will be taxed on the gain "... effected during his presence ... [which ..] exceed his losses ...", and this gain must be "... effected during such presence ...". See I.R.C.§871(a)(2)(A).

   If the alien is present in the United States for more than 90 days then this 30% capital gains rate will be applicable to any gains "effected at any time during such year". See I.R.C.§871(a)(2)(B).

* The author is an attorney-at-law with the International Bureau of Fiscal Documentation, member of the New York Bar and a graduate of Columbia University Law School in New York. Presently he is Editor of the Bulletin.

[1] Except where the husband and wife, or either of them is from a community property jurisdiction (United States or foreign).

2. Non-resident aliens *not engaged in trade or business* in the United States but receiving in the taxable year an aggregate of *more than* $19.000 gross income for the taxable year beginning in 1964 ($21.200 for the taxable years beginning in 1965)[2])
3. Non-resident aliens *engaged in trade or business* within the United States[3])

Discussion will be centered around what is deemed to be "a non-resident alien" and to be "engaged in a trade or business within the United States". The purpose of this discourse is to introduce the alien taxpayer to some of the problems he may encounter when deriving income from United States sources.

"*Non-resident alien*"

An alien is presumed to be a non-resident, but this presumption may be overcome by proof

(a) that the alien has filed a declaration of his intention to become a citizen of the U.S. under the naturalization laws or
(b) that the alien has filed a form 1078 or its equivalent[4] or
(c) of acts and statements of the alien showing a definite intention to acquire residence in the United States or showing that his stay in the United States is of such an extended nature as will constitute him a resident.

An alien who has acquired a residence in the United States retains this status until he departs from the United States. A mere intention to depart does not change his status.

The Regulations to the Internal Revenue Code defines residence as:

§1.871-2. Determining residence of alien individuals.

(a) *General.* The term "nonresident alien individual" means an individual whose residence is not within the United States, and who is not a citizen of the United States. The term includes a nonresident alien fiduciary. For such purpose the term "fiduciary" shall have the meaning assigned to it by section 7701(a)(6) and the regulations in Part 301 of this chapter (Regulations on Procedure and Administration). For presumption as to an alien's nonresidence, see paragraph b) of §1.871-4.

(b) *Residence defined.* An alien actually present in the United States who is not a mere transient or sojourner is a resident of the United States for purposes of the income tax. Whether he is a transient is determined by his intentions with regard to the length and nature of his stay. A mere floating intention, indefinite as to time, to return to another country is not sufficient to constitute him a transient. If he lives in the United States and has no definite intention as to his stay, he is a resident. One who comes to the United States for a definite purpose which in its nature may be promptly accomplished is a transient; but, if his purpose is of such a nature that an extended stay may be necessary for its accomplishment, and to that end the alien makes his home temporarily in the United States, he becomes a resident, though it

[2]) Taxed at the regular rate for individuals subject to a minimum rate of 30% unless limited by a tax treaty.
[3]) Taxed at the regular rate for individuals without regard to the 30% limitation
[4]) Certificate of alien claiming residence in the United States — to be filed with withholding agent by alien residing in the United States for the purpose of claiming the benefit of such residence for income tax purposes.

> may be his intention at all times to return to his domicile abroad when the purpose for which he came has been consummated or abandoned. An alien whose stay in the United States is limited to a definite period by the immigration laws is not a resident of the United States within the meaning of this section, in the absence of exceptional circumstance. [Reg. §1.871-2] [T.D. 6258, 10-23-57].

New regulations have been proposed by the Treasury in December 1963.

The determination as to whether or not an alien will be considered a non-resident involves the question of intentions, coupled with operative facts which may be indicative that the alien is something more than a transient or sojourner. This intention is viewed through the purpose and character of his visit.

Where the nature of his visit requires an extended stay in the United States so that he must make his home temporarily in the United States he becomes a resident alien. There is no precise length of time that is needed for an "extended stay" in the United States but certain operative facts overcome the presumption of non-residency.

The type of visa issued is only one of the elements that must be considered. True, if the visa is one of a temporary nature for a limited time, "in the absence of exceptional circumstances", one will be considered a non-resident. But, an individual who entered the United States on a temporary visa which had been renewed was thereafter considered a resident. Also, where the taxpayer is in the United States on a temporary visa and he acknowledges his intention to become a United States citizen and to establish a permanent address in the United States no problem arises; he will be deemed a resident alien

Problems arise where one is in the United States on a temporary visa and has claimed an intention *not* to make the United States his permanent home, but due to prevailing circumstances his retention there is beyond the stay allotted for by the visa. Where an individual has sought refuge from war, his stay in the United States under these circumstances has made him, in the eyes of the tax authorities, a resident alien. But, where the individual has over-extended his stay and is awaiting deportation, or, he had orders indicating that he may be recalled to his own country, the taxpayer was not deemed to be a resident alien.

The fact that an alien retained his foreign residence may be instrumental in determining the tax status he enjoys in the United States. Therefore, when an alien comes to the United States for the purpose of fulfilling professional engagements and he has a permanent establishement in a foreign country then his status will be one of a non-resident alien. Also, when the alien has not made any permanent arrangements for his stay in the United States, his status as a non-resident alien will remain intact. However, if he comes to the United States on a professional engagement, not knowing how many years he might remain in the United States, and the work was of such a nature that an extended stay was required, he was deemed to be a resident alien.

Notwithstanding the fact that the alien derives his compensation in the United States while being there for a specific purpose, he will be deemed to be a non-resident alien. This will be the case where an alien is assigned to the purchasing agency of his native country located in the United States; or, where aliens come to the United States to investigate conditions in a certain industry and they derive their compensation from the particular industry. But where a non-resident alien serves in the United States military,

his status is that of a resident alien, notwithstanding the fact that the service was for the period of one year.

The mere fact that an individual visits the United States regularly, frequently and for a lengthy stay will not automatically transform his status to that of a resident alien.

A foreign student who had been in the United States for four years, studying for his Bacholor degree, but returned to his home for vacations was considered a non-resident; whereas, a foreign student temporarily residing in the United States while studying for a 2 year program was presumed to be a resident.

"*Engaged in trade or business*"

The Internal Revenue Code considers as "engaged in trade or business within the United States" any performance of personal services within the United States during the taxable year; however, the definition excludes personal services for a

(a) non-resident alien individual, foreign partnership or foreign corporation, not engaged in a trade or business within the United States
(b) place of business maintained by a domestic corporation in a foreign country or in a possession of the United States, performed by a nonresident alien individual temporarily present in the United States for a period not exceeding a total of 90 days during the taxable year and whose compensation for the above services does not exceed in the aggregate $3.000.

Not to be overlooked is the fact that the United States has tax treaties with various various countries wherein various benefits accure to nationa'ls of these countries who derive income from United States sources.

The term "engaged in a trade or business within the United States" is another crucial definition that must be examined carefully by the non-resident alien. The nature of the activity determines the status of the alien in this respect.

The non-resident alien will be considered to be engaged in trade or business if:

(a) he performs services in the United States and he receives remunaration for them; notwithstanding the aforesaid, the non-resident alien will not be considered to be engaged in trade or buiness in the United States if
    (i) he works for a non-resident alien individual, foreign partnership or corporation not engaged in a trade or business in the United States, or for the office or place of business of a United States corporation abroad or United States possessions;
    (ii) he is a non-resident alien in the United States temporarily, i.e. not exceeding a total of 90 days during the taxable year, and
    (iii) his compensation for the above services does not exceed $3.000.
(b) he transacts business involving merchandise through the ordinary channels of commerce, or trades or manages on a regular or continuous basis real property in the United States and this is done either by himself or through his agent.
(c) he is a member of a partnership engaged in trade or business in the United States at any time during the taxable year even though he is not physically present in the United States.

Certain activities are excepted from the term "engaged in trade or business". When a non-resident alien effects transactions in stocks or securities through a resident broker,

commission agent or custodian, the alien is not deemed to be "engaged in a trade or business" in the United States. This is also true with transactions in commodities if certain conditions are met.

Where a non-resident alien owns land in the United States from which he derives income he has been deemed to be "engaged in a trade or business" in the United States. But in this case he had the affairs relating to the business managed through an agent who had a broad power of attorney and who also advised him on advantageous sales or purchases of property. The agent executed leases, payed taxes, supervised repairs, collected the rents, insured the property, executed the sale of one of the properties, etc. The activities were so extensive that they were deemed to be "business" in the United States. It is the character of the activities and not the magnitude which is the controlling factor. A British subject, resident in England, was given United States property when she was quite young. The property had been rented to one person for a considerable time and this tenant was responsible for its operation and minor repairs. The non-resident alien owner received the rent and paid the insurance and mortgage. The court decided that the taxpayer was "not engaged in a trade or business in the United States".

Isolated transactions do not constitute "trade or business in the United States". This was considered so where only 1% of a corporation's gross income arose from activities in the United States. However, the reverse is true when an individual, partnership, or corporation has an agent in the United States with extensive powers.

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ARGENTINA

TAX NEWS

Argentine Government Decree No. 3113, effective April 30, 1964, essentially reestablishes, in modified form, certain tax and other benefits for capital investments. Those promulgated under prior administrations were abrogated in December 1963.

The concessions to be granted, primarily those conferring income tax exemption according to the field of industry, the activities to be fostered, the zones or areas that are declared eligible for 100% of the benefits listed in the decree, and other concessions to be granted to specific industries—namely, those primarily engaged in steel or petrochemicals, are as follows:

Activities to be fostered

Of special national interest are the steel, petrochemicals, cellulose, mining, forestry, and fishing industries, and construction of low cost housing. These qualify for:

- Scaled exemptions from income and excess profits taxes, substitute inheritance and a reduction for each subsequent year of 15% in the tax benefit.
- Elimination of the stamp tax on contracts for a maximum period of 10 years.
- Special temporary residence authorization for foreign workers and families when necessary to carry out the planned investment program.
- Priority ratings for related equipment imports.
- Reduced prices for electric power and industrial fuel.

Tax concessions

The tax concessions, on a percentage basis, in the various industries, with the conditions shown, are:

- Steel, where the industrial process is fully integrated, 100%; semi-integrated, 75%.
- Petrochemicals industries producing primarily hydrocarbons, aromatics, sulphur and/or hydrogen, 50%; industries producing synthetic rubber, carbon black, fertilizers, polyethylene, and similar commodities, fully integrated, 100%.
- Cellulose industries, producing pulp, 50%; industries producing pulp plus paper and carton, 75%; industries producing pulp and newsprint, 100%.
- Mining industries, excluding petroleum, gas and certain minerals, fully integrated 100%.
- Forestry industries, fully integrated, 100%.
- Fishing industries, fully integrated, 100%; otherwise, 75%.
- Low cost housing industry, fully integrated, 100%.

The following special concessions are granted to the specific industries of:

- Steel—An exemption from duties on all basic imports for products not produced locally, and accelerated amortization of fixed assets for income tax purposes.
- Petrochemicals—Reduced price for gas used as a raw material.

Zones to be fostered

Zones that are eligible for 100% of the benefits listed in the industrial promotion decree are: Southern, Northwest and Northeast Argentina. Significantly, investments in the Greater Buenos Aires area are *excluded* from the benefits of the industrial promotion decree, even though they might be in priority industries such as steel and petrochemicals. The decree does make the exception, however, that investments in Greater Buenos Aires *may* be eligible if they involve the amplification of plants already installed.

Source: *International Commerce*, June 8, 1964.

BELGIUM

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Thesis for a doctorate degree at the School of Economics in Tilburg, the Netherlands which discusses problems on the valuation of inventory in the Netherlands and Belgium. The author describes the various rules (Lifo, Fifo, Base-stock, etc.) and indicates which are applicable in each country. He contends that the applicable rules in the Netherlands are further developed than in Belgium due to a greater flexibility of the tax courts.

Het fiscaal regime der natuurlijke personen onder de nieuwe wetgeving, SIBILLE P. and L. VAN BEIRS, Brussels, Banque de la Société de Belgique, 1964, pp. 216.

This book concerns itself with the taxation on income from immovable property, income from personal property, income from business, professions, employment and miscellaneous income e.g. speculation gains received by resident and non-resident individuals. Practical examples are included.

DOCUMENTS

UN AVIS DU CONSEIL CENTRAL DE L'ÉCONOMIE SUR LA REFORME DU REGIME DE LA TAXE SUR LE CHIFFRE D'AFFAIRES

Le 22 avril 1964, des représentants des organisations économiques et sociales ont assisté à une réunion organisée par le secrétaire général du ministère des Finances. Celui-ci a remis une note concernant la taxe à la valeur ajoutée et a invité les organisations à répondre pour le 1er juin aux questions suivantes:

A. Questions concernant les modalités que devrait comporter un système de T.V.A. pour être acceptable en Belgique, compte tenu de la structure économique et sociale du pays et de la mentalité belge.

1) Faut-il appliquer la T.V.A. jusqu'au dernier stade de la production, jusqu'au stade précédant le commerce de détail ou jusqu'au stade du commerce de détail?

2) Le système devrait-il comprendre les services en général, quitte à prévoir éventuellement un régime spécial pour certains services déterminés, ou ne devrait-il comprendre que des services à désigner limitativement?
3) Le système devrait-il comporter des régimes particuliers pour certains secteurs comme l'agriculture, l'artisanat, les professions libérales, les petites entreprises?
4) Faut-il prévoir des exonérations et des taux réduits et, le cas échéant, dans quelles conditions?

B. Question concernant le système de taxe sur le chiffre d'affaires.

Un autre système de taxe sur le chiffre d'affaires ne devrait-il pas être préféré à la T.V.A.? *Dans l'affirmative, pour quels motifs?*

En sa séance du 22 avril 1964, *le Bureau du Conseil central de l'Economie a décidé que celui-ci examinerait de sa propre initiative les questions posées aux organisations. Il a demandé à sa commission «Expansion» de préparer un projet d'avis.*

Au cours de ses travaux, il est apparu opportun à la Commission d'étudier en plus des questions qui lui étaient soumises, certains problèmes relatifs au régime fiscal des biens d'investissement et des entreprises exportatrices. Les conclusions de cette étude ont été reprises dans le projet d'avis.

La Commission a fini ses travaux le 21 *mai* 1964. *Le projet d'avis rédigé par la Commission a été soumis à l'assemblée plénière du* 19 *mai* 1964.

L'AVIS DU CONSEIL

Le Conseil a examiné les questions dans l'ordre fixé dans le questionnaire transmis aux organisations.

En répondant à la série de questions relatives aux modalités d'un système de T.V.A. (questions groupées sous A), le Conseil s'est placé dans l'hypothèse qu'une T.V.A. sera appliquée. Cette partie de l'avis n'implique donc nullement une prise de position en ce qui concerne le principe même du système de la T.V.A. Ce dernier problème n'est traité qu'à propos de la question B concernant le choix du système de taxe sur le chiffre d'affaires.

Lors de l'examen des questions, on a soulevé plusieurs fois des problèmes relatifs à la comptabilité des assujettis; à cet égard, des données concernant le nombre de personnes physiques et d'associations de fait tenant une comptabilité régulière ont été reprises en annexe à l'avis.

A. MODALITÉS QU'UN SYSTÈME DE T.V.A. DEVRAIT COMPORTER.

1. Questions du ministre des Finances relatives aux modalités que devrait comporter un système de T.V.A. pour être acceptable en Belgique, compte tenu de la structure économique et sociale du pays et de la mentalité belge.

Question 1.—Faut-il appliquer la T.V.A. jusqu'au stade final de la production, jusqu'au stade précédant le commerce de détail ou jusqu'au stade du commerce de détail?

De nombreux membres, dont ceux représentant les employeurs industriels estiment que si une T.V.A. devait être instaurée, il serait souhaitable de l'appliquer jusqu'au stade du commerce de détail.

Ils rappellent que ce système comporte notamment les avantages suivants:

- la taxation porte sur la valeur totale des produits; la T.V.A. revêt donc pleinement le caractère d'une taxe à la consommation;
- toute discrimination, fiscale entre les différentes structures de la production et de la distribution est évitée;
- comme l'impôt est perçu à tous les stades des circuits de production et de distribution, la désignation des personnes assujetties pose moins de problèmes que dans l'hypothèse où la T.V.A. s'arrête à un stade antérieur;
- le problème des entreprises mixtes ne se pose pas:
- le système exclut dans toute la mesure du possible des distorsions dans les échanges internationaux; a cet égard, ces membres attirent l'attention sur l'importance croissante que prennent les échanges internationaux qui s'effectuent par le biais du commerce de détail;
- une T.V.A. au stade du détaillant permet l'application d'un taux d'imposition d'autant plus restreint que la base imposable est plus large;
- les possibilités de fraude sont limitées; la technique de la T.V.A. (déduction des taxes perçues sur les achats effectués) peut contribuer à réduire les possibilités de fraude.

Par contre, ce système se heurte aux difficultés suivantes: le nombre de personnes assujetties est sensiblement plus élevé dans un système qui incorpore le stade du commerce de détail; les opérations de contrôle seront donc plus nombreuses et les frais de perception pourront être plus lourds; les difficultés de recouvrement seront plus grandes.

Toutefois, en comparant les sytèmes du point de vue des difficultés de contrôle et des frais de perception, il ne faut pas oublier que dans les systèmes de T.V.A. qui s'arrêtent à un stade entérieur, des complications et des frais additionnels résultent du fait qu'il faut y introduire une série de modalités techniques particulières pour résoudre le problème des entreprises mixtes et pour diminuer certaines distorsions entre différents circuits de distribution.

Les membres ne perdent pas de vue les difficultés pratiques qui devront être éliminées avant de pouvoir taxer de manière efficace le commerce de détail. Dans la plupart des entreprises de détail, la comptabilité est encore insuffisante; la formation professionelle devrait également être améliorée.

Ces membres sont d'avis que ces problèmes peuvent être largement rencontrès à condition que le gouvernement prenne en temps opportun les mesures nécessaires afin que les assujettis tiennent une comptabilité permettant l'application correcte d'un système de T.V.A. De plus, des mesures devraient être prises tendant à accélérer les efforts déjà entrepris de plusieurs côtés pour élever le niveau de la formation professionnelle des détaillants.

Ces membres font remarquer que le fait que des difficultés pratiques subsistent encore actuellement ne peut constituer un argument pour remettre à plus tard les décisions de principe en ce qui concerne la taxation des détaillants. Ils estiment au con-

traire que, si l'on envisage d'instaurer une T.V.A., ces décisions doivent être prises sans tarder.

Il est indispensable que les détaillants soient informés à temps sur le nouveau régime qui leur sera appliqué si l'on veut que ceux-ci procèdent en temps utile aux adaptations nécessaires.

Une période de transition suffisante devra être prévue, dont il faudra cependant délimiter clairement la durée.

Certains membres, représentants des agriculteurs et des classes moyennes, font remarquer que pour arriver à l'élimination des distorsions dans les échanges intra-communautaires qui constituent l'objectif essentiel de l'harmonisation des taxes sur le chiffre d'affaires, il n'est pas nécessaire d'étendre la T.V.A. au commerce de détail, l'activité des détaillants étant principalement d'ordre local.

Ces membres rejettent, pour des raisons pratiques, une T.V.A. jusqu'au stade du commerce de détail. Ils estiment impossible d'appliquer efficacement la T.V.A. à ce stade. Un pourcentage infime de détaillants tient une comptabilité régulière et selon ces membres, il est exclu que dans un délai relativement court, on puisse parvenir à modifier profondément cette situation.

Ces membres soulignent que les frais de perception de la T.V.A. qui, par la nature du système, sont déjà très lourds, augmenteront encore considérablement si l'on étend le système au commerce de détail. L'augmentation sensible des points de perception nécessitera une multiplication des opérations de contrôle et entraînera une extension considérable de l'appareil administratif. De leur côté, les détaillants devront supporter des frais additionnels importants.

Question 2.—Le système devrait-il comprendre les services en général, quitte à prévoir éventuellement un système spécial pour certains services déterminés, ou ne devrait-il comprendre que des services à désigner limitativement?

Le Conseil estime qu'en principe, il n'y a pas lieu d'établir une distinction entre les biens et les services dans un régime de T.V.A.; les services doivent être soumis à la taxe sur le chiffre d'affaires au même titre que les marchandises.

En effet:

- la base de la T.V.A. doit être aussi large que possible;
- les services prennent une part de plus en plus importante dans la consommation privée;
- tant du point de vue fiscal que du point de vue économique, la distinction entre biens et services s'avère de plus en plus difficile.

Le Conseil tient à faire remarquer qu'à son avis, il n'est pas souhaitable qu'un régime différent soit prévu pour les services influençant les prix d'une part, et pour les services destinés directement aux consommateurs d'autre part. En beaucoup de cas, la distinction entre ces deux catégories de services est difficile à faire; aussi, en appliquant des régimes différenciés partant de cette distinction, on risque de faire naître, outre nombre de complications techniques et pratiques, une fraude considérable.

Le Conseil est donc d'avis qu'il faudra limiter les exonérations et les réductions à un

strict minimum, quel que soit le type d'opération écoromique. Elles ne devront être admises que dans les cas où elles s'imposent, soit pour des raisons techniques et d'efficacité fiscale; soit pour des raisons d'ordre économique ou social.

Question 3.—Le système devrait-il comporter des régimes particuliers pour certains secteurs comme l'agriculture, l'artisanat, les professions libérales, les petites entreprises?

Le Conseil est d'avis qu'il faudra éviter dans le mesure du possbile d'instaurer des régimes particuliers qui compliqueraient le système de la T.V.A., créeraient des ruptures dans son application, ou et porteraient atteinte à la neutralité du système par rapport aux différentes structures du circuit économique. Il rappelle à cet égard la complexité excessive du système actuel de taxes assimilées au timbre, qui résulte notamment de l'introduction d'un nombre exagéré de régimes spéciaux.

Aussi, faudra-t-il limiter les régimes particuliers à des secteurs où l'application des modalités générales du système se heurte vraiment à des difficultés pratiques considérables. Il faudra également veiller à ce que les modalités particulières aient, dans la mesure du possible, des incidences comparables à celles de la T.V.A. En outre, le Conseil estime qu'il faut en principe laisser aux entreprises du secteur visé le choix entre le régime particulier et l'application normale de la T.V.A.

Après avoir étudié les possibilités d'émettre dès à présent certaines propositions concrètes relatives au régime qu'il conviendrait d'appliquer à l'agriculture, aux professions libérales, à l'artisanat et aux petites entreprises, le Conseil est arrivé à la conclusion qu'il n'est pas encore possible de répondre aux questions du Ministre à ce sujet.

A cet égard, le Conseil attire l'attention sur les difficultés suivantes devant lesquelles il se trouvait placé:

- il est difficile d'apprécier dans quels cas concrets il faut déroger aux modalités générales du système de T.V.A. aussi longtemps que celles-ci n'ont pas été précisées; le même problème se pose quand il s'agit de définir le régime particulier;
- des propositions valables ne peuvent être faites que sur base d'un ensemble de données statistiques et sociologiques dont le Conseil n'a pu disposer; le délai limité qui lui était imparti pour répondre aux questions posées ne lui permettait pas de procéder à certaines recherches indispensables;
- lors des discusions, il est apparu que les membres qui exposaient le point de vue de l'agriculture, de l'artisanat et de certains groupements de petites entreprises, étaient fondamentalement opposés à l'application de la T.V.A. aux entreprises en question, soit pour des raisons pratiques (par exemple comptabilité insuffisante), soit pour des raisons économiques (crainte de distorsion). Aussi ces membres se sont-ils limités à proposer des modalités qui aboutissaient en fait à soustraire les opérations de ces entreprises au champ d'application de la T.V.A.

Les organisations représentées au Conseil qui estiment utile de préciser de manière plus approfondie leur point de vue en ce qui concerne les régimes particuliers feront connaître leurs observations au ministre des Finances dans leur réponse au questionnaire qui leur a été transmis et communiqueront le texte de ces observations au secrétariat du Conseil central de l'économie.

Le Conseil reste disposé à poursuivre l'étude du problème des régimes particuliers. A cet égard, il exprime le souhait de prendre connaissance du rapport qu'élabore en ce moment le groupe de travail interministériel chargé de l'examen des problèmes que pose l'application d'une T.V.A.

Question 4.—Faut-il prévoir des exonérations et des taux réduits et le cas échéant, dans quelles conditions?

Le Conseil propose d'appliquer des taux réduits épongeant les taxes perçues aux stades antérieures, toutes les fois qu'il s'indiquera de prévoir, pour des motifs économiques ou sociaux, un régime de faveur pour un produit déterminé. Il faudra toutefois veiller à limiter le nombre de taux afin de ne pas compliquer exagérément le système.

Le Conseil estime qu'il convient d'éviter autant que possible les exonérations dans un système de T.V.A.: en effet,

- l'exonération de la valeur totale d'un produit (ou service) est dans de nombreux cas difficilement réalisable; une telle exonération suppose le remboursement de la T.V.A. perçue à tous les stades du circuit parcouru par le produit et par les facteurs qui ont contribué à sa fabrication; ce remboursement pose notamment des problèmes techniques extrêmement compliqués;
- d'autre part, l'exonération du produit (ou service) sans remboursement des taxes perçues aux stades antérieurs présente les inconvénients suivants:
  - il peut en résulter une charge fiscale différente pour des produits semblables; en effet, l'importance des taxes perçues aux stades antérieurs peut varier d'après la structure du circuit et d'après la technique de production adoptée pour la fabrication du produit exonéré;
  - des cas de double taxation se présenteront quand les produits exonérés sont achetés par des entreprises (ces entreprises ne pourront pas déduire les taxes incorporées dans les produits, aucune taxe n'ayant été perçue lors de leur achat).

Le Conseil n'a pas établi une liste des produits et services auxquels, à son avis, devraient être appliqués des taux réduits ou pour lesquels une exonération paraît inévitable.

Pour être en mesure d'élaborer une telle liste, il serait nécessaire de disposer de données plus précises concernant la structure et les modalités du régime de T.V.A.

2. Questions annexes traitées par le Conseil.

a) Le régime des biens d'investissement.

Le Conseil se prononce en faveur de la *déduction immédiate* de la T.V.A. perçue sur les achats de biens d'investissement. Il rejette la déduction pro rata temporis, qui impose à l'entreprise qui réalise des investissements des charges financières et des risques plus grands et entraîne en outre d'importantes complications techniques et administratives.

En outre, il serait souhaitable d'autoriser, moyennant les conditions à établir par l'administration, un remboursement de taxe au cas où la taxe perçue sur les biens d'investissement achetés dépasserait l'impôt dû sur le chiffre d'affaires de l'entreprise.

Si aucun remboursement n'était autorisé dans des cas semblables, la charge qui en résulterait constituerait un handicap pour certaines entreprises. De nouvelles entreprises n'ayant encore qu'un chiffre d'affaires insignifiant, voire nul, et des entreprises en pleine activité mais accomplissant un effort particulièrement considérable en matière d'investissement se trouveraient notamment placées dans une situation défavorable. Cet handicap pourrait être particulièrement lourd lorsqu'il s'agit — comme par exemple dans la recherche scientifique — d'investissements qui n'augmenteront pas nécessairement la production de l'entreprise ou du moins ne le feront pas à bref délai:

b) Modalités en ce qui concerne les exportations.

Le Conseil est d'avis que, moyennant les conditions à établir par l'administration, les entreprises devraient pouvoir obtenir l'autorisation d'effectuer en suspension de taxe leurs achats en vue des productions destinées à l'exportation, et ce de telle façon que le dégrèvement soit total.

B. UN AYTRE SYSTÊME DE TAXE SUR LE CÈIFFRE D'AFFAIRES NE DEVRAIT-IL PAS ÊTRE PRÉFÉRÉ À LA T.V.A.? DANS L'AFFIRMATIVE, POUR QUELS MOTIFS?

Le Conseil estime que le gouvernement, en introduisant des réformes dans le système actuel de taxation indirecte, devrait, tenir compte des recommandations suivantes:

1° Il importe d'introduire dans le système actuel une clarté suffisante pour que soit connu le taux précis des impôts indirects qui pèsent sur chaque produit ou opération économique. Ceci comporte nécessaire le rejet du système de taxation en cascade.

2° Toute modification des impôts indirects doit sauvegarder les possibilités d'une politique sociale, c'est-à-dire d'une différenciation dans les taux suivant les types de produits ou d'opérations économiques.

3° Toute réforme des impôts indirects devrait avoir comme conséquence de maintenir la neutralité économique entre les structures de production et de distribution et de mettre les produits belges sur le même pied que les produits des concurrents étrangers, en ce qui concerne tant les exportations que les investissements.

4° Dans le cadre des pouvoirs dont dispose le ministre des Affaires économiques dans le domaine des prix, il devrait veiller à ce que le marché répercute d'une façon suffisamment fidèle les modifications du système fiscal.

5° Il est absolument indispensable que les organisations professionnelles soient préalablement consultées chaque fois qu'une mesure réformant les impôts indirects est envisagée. Cette consultation ne devrait pas seulement porter sur les aspects fiscaux du problème, mais également fournir les indications quant aux répercussions économiques et sociales, en particulier dans le domaine des prix.

* * *

Plusieurs membres du Conseil considèrent que, dans la mesure où le gouvernement compte s'orienter vers un système communautaire au cours des prochaines années, il n'apparaît pas comme raisonnable d'introduire entretemps une réforme des impôts

indirects qui soit profondément différente tant du système actuel que du système communautaire.

De même, des membres estiment qu'il est difficile de se prononcer sur le système définitif de taxe sur le chiffre d'affaires, en l'absence de renseignements sur de nombreux aspects et modalités de la future T.V.A. européenne.

Dans la mesure où une T.V.A. européenne, c'est-à-dire ayant des taux européens et des modalités communautaires, serait instaurée, elle aurait nécessairement de nombreuses implications budgétaires, économiques et sociales sur lesquelles il n'est pas possible d'émettre un jugement aujourd'hui.

D'autres participants aux travaux du Conseil se prononcent pour l'adoption d'un système de T.V.A. comme système communautaire. Ils renvoient à l'argumentation qui a été développée à cet égard dans l'avis du 7 mars 1963 du Conseil central de l'économie (1) et considèrent par ailleurs que l'évolution des études et des consultations au sein des organisations européennes, les avis exprimés à cet égard par divers groupes d'experts, l'orientation prise en l'espèce par plusieurs pays de la Communauté démontrent clairement que ce sera un système de T.V.A. qui sera finalement choisi comme système communautaire.

Ces membres estiment en outre qu'un passage direct à la T.V.A. est de loin préférable pour des raisons qui, elles aussi, ont été largement développées dans l'avis du 7 mars 1963 (2). Plusieurs instances d'ailleurs, notamment le Parlement Européen, se sont prononcées pour un passage direct au système communautaire et la Commission européenne envisage de modifier son premier projet de directive dans le sens d'une suppression de la phase intermédiaire.

Pour le surplus, ces membres sont d'avis qu'il serait préférable que notre pays adopte un système de taxe sur la valeur ajoutée dans des délais plus courts que ceux qu'envisagerait comme ultime la directive communautaire plutôt que d'entreprendre une réforme consistant, par la généralisation des taxes forfaitaires, à rapprocher notre système de taxe unique générale.

En toute hypothèse, il apparaît qu'une généralisation des taxes forfaitaires serait réalisable dans un délai très rapide. L'échéance de fin 1965 était déjà celle dont on faisait état en 1963 lorsque la première phase d'une telle réforme était alors prévue pour le 1er janvier 1964. Outre que le timing initial est donc dépassé, la crainte légitime de répercussions notables sur les prix en période inflatoire subsiste entièrement.

D'autre part, il paraît vain de demander à l'administration d'entreprendre simultanément d'une part les travaux d'étude et de mise en application d'une généralisation des taxes forfaitaires et d'autre part la rédaction d'un projet de loi sur la taxe sur la valeur ajoutée avec les multiples travaux administratifs qu'une telle rédaction implique, ceci sans même parler de l'urgente nécessité de recruter et de former le personnel.

Des membres, généralement représentants des employeurs et de l'agriculture, font remarquer qu'un système communautaire ne s'impose qu'à partir du moment où l'on

1 Avis du Conseil de l'économie concernant la rëforme du système de taxes sur le chiffre d'affaires, motivation des membres qui se sont prononcés pour un passage direct à la T.V.A., rapport du secrétaire 1962-1963, pp. 47-52.
2 Ibidem.

supprimera les frontières fiscales; ce stade ne sera sans doute pas atteint dans un délai rapproché puisqu'il implique au moins une communauté financière sinon politique. Avant ce stade définitif, il n'y a pas d'inconvénient à ce que les pays membres appliquent des systèmes non cumulatifs différents, adaptés à leur propre situation; il suffit que ces systèmes permettent des taxations et détaxations correctes aux frontières et qu'ils sont neutres par rapport aux différents circuits de production et de distribution.

En ce qui concerne le choix du système communautaire, ces membres sont d'avis que l'option à prendre dépend en large mesure des tendances qui se manifestent dans les autres pays de la C.E.E. Si la majorité des pays s'oriente résolument vers un régime de T.V.A., la Belgique se trouvera pratiquement obligée de se rallier à ce système, même si une taxe unique générale paraît mieux adaptée à la situation belge. Toutefois, à l'heure actuelle, il ne semble pas probable que les Pays-Bas soient disposés à opter pour un système de T.V.A. Par ailleurs, l'Italie est dans l'impossibilité de passer à une T.V.A. avant longtemps.

Pour ces raisons et eu égard aux particularités structurelles et aux exigences de notre économie, ces membres estiment que la Belgique aurait profit à suivre une politique prudente tant en ce qui concerne le choix du système communautaire qu'en ce qui concerne les mesures à prendre dans la période qui précédera la mise en application du régime communautaire.

Ils soulignent que le régime actuel de taxes assimilées au timbre place les entreprises belges dans une position désavantageuse par rapport à leurs concurrents des autres pays membres de la C.E.E.

D'autre part, il paraît pratiquement impossible de faire appliquer en Belgique un système de T.V.A. avant 1970, dans l'hypothèse où ce système serait adopté comme système communautaire. Il en résulte que si la Beglique accepte un passage direct à un système de T.V.A., notre économie se trouvera fixée dans sa position désavantageuse pour une période d'au moins six ans.

La situation risque encore de s'aggraver parce qu'il faut prévoir que l'Allemagne et le Luxembourg passeront dans un délai assez rapproché à un système de T.V.A., et qu'ainsi la Belgique demeurera avec le régime de taxe sur le chiffre d'affaires le moins favorable comparé à ses partenaires du Marché commun. En effet, le taux de base de taxation de notre système est le plus élevé; le degré de détaxation à l'exportation et de compensation à l'importation est le moins poussé malgré une attitude de l'administration aussi compréhensive que le permette la législation.

En conclusion, ces membres estiment que la Belgique doit essayer d'améliorer dans l'immédiat son système de taxe sur le chiffre d'affaires en réalisant la réforme qui a été préparée par l'administration belge et qui, par la voie d'une généralisation des taxes forfaitaires, aboutira à un système qui se rapproche d'une taxe unique générale, système dont les avantages ont été décrit dans l'avis du 7 mars 1963 du Conseil central de l'économie (3).

Cette réforme, tout en améliorant notre position concurrentielle, contribuerait large-

3 Avis du Conseil central de l'économie sur la réforme de la taxe sur le chiffre d'affaires, motivation des membres qui ont opté pour un régime transitoire d'impôt à paiement unique, rapport du secrétaire 1962-1963, pp. 41-47.

ment à réaliser les objectifs essentiels de la Commission européenne, c'est-à-dire la neutralité de la taxe sur le chiffre d'affaires par rapport aux différents circuits économiques et l'élimination des distorsions dans les échanges intra-communautaires.

En outre, cette réforme ne préjuge en rien du choix final d'un système communautaire. Elle constitue une étape prudente et rationnelle aussi bien vers une taxe unique générale, que vers un passage à une T.V.A.

Ces membres insistent pour que le gouvernement réalise sans retard la réforme envisagée. En effet, dans le cas où le Conseil des Ministres approuvait le nouveau projet de directive de la Commission européenne, qui prévoit un passage direct à une T.V.A. communautaire, la Belgique verrait diminuer considérablement ses chances de faire accepter une réforme intermédiaire par les partenaires européens.

A la fin de 1963, le gouvernement a jugé opportun de reporter l'application de taxes forfaitaires à certains secteurs, suite à la situation préinflatoire qui se développait dans l'économie. Ces membres estiment qu'il ne faut pas surestimer l'importance des augmentations de prix que pourrait provoquer la réforme préconisée; d'ailleurs, on peut craindre que les perturbations des structures des prix seraient bien plus grandes dans le cas d'un passage direct à la T.V.A.

Sur le plan des entreprises, la concurrence tant intérieure qu'extérieure assurera une adaptation normale des prix. Néanmoins, le gouvernement devrait, pour prévenir des exagérations en matière de prix, mener une campagne d'information pour que tous les secteurs connaissent les modifications apportées par la réforme.

* * *

Considérant qu'ils sont insuffisamment informés quant à présent sur la durée de la période nécessaire à l'adoption et à la mise en vigueur d'un système communautaire et désireux d'obtenir le plus rapidement possible la modification du régime belge de taxes en cascade, de manière à en écarter dans le plus bref délai tous les effets discriminatoires, quelques membres du Conseil, issus des milleux de la distribution, n'entendent pas prendre une position doctrinale quant au régime communautaire à choisir.

Ils demandent que ce régime communautaire, quel qu'il soit, assure la neutralité économique de l'impôt, l'égalité de son incidence à prix égal, la simplicité de sa perception et du contrôle de celle-ci et la protection efficace des concurrents contre la fraude fiscale.

Ils demandent avec insistance que les dispositions transitoires qui seraient adoptés en Belgique, assurent efficacement les garanties qu'ils ont précicées ci-dessus et que ces dispositions soient applicables à l'ensemble des marchandises sans distinction.

Ils se réservent de préciser cet avis dans les communications que les organisations qu'ils représentent adresseront à M. le ministre des Finances.

Source: *Bulletin de la Fédération des Industries Belges*, 20 Juin 1964.

BRITISH COMMONWEALTH

BIBLIOGRAPHY

Double Taxation within the Commonwealth—Federation of Commonwealth Chambers of Commerce, 69 Cannon Street, London, E.C.4, January 1964, pp. 30.

During the 21st Congress, London, May 1962, of Commonwealth Chambers of Commerce, it was considered "that one of the biggest obstacles to investment within the Commonwealth is the burden of taxation of income and profits, and of capital". Consequently, the Congress recommended "that reciprocal arrangements should be made between governments with the object of removing over-lapping tax jurisdictions. . ." (Paragraph 26 of the report of the Congress).

The Federation of Commonwealth Chambers of Commerce has appointed a special Taxation Committee which has published its report, together with a model tax agreement for use between Commonwealth countries. This model agreement follows closely agreed the draft convention of the Fiscal Committee of the O.E.C.D., with a few noteworthy differences.

– Relief is not to be granted with respect to income for which a person is liable to tax in a non-Commonwealth country by reason of domicile residence, citizenship, place of management or similar criteria. (Article 1).

– Intercorporate dividends will be exempt from withholding tax in the country from which they are paid, as well as in the country of which the receiving company is a resident (Articles 9 (1) and 20 (3)).

– The latter exemption from tax (in the hands of the receiving company) shall not apply if more than 50 per cent of the shares in the receiving company are owned or controiled, directly or indirectly, by persons not resident in Commonwealth countries (Article 30 (3) last paragraph). According to the Taxation Committee's commentary, this provision is meant as a safeguard against abuses.

– A taxing Commonwealth country will give its taxpayer a credit for taxes paid to another Commonwealth country, while it will include amounts that would have been paid but for a special exemption or reduction granted for the promotion of industrial, commercial, scientific, educational or other development (tax sparing) (Article 20 (5)).

The October issue of the Bulletin will present the Recommendation and Report of the Federation of Commonwealth Chambers of Commerce.

CANADA

BIBLIOGRAPHY

Canadian business guide, Toronto, The Bank of Nova Scotia, 1964, 81 pp.

This brochure published by the Bank of Nova Scotia is a useful source of information on Canadian taxation, particularly for the foreign business man. The brochure is directed to the following subjects: formation of an enterprise in Canada (business forms, fees for incorporation, branches of foreign corporations, partnerships), federal income tax on

individuals and corporations, including legislation pertaining to the various tax incentives (tax holiday, accelerated depreciation, scientific research, re-equipment and modernization allowance and the production incentive tax credit). A chapter is devoted to non-residents receiving Canadian source income. The treaties with the United States and Germany are also analyzed, as are the provincial income tax and other provincial taxes. Attention is paid to federal and provincial estate and gift taxes and also to the sales and excise taxes. The last part of the brochure concentrates on non-tax matters such as corporate and labour legislation, the Combined Investigation Act and foreign exchange.

Provincial Sales Taxes, Canadian Tax Papers No. 37, DUE, J.E., Toronto, Canadian Tax Foundation, 1964, 234 pp.

The development, structure and operation of the provincial sales taxes in Canada is the subject of this general survey. Points of view of both the administrator and the vendor are presented. The book provides a guide to the taxes and a basis for evaluating and reforming various features of the taxes. Specific attention is directed to the possible integration of federal and provincial sales taxes.

COMMON MARKET

BIBLIOGRAPHY

Le financement des investissements et les aspects sociaux de la reconversion, Collection d'économie et politique régionale du Communauté Européenne du Charbon et de l'Arcier, Série I (la reconversion industrielle en Europe), Tome III, PETER H. A. CAMPOLONGO, J. UMLAUF, e.a., Paris, Dalloz et Sirey, 1963, 255 pp.

An intergovernmental meeting of the members of the European Coal and Steel Community held in Luxemburg in 1960 concerned itself with problems on industrial reorientation necessitated by the closing of inefficient coal mines in various regions throughout member countries. This volume discusses not only the social implications of this reorientation but also the various aspects of financing new investment in this economically blighted area.

La conduite sur place des opérations de conversion industrielle, Collection d'économie et politique régionale du Communauté Européenne du Charbon et de l'Acier, Série I (la reconversion industrielle en Europe), Tome IV, ROEMEN, H.C.W., M. DUQUESNE DE LA VINELLE, H. BRUNNÉE e.a., Paris, Dalloz et Sirey, 1963, 253 pp.

Publication of various reports submitted to an inter-governmental meeting held in 1960 in Luxemburg by the members of the Coal and Steel Community. Problems brought about by the closing of certain inefficient coal mines in member countries was the concern of this meeting.

De Fiscale Balans, Fiscale Monografieën no. 21, IJSSELMUIDEN, TH.S., Deventer, Kluwer, 1964, pp. 155.

The determination of taxable income for businesses, particularly in the Netherlands is the primary direction of the book. The author has also thoroughly analyzed the tax systems of the other Common Market countries and in the course of his analysis valuable information is given about all countries concerned.

The following subjects are discussed: depreciation of business assets (including depreciation rates, accelerated depreciation, incorporeal assets), reserves (such as for employees' pensions, for bad debts, self-insured risks), and valuation of inventory (including base-stock system, Life, Fifo).

DOMINICAN REPUBLIC

TAX NEWS

The latest amendment to the Dominican Republic basis income tax law, No. 5911 of May 22, 1962 (already amended twice, once by Law No. 6173 of January 30, 1963 and again by Law No. 152 of February 20, 1964) was signed and published by the Triumvirate of the Provisional Government on April 30, 1964 as Law No. 236.

The new law "derogates" or repeals Law No. 152 which had been in effect less than 3 months. The action taken was effected by the continued efforts of the Triumvirate to stimulate national production, to promote the economic development of the country and, as a tax reform measure, constitutes a major objective of the Alliance for Progress in the Dominican Republic. The administration is adopting various means which it feels will achieve these goals, and has restructured the tax system to establish assessments more in keeping with the economic ability of the person to pay.

The complementary tax which Law No. 152 had superimposed at all income levels had attained the maximum rate of 60% on all net income in excess of m$n 900,000.01 (one Dominican Peso equals $1). Henceforth the maximum tax rate will be 70% on all such incomes.

The law also authorizes exemptions or deductions from income that is reinvested or deposited in State development institutions. Incentives in the income tax are introduced to encourage the creation of reserves for pensions and severance pay, which it is hoped will improve the conditions of the laboring class.

Other amendments

Besides establishing a new maximum rate in the complementary tax scale, the new law amends the tax exemptions in the following manner:

- Losses sustained by firms shall be deductible from the profits obtained during fiscal periods immediately following those in which such losses were incurred. In the case of losses sustained before the effective date of this law, the allocation of shares for the fiscal year will remain suspended to permit an investigation or verification of the losses. The compensation or the suspension will not exceed 3 years from the date the declaration of the losses is presented.
- Authorizes donations to the State, National, District, municipalities, universities, orphanages, asylums, relious, charitable, educational, literary, scientific or cultural organizations, and similar

institutions as long as the operations are of a nonprofit nature and for collective benefit. Also donations of up to 5% of one's taxable income for the creation of scholarships for study within the country or abroad are exempted, but such scholarships may not benefit families of owners, directors or shareholders who have a net taxable income of over m$n 10,000.

- Authorizes amortizations in respect to wear and tear, obsolescence and losses caused by justified nonuse of the property in operation as indicated in the regulations.
- Reserves set aside for payment of pensions and severance pay to employees are exempt up to 5% of the net taxable in-income, provided such monies were placed on deposit in savings and loan associations.
- Among the personal deductions allowed are medical and dental expenses up to m$n 400 per year without presentation of vouchers. However, expenses in excess of that amount will be allowed only with accompanying vouchers or other certificates of proof.
- Contributions to political organizations, labor unions and Chambers of Commerce are deductible up to 3/4 of 1% of one's net annual income when made directly by the taxpayer, as well as life and disability insurance premiums and interest paid on loans to legally established banking institutions in the country, upon presentation of vouchers to justify such payments, provided the beneficiaries have no family ties with the donors.

Stock dividends and income from securities of the Dominican Government are exempt from tax provided such income is not derived from mortgage or lien; term deposits of 5 years or more in Government banks or Housing Savings and Loan Institutions, are exempt from tax up to 5% of the total net income during a fiscal period; such portion of the net profits that individuals or legal entities reinvest in the development of agricultural, cattle raising, industrial or social, cultural and educational activities are exempt subject to the approval of the Secretary of State and Finance. This exemption, however, is limited to 40% of the taxpayer's total net income, or m$n 75,000 per year, whichever is less.

Regarding the extension of time limit for filing declaration and payment of the tax, which now allows for two 30-day extensions upon request, the law now authorizes a final period of up to 120 days, in exceptional cases, provided the taxpayer does not have any fiscal obligations nor any other obligations pending under the law. If he does, the tax owing will become subject additionally, to a monthly interest charge of 2%.

The foregoing provisions and increased tax rates are in line with views expressed at the special conference on fiscal policy for economic development of Latin America held in Santiago, Chile in December 1962 under the auspices of the Organization of American States (OAS), the Inter-American Development Bank (IBD), and the Economic Commission for Latin America (ECLA). The conference agreed that there was need to reform tax laws, to demand more from those who have most, to punish tax evasion severely and to redistribute the national income to benefit those who are most in need.

Source: *International Commerce*, June 8, 1964.

FRANCE

BIBLIOGRAPHY

Comment fonder une entreprise en France, Série «Ce qu'il vous faut savoir», COLOMES M., Paris, Delmas & Cie., 1964.

Cet ouvrage se propose, de façon essentiellement pratique, d'indiquer le droit et les modalités de l'établissement des entreprises et des capitaux étrangers en France et de présenter au lecteur français, comme au lecteur étranger, une vue d'ensemble du droit des affaires en France, lui permettant d'apporter des solutions aux problèmes généraux que pose son établissement dans la France.

Principal taxes and the taxation of foreign enterprises in France are summarized in this publication as long as this information may be helpful to the entrepreneur who intends to establish an enterprise in France.

Die Mehrwertsteuer in Frankreich, FRAPCAUCE M., Bonn. Wilhelm Stollfuss Verlag, 1964, pp. 63.

Brochure concerning itself with the French tax on added value. It is a German translation of the speech delivered by the author for the "Instituto per l'Economia Europea" in Rome.

Memento Pratique du Contribuable 1964, Edition F. Lefebvre; 15, Rue Viète Paris 17ème, pp. 800.

Cet ouvrage constitue un «CONDENSE» 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 Memento est conçu *dans un esprit essentiellement pratique.* Il ne s'agit ni d'un ouvrage de doctrine, ni d'un «cours» de législation fiscale, mais d'un *instrument de travail et de contrôle* qui s'adresse non seulement aux praticiens, mais encore aux chefs d'entreprises, et d'une manière plus générale, à tous les contribuables. Bien entendu, il tient compte de tous les testes récents, y compris ceux concernant la fiscalité immobilière et la réforme du contentieux fiscal.

En même temps qu'un exposé très clair des règles d'assiette et de paiement des divers impôts et taxes (dètermination de la base d'imposition, déclarations, etc. . .), il donne tous les renseignements chiffrés nécessaires: taux, tarifs, abattements, déductions, indices, coefficients, 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 fiscales, modèles de réclamations, évaluation des frais d'automobile, taux effectifs des taxes sur le chiffre d'affaires, régime fiscal des dirigeants de sociétés, tarifs des principaux droits d'enregistrement (et plus particulièrement des droits applicables aux sociétés, aux ventes d'immeubles et aux successions), tarif des droits de timbre, 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 ET UN SYSTÈME DE NUMÉROTAGE TRÈS PRATIQUE PERMETTENT DE TROUVER IMMÉDIATEMENT LE RENSEIGNEMENT RECHERCHE.

This French language publication is a digest of all tax regulations (direct taxes, turn-over taxes, singles taxes, registration duties, indirect taxes).

GERMANY

BIBLIOGRAPHY

Einkommensteuergesetz, Band II, BLÜMLICH, DR. W. und DR. L. FALK, unter Mitwirkung von W. Steinbring; Verlag Franz Vahlen GmbH., Berlin 45, Willdenowstrasse 6, 1964, 9. Auflage, pp. 1235.

Analysis of the Income Tax Act is continued in this second volume (for a review of Vol. I see the Bulletin, vol 5, p. 189-190). The paragraphs of the Income Tax Act discussed in this volume (§§ 13-54) pertain to sources of taxable income, the tax assessment, the rates payable, deductions, and the taxation of non-resident individuals.

Explanatory comments follow each section of the law. Furthermore, a "keyword" index makes this volume an appropriate instantaneous reference service.

ISRAEL

TAX NEWS

Israel and the European Economic Community (EEC) have concluded a 3-year agreement providing for temporary Common External Tariff (CXT) reductions of from 10% to 40% on about 20 items.

These reduced rates are also available to the U.S. under the most-favored-nation clause of the General Agreement on Tariffs and Trade (GATT).

Member states with rates higher than the reduced CXT will immediately align their rates on these items covering a wide range of goods including both agricultural and industrial items. Included are grapefruit; avocados; semi-finished, synthetic-fiber stockings; men's synthetic, textile outer wear; knitted baby wear; certain kinds of glass for hot houses; bicalcium phosphate with fluorine content; aluminium bands for venetian blinds; aluminum irrigation tubes; methylbromide for agricultural use; furazolidon; aethoxy-chiniline, nitrofurazon; certain preparations of aethylened bromide; bathing suits; asbestos tubes; and containers.

Some member state reductions will also be made on the basis of current CXT rates for items under 7 other tariff headings, including oranges; dried tomatoes; certain fresh, cut up and dried vegetables; citrus fruit juices; and asbestos yarn.

Israel's exports to the EEC of the items covered by the agreement have reportedly been running between £17-18 million annually.

Source: *International Commerce*, June 8, 1964.

III

TREATIES

JAPAN-NEW ZEALAND

CONVENTION BETWEEN JAPAN AND NEW ZEALAND FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PRERENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

The Government of Japan and the Government of New Zealand,

Desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income,

Have agreed as follows:

ARTICLE I

(1) The taxes which are the subject of the present Convention are—

(a) In Japan:

The income tax and the corporation tax.

(b) In New Zealand:

The income tax and the excess retention tax.

(2) The present Convention shall also apply to any other taxes on income or profit which are of a substantially similar character to those referred to in the preceding paragraph and which may be imposed by either Contracting State after the date of signature of the present Convention

ARTICLE II

(1) In the present Convention, unless the context otherwise requires:

(a) The term "Japan", when used in a geographical sense, means all the territory in which the laws relating to Japanese tax are enforced;

(b) The term "New Zealand", when used in a geographical sense, means the metropolitan territory of New Zealand (including the outlying islands) and exclude the Cook Islands (including Niue);

(c) The terms "one of the Contracting States" and "the other Contracting State" mean Japan or New Zealand, as the context requires:

(d) The term "Japanese tax" means tax imposed by Japan being tax to which the present Convention applies by virtue of Article I; and the term "New Zealand tax" means tax imposed by New Zealand being tax to which the present Convention applies by virtue of Article I;

(e) The term "tax" means Japanese tax or New Zealand tax, as the context requires;

(f) The term "Japanese corporation" means any corporation or other association having juridical personality or any association without juridical personality which has its head or main office in Japan and the business of which is not managed and controlled in New Zealand; and the term "New Zealand corporation" means any company the business of which is managed and controlled in New Zealand and which does not have its head or main office in Japan;

(g) The terms "corporation of one of the Contracting States" and "corporation of the other Contracting State" mean a Japanese corporation or a New Zealand corporation, as the context requires;

(h) The term "resident of Japan" means any individual who is resident in Japan for the purposes of Japanese tax and not resident in New Zealand for the purposes of New Zealand tax and any Japanese corporation; and the term "resident of New Zealand" means any person other than a company who is resident in New Zealand for the purposes of New Zealand tax and not resident in Japan for the purposes of Japanese tax and any New Zealand corporation;

(i) The terms "resident of one of the Contracting States" and "resident of the other Contracting State" mean a resident of Japan or a resident of New Zealand, as the context requires;

(j) The term "Japanese enterprise" means an industrial or commercial enterprise or undertaking carried on by a resident of Japan; and the term "New Zealand enterprise" means an industrial or commercial enterprise or undertaking carried on by a resident of New Zealand;

(k) The terms "enterprise of one of the Contracting States" and "enterprise of the other Contracting State" mean a Japanese enterprise or a New Zealand enterprise, as the context requires;

(l) The term "industrial or commercial enterprise or undertaking" includes an enterprise or undertaking engaged in mining, agricultural, fishing, pastoral or forestry activities, or in the business of banking, insurance, life insurance or dealing in investments, and the term "industrial or commercial profits" includes profits from such activities or business but does not include income in the form of dividends, interest, rents, royalties, fees for technical services, management charges, remuneration for personal services or income arising from, or in relation to, contracts or obligations to provide the services of public entertainers such as stage, motion picture, radio or television artists, musicians and athletes;

(m) (i) The term "permanent establishment" means a fixed place of business

in which the business of the enterprise is wholly or partly carried on;

(ii) A permanent establishment shall include especially:

(aa) a place of management;

(bb) a branch;

(cc) an office;

(dd) a factory;

(ee) a workshop;

(ff) a warehouse;

(gg) a mine, quarry or other place of natural resources subject to exploitation;

(hh) an agricultural, pastoral or forestry property;

(jj) a building site or construction or assembly project which exists for more than twelve months;

(iii) Where the business of an enterprise of one of the Contracting States is of a mobile nature the place where such business is being carried on in the other Contracting State shall be deemed to be a fixed place of business;

(iv) A person acting in one of the Contracting States for or on behalf of an enterprise of the other Contracting State shall be deemed to be a permanent establishment in the former Contracting State if—

(aa) the person has and habitually exercises in the former Contracting State a general authority to negotiate and conclude contracts on behalf of such enterprise, unless the activities of such person are limited to the purchase of goods or merchandise on behalf of such enterprise; or

(bb) the person habitually maintains in the former Contracting State a stock of goods or merchandise belonging to such enterprise from which such a person regularly fills orders on behalf of such enterprise; or

(cc) the person habitually secures orders in the former Contracting State, exclusively or almost exclusivelyk for the enterprise itself or for such enterprise and other enterprises which are controlled by it or have a controlling interest in it;

(v) (aa) An enterprise of one of the Contracting States shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business dealings in that other Contracting State through a bona fied broker or general commission agent or other agent of independent status acting in the ordinary course of his business as such;

(bb) The fact that an enterprise of one of the Contracting States

maintains in the other Contracting State a fixed place of business solely for the purpose of purchase, storage or delivery of goods or merchandise, or for collecting information shall not of itself constitute that fixed place of business a permanent establishment of the enterprise;

(cc) The fact that a corporation of one of the Contracting States has a subsidiary corporation which is a carporation of the other Contracting State or which carries on a trade or business in that other Contracting State (whether through a permanent establishment or otherwise) shall not of itself constitute that subsidiary corporation a permanent establishment of its parent corporation;

(vi) Where an enterprise of one of the Contracting States sells to a resident of the other Contracting State goods manufactured, assembled, processed, packed or distributed in the other Contracting State by an industrial or commercial enterprise or undertaking for, or at or to the order of, that first mentioned enterprise and that first mentioned enterprise participates in the management, control or capital of that other enterprise or undertaking, then, for the purpose of the present Convention, that first mentioned enterprise shall be deemed to have a permanent establishment in the other Contracting State and to be engaged in trade or business in the other Contracting State through that permanent establishment;

(n) The term "competent authorities" means, in the case of Japan, the Minister of Finance or his authorised representative; and, in the case of New Zealand, the Commissioner of Inland Revenue or his authorised representative;

(o) Words in the singular include the plural and words in the plural include the singular.

(2) In the application of the provisions of the present Convention by either Contracting State any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of that Contracting State relating to the taxes which are the subject of the present Convention.

ARTICLE III

(1) (a) The industrial or commercial profits (excluding profits derived from the operation of ships or aircraft) of a New Zealand enterprise shall not be subject to Japanese tax unless the enterprise carries on a trade or business in Japan through a permanent establishment situated therein. If it carries on a trade or business as aforesaid, tax may be imposed on those profits

by Japan, but only on so much of them as is attributable to that permanent establishment.

(b) The industrial or commercial profits (excluding profits derived from the operation of ships or aircraft) of a Japanese enterprise shall not be subject to New Zealand tax unless the enterprise carries on a trade or business in New Zealand through a permanent establishment situated therein. If it carries on a trade or business as aforesaid, tax may be imposed on those profits by New Zealand, but only on so much of them as is attributable to that permanent establishment.

(c) Nothing in subparagraphs (a) and (b) of this paragraph shall affect any provisions of the law of either Contracting State regarding the taxation of income from the business of renting motion picture films or of insurance.

(2) (a) Where an enterprise of one of the Contracting States carries on a trade or business in the other Contracting State through a permanent establishment situated therein, there shall be attributed to that permanent establishment the industrial or commercial profits which it might be expected to derive in that other Contracting State if it were an independent enterprise engaged in the same or similar activities and its dealings with the enterprise of which it is a permanent establishment were dealings at arm's length with that enterprise.

(b) If the information available to the taxation authority concerned is inadequate to determine the profits to be attributed to the permanent establishment, nothing in subparagraph (a) of this paragraph shall affect the application of the law of either Contracting State in relation to the liability of the permant establishment to pay tax on an amount determined by the exercise of a discretion or the making of an estimate by the taxation authority of that Contracting State:

Provided that such discretion shall be exercised or such estimate shall be made, so far as the information available to the taxation authority permits, in accordance with the principle stated in the said subparagraph.

(3) In determining the industrial or commercial profits of a permanent establishment, there shall be allowed as deductions all expenses which would be deductible if the permanent establishment were an independent enterprise in so far as they are reasonably allocable to the permanent establishment, including executive and general administrative expenses so deductible, whether incurred in the Contracting State in which the permanent establishment is situated or elsewhere:

Provided that only such deductions shall be allowed as are of a substantially similar nature to deductions allowable under the law of the Contracting State in which the permanent establishment is situated.

(4) Where an enterprise of the Contracting States derives profits under contracts concluded in that Contracting State, from sales of goods or merchandise stocked in a warehouse in the other Contracting State for convenience of delivery and not for purpose of display, those profits shall not be attributed to a permanent establishment of the enterprise in that other Contracting State notwithstanding that the offers of purchase have been obtained by an agent of the enterprise in that other Contracting State and transmitted by him to the enterprise for acceptance.

(5) No portion of any profits derived by an enterprise of one of the Contracting States shall be attributed to a permanent establishment situated in the other Contracting State by reason of the mere purchase of goods or mechandise dise within that other Contracting State by the enterprise.

ARTICLE IV

(1) Where:

(a) an enterprise of one of the Contracting States participates directly or indirectly in the managerial or financial control of an enterprise of the other Contracting State, or

(b) the same individuals or corporations participate directly or indirectly in the managerial or financial control of an enterprise of one of the Contracting States and an enterprise of the other Contracting State,

and in either case, conditions are made or imposed between the two enterprises, in their commercial or financial relations, which differ from those which would be made between independent enterprises dealing at arm's length with one another, then any profits which would but for those conditions have accrued to one of the enterprises but by reason of those conditions have not so accrued may be included in the profits of that enterprise and taxed accordingly.

(2) Profits included in the profits of an enterprise of one of the Contracting States under paragraph (1) of this Article shall be deemed to be income derived from sources in that Contracting State and shall be taxed accordingly.

(3) If the information available to the taxation authority concerned is inadequate to determine, for the purposes of paragraph (1) of this Article, the profits which might be expected to accrue to an enterprise, nothing in the said paragraph shall affect the application of the law of either Contracting State in relation to the liability of that enterprise to pay tax on an amount determined by the exercise of a discretion or the making of an estimate by the taxation authority of that Contracting State:

Provided that such discretion shall be exercised or such estimate shall be made, so far as the information available to the taxation authority permits, in accordance with the principle stated in the said paragraph.

ARTICLE V

(1) The profits which an enterprise of one of the Contracting States derives from the operation of aircraft shall be exempt from tax of the other Contracting State unless the aircraft are operated wholly or mainly between places within that other Contracting State.

(2) The amount of tax imposed by one of the Contracting States on profits which an enterprise of the other Contracting State derives from the operation of ships shall be reduced by an amount equal to 50% thereof unless the ships ships are operated wholly or mainly between places with the former Contracting State.

ARTICLE VI

(1) The rate of tax imposed by one of the Contracting States on dividends derived from sources within that Contracting State by a resident of the other Contracting State shall not exceed 15 % unless such dividends arise in connection with a trade or business carried on by that resident through a permanent establishment situated in the former Contracting State.

(2) Dividends paid by a corporation of one of the Contracting States shall be treated as income from sources within that Contracting State.

ARTICLE VII

Income of whatever nature derived from real property within one of the Contracting States by a resident of the other Contracting State and any royalty or other amount paid in respect of the operation of a mine or quarry or of the extraction or removal of timber or other natural resources within one of the Contracting States to a resident of the other Contracting State shall be subject to tax in accordance with the laws of the Contracting State in which the real property, mine, quarry, standing timber or other natural resources, as the case may be, are situated.

ARTICLE VIII

(1) (a) Remuneration (other than pensions) paid by the Government of Japan to any individual in respect of services rendered to that Government in the discharge of governmental functions shall be exempt from New Zealand tax, if the individual is not resident in New Zealand or is resident in New Zealand solely for the purpose of rendering those services.

(b) Remuneration (other than pensions) paid by the Government of New Zealand to any individual in respect of services rendered to that Government in the discharge of governmental functions shall be exempt from Japanese tax, if the individual is not a national of Japan or is not admitted to Japan for permanent residence therein.

(1) The provisions of paragraph (1) of this Article shall not apply to payments in respect of services rendered in connection with any trade or business carried on by either of the Contracting States for purposes of profits.

ARTICLE IX

(1) (a) Pensions and other similar remuneration derived from sources within Japan by an individual who is resident in New Zealand and subject to New Zealand tax in respect thereof shall be exempt from Japanese tax.

(b) The provisions of subparagraph (a) of this paragraph shall not apply to pensions or other similar remuneration paid to any individual in respect of services rendered to the Government of Japan in the discharge of governmental functions and such pension or other similar remuneration shall be exempt from New Zealand tax.

(1) Pensions and other similar remuneration derived from sources within New Zealand by an individual who is resident in Japan and subject to Japanese tax in respect thereof shall be exempt from New Zealand tax.

ARTICLE X

(1) An individual who is a resident of one of the Contracting States shall be exempt from tax of the other Contracting State on remuneration for personal (including professional) services performed within that other Contracting State in any taxable or income year if—

(a) he is present within that other Contracting State for a period or periods not exceeding in the aggregate 183 days during that year, and

(b) the services are performed for or on behalf of a resident of the former Contracting State, and

(c) the remuneration or other income is subject to tax in the Contracting State in which that individual is resident.

(2) The provisions of paragraph (1) of this Article shall not apply to the profits or remuneration of public entertainers such as stage, motion picture, radio or television artists, musicians and athletes.

ARTICLE XI

A professor or teacher from one of the Contracting States who visits the other Contracting State for a period not exceeding two years for the purpose of teaching at a university or similar establishment for higher education in that other Contracting State, shall be exempt from tax of that other Contracting State in respect of remuneration for that teaching.

ARTICLE XII

A student or business or trade apprentice from one of the Contracting States, who is receiving full-time education or training in the other Contracting State, shall be exempt from tax in that other Contracting State on payments made to him by a resident of the former Contracting State for the purposes of his maintenance, education or training.

ARTICLE XIII

(1) Subject to such provisions of the laws of New Zealand which may from time to time be in force relating to the allowance as a credit against New Zealand tax payable in any country other than New Zealand, Japanese tax payable under the laws of Japan and in accordance with the present Convention, whether directly or by deduction, in respect of income from sources within Japan shall be allowed as a credit against New Zealand tax payable in respect of that income.

(2) Subject to such provisions of the laws of Japan which may from time to time be in force relating to the allowance as a credit against Japanese tax of tax payable in any country other than Japan, New Zealand tax payable under the laws of New Zealand and in accordance with the present Convention, whether directly or by deduction, in respect of income from sources within New Zealand shall be allowed as a credit against Japanese tax payable in respect of that income.

(3) For the purposes of paragraphs (1) and (2) of this Article, profits or remuneration for personal (including professional) services performed in one of the the Contracting States shall be deemed to be income from sources within that Contracting State, and the services of an individual whose services are wholly or mainly performed in ships or aircraft operated by a resident of one of the Contracting States shall be deemed to be performed in that Contracting State, unless the ships or aircraft are operated wholly or mainly between places within the other Contracting State.

ARTICLE XIV

The competent authorities of both Contracting States shall exchange such information available under their respective tax laws in the normal course of administration as is necessary for carrying out the provisions of the present Convention or for the prevention of fraud or for the administration of statutory provisions against avoidance of the taxes. Any information so exchanged shall be treated as secret and shall not be disclosed to any person other than those, including a court or reviewing authority, concerned with the assessment and collection of the tax or the determination of appeal in relation thereto. No information shall be ex-

changed which discloses any trade, business, industrial or professional secret or any trade process.

ARTICLE XV

Any taxpayer, who shows proof that the action of the taxation authorities of either Contracting State has resulted or will result in double taxation contrary to the provisions of the present Convention, may lodge a claim with the competent authorities of the Contrracting State of which that taxpayer is a resident. Should the claim be deemed justified, such competent authorities shall endeavour to come to an agreement with the competent authorities of the other Contracting State with a view to avoidance of the double taxation in question.

ARTICLE XVI

Should any difficulty or doubt arise as to the interpretation or application of the present Convention, the competent authorities of the Contracting States may settle the question by mutual agreement. It is understood, however, that the foregoing provision shall not be construed to preclude the Contracting States from settling by negotiation through diplomatic channels any dispute arising under the present Convention.

ARTICLE XVII

(1) The provisions of the present Convention shall not be construed to deny or affect in any manner the right of diplomatic and consular officers to other or additional exemptions now enjoyed or which may hereafter be granted to such officers.

(2) The provisions of the present Convention shall not be construed to restrict in any manner any exemption, deduction, credit or other allowance now or hereafter accorded by the laws of one of the Contracting States in determining the tax of that Contracting State.

(3) The competent authorities of either Contracting State may prescribe regulations necessary to interpret and carry out the provisions of the present Convention and may communicate with each other directly for the purpose of giving effect to the provisions of the present Convention.

ARTICLE XVIII

(1) Individuals who are residents of Japan shall be entitled to the same personal allowances, reliefs and reductions for the purposes of New Zealand tax as New Zealand citizens not resident in New Zealand.

(2) Individuals who are residents of New Zealand shall be entitled to the same personal allowances, reliefs and reductions for the purposes of Japanese tax as Japanese nationals not resident in Japan.

ARTICLE XIX

(1) The present Convention shall be ratified by the Contracting States and the instruments of ratification shall be exchanged at Tokyo as soon as possible.

(2) The present Convention shall come into force on the date of exchange of instruments of ratification and shall have effect—

(a) In Japan:

As regards income derived during the taxable years beginning on or after the first day of January in the calendar year in which the present Convention comes into force.

(b) In New Zealand:

As regards income derived during the income years beginning on or after the first day of April in the calendar year in which the present Convention comes into force.

(3) At any time after the expiration of a period of three years from the date of coming into force of the present Convention either Contracting State may give to the other Contracting State notice of its desire to review the terms of the Convention. In such case the two Contracting States shall hold the review requested; this shall take place at such time and place as may be convenient to the Contracting States but not later than six months from the date on which the said notice is received. The foregoing provisions shall not be deemed to prevent the Contracting States from entering into negotiations at any time during the period of three years from the date of coming into force of the present Convention on any amendment to the Convention which may become desirable before the expiration of such period.

(4) In any year after the expriration of a period of three years from the date of coming into force of the present Convention either Contracting State may give to the other Contracting State notice of intention to terminate the Convention. Such notice must, however, be transmitted to the other Contracting State on or before the thirtieth day of June in the year in which it is given and in such event the present Convention shall cease to be effective—

(a) In Japan:

As regards income derived during the taxable years beginning on or after the first day of January in the calendar year next following that in which the notice is given.

(b) In New Zealand:

As regards income derived during the income years beginning on or after the first day of April in the calendar year next following that in which the notice is given.

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INTERNATIONAL BUREAU OF FISCAL DOCUMENTATION

HISTORY

Since its establishment in 1938, the International Bureau of Fiscal Documentation has served as an independent source of tax information and advice. After World War II its functions were broadened beyond mere simple fiscal documentation and assumed the character of supplying factual data on the tax systems of countries around the world in response to requests from various governmental and business organisations.

In 1946, the Bureau began publication of the *Bulletin for International Fiscal Documentation,* the official organ of the International Fiscal Association. This publication has been supplemented by various special publications. In 1961, the Bureau published the first issue of *European Taxation,* a fortnightly English language review of tax developments on the European Continent, in the United Kingdom and in Ireland, followed in 1963 by two loose-leaf services, *Supplementary Service to European Taxation* and *The Taxation of Patent Royalties, Dividends and Interest in Europe.* During that time span the Bureau also published the Germany original of the well-known book by Dr. Albert J. Rädler about taxation in the common market countries. The Bureau continuously assisted in translating and preparing tax materials for other publications. Additionally, its library was greatly expanded and now contains well over 7000 volumes on national and international tax matters, as well as more than 250 selected periodicals; many visiting researchers make use of these library facilities.

GOALS

The overriding goal of the Bureau is to serve the International community by collecting, evaluating and disseminating tax data in a manner which combines scientific objectivity with practical realism.

Organization

The Bureau is a public non-profit foundation established under Dutch law. Its policies are determined by a "Curatorium", or board of trustees, composed of outstanding representatives of the government, business and academic communities in various countries. A managing director is responsible for carrying out the goals articulated by the Curatorium.

The Bureau is separated into four divisions: Library and Documentation, which is responsible for acquisition and maintenance of tax materials; International Tax Service, which prepares reports for governmental, business and scholarly purposes; Publications Department, which is responsible for the whole gamut of the Bureau's publications; and the Administrative arm, which plans and coordinates Bureau activities.

Correspondents

Apart from its own Associates, who represent several nationalities, the Bureau avails itself of the coopeative services of a large number of expert correspondents throughout the world.

The program

1. *Training*

The Bureau seeks to prepare young lawyers and economists to meet the growing demand for international tax experts and offers to young post-graduates from developed and developing countries the opportunity to work with the Bureau.

2. *Research*

The Bureau is focusing its research efforts upon a significant contemporary problem—the relationship between capital exporting nations and developing countries. Other important research projects include studies of the tax aspects of economic integration and of the influence of tax incentives on economic growth.

3. *Education*

The Bureau seeks to stimulate, and participate in, seminars and discussion groups, lectures and publications.

4. *Library and Documentation*

The Bureau's program of cataloguing and completing its set of materials will be continued in the framework of its library facilities which were much improved as a result of the move in 1963 to new quarters in an old city gate of Amsterdam.

5. *Reports*

The Bureau prepares reports containing factual data and legal appraisals relating to countries other than the country of residence of the organization or individual who requests a report.

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THE TAXATION OF PATENT ROYALTIES, DIVIDENDS, INTEREST IN EUROPE

This new publication is a looseleaf service which gives every tax (with basis and rates) levied on patent royalties, dividends and interest as each type of income flows from one European country to another and to the United States and Canada.
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Liability, basis and rate of income taxes, withholding taxes, business tax, net worth tax, turnover tax, stamp tax, local tax as applied to patent royalties, dividends and interest.

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I

UNITED KINGDOM

DOUBLE TAXATION WITHIN THE COMMONWEALTH

by

E.B. NORTCLIFFE*

If private capital and enterprise are to play their part in Commonwealth economic development, effective steps must be taken to avoid double taxation and discriminatory taxation in relation to income flowing from one Commonwealth country to another.

The United Kingdom has double taxation agreements with most countries of the Commonwealth, with the notable exception of India. Many of these agreements are now 15-18 years old and are no longer ideally adapted to the circumstances of the time. Bilateral agreements between countries other than the United Kingdom are few in number and even less appropriate to current conditions than those to which the United Kingdom is a party. In consequence, taxation is becoming an increasingly serious obstacle to the free movement of capital and know-how within the Commonwealth.

What is needed today is an approach to inter-Commonwealth taxation which reflects its new character. It is an association of nations best symbolised by a lattice rather than by a wheel with the United Kingdom as the hub. It is a friendly association for mutual benefit in which the negotiation of treaties need not, and should not, be based on making sure that one gives no more than one gets. If the problems are approached in this spirit, the way is open to the rapid evolution of a complete Commonwealth network of taxation agreements modelled upon the most liberal and effective techniques which have been developed in this field.

The principal flaws in all modern double taxation agreements are three in number. They do not entirely prevent tax discrimination against the non-resident taxpayer. They do not entirely prevent tax discrimination against income from another country. They do not entirely avoid double taxation. To a degree these faults are to be found even in the model convention produced last year by O.E.C.D. The reason is obvious. Every

* Overseas tax manager Unilever Ltd.

bilateral agreement is an attempt to reconcile the conflicting interests of the two parties; it ends by reflecting the extent to which reconciliation was successful. For the rest, the taxpayer must continue to put up with double or excessive taxation. In practice of course he does not put up with it; he directs his capital and skills elsewhere.

The Commonwealth can do better than this. The common interests and traditions of the members make it much easier to abandon doctrinaire attitudes. The will to co-operate makes it much more likely that a sacrifice at one point will yield its reward at another.

At its recent Congress in Trinidad, the Federation of Commonwealth Chambers of Commerce adopted a model form of Commonwealth double taxation agreement which has been circulated to the governments of all member countries.* This could be a useful starting point for a concerted effort to remove taxation as an obstacle to Commonwealth economic development.

The model agreement is distinguished by its thoroughness rather than its novelty. Effective remedies are provided for all the difficulties and anomalies inherent in international taxing practices. Conflicting views on which country should be regarded as the primary source of income are resolved. Care is taken to avoid the possibility of gross income being taxed by one country whilst the related expenses remain unrelieved in the other. The growing tendency to impose a cascade of taxes on company profits and dividends is contained. Tax sparing is treated as a two-way responsibility. When income has enjoyed special tax reliefs at its source, these reliefs should not be frustrated in the other country where the taxpayer is resident. Correspondingly, when a person or institution (such as a charity or approved pension fund) is exempt from tax at home, the exempt status should be recognised throughout the Commonwealth.

The Federation's model is an advance on most existing agreements and its adoption by all Commonwealth countries to regulate the tax treatment of income moving from one jurisdiction to another could bring life to many otherwise still-born development projects. The less developed members could look more confidently for private capital to the Commonwealth as a whole, instead of merely to the United Kingdom, and the export marketing of the products of their new industries would be marked-

* Copies of the report can be obtained from the Federation of Commonwealth Chambers of Commerce, 69 Cannon Street, London, E.C.4

ly encouraged by the facility to set up permanent establishments in other Commonwealth countries without tax disadvantages.

All the tax impediments to economic development cannot of course be removed by mere agreement. The excessive weight of tax on private enterprise within some Commonwealth countries is a bar to vigorous capital formation and investment. Many are in the desperate revenue plight of regarding a high rate of tax on next to nothing now, as better than a low rate to ensure a progressively larger base for taxation in the future. This is a knot which a comprehensive double taxation agreement network along the lines recommended by the Federation would help to cut.

There is a precedent for the Commonwealth taking the lead in this sphere. Dominion income tax relief was operating successfully long before general agreements for the avoidance of double taxation had moved off the visionaries' desks into Finance Ministers' in-trays. A major step forward by the Commonwealth today may well mean that tomorrow the rest of the world will find it possible to follow more liberal and more rational policies towards the international deployment of capital and enterprise.

For the Model Commonwealth Taxation Agreement see section III of this Bulletin.

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ENGLEWOOD CLIFFS, NEW JERSEY

UNITED STATES

U.S. TAXATION OF FOREIGN-SOURCE CORPORATE INCOME

by

LEO S. ULLMAN*

Prior to 1962, a U.S. shareholder, corporate or individual, was not taxed on foreign-source corporate income until such income was distributed.

Thus, a foreign corporation could accumulate all profits abroad without any liability to U.S. income taxes. Such profits could then be returned to the U.S. shareholder at capital gain rates if the foreign corporation were sold or liquidated. Sections 951-972 of the Internal Revenue Code were enacted in 1962 to prevent abuses of this tax deferral privilege in certain foreign 'tax haven' operations. They were also intended to aid the balance of payments difficulties experienced by the United States since the latter 1950's.[1] The deferral privilege has been partially restricted so that certain categories of foreign-source corporate income are now taxed, whether or not remitted to the U.S. shareholder. In general, the statutes provide that a 'United States shareholder' of a 'controlled foreign corporation' is required to include his pro-rata share of certain types of 'Subpart F' income of the controlled foreign corporation in his gross income, whether actually distributed or not.

a *U.S. shareholder*[2]

A 'United States shareholder' is a United States citizen, resident, domestic partnership, corporation, trust or estate, which actually or constructively owns 10% or more of the outstanding voting stock of a 'controlled foreign corporation'.

Only those shareholders who own 10% of the voting stock of a controlled foreign corporation on the last day of the taxable year are taxed. Broad attribution rules have been provided to determine constructive ownership.

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1 The President's Tax Message as Presented to Committee on Ways and Means, House of Representatives, May 3, 1961.

2 Internal Revenue Code (hereafter referred to as I.R.C.) Section 951(b)

b *Controlled foreign corporations*[3]

A 'controlled foreign corporation' is defined as any corporation of which more than 50% of the voting power is owned, actually or constructively, by 'United States shareholders' on any day of the taxable year. The foreign source income of a 50-50 joint venture will therefore not be subject to U.S. income taxes. Furthermore, even if a foreign corporation is 'controlled', shareholders who own less than 10% of the voting stock will not be taxed. The regulations concerning 'controlled foreign corporations appear to substantially exceed the terms of the statute. While the statute only refers to voting power, the Regulations are aimed at such elements of control as the power to elect a majority of the Board of Directors, to cast the tie-breaking vote in cases of deadlock, or, in the absence of a board, to appoint the chief executive officer. If the U.S. shareholders own less than 50% of the voting stock, but have the unqualified right to purchase majority control, or by agreement with other shareholders they in fact dictate how others will vote, the Regulations provide that the requisite voting power will be deemed to exist. Furthermore, the Treasury reserves the right to determine whether 50% is actually or constructively owned according to the facts of the particular case.

c *'Tainted' Income*

The United States shareholder of a controlled foreign corporation must include three types of income (tainted income) of the controlled foreign corporation in his gross income:

(i) 'Subpart F income';
(ii) previously included 'Subpart F income' withdrawn from investments in less-developed countries; and
(iii) increase in investments in certain U.S. property.[4]

'Subpart F income' consists of two types of income: income to a controlled foreign corporation from insurance of U.S. risks, and foreign base company income.[5]

Income from insurance of certain U.S. risks is taxed to end a special abuse of the deferral privilege by insurance companies seeking to avoid U.S. tax on underwriting gains.

3 I.R.C. 975(a)
4 I.R.C. 951(a)
5 I.R.C. 953(a)

Foreign base company income, the heart of the 1962 provisions relating to foreign source income, consists of the total of:
foreign base company sales income
foreign base company service income, and
foreign personal holding company income.

Only foreign base company sales income will be further discussed in this article.

Foreign base company service income is income derived by a controlled foreign corporation from technical, managerial, engineering or similar services rendered to a related person outside the country where the controlled foreign corporation is organized.[6]

Foreign personal holding company income is passive investment income, such as dividends, interest, rent and royalties received by a controlled foreign corporation from related persons.[7]

Of the two remaining types of 'tainted' income—increases in investments in U.S. property and previously excluded 'Subpart F income' withdrawn from less-developed countries—only the former will be mentioned here, since the latter will be further discussed in this article.

The increase in the amount of investment in certain U.S. property is measured for tax purposes as the increase in the amount of U.S. property held by the controlled foreign corporation from the beginning to the end of the taxable year.[8] This increase is considered to be in the nature of a constructive dividend to the U.S. shareholder.

1 Foreign Base Company Sales Income[9]

A United States shareholder must include in his gross income his pro-rata share of income, whether in the form of profits, commissions, fees, or otherwise, derived by a controlled foreign corporation from the purchase from, or sale of personal property to, a related person, if such property was not manufactured nor sold for use in the country where the controlled foreign corporation is organized. These provisions were designed primarily to tax the income of a sales subsidiary, separated from the manufacturing activities of a related corporation primarily to obtain a lower rate of

6 I.R.C. 954(e)
7 I.R.C. 954(c)
8 I.R.C. 956
9 I.R.C. 954(d)

tax on the sales income.

The concept of foreign base company sales income includes several elements which are new to the Internal Revenue Code.

The requirement of a sale to a 'related person' is crucial to the new provisions. A related person in this context is

(1) an individual, partnership, trust or estate which controls the controlled foreign corporation;
(2) a corporation which either controls, or is controlled by the controlled foreign corporation; or
(3) a corporation which is controlled by the same person(s) who control the controlled foreign corporation.[10]

Again, broad attribution rules apply to determine stock ownership.

Income derived from the sale or purchase of personal property from or to a related person is only includible in gross income as foreign base company income if the property is not manufactured, produced, grown, or extracted in the country where the controlled foreign corporation is organized.

If the property is sold to, or purchased by, a related person for use, consumption, or disposition in the country where the controlled foreign corporation is organized, the income is not foreign base company sales income and hence not included in gross income. The test is one of ultimate destination rather than passage of title.

The determination of the ultimate destination may prove to be extremely difficult. The Regulations, however, establish several presumptions to facilitate the task. If property is sold to a non-related person, it is presumed that the product will be used, consumed or disposed of in the country to which delivery is made. If the sales are to a related person, the use, consumption, or disposition will be presumed to take place outside the country where the controlled foreign corporation is organized.

If the controlled foreign corporation makes 'substantial use' of tangible personal property prior to the sale to a non-related shareholder, the Regulations provide that the income from such sale will not be 'tainted'.[11]

10 I.R.C. 954(d)(3)
11 Regs. 1.954

Income of the controlled foreign corporation will also not be 'tainted' if it manufactures the goods or transforms the goods purchased to such an extent as to produce 'new goods'. The Regulations provide two tests: the qualitative 'substantial transformation' test and the quantitative 'value-added' test. The first test depends largely on the nature of the product. The second test is deemed to be met if the cost to convert the product (other than labelling, packaging, etc.) is equal to 20% or more of the total cost of the product. A lesser percentage will be allowed, however, if the facts and circumstances justify an exemption.

2 Branch Income

The earnings of a 'branch or similar establishment' of a controlled foreign corporation are treated as earnings of separate controlled foreign corporations deemed to be incorporated where the branch is 'located' for purposes of determining foreign base company sales income, if it has 'substantially the same effect' as if it were a wholly-owned subsidiary.[12]

The Regulations construe 'substantially the same effect' to be at least a 5 percentage-point lesser tax rate, or an effective rate less than 90% of the rate which would apply if the earnings were taxed where the controlled foreign corporation is located. If the remainder of the corporation is taxed at a rate of at least 5 percentage points less, or less than 90% of the rate that would apply in the country where the branch is located, the reverse rule will apply. The Regulations limit the former rule to purchasing or selling branches, while the latter is applied only to manufacturing branches.

d *Special Rules and Exclusions*

1 Qualified Investments in Less-Developed Countries[13]

Investments in certain less-developed countries, designated by Presidential order, will give rise to a measure of tax deferral. Increases in qualified investments in less-developed countries, which have been held for six months, may reduce foreign base company income. Thus, dividends and interest and gains from sale or exchange of qualified investments may be excluded from foreign base company income to the extent they represent an increase in qualified investments. If there is a decrease in qualified investments, however, the amounts previously excluded will be added to

12 I.R.C. 954(d) (2)

13 I.R.C. 955

the current income of the controlled foreign corporation to the extent of the decrease.

'Qualified investments' by a controlled foreign corporation in a less-developed country include:

(*a*) stock of a less-developed country corporation, if the controlled foreign corporation owns 10% or more of the voting stock;

(*b*) obligations of a less-developed country corporation with a maturity of one year or more at the time of purchase, if the controlled foreign corporation owns 10% or more of the voting stock;

(*c*) obligations of a less-developed country.

A 'less-developed country corporation' is defined as a foreign corporation which:

(*a*) is engaged in the active conduct of a trade or business;

(*b*) derives at least 80% of its gross income from sources in less-developed countries;

(*c*) has 80% of its gross assets located in less-developed countries.[14]

The methods of computing the various percentage requirements and the amount of increase or decrease are further specified in the Regulations.

2 The '30-70' Rule[15]

If less than 30% of the gross income of a controlled foreign corporation is foreign base company income, no part of its gross income will be treated as foreign base company income. If, however, more than 70% of its gross income is foreign base company income, the entire gross income will be treated as 'tainted' income. Exclusions for increases in qualified investments in less-developed countries and other deductions are not taken into account for the purpose of ascertaining these percentages.

3 Special Exemption[16]

The Secretary may exclude any income item of a controlled foreign corporation from foreign base company income if the effect was not such as to 'substantially reduce' taxes. The Regulations provide that the income items may be excluded if they bore a tax of 90% of, or not more than 5% less than, those taxes which would have been paid if the corpora-

14 I.R.C. 951 (a) (1) (A) (ii)
15 I.R.C. 954 (b) (3)
16 I.R.C. 954 (b) (4)

tion had been organized in the country of use, consumption or disposition of the property sold.

4 Minimum Distribution[17]

If a U.S. corporate shareholder receives a minimum distribution of the profits of a controlled foreign corporation, no Subpart F income of the controlled foreign corporation shall be included in the domestic corporation's gross income. The minimum distribution may be applied separately to each foreign subsidiary or on an average basis to a chain of foreign subsidiaries or all foreign subsidiaries.

The amount of earnings and profits which must be distributed in order to qualify as a minimum distribution is inversely proportional to the effective foreign tax rate. If, for example, the effective foreign tax rate is 22%, then the minimum distribution is 82% of earnings and profits. No distribution of earnings and profits is required if the effective foreign tax rate is 45% or more.

5 Shipping Income[18]

Income from the use, hiring, or leasing, of any aircraft or vessel for the transportation of persons or property between foreign ports or airports, or between U.S. and foreign ports and airports, is excluded from Subpart F income.

6 Export Trade Corporations[19]

A further limited exception to the tainted income provisions is provided for certain companies 'because of their function in promoting United States exports'. To qualify as an export trade corporation, the corporation must be a controlled foreign corporation which derived 90% of its gross income for the three-year period preceding the close of the taxable year from sources outside the United States. Furthermore, at least 75% of its gross income must be 'export trade income'. Export trade income is income from four types of transactions:

(*a*) sales of property manufactured in the U.S. to unrelated persons for use outside the U.S.;

17 I.R.C. 963
18 I.R.C. 995(c) (2)
19 I.R.C. 970-971

(*b*) income from services to unrelated persons with respect to the use of intangible property (patents, trademarks, copyrights, etc.);

(*c*) commissions, fees, rentals, or other compensation or income attributable to the use of export property by an unrelated person, or for services rendered to an unrelated person (equipment leasing);

(*d*) interest on debt instruments executed by unrelated persons in connection with payment for purchase of export property or with payment for certain services.

Qualification as an export trade corporation permits a reduction of Subpart F income for amounts reinvested in export trade assets (working capital, inventory, storage, facilities, etc.) but only to the extent of: (i) 1.5 times the export promotion expenses (salaries, rentals, depreciation, etc.); or (ii) 10% of gross receipts allocable to export trade income, whichever is less.

Final Remarks

The efforts of the U.S. tax authorities to extend their jurisdiction to foreign operations of U.S. enterprises have been viewed with much alarm. While the foreign income provisions have been largely designed to end flagrant 'tax haven' abuses many critics view these measures as merely a first step towards U.S. taxation of all foreign source income.

The impact of the new measures cannot even now be measured, but it seems reasonably clear that most U.S. firms operating abroad will be merely harassed by the new provisions. The substantial avoidance provisions in the Law may be easily availed of by most legitimate foreign operations.

These measures will continue to stir considerable controversy. They will not be justified in terms of balance of payments arguments on the basis of which they seem to have been carried through Congress. They may also cause immense problems on application.

III

TREATIES

DOUBLE TAXATION WITHIN THE COMMONWEALTH

Extract from the report of the 21st Congress of Commonwealth Chambers of Commerce —London, May 1962.

'26 Congress considers that one of the biggest obstacles to investment within the Commonwealth is the burden of taxation of income and profits, and of capital, and recommends that reciprocal arrangements should be made between governments with the object of removing over-lapping tax jurisdictions which result at the present time in a situation in which two or more taxing authorities levy tax on the same income, or capital, from the same person. Congress recognises that the Organisation for European Economic Co-operation and also the United Nation Organisation have done valuable work in devising standard methods of avoiding double taxation, but thinks that these methods are appropriate to highly industrialised countries and would not necessarily be appropriate to the Commonwealth which includes a number of less developed countries which are recipients of capital rather than providers of capital.

'27 Congress recommends that a small technical Committee should be set up by the Federation to study the advisability of the negotiation between Governments of the Commonwealth of a Convention on the single taxation of income. The principle of such a Convention should be to tax income only in the country to the jurisdiction of which it is allocated by the Convention. The Committee would report to the Council of the Federation.'

APPOINTMENT OF COMMITTEE

Pursuant to a resolution adopted by the Council of the Federation on the 28th June, 1962, the following special Taxation Committee was set up to consider the recommendations made by the 21st Congress.

Chairman: Sir Ralph Hone, K.C.M.G., K.B.E., M.C., T.D., Q.C.

Members: Mr. R.T. Esam.
Sir Clifford Gothard, O.B.E., J.P., B.SC., F.C.A.
Sir Percival Griffiths, K.B.E., C.I.E., I.C.S. (Rtd.).
Mr. H.J. Hinves.
Mr. E.B. Nortcliffe.

RESOLUTION OF THE EXECUTIVE COMMITTEE OF THE FEDERATION

On the 30th January, 1964, the Executive Committee of the Federation, acting as a matter of urgency on behalf of the Council, resolved that the Report of the Special Committee incorporating the Model Commonwealth Taxation Agreement and Commentary be submitted to Congress in April 1964 for adoption.

REPORT OF SPECIAL COMMITTEE ON DOUBLE TAXATION WITHIN THE COMMONWEALTH

At the Twenty-First Congress of the Federation held in 1962 Congress considered that one of the biggest obstacles to investment within the Commonwealth was the burden of taxation on income, profits and capital. It recommended that reciprocal arrangements should be made between Governments with the object of removing overlapping tax jurisdictions.

Congress recognised the work done by the Organisation for European Economic Co-operation and the United Nations Organisation but thought that methods appropriate to highly industrialised countries would not necessarily be appropriate to the Commonwealth as a whole.

Congress therefore recommended that a small technical Committee should be set up 'To study the advisability of the negotiation between Governments of the Commonwealth of a Convention on the single taxation of income. The principle of such a Convention should be to tax income only in the country to the jurisdiction of which it is allocated by the Convention.'

The Committee was to report to the Council of the Federation.

The Committee was subsequently established and met several times. In the course of its deliberations it reached the conclusion that the removal of fiscal obstacles to Commonwealth investment would have to be attempted by means other than a Convention based on the principle of single taxation of income.

In the view of the Committee the allocation of exclusive taxing rights over all the different classes of income is a highly controversial subject on which agreement between Governments, both inside and outside the Commonwealth, is improbable in the foreseeable future.

In the most important area, namely taxation of dividends and interest, it is not by any means certain that the major fiscal obstacle to investment is double taxation in the ordinary meaning of the term. Cases of dual taxation of dividends and interest involving the worst hardship could be resolved if investing countries were prepared to treat foreign income no less favourably than domestic income.

In a world in which all countries are rigidly committed to graduated taxation of the income of individuals, the principle of single taxation of income would require a tax-

payer to file a world income return in each country in which his taxable income arises. The administrative difficulties and inconvenience resulting from such a system would in the considered opinion of the Committee be greater than those currently experienced under the tax credit system.

In addition the Committee does not consider that many member countries of the Commonwealth would be prepared to enter into a Convention the principles of which differ materially from those governing their relationships with non-Commonwealth countries. Even if the support of some member countries were secured, the possibility of abuse inherent in the employment of radically different methods of avoiding double taxation, according to the source or destination of the income, presents most formidable problems of control.

As a result of the above conclusions, the Committee asked the Council if it could pursue its studies along lines outside its original terms of reference. In particular it recommended that Commonwealth countries should be encouraged to enter into bilateral agreements containing the more effective provisions for avoidance of double taxation which have been evolved in recent years especially by the Organisation for Economic Co-operation and Development.

The Committee said that particular attention would be paid to the removal of tax obstacles occasioned by investing countries employing taxing methods which, directly or indirectly, discriminate against Commonwealth investment compared with domestic investment. Also investing countries should be urged to take vigorous and effective action to avoid frustrating economic incentives built into the tax systems of Commonwealth countries in process of development.

In November 1963, the Council of the Federation authorised the Committee to continue its work along the lines it had suggested.

In the course of its subsequent discussions the Committee visualised the type of taxation agreement required to meet the needs of the Commonwealth. Such an agreement would comprise a Code aimed at eliminating all the direct tax obstacles to intra-Commonwealth trade, investment and use of specialist knowledge and skills.

The Code should contain not only the most effective provisions for avoidance of double taxation, but also rules which would ensure that member countries neither discriminated against external income from Commonwealth sources nor frustrated the economic incentives afforded by the tax systems of fellow members. In addition, it would be necessary to provide for reciprocal exemption of certain classes of income arising to such institutions as pension funds and charities.

The Committee now submits the attached Model Commonwealth Taxation Agreement. This contains footnotes indicating the purpose of those provisions which do not ordinarily appear in existing agreements. The model is designed as a basis for bilateral agreements between members of the Commonwealth. A number of provisions, which may be regarded as optional aim to prevent persons not resident in the Commonwealth from taking improper advantage of the provisions of the agreement. The Model Agreement is also accompanied by a Commentary.

H. RALPH HONE
Chairman.

6th January, 1964.

MODEL COMMONWEALTH TAXATION AGREEMENT

ARTICLE 1

PERSONAL SCOPE

This Agreement shall apply to any person who is a resident of one or both of the Contracting States, provided that relief shall not be given under this Agreement in relation to income in respect of which such person is subject to tax in a State outside the Commonwealth by reason of domicile, residence, citizenship, place of management or any other criterion of a similar nature.

NOTE.—The proviso aims to ensure that reliefs afforded by the Agreement do not operate to the advantage of any non-Commonwealth country.

ARTICLE 2

TAXES COVERED

1 This Agreement shall apply to taxes on income imposed on behalf of each Contracting State or of its political subdivisions or local authorities, irrespective of the manner in which they are levied.

2 The existing taxes to which the Agreement shall apply are in particular:

(*a*) In the case of State A ... ...

(*b*) In the case of State B ... ...

3 The Agreement shall also apply to any identical or substantially similar taxes which are subsequently imposed in addition to, or in place of, the existing taxes.

ARTICLE 3

GENERAL DEFINITIONS

1 In this Agreement, unless the context otherwise requires:

(*a*) the terms 'a Contracting State' and 'the other Contracting State' mean State A or State B as the context requires;

(*b*) the term 'person' comprises an individual, a company and any other body of persons;

(*c*) the term 'company' means any body corporate, or any entity, which is treated as a body corporate for tax purposes;

(*d*) the terms 'enterprise of a Contracting State' and 'enterprise of the other Contracting State' mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State.

2 As regards the application of the Agreement by a Contracting State any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of that Contracting State relating to the taxes which are the subject of the Agreement.

ARTICLE 4

RESIDENCE

1. For the purposes of this Agreement, the term 'resident of a Contracting State' means any person who, under the law of that State, is liable to taxation therein by reason of his domicile, residence, place of management or any other criterion of a similar nature.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then this case shall be determined in accordance with the following rules:

(*a*) He shall be deemed to be a resident of the Contracting State in which he has a permanent home available to him. If he has a permanent home available to him in both Contracting States, he shall be deemed to be a resident of the Contracting State with which his personal and economic relations are closest (centre of vital interests);

(*b*) If the Contracting State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either Contracting State, he shall be deemed to be a resident of the Contracting State in which he has an habitual abode;

(*c*) It he has an habitual abode in both Contracting States or in neither of them, he shall be deemed to be a resident of the Contracting State of which he is a national;

(*d*) If he is a national of both Contracting States or of neither of hem, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reasons of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident of the Contracting State in which its business is managed and controlled.

ARTICLE 5

PERMANENT ESTABLISHMENT

1 For the purpose of this Agreement, the term 'permanent establishment' means a fixed place of business in which the business of the enterprise is wholly or partly carried on.

2 The term 'permanent establisment' shall include especially:

(*a*) a place of management;

(*b*) a branch;

(*c*) an office;

(*d*) a factory;

(*e*) a workshop;

(*f*) a mine, quarry or other place of extraction of natural resources;

(*g*) a building site or construction or assembly project which exists for more than twelve months.

3 The term 'permanent establishment' shall not be deemed to include:

(*a*) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;

(*b*) the maintenance of a stock ot goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;

(*c*) the maintenance ot a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

(*d*) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or tor collecting information, for the enterprise;

(*e*) the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research or for similar activities which have a preparatory or auxiliary character, for the enterprise.

4 A person acting in a Contracting State on behalf of an enterprise of the other Contracting State—other than an agent of an independent status to whom paragraph 5 applies—shall be deemed to be a permanent establishment in the first-mentioned State if he has, and habitually exercises in that State, an authority to conclude contracts in the name of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise.

5 An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State through a broker, general commission agent or any other agent of an independent status, where such persons are acting in the ordinary course ot their business.

6 The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

ARTICLE 6

BUSINESS PROFITS

1 The profits or an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

2 Where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or

similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

3 In the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere.

4 No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

ARTICLE 7

ASSOCIATED ENTERPRISES

1 Where:

(*a*) an enterprise of one of the territories participates directly or indirectly in the management, control or capital of an enterprise of the other territory, or

(*b*) the same persons participate directly or indirectly in the management, control or capital of an enterprise of one of the territories and an enterprise of the other territory, and

(*c*) in either case conditions are made or imposed between the two enterprises, in their commercial or financial relations, which differ from those which would be made between independent enterprises,

then any profits which would but for those conditions have accrued to one of the enterprises but by reason of those conditions have not so accrued may be included in the profits of that enterprise and taxed accordingly.

2 The provisions of paragraph 1 shall not be applied by a Contracting State without the agreement of the other Contracting State whose duty it shall be to ensure that the operation of this Article does not give rise to double taxation.

NOTE.—Articles of this kind frequently give rise to double taxation. Paragraph 2 avoids this consequence, and ensures that the Article merely re-allocates taxing powers by agreement.

ARTICLE 8

SHIPPING AND AIR TRANSPORT

Notwithstanding the provisions of Articles 6 and 7, profits derived by a resident of one Contracting State from operating ships or aircraft shall be exempt from tax in the other Contracting State, unless the ship or aircraft is operated wholly or mainly between places within that other Contracting State.

ARTICLE 9

DIVIDENDS

1 Dividends paid by a company which is a resident of a Contracting State to a company which is a resident of the other Contracting State shall be exempt from any tax in the first-mentioned State which is chargeable on dividends in addition to the tax chargeable in respect of the profits or income of the company paying the dividend.

2 Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State (other than a company) may be taxed in the first mentioned State, but the tax so charged (in addition to the tax chargeable in respect of the profits or income of the company) shall not exceed 15 per cent. of the amount of the dividends. For this purpose 'the amount of the dividends' shall be taken to be the net amount payable without any deduction in respect of the tax so charged.

3 Notwithstanding the provisions of paragraph 2, 'dividends' which comprise an allotment of bonus shares of the same class, or a distribution of surplus in liquidation, shall be exempt from tax in the Contracting State of which the company paying the dividends is a resident.

4 The provisions of paragraph 2 shall not apply if the recipient of the dividends, being a resident of a Contracting State, has in the other Contracting State, of which the company paying the dividends is a resident, a permanent establishment with which the holding by virtue of which the dividends are paid is effectively connected. In such a case, Article 6 shall apply.

5 Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, such other State may not impose any tax on the dividends paid by the company to persons who are not residents of that other State, or subject the company's undistributed profits to a tax on undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State. Such State shall also refrain from imposing any tax on the profits of a company resident in the other State in lieu of tax on that company's dividends or by reference to the amount of profits remitted out of the State in which they arose.

NOTES:

(1) Paragraph 1, togehter with paragraph 3, aims to avoid all taxes on inter-company dividends. This follows the domestic practice of most Commonwealth countries.

(2) Paragraph 2 (which must be read with paragraph 2 of Article 22) places a ceiling on the amount of personal income tax which the source country may collect. It rests on the assumption that tax-sharing is appropriate in respect of dividends accruing to individuals.

(3) Paragraph 3 is a necessary complement to Article 12 under which capital gains from the alienation of shares are taxable (if at all) only in the shareholder's country of residence.

(4) The second sentence of paragraph 5 is necessary in view of the increasing tendency to avoid the obligation under the first sentence by other methods.

ARTICLE 10

INTEREST

1 Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in the Contracting State in which it arises, according to the law of that State, but the tax so charged shalll not exceed 10 per cent. of the amount of the interest.

2 The term 'interest' as used in this Article means income from Government securities, bonds or debentures, whether or not secured by mortgage and whether or not carrying a right to participate in profits, and debt-claims of every kind as well as all other income assimilated to income from money lent by the taxation law of the State in which the income arises.

3 The provisions of paragraph 1 shall not apply if the recipient of the interest, being a resident of a Contracting State, has in the other Contracting State in which the interest arises a permanent establishment with which the debt-claim from which the interest arises is effectively connected. In such a case, Article 6 shall apply.

4 Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment, then such interest shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

5 Where, owing to a special relationship between the payer and the recipient or between both of them and some other person, the amount of the interest paid, having regard to the debt claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the recipient in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of the Agreement.

NOTE.—This article is inserted provisionally. It may be considered sounder economic policy to allocate taxing rights over interest to the source country entirely, in which case the article will be omitted.

ARTICLE 11

ROYALTIES

1 Royalties arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable only in that other State.

2 The term 'royalties' as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films, any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience.

3 The provisions of paragraph 1 shall not apply if the recipient of the royalties, being a resident of a Contracting State, has in the other Contracting State in which the royalties arise a permanent establishment with which the right or property giving rise to the royalties is effectively connected. In such a case, Article 6 shall apply.

4 Where, owing to a special relationship between the payer and the recipient or between both of them and some other person, the amount of the royalties paid having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the recipient in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Agreement.

ARTICLE 12

CAPITAL GAINS

1 Gains from the alienation of real property may be taxed in the Contracting State in which such property is situated.

2 Gains from the alienation of personal property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of personal property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing professional services, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) or of such a fixed base, may be taxed in the other State.

3 Gains from the alienation of any property other than those mentioned in paragraphs 1 and 2, may be taxed only in the State of which the alienator is a resident.

ARTICLE 13

PROFESSIONAL SERVICES

Income derived by a resident of a Contracting State in respect of professional services or other independent activities of a similar character shall be taxable only in that State unless he has a fixed base regularly available to him in the other Contracting State for

the purpose of performing his activities. If he has such a fixed base, the income may be taxed in the other Contracting State but only so much of it as is attributable to that fixed base. The term 'professional services' includes, especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

ARTICLE 14

DEPENDENT PERSONAL SERVICES

1 Subject to the provisions of Articles 16 and 17, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2 Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

(*a*) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the fiscal year concerned, and

(*b*) the remuneration is paid by, or on behalf of an employer who is not a resident of the other State, and

(*c*) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

ARTICLE 15

ARTISTES AND ATHLETES

Nothwithstanding anything contained in Articles 13 and 14, income derived by public entertainers, such as theatre, motion picture, radio and television artistes, and musicians, and by athletes, from their personal activities as such may be taxed in the Contracting State in which these activities are exercised.

ARTICLE 16

PENSIONS

1 Any pension (other than a pension to which Article 7 applies) and any annuity, derived from sources within a Contracting State by an individual who is a resident of the other Contracting State, shall be exempt from tax in the first-mentioned State.

2 The term 'annuity' means a stated sum payable periodically at stated times, during life or during a specified or ascertainable period of time, under an obligation to make the payments in consideration of money paid.

ARTICLE 17

GOVERNMENTAL FUNCTIONS

1 Remuneration, including pensions, paid by, or out of funds created by, a Contracting State or a political subdivision or a local authority thereof to any individual in respect of services rendered to that State or subdivision or local authority thereof in the discharge of functions of a governmental nature may be taxed in that State.

2 The provisions of Articles 14 and 16 shall apply to remuneration or pensions in respect of services rendered in connection with any trade or business carried on by one of the Contracting States or a political subdivision or a local authority thereof.

ARTICLE 18

STUDENTS

Payments which a student or business apprentice who is or was formerly a resident of a Contracting State and who is present in the other Contracting State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that other State, provided that such payments are made to him from sources outside that other State.

ARTICLE 19

TEACHERS

The remuneration derived by a professor or teacher who is ordinarily resident in one of the territories, for teaching, during a period of temporary residence not exceeding two years, at a university, college, school or other education institution in the other territory, shall be exempt from tax in that other territory.

ARTICLE 20

ELIMINATION OF DOUBLE TAXATION

1 Subject to the provisions of the law of Contracting State A, regarding the allowance of a credit against State A tax of tax payable in a country outside State A, State B tax payable whether directly or by deduction in respect of income from sources within State B shall be allowed as a credit against any State A tax payable in respect of that income. Where such income is an ordinary dividend payable by a company resident in State B, the credit may take into account (in addition to any State B tax payable directly or by deduction from the dividend) the State B tax payable by the company in respect of its profits, and where it is a dividend paid on participating preference shares and representing both a dividend at the fixed rate to which the shares are entitled and an additional participation in profits, the State B tax so payable by the company shall likewise be taken into account in so far as the dividend exceeds the fixed rate.

2 In relation to income derived by a resident of State A from sources in State B, State A shall not impose any tax which is higher or more burdensome than, or additional to, the tax which would be imposed on similar income arising under similar conditions from sources in State A.

3 Nothwisthstanding paragraphs 1 and 2, where a company which is resident in State A derives a dividend from a company which is a resident of State B, or income from real property situated in State B, or industrial or commercial profits of a permanent establishment situated in State B, no tax shall be payable thereon by the company in State A.

Provided that State A may impose any amount of additional tax which is assessable under its law in respect of the undistributed amount of the distributable income of a company which is a private company for the purposes of State A tax.

Provided also that the provisions of this paragraph shall not apply to any company in which more than 50 per cent. of the shares entitled to voting rights are, directly or indirectly, owned or controlled by persons not resident in Commonwealth countries.

4 Where the law of State A provides that a resident shareholder in a resident company shall be entitled to a credit or abatement of tax payable on dividends from such company (whether or not such credit or abatement is directly related to the taxes payable by the company), the credit or abatement shall be calculated as though income derived by the company from sources in State B had been derived from sources in State A and had been taxed in State A accordingly.

5 Where a resident of State A, other than a company, derives income from sources in State B which in accordance with the provisions of this agreement is taxable in State B, the State B tax payable for the purposes of paragraph 1 shall be deemed to include any amount which would have been payable but for an exemption granted or relief afforded with a view to promoting industrial, commercial, scientific, educational or other development in State B.

6 For the purposes of this Article, profits or remuneration for personal (including professional) services performed in one of the States shall be treated as income from sources within that State, and the services of an individual whose services are whole or mainly performed in ships or aircaraft operated by a resident of one of the States (other than ships or aircraft operated wholly or mainly between places in the other State) shall be treated as performed in that State.

NOTES:

(1) Paragraph 1 assumes that the basic method of relief in countries of residence will be the tax credit. This does not preclude the continued use of the exemption method for certain classes of income as practised, for example, by Australia and New Zealand.

(2) Paragraph 3 is complementary to Article 9, ensuring no additional tax on intercompany dividends. The first proviso is a defence against the improper use of the company form in order to minimise tax. The second proviso limits the benefits of tax exemption for intercompany dividends in cases where the holding company is controlled by persons not resident in the Commonwealth.

(3) Paragraph 2 prohibits the imposition of taxes in a country of residence which discriminate against foreign income compared with domestic income.
(4) Paragraph 4 avoids discrimination against shareholders by reason of dividends being derived from foreign profits rather than domestic profits.
(5) Paragraph 3 automatically avoids frustration of economic incentives accorded at the source in the case of income arising to companies. Paragraph 5 makes special provision for the case of income accruing to individuals.

If Article 10 (*re* interest) is omitted from the agreement, interest will need to be added to the classes of income referred to in Paragraph 3.

ARTICLE 21

REMITTANCE BASIS

Where under this Agreement, any income arising to a resident of one Contracting State is exempt from tax or is accorded relief from tax in the other Contracting State, and the income is subject to tax in the first-mentioned State by reference to the amount thereof which is remitted to or received in that State, the exemption or relief allowed under this Agreement in the other Contracting State may be withheld until such time as the income is remitted to or received in the first-mentioned State.

ARTICLE 22

RECIPROCAL EXEMPTIONS AND RELIEFS

1 Where certain institutions, such as pension funds and charities, are exempt from tax in respect of certain classes of income in the Contracting State in which they are established, similar exemption from tax shall be accorded by the other Contracting State in respect of income arising therein.

2 Individuals who are residents of one Contracting State shall be entitled to the same personal allowances, reliefs and reductions for the purposes of income tax in the other Contracting State as are British subjects or nationals of that other State not resident in that other State.

ARTICLE 23

NON-DISCRIMINATION

1 The nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected.

2 The term 'nationals' means:
(*a*) all individuals possessing the nationality of a Contracting State;
(*b*) all legal persons, partnerships and associations deriving their status as such from the law in force in a Contracting State.

3 Stateless persons shall not be subjected in a Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of that State in the same circumstances are or may be subjected.

4 The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities.

This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

5 Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of that first-mentioned State are or may be subjected.

6 In this Article the term 'taxation' means taxes of every kind and description.

ARTICLE 24

MUTUAL AGREEMENT PROCEDURE

1 Where a resident of a Contracting State considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with this Convention, he may, notwithstanding the remedies provided by the national laws of those States, present his case to the competent authority of the Contracting State of which he is a resident.

2 The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at an appropriate solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation not in accordance with the Agreement.

3 The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Agreement. They may also consult together for the elimination of double taxation in cases not provided for in the Agreement.

4 The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs. When it seems advisable in order to reach agreement to have an oral ex-

change of opinions, such exchange may take place through a Commission consisting of representatives of the competent authorities of the Contracting States.

ARTICLE 25

EXCHANGE OF INFORMATION

1 The competent authorities of the Contracting States shall exchange such information as is necessary for the carrying out of this Agreement and of the domestic laws of the Contracting States concerning taxes covered by this Agreement in so far as the taxation thereunder is in accordance with this Agreement. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons or authorities other than those concerned with the assessment or collection of the taxes which are the subject of the Agreement.

2 In no case shall the provisions of paragraph 1 be construed so as to impose on one of the Contracting States the obligation:

(*a*) to carry out administrative measures at variance with the laws or the administrative practice of that or of the other Contracting State;
(*b*) to supply particulars which are not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
(*c*) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy.

There will be further articles dealing with EXTENSION, ENTRY INTO FORCE and TERMINATION.

COMMENTARY ON MODEL COMMONWEALTH TAXATION AGREEMENT

The Model Commonwealth Taxation Agreement is closely in line with the Draft Convention as agreed by the O.E.C.D. Fiscal Committee. Where significant differences exist between the Model Agreement and the Draft Convention, they are mentioned below:—

Scope of the Agreement

Articles 1 and 2 provide that the Agreement shall apply to persons who are residents of one or both of the contracting states and define the taxes covered. A proviso in Article 1 which does not appear in the Draft Convention is designed to ensure that reliefs do not operate to the advantage of countries outside the Commonwealth. The definition of taxes in Article 2 is shorter than the corresponding Article in the Draft Convention but adequately covers Commonwealth requirements.

Definitions

Articles 3, 4 and 5 relate respectively to General Definitions and the Definitions of Residence and of Permanent Establishment. Residence is, of course, often of considerable importance in determining tax liability, and the definition tries to establish rules which can be applied if, under ordinary internal legislation, there is a danger of a person being regarded as resident in both the countries involved in the Agreement. Similarly, the existence of a 'permanent establishment' is often crucial in determining tax liability, and the definition proceeds from the simple statement that a permanent establishment means 'a fixed place of business in which the business of the enterprise is wholly or partly carried on' and leads on to a consideration of examples of circumstances which would amount to a permanent establishment and those which would not.

Business Profits

Article 6 provides that business profits shall only be taxed in the country where the enterprise is resident unless the profits are attributable to a permanent establishment in the other country. The Article then goes on to lay down rules for determining a fair measure of the profits to be allocated to a permanent establishment. The corresponding Article in the Draft Convention contains certain additional provisions which are not considered necessary in the context of the Commonwealth.

Associated Enterprises

Article 7 deals with associated enterprises and provides that, in such cases, profits can be re-allocated if distortions have arisen as a result of the associations. The corresponding Article in the Draft Convention does not include the second paragraph, which, as the note states, has been added to avoid unilateral re-allocation which could result in double taxation.

Shipping and Air Transport

Article 8 provides that profits from operating ships and aircraft shall normally be taxed only in the country of residence of the operator. The Article, however, goes on to provide an exception which is not incorporated in the Draft Convention, where the ship or aircraft is operated mainly between places in the other country, e.g. inland or coastal transport.

Dividends

Article 9 differs in principle from the corresponding Article in the Draft Convention. The latter reserves a right in all cases for the country in which the company paying the dividend is resident to charge a limited tax on dividends. The Model Agreement rules out any tax in the source country on dividends flowing to corporate shareholders in the other country, but accepts that a limited tax up to a maximum of 15 per cent. of the gross amount of the dividends may be charged in other cases. This maximum of 15 per cent. does not apply, however, if the dividends are effectively linked with a permanent establishment in the source country.

The final paragraph of this Article rules out extra territorial taxation by one territory of dividends from a company resident in the other territory, even though profits of the

company may have been derived from the former territory, and the paragraph also provides that the company should not be subject to special taxes on undistributed profits. This paragraph is similar to one in the Draft Convention, but contains an additional safeguard.

Interest

Article 10 follows the compromise solution in the Draft Convention in giving a right to levy tax of up to a maximum of 10 per cent. of the interest to the country in which the interest arises, the source being determined in accordance with the rules in paragraph 4 of the Article. As in the case of dividends, there is to be no maximum rate if the interest is effectively connected with a permanent establishment in the source country. There is a final paragraph making sure that the Article should only apply to the extent that interest is 'arms length'.

Royalties

Article 11 conforms with generally accepted principles and with the corresponding Article in the Draft Convention. It provides that royalties shall only be taxed in the country of residence, but this is to apply only to the extent that the royalties are 'arms length' and subject to an exception if the royalties are effectively connected with a permanent establishment in the other country.

Capital Gains

Article 12 also follows the principles adopted in the Draft Convention. It provides that gains from real (immovable) property may be taxed (if at all) in the country where the property is situated. Other gains may be taxed only in the country of residence of the recipient, unless they relate to a permanent establishment in the other country.

Income from Services

Articles 13 and 14 again conform very closely to the Draft Convention. Article 13 provides that income from professional services shall only be taxed in the country of residence of the recipient unless the income is attributable to a 'fixed base' (corresponding to the idea of a permanent establishment for commercial activities) in the other country. Article 14 refers to income from employments in which the general rule is that such income should be taxable in the country where the employment is actually exercised. There is, however, the usual exception for a resident of one of the countries who visits the other country for a period lasting less than six months, and is not on the payroll of an employer or permanent establishment in the country visited.

Artistes and Athletes

Article 15 is the normal provision that the income of entertainers and athletes should be taxed where the activities giving rise to the income take place.

Pensions

Article 16 is a standard Article in existing Commonwealth Treaties and provides that pensions and annuities (as defined) should be taxed only in the country of residence of the recipient.

Governmental Functions

Article 17 deals with the particular problem of remuneration and pensions from governmental sources. These may be taxed in the source country unless they relate to trading or business activities.

Students and Teachers

Articles 18 and 19 provide that, within certain limits, payments to students and teachers who are on visits from one territory to the other shall be exempt in the latter territory. Article 18 is similar to the Article dealing with students in the Draft Convention which, however, does not deal specifically with teachers.

Elimination of Double Taxation

Article 20 has been drafted with Commonwealth requirements in mind.

Paragraph 1 provides for normal tax credit relief in respect of doubly taxed income. Paragraph 2 prohibits discriminatory taxation of foreign income and paragraph 4 carries this safeguard through to the shareholder of a resident company to ensure that he does not suffer if the company has income from the other territory. Paragraph 3 attempts to avoid double taxation of companies resident in one country and deriving dividends or profits connected with permanent establishments from the other country, and this paragraph also provides certain safeguards against abuse by private companies or by companies which are more than 50 per cent. controlled or owned outside the Commonwealth. Paragraph 5 makes sure that in so far as the situation is not covered elsewhere 'pioneer industry', 'tax holiday' and similar reliefs granted in one territory are not cancelled by the other, and paragraph 6 contains certain rules for determining the source of remuneration for services.

Remittance Basis

Article 21 is introduced to deal with the problem that in the United Kingdom and many Commonwealth laws overseas income is, in certain cases, only assessable on a remittance basis. The Article provides that exemption or reliefs in the source country can be deferred until the income is remitted to, and therefore becomes taxable in, the other country.

Reciprocal Exemptions and Reliefs

Article 22 not only provides that residents in one of the territories involved shall be entitled to the same allowances in the other territory as are British subjects or non-resident nationals of that territory, but also covers the case of exempt institutions. These institutions, such as charities and pension funds, exempt in their home country, often suffer by being taxed on overseas income (e.g. by deduction of taxes from dividends or interest), and this Article therefore provides for exemption on such income in the source country.

Miscellaneous Articles

Articles 23 to 25 inclusive deal with the questions of Non-Discrimination, Mutual Agreement Procedure and Exchange of Information. These headings are, to some extent, self-explanatory and they appear in similar form in the Draft Convention.

CONVENTION BETWEEN JAPAN AND THE FEDERATION OF MALAYA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

1 The Government of Japan and the Government of the Federation of Malaya,

Desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income,

Have agreed as follows:

ARTICLE I

1 The taxes which are the subject of the present Convention are:

(a) In the Federation of Malaya:
The income tax (hereinafter referred to as 'Federation tax').

(b) In Japan:
The income tax and the corporation tax (hereinafter referred to as 'Japanese tax').

2 The present Convention shall also apply to any other taxes of a substantially similar character to those referred to in the preceding paragraph imposed in either Contracting State after the date of signature of the present Convention.

ARTICLE II

1 In the present Convention, unless the context otherwise requires:

(a) The term 'Federation' means the Federation of Malaya.

(b) The term 'Japan', when used in a geographical sense, means all the territory in which the laws relating to Japanese tax are enforced.

(c) The terms 'one of the Contracting States' and 'the other Contracting State' mean Japan or the Federation, as the context requires.

(d) The term 'tax' means Japanese tax or Federation tax, as the context requires.

(e) The term 'Japanese corporation' means a company or any other kind of juridical person created under the law of Japan or any organisation without juridical personality treated for the purposes of Japanese tax as a juridical person created under the law of Japan and the business of which is not managed and controlled in the Federation; and the term 'Federation corporation' means any company the business of which is managed and controlled in the Federation and which does not have its head or main office in Japan.

(f) The terms 'corporation of one of the Contracting States' and 'corporation of the other Contracting State' means a Japanese corporation or a Federation corporation, as the context requires.

(g) The term 'resident of Japan' means any individual who is resident in Japan for the purposes of Japanese tax and not resident in the Federation for the purposes of Federation tax and any Japanese corporation; and the term 'resident of the Federa-

tion' means any Federation corporation and any other person who is resident in the Federation for the purposes of Federation tax and not resident in Japan for the purposes of Japanese tax.

(h) The terms 'resident of one of the Contracting States' and 'resident of the other Contracting State' means a resident of Japan or a resident of the Federation, as the context requires.

(i) The terms 'Japanese enterprise' and 'Federation enterprise' mean, respectively, an industrial, mining, commercial, plantation, or agricultural enterprise or undertaking carried on by a resident of Japan and an industrial, mining, commercial, plantation, or agricultural enterprise or undertaking carried on by a resident of the Federation.

(j) The terms 'enterprise of one of the Contracting States and 'enterprise of the other Contracting State' mean a Japanese enterprise or a Federation enterprise, as the context requires.

(k) The terms 'profits of a Japanese enterprise' and 'profits of a Federation enterprise' do not include rents or royalties in respect of motion picture films or of mines, oil wells, quarries or other places of extraction of natural resources, or income in the form of dividends, interest, rents, royalties, or capital gains, or fees or other remuneration derived from the management, control or supervision of the trade, business, or other activity of another enterprise or concern, or remuneration for labour or personal services, or profits derived from the operation of ships or aircraft.

(l) (i) The term 'permanent establishment' means a fixed place of business in which the business of the enterprise is wholly or partly carried on.

(ii) A permanent establishment shall include especially—

(aa) a place of management;
(bb) a branch;
(cc) an office;
(dd) a factory;
(ee) a workshop;
(ff) a mine, oil well, quarry or other place of extraction of natural resources;
(gg) a building site or construction or assembly project which exists for more than six months;

(iii) The term 'permanent establishment' shall not be deemed to include—

(aa) the use of facilities solely for the purpose of storage, display, or delivery of goods or merchandise belonging to the enterprise;
(bb) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display, or delivery;
(cc) the maintenance of a stock of goods or merchandise belonging to the enterprise belonging to the enterprise solely for the purpose of processing by another enterprise;
(dd) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or for collecting information, for the enterprise;
(ee) the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research or for similar activities which have a preparatory or auxiliary character, for the enterprise.

(iv) An enterprise of one of the Contracting States shall be deemed to have a permanent establishment in the other Contracting State if

(aa) it carries on supervisory activities in that other Contracting State for more than six months in connection with a construction, installation, or assembly project which is being undertaken in that other Contracting State;

(bb) it carries on a business which consists of providing the services of public entertainers referred to in paragraph 3 of Article X in that other Contracting State.

(v) A person acting in one of the Contracting States on behalf of an enterprise of the other Contracting State—other than an agent of an independent status to whom paragraph

(vi) applies—shall be deemed to be a permanent establishment in the former Contracting State if

(aa) he has, and habitually exercises in that former Contracting State, an authority to conclude contracts in the name of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise; or

(bb) he maintains in that former Contracting State a stock of goods or merchandise belonging to the enterprise from which he regularly fills orders on behalf of the enterprise.

(vi) An enterprise of one of the Contracting States shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other Contracting State through a broker, general commission agent or any other agent of independent status, where such persons are acting in the ordinary course of their business.

(vii) The fact that a corporation of one of the Contracting States controls or is controlled by a corporation which is a corporation of the other Contracting State, or which carries on business in that other Contracting State (whether through a permanent establishment or otherwise), shall not of itself constitute either corporation a permanent establishment of the other.

(m) The term 'taxation authorities' means, in the case of Japan, the Minister of Finance or his authorised representative; and in the case of the Federation, the Minister of Finance or his authorised representative.

2 In the application of the provisions of the present Convention by one of the Contracting States, any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of that Contracting State relating to the taxes which are the subject of the present Convention.

ARTICLE III

Where the present Convention provides (with or without other conditions) that income from sources in one of the Contracting States shall be exempted from tax, or taxed at a reduced rate, by that Contracting State if it is subject to tax in the other Contracting State, and under the law in force in that other Contracting State the said income is subject to tax by reference to the amount thereof which is remitted to or received in that

other Contracting State and not by reference to the full amount thereof, then the exemption or reduction of tax to be allowed under the present Convention in the former Contracting State shall apply only to so much of the income as is remitted to or received in the other Contracting State.

ARTICLE IV

1 (a) The profits of a Federation enterprise shall be taxable only in the Federation unless the enterprise carries on business in Japan through a permanent establishment situated in Japan. If the enterprise carries on business as aforesaid, tax may be imposed in Japan on the profits of the enterprise but only on so much of them as is attributable to that permanent establishment.

(b) The profits of a Japanese enterprise shall be taxable only in Japan unless the enterprise carries on business in the Federation through a permanent establishment situated in the Federation. If the enterprise carries on business as aforesaid, tax may be imposed in the Federation on the profits of the enterprise but only on so much of them as is attributable to that permanent establishment.

2 Where an enterprise of one of the Contracting States carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing quite independently with the enterprise of which it is a permanent establishment.

3 In determining the profits of a permanent establishment, there shall be allowed as deductions all expenses which would be deductible if the permanent establishment were an independent enterprise in so far as they are reasonably allocable to the permanent establishment, including executive and general administrative expenses so deductible, whether incurred in the Contracting State in which the permanent establishment is situated or elsewhere.

4 No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

ARTICLE V

Where—

(a) an enterprise of one of the Contracting States participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or

(b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of one of the Contracting States and an enterprise of the other Contracting States, and

(c) in either case, conditions are made or imposed between the two enterprises, in their

commercial or financial relations, which differ from those which would be made between independent enterprises,

any profits which would but for those conditions have accrued to one of the enterprises, but by reason of those conditions have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

ARTICLE VI

1 Profits which an enterprise of one of the Contracting States derived from the operation of ships or aircraft shall be exempt from tax of the other Contracting State, unless the ships or aircraft are operated wholly or mainly between places within that other Contracting State.

2 An enterprise of one of the Contracting States shall likewise be exempt from any local tax in the other Contracting State which is or may be imposed on the basis of profits derived from the operation of ships or aircraft.

ARTICLE VII

1 Dividends paid by a corporation of one of the Contracting States to a resident of the other Contracting State shall not be chargeable to tax in the former Contracting State, in addition to the tax on the profits of the corporation out of which the dividends are paid, at a rate exceeding 15 per cent.

Provided that where the resident of the other Contracting State is a corporation which owns not less than 25 per cent of the entire voting power of the corporation of the former Contracting State for at least six months immediately prior to the date when the dividend becomes payable, such dividend shall not be chargeable to tax in the former Contracting State at a rate exceeding 10 per cent.

2 Where a corporation of one of the Contracting States derives profits or income from sources within the other Contracting State, there shall not be imposed in that other Contracting State any form of taxation on dividends paid by the corporation unless paid to a resident of that other Contracting State, or any tax in the nature of undistributed profits tax on undistributed profits of the corporation, whether or not those dividends or undistributed profits represent, in whole or in part, profits or income so derived.

3 The provisions of paragraph 1 of this Article shall not apply to dividends received by a resident of one of the Contracting States where such dividends are attributable to a permanent establishment of such resident in the other Contracting State; in such event, such dividends as are attributable to that permanent establishment shall be treated as if they were profits to which the provisions of Article IV are applicable.

ARTICLE VIII

1 Royalties arising in one of the Contracting States and paid to a resident of the other

Contracting State which are subject to tax in that other Contracting State shall be exempt from tax of the former Contracting State.

2 The term 'royalties' as used in this Article means payments of any kind received as consideration for the use of, or the right to use, any copyright of scientific work, any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience.

3 Profits from the alienation of any right or property mentioned in paragraph 2 of this Article and subject to tax in the Contracting State of which the alienator is a resident shall be exempt from tax of the other Contracting State.

4 The provisions of paragraphs 1 and 3 of this Article shall not apply to royalties or profits received by a resident of one of the Contracting States where such royalties or profits are attributable to a permanent establishment of such resident in the other Contracting State; in such event, such royalties or profits as are attributable to that permanent establishment shall be treated as if they were profits to which the provisions of Article IV are applicable.

5 Where, owing to a special relationship between the payer and the recipient or between both of them and some other person, the amount of the royalties or profits paid, having regard to the use, right, property or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the recipient in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the Contracting States' own laws, due regard being had to the other provisions of the present Convention.

ARTICLE IX

1 Any salary, wage and similar remuneration paid by the Government or any local government of Japan to an individual who is a national of Japan and who is subject to Japanese tax on such payment in respect of services rendered in the discharge of governmental functions, or any pension paid to such individual in respect of such services, shall be exempt from Federation tax, unless such individual has been admitted to the Federation for permanent residence therein.

2 Any salary, wage, similar remuneration or pension paid by the Government or any State government or local authority of the Federation to an individual in respect of services rendered in the discharge of governmental functions, shall, if he is subject to Federation tax on such payment, be exempt from Japanese tax, unless such individual is a national of Japan or has been admitted to Japan for permanent residence therein.

3 The provisions of this Article shall not apply to payments in respect of services rendered in connection with any trade or business carried on for purposes of profit.

ARTICLE X

1 An individual who is a resident of the Federation shall be exempt from Japanese tax on remuneration in respect of personal services performed within Japan in any calendar year, if—

(a) he is present within Japan for a period or periods not exceeding in the aggregate 183 days during that year,
(b) the services are performed for or on behalf of an employer in the Federation, and
(c) the remuneration is subject to Federation tax.

2 An individual who is a resident of Japan shall be exempt from Federation tax on remuneration in respect of personal services performed within the Federation in any calendar year, if—

(a) he is present within the Federation for a period or periods not exceeding in the aggregate 183 days during that year,
(b) the services are performed for or on behalf of an employer in Japan, and
(c) the remuneration is subject to Japanese tax.

3 The provisions of this Article shall not apply to the remuneration derived from one of the Contracting States of public entertainers such as stage, motion picture, radio, or television artistes, musicians, and athletes whose visit to that Contracting State is not supported from the public funds of the Government of the other Contracting State.

ARTICLE XI

An individual who is a resident of one of the Contracting States at the beginning of a visit to the other Contracting State and who has made such visit at the invitation of a university, college, school or other recognised educational institution in the other Contracting State, solely for the purpose of teaching or engaging in research at such educational institution for a period not exceeding two years shall be exempt from tax of that other Contracting State on his remuneration for such teaching or research.

ARTICLE XII

1 An individual who is a resident of one of the Contracting States at the beginning of a visit to the other Contracting State and is temporarily present in that other Contracting State solely—

(a) as a student at a recognised university, college, or school or other educational organisation in that other Contracting State, or
(b) as a recipient of a grant, allowance or award for the primary purpose of study or research from a governmental, religious, charitable, scientific, literary, or educational organisation, or
(c) as a business apprentice,

shall be exempt from tax of that other Contracting State in respect of—

(i) remittances from abroad for the purposes of his maintenance, education, study, research, or training,
(ii) such grant, allowance, or award,
(iii) remuneration for personal services in that other Contracting State paid by his employer in the former Contracting State, and
(iv) remuneration or profits for personal services in that other Contracting State other than the remuneration referred to in subparagraph (iii) not exceeding the sum of 3,000 Malayan Dollars or 360,000 Yen, as the case may be, during any calendar year.

2 An individual who is a resident of one of the Contracting States at the beginning of a visit to the other Contracting State and is temporarily present in that other Contracting State for a period not exceeding twelve months as an employee of, or under contract with, an enterprise of the former Contracting State, or an organisation referred to in subparagraph (b) of paragraph 1 of this Article, solely to acquire technical, professional or business experiene shall be exempt from tax of that other Contracting State on the remuneration for such period for his services directly related to the acquisition of such experience, if the total amount of such remuneration received from abroad by such individual and paid in that other Contracting State does not exceed the sum of 12,000 Malayan Dollars or 1,400,000 Yen, as the case may be, during any calendar year.

3 An individual who is a resident of one of the Contracting States at the beginning of a visit to the other Contracting State and is temporarily present in that other Contracting State under arrangements with the Government of that other Contracting State, solely for the purpose of study, research or training, shall be exempt from tax of that other Contracting State on remuneration for services directly related to such study, research or training.

4 Notwithstanding the provisions of paragraphs 1, 2 and 3 of this article, as respects a period throughout which an individual qualifies for exemption under two or all of these paragraphs, he shall only be entitled to exemption under such one of the paragraphs under which he so qualifies as he may select.

ARTICLE XIII

For the purposes of the present Convention:
1 Dividends paid by a corporation of one of the Contracting States shall be treated as derived from sources within that Contracting State.

2 Interest paid by one of the Contracting States, including local governments thereof, or by an enterprise of one of the Contracting States, shall be treated as derived from sources within that Contracting State, except that interest (other than that paid on indebtedness in connection with the purchase of ships or aircraft) which is paid
(a) by an enterprise of one of the Contracting States with a permanent establishment outside both Contracting States to a resident of the other Contracting State, or

(b) by an enterprise of one of the Contracting States with a permanent establishment in the other Contracting State,

on indebtedness incurred for the use of (or, in the case of a banking business, on deposits made with) the permanent establishment in the conduct of its trade or business and which is borne by that permanent establishment shall be treated as derived from sources within the territory where the permanent establishment is situated.

3 Royalties as defined in paragraph 2 of Article VIII shall be treated as derived from sources within the Contracting State in which the property referred to in that paragraph is used.

4 Profits derived from the alienation of rights or properties referred to in paragraph 3 of Article VIII shall be treated as derived from sources within the Contracting State in which such rights or properties are used.

5 Gains, profits and income derived from the alienation of movable property (excluding shares of a corporation) shall be treated as derived from sources within the Contracting State in which such property is alienated.

6 Gains, profits and income derived from the sale by an enterprise in one of the Contracting States of goods produced in whole or in part by such enterprise in the other Contracting State shall be treated as derived in part from sources within that other Contracting State and in part from sources within the former Contracting State.

7 Income from real property (including gains derived from the alienation of such property) and royalties in respect of the operation of mines, oil wells, quarries or other places of extraction of natural resources shall be treated as derived from sources within the Contracting State in which such real property, mines, oil wells, quarries or other places of extraction of natural resources are situated.

8 Remuneration or profits for personal (including professional) services shall be treated as derived from sources within the Contracting State in which are rendered the services for which such remuneration or profits are paid, and the services performed in ships or aircraft operated by an enterprise of one of the Contracting States shall be deemed to be rendered in that Contracting State, unless the ships or aircraft are operated wholly or mainly between places within the other Contracting State.

9 Notwithstanding the provisions of paragraph (8) of this Article, remuneration of a director of a corporation of one of the Contracting States—

(a) shall, where the business of such corporation is mainly carried on in the other Contracting State, be treated as derived from sources in that other Contracting State, including the case where the director is a resident of that Contracting State, if such remuneration is directly deductible in determining the profits of such corporation in that other Contracting State, provided that this provision shall not be construed so as

to limit the effect of paragraph 3 of Article IV which provides for the deduction of executive and general administrative expenses in determining the profits of a permanent establishment;

(b) shall be treated as derived from sources within that Contracting State where the provisions of subparagraph (a) of this paragraph are not applicable and the director's only duties are connected with the functions of the board of directors of such corporation.

ARTICLE XIV

1 The laws of Japan and the Federation shall continue to govern the taxation of income arising in either State except where express provision to the contrary is made in the present Convention. Where income is subject to tax in both Contracting States, relief from double taxation shall be given in accordance with the following paragraphs of this Article.

2 Subject to the provisions of the law of the Federation regarding the allowance as a credit against Federation tax of tax payable in any country other than the Federation, Japanese tax payable, whether directly or by deduction, in respect of income from sources within Japan shall be allowed as a credit against Federation tax payable in respect of that income. Where such income is a dividend paid by a Japanese corporation to a Federation corporation which owns not less than 25 per cent of the entire shares with voting power of the Japanese corporation, the credit shall take into account Japanese tax payable by the Japanese corporation in respect of its profits.

3 (a) Subject to the provisions of the law of Japan regarding the allowance as a credit against Japanese tax of tax payable in any country other than Japan, Federation tax payable, whether directly or by deduction, in respect of income from sources within the Federation shall be allowed as a credit against Japanese tax payable in respect of that income. Where such income is a dividend paid by a Federation corporation to a Japanese corporation which owns not less than 25 per cent of the entire shares with voting power of the Federation corporation, the credit shall take into account Federation tax payable by the Federation corporation in respect of its profits.

(b) For the purposes of the credit referred to in subparagraph (a) of this paragraph, there shall be deemed to have been paid by the taxpayer in Japan the amount of Federation tax exempted under section 19 of the Pioneer Industries (Relief from Income Tax) Ordinance, 1958, of the Federation which makes special provision for encouraging the establishment and development in the Federation of industrial and commercial enterprises.

(c) For the purposes of the credit referred to in subparagraph (a) of this paragraph, where the taxpayer in Japan receives a dividend from a Federation corporation which is exempt under the provisions of section 20 of the Pioneer Industries (Relief from Income Tax) Ordinance, 1958, of the Federation there shall be deemed to have

been paid by the taxpayer in Japan the amount of Federation tax so exempted under the provisions of the said Ordinance.

(d) In the application of subparagraphs (b) and (c) of this paragraph, such exemption under the provisions of the Pioneer Industries (Relief from Income Tax) Ordinance, 1958, of the Federation as is to be taken into account in allowing as a credit against Japanese tax shall not go beyond the exemption falling to be accorded under the provisions of the said Ordinance as in effect on the date of signature of the present Convention.

(e) For the purposes of this paragraph, the term 'Japanese tax' shall be taken to include the inhabitant taxes.

ARTICLE XV

The taxation authorities of the Contracting States shall exchange such information (being information available under the respective taxation laws of the Contracting States) as is necessary for carrying out the provisions of the present Convention or for the prevention of fraud or for the administration of statutory provisions against tax avoidance in relation to the tax. Any information so exchanged shall be treated as secret and shall not be disclosed to any person other than those, including a court, concerned with the assessment and collection of the tax or the determination of appeals in relation thereto. No information shall be exchanged which would disclose any trade secret or trade process.

ARTICLE XVI

1 Citizens or nationals of one of the Contracting States shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which citizens or nationals of that other Contracting State in the same circumstances are or may be subjected. This provision shall not be construed as obliging the Federation to grant to nationals of Japan not resident in the Federation those personal allowances, reliefs and reductions for tax purposes which are by law available on the date of signature of the present Convention only to citizens of the Federation or to such other persons as may be specified therein who are not resident in the Federation.

2 The taxation on a permanent establishment which an enterprise of one of the Contracting States has in the other Contracting State shall not be less favourably levied in that other Contracting State than the taxation levied on enterprises of that other Contracting State carrying on the same activities. This provision shall not be construed as obliging either of the Contracting States to grant to citizens or nationals of the other Contracting State not resident in the former Contracting State those personal allowances, reliefs and reductions for tax purposes which are by law available only to residents of that former Contracting State.

3 Enterprises of one of the Contracting States, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the former Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the former Contracting State are or may be subjected.

4 In this Article, the term, 'citizens or nationals' means—

(a) in the case of the Federation, all individuals possessing the citizenship of the Federation and all legal persons, partnerships, associations and other entities deriving their status as such from the law in force in the Federation; and

(b) in the case of Japan, all individuals possessing the nationality of Japan and all companies or other kinds of juridical persons created under the law of Japan and all organisations without juridical personality treated for the purposes of Japanese tax as juridical persons created under the law of Japan.

5 In this Article the term 'taxation' means taxes of every kind and description.

ARTICLE XVII

1 Where a taxpayer shows to the satisfaction of the taxation authorities of the Contracting State of which the taxpayer is a resident that the taxpayer has not received the treatment in the other Contracting State to which the taxpayer is entitled under any provision of the present Convention, such taxation authorities shall consult with the taxation authorities of the other Contracting State with a view to the avoidance of the double taxation in question.

2 The taxation authorities of the Contracting States may communicate with each other directly for the purpose of giving effect to the provisions of the present Convention and for resolving any difficulty or doubt as to the application or interpretation of the present Convention.

ARTICLE XVIII

1 The present Convention shall be ratified and the instruments of ratification shall be exchanged at Tokyo as soon as possible.

2 The present Convention shall enter into force on the date of exchange of instruments of ratification and shall be applicable—

(a) In the Federation:
as respects tax for the years of assessment beginning on or after the first day of January of the calendar year in which the exchange of instruments of ratification takes place; and

(b) In Japan:
as respects tax for the taxable years beginning on or after the first day of January of the calendar year in which the exchange of instruments of ratification takes place.

3 Either of the Contracting States may terminate the present Convention at any time after a period of five years from the date on which the present Convention enters into force, by giving to the other Contracting State notice of termination, provided that such notice shall be given on or before the 30th day of June, and, in such event, the present Convention shall cease to be effective—

(a) In the Federation:
as respects tax for the years of assessment beginning on or after the first day of January of the calendar year next following that in which the notice is given; and

(b) In Japan:
as respects tax for the taxable years beginning on or after the first day of January of the calendar year next following that in which the notice is given.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed the present Convention.

DONE in duplicate at Kuala Lumpur this fourth day of June of the year one thousand nine hundred and sixty-three in the English language.

For the Government of Japan:
Wataru Okuma

For the Government of the Federation of Malaya:
Tan Siew Sin

EXCHANGE OF NOTES

(Malayan Note)

Kuala Lumpur, 4th of June, 1963

Your Excellency,

I have the honour to refer Your Excellency to the Convention between the Governments of Japan and of the Federation of Malaya for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income signed today, and to record the following matters which arose in the course of negotiations on the Convention and with respect to which the following treatment was agreed upon viz:—

1 The interpretation to be placed upon paragraph 1 of Article 7 of the Convention is that any application of the provisions of section 40 of the Income Tax Ordinance, 1947, as amended, of the Federation, would not have the effect of imposing an additional tax upon dividends within the meaning of paragraph 1 of Article 7 of the Convention.

2 That notwithstanding the provisions of section 6 of the Income Tax Act, 1962, of the Federation of Malaya, those provisions shall be treated as not having effect for and only for the year of assessment 1962 in relation to the gains or profits from the business of ship owner or charterer of air transport carried on in the Federation by a Japanese person or company not resident in the Federation for that year of assessment.

I have the honour to request Your Excellency to confirm on behalf of the Government of Japan the treatment of the matters agreed as recorded above.

I avail myself of this opportunity to convey to Your Excellency the assurances of my highest consideration.

Tan Siew Sin
Minister of Finance,
Federation of Malaya

His Excellency
Mr. Wataru Okuma,
Ambassador of Japan
to the Federation of Malaya.

(Japanese Note)

Kuala Lumpur, 4th of June, 1963

Your Excellency,

I have the honour to acknowledge receipt of Your Excellency's letter of the 4th of June, 1963, relating to the Convention between the Governments of the Federation of Malaya and of Japan, for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, and recording certain matters, arising in the course of negotiations on the Convention, the treatment of which was agreed upon, as set out in your letter under reply.

As requested in Your Excellency's letter, I confirm, on behalf of the Government of Japan, that the treatment of those matters will be as recorded in Your Excellency's letter.

I avail myself of this opportunity to convey to Your Excellency the assurances of my highest consideration.

Wataru Okuma
Ambassador of Japan

His Excellency
Mr. Tan Siew Sin,
Minister of Finance,
Federation of Malaya.

INTERNATIONAL BUREAU OF FISCAL DOCUMENTATION

HISTORY

Since its establishment in 1938, the International Bureau of Fiscal Documentation has served as an independent source of tax information and advice. After World War II its functions were broadened beyond mere simple fiscal documentation and assumed the character of supplying factual data on the tax systems of countries around the world in response to requests from various governmental and business organisations.

In 1946, the Bureau began publication of the *Bulletin for International Fiscal Documentation,* the official organ of the International Fiscal Association. This publication has been supplemented by various special publications. In 1961, the Bureau published the first issue of *European Taxation,* a fortnightly English language review of tax developments on the European Continent, in the United Kingdom and in Ireland, followed in 1963 by two loose-leaf services, *Supplementary Service to European Taxation* and *The Taxation of Patent Royalties, Dividends and Interest in Europe*. During that time span the Bureau also published the Germany original of the well-known book by Dr. Albert J. Rädler about taxation in the common market countries. The Bureau continuously assisted in translating and preparing tax materials for other publications. Additionally, its library was greatly expanded and now contains well over 7000 volumes on national and international tax matters, as well as more than 250 selected periodicals; many visiting researchers make use of these library facilities.

GOALS

The overriding goal of the Bureau is to serve the International community by collecting, evaluating and disseminating tax data in a manner which combines scientific objectivity with practical realism.

Organization

The Bureau is a public non-profit foundation established under Dutch law. Its policies are determined by a "Curatorium", or board of trustees, composed of outstanding representatives of the government, business and academic communities in various countries. A managing director is responsible for carrying out the goals articulated by the Curatorium.

The Bureau is separated into four divisions: Library and Documentation, which is responsible for acquisition and maintenance of tax materials; International Tax Service, which prepares reports for governmental, business and scholarly purposes; Publications Department, which is responsible for the whole gamut of the Bureau's publications; and the Administrative arm, which plans and coordinates Bureau activities.

Correspondents

Apart from its own Associates, who represent several nationalities, the Bureau avails itself of the coopeative services of a large number of expert correspondents throughout the world.

The program

1. *Training*

The Bureau seeks to prepare young lawyers and economists to meet the growing demand for international tax experts and offers to young post-graduates from developed and developing countries the opportunity to work with the Bureau.

2. *Research*

The Bureau is focusing its research efforts upon a significant contemporary problem—the relationship between capital exporting nations and developing countries. Other important research projects include studies of the tax aspects of economic integration and of the influence of tax incentives on economic growth.

3. *Education*

The Bureau seeks to stimulate, and participate in, seminars and discussion groups, lectures and publications.

4. *Library and Documentation*

The Bureau's program of cataloguing and completing its set of materials will be continued in the framework of its library facilities which were much improved as a result of the move in 1963 to new quarters in an old city gate of Amsterdam.

5. *Reports*

The Bureau prepares reports containing factual data and legal appraisals relating to countries other than the country of residence of the organization or individual who requests a report.

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I

For the benefit and information to our readers, the Bulletin is printing the entire text of Mr. Surrey's talk to the Tax Executives Institute in Canada, the first portion is set forth below. The remainder of the address will appear in the next issue.

THE UNITED STATES TAX SYSTEM AND INTERNATIONAL TAX RELATIONSHIPS — PERSPECTIVE IN 1964

Remarks by STANLEY S. SURREY

Assistant Secretary of the Treasury

before the Tax Executives Institute, Montreal, Quebec, Canada, Sept. 21, 1964

I appreciate the opportunity to meet with you and discuss recent trends in international tax relationships. Much has happened in the last four years respecting United States tax policy in the international field. It may therefore be helpful to review these developments and place them in perspective. The main focus in this consideration will be to project these developments into the future, and to ascertain some of the aspects that will require our thought and attention in the next few years. I will divide this consideration into three main parts—income tax treaties, United States statutory taxation of foreign income, and United States statutory taxation of foreigners.

Since the consideration covers a wide area and in some instances is rather detailed, it may be helpful to summarize at the outset the principal matters discussed. The following summary represents the significant areas of current activity in United States international tax relationships.

SUMMARY

The Treasury Department is seeking in a wide range of activity to improve the rules and procedures applicable to the taxation of income earned abroad by United States taxpayers and income earned in the United States by foreigners. The governing purpose of this activity is to modernize international tax rules and mechanisms in the interest of: (1) reducing tax restrictions on the free flow of capital and goods between developed countries, and (2) increasing United States private activity, especially private investment, in less developed countries.

The reduction of tax restrictions on international trade and investment between

developed countries lies primarily in lessened taxation by the country in which the income arises. This step should be of material assistance to United States companies trading abroad in developed areas and to United States companies which have established operating activities abroad, since it will remove a number of tax problems now faced by such companies in these countries. In the same fashion, a removal of problems faced by foreigners under United States taxation will promote increased foreign investment and trade in the United States.

As respects less developed countries, the approach is that of encouraging United States private activity through United States tax incentives to private investment in those areas. This approach is to be accompanied by a lessening of the tax problems now arising for our investors, traders and others under the laws of the less developed countries, without at the same time causing those countries a revenue sacrifice which they find unacceptable.

This overall program is being carried out by: (1) reshaping our income tax treaties with developed and less developed countries, (2) the issuance of comprehensive Regulations under the 1962 Revenue Act provisions relating to foreign income, (3) improvement in the guidelines and procedures applied by our Internal Revenue Service in the administration of our laws relating to foreign income, and (4) consideration of a broad revision of United States statutory rules governing the taxation of foreigners receiving income from the United States.

1 As to *treaties with developed countries,* the United States is engaged in an intensive re-examination of our existing income tax treaty provisions, prompted by the desire to modernize these provisions and, where appropriate, bring them into conformity with the recently published OECD Model Draft. This re-examination substantively moves in the direction of lessened taxation by the country of the source of income—for example, non-taxation of capital gains of foreigners, allowing increased activity by trading companies without subjecting those activities to taxation at the source, separating the taxation by the country of source of operating activities from that of investment income, thereby leaving the latter usually subject to the lower rates of tax under the treaties.

This substantive re-examination is being accompanied by improved drafting techniques, a revision of the method of issuing Regulations under the treaties with the objective of achieving a master set of United States treaty Regulations, and—a very significant matter—an improvement in the treaty techniques for inter-governmental arrangements. The objective of the last mentioned matter is to eliminate, or reduce, possible double taxation growing out of administrative allocations of income and expense by tax authorities of the United States or other countries between the related entities of a taxpayer engaged in operations in the United States and abroad.

2 As to *treaties with less developed countries,* the United States is engaged in discussions with a number of less developed countries on the basis of a new approach to income tax treaties with them. In order to encourage private investment in these countries the United States is offering to extend, through such treaties, a 7 percent credit comparable to that now allowed on investment in the United States (adopted in the 1962 Act), to investment in less developed countries. As a companion treaty tax incentive it is also suggesting deferral of current taxation by both the United States and the foreign country of compensation received in the form of stock in a foreign corporation in return for transferred technical know-how, patents, technical services, and the like. This extension of the 7 percent credit by treaty is separate from the consideration now being given in Congress to the President's recommendation for a 30 percent credit through statutory enactment, on which it is presumed hearings will be held next year. The new approach also involves a lessening, through appropriate treaty provisions, of the problems for our investors, traders, business visitors, and others arising under the tax laws of these countries without at the same time involving them in a loss of tax revenues which they would find unacceptable.

Tentative agreements have already been reached with Thailand and the Philippines. The former incorporates various provisions relating to investment including the 7 percent credit and tax deferral on stock compensation, and both embody significant clauses protecting the taxpayers of one country against discriminatory tax treatment by the other treaty country.

3 As to *Regulations under the* 1962 *Act,* the Treasury expects to complete publication of all the foreign income regulations by the end of the year. These Regulations, comprehensive in scope, are designed to facilitate the transition to the new 1962 rules. The Regulations on the determination of the earnings and profits of a foreign subsidiary, formulated with the invaluable advice of experts drawn from our major international accounting firms, are a significant step in the development of international tax accounting rules. The Service plans to continue to obtain expert consultant guidance in its application of these rules. The Regulations on the minimum distribution rule adopt a simplified application of that rule permitting a taxpayer to obtain the protection the rule affords without being involved in complex detail.

4 As to *improved tax administration,* the Treasury expects that comprehensive proposed Regulations governing section 482 allocations and a comprehensive Revenue Procedure regarding section 367 rulings will be issued by the end of this year. These steps are a phase of the study of the problems now arising under section 482 allocations and related matters. Another example of the steps here being

taken is the consideration of various methods of alleviating a double taxation situation for past years where foreign taxes have been paid on income subject to reallocation under section 482. One approach which the Internal Revenue Service is considering is that of adjusting any proposed deficiency by the amount of foreign taxes paid. As respects internal Internal Revenue Service procedures, a Service order to be issued in the near future will place the existing Field Groups of the Office of International Operations under the supervision of the District Directors, with close coordination between the field activities and Washington to be assured under the regular procedures for that purpose. The combination of these actions should eliminate many of the present problems facing taxpayers and the Service alike in the transition to an improved tax administration capable of handling with wisdom and responsibility the tax issued involved in modern international tax relationships.

5 As to the *United States taxation of the income of foreigners,* the Treasury is engaged in a comprehensive re-examination of our hitherto little-noticed statutory rules governing the tax liabilities of foreigners receiving income from the United States. This re-examination, stemming in large measure from the recent Report of the President's Task Force on Promoting Increased Foreign Investment in United States Corporate Securities (the Fowler Report), bears promise of legislative proposals which would modernize this area through removing aspects of our laws that are unnecessarily restricitive to the investment or other activity of foreigners in the United States, and, further, coordinate these legislative developments with our tax treaty program.

I. INCOME TAX TREATIES

The pace of income tax treaty negotiation and the scope of the issues relating to these treaties have increased materially in the last year or so. The causes are varied, and can best be considered, along with their consequences, by separating the subject into three principal classes—income tax treaties with developed countries, those with less developed countries, and discussions involving international agencies and conducted on a multi-national basis.

Developed Countries

As respects the developed countries, the ratification of the treaty with Luxembourg gave the United States a full complement of tax treaties with the European Common Market countries. Moreover we have treaties with almost all of the developed countries, the principal exceptions being Spain and Portugal. But the

conclusion of tax treaties cannot remain a static process. The impact on internal tax legislation of changing currents in the business, financial and political spheres is evident to all who follow that subject, and is responsible for constant revision and development in domestic tax legislation. But while these changes are equally present in the international scene, their effect on the substance and scope of the tax treaties to which the United States is a party has until recently been far less pronounced. The balance is now being redressed, however, as the result of several forces, and as a consequence, the United States is now engaged in a wide ranging re-examination of the provisions contained in its tax treaties.

One major force has been the publication in 1963 of the OECD Draft of a model income tax Convention. This effort, commenced in 1958, was designed to provide "a means of settling on a uniform basis the most common problems of double taxation." Once published, despite the many reservations of the participating countries—and the United States had significant reservations—the Draft Convention has become the starting point for the developed countries as they engage in treaty discussions. Most of the European countries, for example, desire at least to begin with the text of the Draft Convention and to follow it as closely as possible. In turn, however, as countries apply the Draft Convention to concrete treaty issues, the many problems of interpretation and application that are involved begin to emerge. Any concentrated examination of the precise words and effect of a tax provision that penetrates below the surface of the provision is bound to disclose ambiguities, shortcomings and unsolved questions. The effort to deal with these difficulties has involved the United States in a very considerable concentration on the technical aspects of our treaties.

Another force for change has been the spillover to treaties of the concentration of technical attention that has characterized United States tax legislation. As tax expertise spreads wider and as the impact of taxation on the expanding horizons of business produce more and more "tax problems", more people are seeking to embody solutions to more of these problems in the provisions of tax treaties. The money value of these problems has also risen in significance with the growing importance of international business. In addition to its responsibility for considering these problems thus presented to it, Government also has its own rising tide of problems that demand attention. The increasing importance of balance of payments factors adds a new dimension that must constantly be borne in mind. The adeptness with which tax experts—here and abroad—join tax treaty provisions with domestic legislation tends to produce exquisite structures of tax reduction and avoidance—witness the arrangements flowing from the Netherlands Antilles tax treaty before its recent revision. This demands an equal alertness and agility on the part of Government. In addition, changing national tax legisla-

tion and policies have their impact on international rules, and thereby require re-examination and renegotiation of those rules.

Combined with these two forces is the fact that many of our treaties were concluded some time agó—the treaty with France signed in 1939 is an example—so that they are in need of revision almost in their own right apart from these forces. With the increasing tempo of events, these earlier treaties more clearly show their age.

Substantive Re-examination

These are some of the forces for change. Let us turn to the treaty provisions in which they are likely to produce change. Almost every provision of our tax treaties is undergoing re-examination, both in substantive scope and drafting, so that an exahustive description is impossible. I have therefore selected for mention several of the more significant matters.

Force of Attraction

The standard U.S. tax treaty has up to now provided that if a foreign taxpayer has a permanent establishment in the United States, then all of its investment income and all of its business income from United States sources becomes subject to our regular rates of tax. As a consequence, for example, any reduced rates of withholding tax applicable under the treaty to dividend, interest or royalty income cease to apply. In this sense the permanent establishment "attracts" the income not in fact attributable to it. The OECD Draft Convention, following some of the European treaties, takes a contrary approach which does not embody this "force of attraction". Under it the presence of the permanent establishment permits taxation of the profits in fact attributable to it, but other items of income continue to be taxed under the treaty rules independently applicable to the various items.

The United States entered a reservation to this OECD Draft approach. Nevertheless, we have been giving it considerable study. Our present view is that we are ready to explore with other treaty countries the development of an appropriate clause. Such an approach which departs from our traditional provisions in the direction of the OECD approach, but which attempts to avoid some of the administrative problems and policy dilemmas which we believe would be entailed by outright acceptance of the OECD clause, would be in keeping with our overall national policy of encouraging international trade. For example, under this approach a U.S. exporter whose affairs required a degree or form of activity involving permanent establishment status abroad would not at the same time subject its other income to increased foreign taxation. It would make unnecessary the practice under the existing treaties of artificially "isolating" the business activities in a subsidiary solely to prevent the force of attraction from affecting the

taxpayer's other foreign income. Moreover, this approach, as respects activity in the United States, would be in accord with our policy of encouraging foreign investment in the United States.

Under such a provision investment income and also business income from activities unrelated to the business in which the permanent establishment is engaged would not be attracted to it and would not be taxable as part of its income. The agreement with Germany on the matters to be incorporated in a new protocol embodies a provision to this effect. We are proceeding carefully with this approach, trying to eliminate at the start problems which may result from the interaction of the provision with our domestric source rules and also keeping an eye on the administrative problems involved.

Definition of Permanent Establishment

The OECD Draft Convention has introduced further particularity into the definition of permanent establishment, the overall thrust of the changes being to restrict somewhat the scope of the definition. Put differently, a taxpayer engaged in trade and related activities can under the OECD Draft undertake more extensive activities in a foreign country before it acquires a permanent establishment status that subjects its business profits to taxation by that country. Our policy position is to move in this direction, again in keeping with our overall policy of encouragnig international trade. A number of drafting difficulties are involved in the attempt to state the boundary lines, and the OECD Draft provision in turn presents some unforeseen ambiguities. We are working through these technical issues, guided by the policy direction I have indicated. We would hope that the countries involved can achieve a greater clarity and completeness in the OECD definition of a permanent establishment.

Capital Gains

The standard U.S. tax treaty up to now has not restricted the jurisdiction of the United States to tax the capital gains of foreigners. On the other hand, the OECD Draft Convention, following the European treaties, restricts taxation of capital gains to the country of residence, other than gains on real property and property forming a part of a permanent establishment. In considering some of our earlier treaties, the Senate was unwilling to relinquish United States tax jurisdiction in this area, influenced partly by the scope of trading activities conducted in this country by World War II refugees. Therefore the United States originally entered a reservation on this subject. Recently, however, we have been exploring the desirability of the OECD approach. It is likely, given the wider scope of capital gains taxation in this country, that other countries will seek this change in our treaties. Such a change would be in keeping with our policy of encouraging

foreign investment in the United States. Accordingly, we are now willing to consider the inclusion of such a provision, though we are giving continued consideration to whether we should exempt the trading gains of a foreigner who remains in this country for significant periods of time. Also we must work through the issues relating to an appropriate definition of capital assets for this purpose. The agreement with Germany on a new protocol embodies a capital gain exemption provision and the lines of the new approach will be worked out in that document.

Undistributed Profits

The standard U.S. tax treaty has reserved our right to apply our tax on accumulated profits and our personal holding company tax to the income derived by a foreign corporation from the United States. Again, the OECD Draft Convention takes the opposite approach and would prohibit the application of these taxes. Here also we are exploring the policy and technical ramifications of moving to the OECD approach.

* * *

It will be seen that the thrust of the matters I have been discussing is in the direction of restricting the scope or degree of taxation in the country of source. It cannot be said that all of this is in response to firmly held views in the countries concerned that policies be consciously shaped to this end. On the other hand these developments are in keeping with the pattern of double taxation treaties between developed countries. While the policies to be taken into account in the United States do not all uniformly point to the same result, it seems clear that the direction is toward restricting the scope of our taxation of foreigners currently taxable in the United States on their United States income, if at the same time foreign countries are willing to move in a similar direction.

Effect of Split Corporate Tax Rates and Other Factors on Withholding Rates on Dividends

In several recent negotiations the United States has been presented with the need to consider the relationship of the standard treaty withholding provision on dividend income to a variety of domestic tax policies of the other treaty countries. These tax policies have caused the other contracting parties to seek a treaty withholding rate on dividends going to the United States which would be higher than the United States rate on dividends going to the foreign country. For example, in Germany the tax policy involved is that of a split rate corporation tax under which distributed profits are taxed at a substantially lower rate than undistributed

profits. Such an internal policy is said to require a higher withholding rate on dividends paid by a German subsidiary to its foreign parent than is customary under standard treaties and the OECD Draft—which is 5 percent in certain parent-subsidiary cases and 15 percent on other dividends. In other situations, as in Belgium, the problem may arise from an opposite approach to the internal double taxation of dividends, under which the domestic shareholder receives a tax credit for a part of the corporate tax, and from the internal development of that policy. In other cases, as in Canada, the problem may arise from a desire to differentiate between domestic subsidiaries with a high degree of foreign ownership and those with greater domestic participation.

Whatever the cause of the issue, the United States has found itself in the position of being asked to agree to a treaty provision under which our withholding rate on dividends to a particular country would be less than the rate levied by that country on dividends moving to the United States. We have in these cases—in order to protect our investors from an increased level of foreign taxation and to protect the United States from revenue loss under the foreign tax credit—taken the firm position that international withholding rates should be reciprocal and hence we cannot agree to an upward adjustment by other countries to accommodate to their internal tax policies. In the simplest case, for example, the fact that a foreign country may have a corporate tax rate of 30 percent compared to the U.S. 48 percent rate does not warrant a non-reciprocal set of withholding rates under which the rate of the foreign country would be higher than ours. Moreover, we do not prefer a solution which makes the rates reciprocal through an increase in our rate as well, since that course is both contrary to the OECD Draft and to the policy behind that Draft of relieving double taxation and granting more freedom to international capital movements.

Clearly issues of this nature are difficult of resolution, stemming as they do from domestic tax policies of the other country which present difficulties for it in its international economic relations. The United States has held firm to its basic position while at the same time accommodating the most acute problem which that position entailed for the other country. Thus, the tentative protocol with Belgium reduces the Belgian statutory rate from 18.2 percent to a reciprocal 15 percent for shares held in registered form which form of holding characterizes parent-subsidiary investment, while permitting the higher rate on bearer shares to remain until administrative difficulties involved in applying a reciprocal rate could be solved. Moreover, it was found that in actual practice the Belgian law was such that the rate on bearer shares rarely in fact exceeded 15 percent. The agreement with Germany on a new protocol retains a reciprocal withholding rate of 15 percent but permits Germany to impose an additional 10 percent when the United States parent immediately reinvests the dividend in situations where the

reinvestment is more than minor in amount. In Canada, the Canadian Government found that the reduction in the United States corporate tax rate resulting from our 1964 tax legislation permitted the problem to be solved automatically, so it could retain a maximum Canadian withholding rate that is the same as the United States rate, thus eliminating a treaty problem.

Income From Independent Personal Service

The standard United States tax treaty as respects the income derived by professional and other persons through their personal services is to subject the income to taxation in the source country only when the person is present in the country more than 180 days in the taxable year. The OECD Draft, however, places jurisdiction to tax at the source on the existence of a "fixed base regularly available" to the taxpayer in the source country. Since this "fixed base" concept is foreign to our tax concepts and its scope and effect are thus uncertain, we entered a reservation on this provision. As another approach, some countries seek to tax at the source in all cases where the payments are deducted by their domestic taxpayers. The general thrust of these approaches would appear to be in the direction of a larger scope for the source country, especially if the "fixed base" concept is given a wide application. We believe that the entire matter requires further study and, while we have not as yet made a final decision on our policy in this area, our thinking is in the direction of retaining a time period criterion rather than introducing a new concept.

The above are some of the significant provisions under re-examination. Others, for example, relate to the treatment of interest in the case of financial institutions, the treatment of life insurance premiums, permission to collect in the United States on an adversary judgment obtained by the tax authority in a country whose legal development corresponds to our own, the problems in the taxation of dividends and interest payments moving over international borders and then returning in the case of the international corporation with various foreign subsidiaries, and so on. Recently, the Treasury Department held a two day meeting with lawyers, accountants and executives interested in the tax treaty area to discuss the issues raised by our re-examination of the tax treaty provisions. Further conferences will be held as our study progresses.

Drafting

Closely allied to this substantive revision is a comprehensive re-examination of the drafting of our tax treaties. Experience over the years with the existing terminology, the closer scrutiny that has come with more eyes and minds poring over the words and details, and the existence of the OECD Draft have led us to the view that drafting improvements are both needed and possible. A part of this

redrafting will involve a reorganization of the order and arrangement of treaty provisions.

Clearly all this will take time, for often the press of problems does not permit the patient consideration that both countries would have to give to a new treaty draft. Moreover, it is an extremely difficult task to achieve a high level of standardization of terminology in a process that, after all, involves intricate negotiation and the inevitable compromises in thought and phrasing necessary to surmount the differences that arise. All of this is likely of course to lead to greater technical complexity, and those with a nostalgia for a simpler era of international tax relationships will shake their heads. But as national tax systems grow more complex, and as the expertise of those engaged in domestic tax matters spreads to those, in Government and out, dealing with international tax matters, one cannot expect to retain simple international bridges between intricate national systems.

Interpretation

One way of meeting the growing complexity of tax treaties is to improve the interpretative process applicable to these treaties. For example, we are exploring the desirability of a single master income tax treaty regulation covering all the income treaties. There would then be appendices to show the points at which the several treaties contain provisions, if any, at variance with the master framework. This approach, if it proves feasible, should have several advantages: It will permit more rapid promulgation of regulations since only the variations of a particular treaty must be noted; it will permit a clear awareness of the precise place at which a particular treaty varies substantively from the standard form; it will indicate that differences in phrasing—so often occasioned by problems of language, the stylistic tastes and idiosyncreasies of the particular negotiators, sticky points of internal law, the phrasing required to embody carefully structured compromises or the like—do not involve intended differences in result.

In addition, the publication of more descriptive material will be helpful. The Treasury has expanded the technical explanations which it presents to the Senate Committee on Foreign Relations and which are in turn published by that Committee. We are also hopeful of increasing the number of published rulings relating to treaties.

Implementation of Treaty Provisions

Improvements in substantive provisions must be followed by improvements in the administrative implementation of those provisions, or else the full benefits of substantive change will not be realized. Thus, the techniques of allocation of income and expenses between parent and subsidiary and of the allocation of ex-

penses to a permanent establishment need modernizing so that rational allocations are pursued by both countries and inconsistent determinations avoided as far as possible.

Moreover, efforts must be made to develop treaty mechanisms which permit the appropriate accommodation of allocations made by the tax authorities of one country and accepted as proper both by the taxpayer and by the tax authorities of the other country. Such a treaty mechanism could, for example, remove impediments of domestic law to the accommodation, such as statute of limitations or the finality of previous assessments. Further, where the tax authorities disagree as to the appropriate allocation, mechanisms should be sought which would permit any resulting double tax burden to be shared among the two Governments and the taxpayer in a proper fashion, so that all three would have an interest in keeping differences in allocation approaches to a minimum. Indeed, this subject of proper international allocations and the mechanisms for handling changes in allocations and the differences that arise in concrete cases represents one of the most important areas of treaty development.

Other illustrations of matters where improvement would appear desirable are: The mechanics of applying reduced dividend withholding rates to bearer shares and the determination of the amount of the credit to be granted by the other country in these situations required re-examination, in view of the complexity of ascertaining the applicable rate under some European systems where the dividend is paid, for example, by a corporation which in turn derives income from other corporations. The responsibility of one treaty country to "pick up" the differential between the regular withholding rate and the treaty rate of the other country when the former finds an income payment flowing to one who is not a resident must be met with more fidelity. The information to be exchanged between treaty countries must be in a form more susceptible of use by the various countries, and in turn should be used. The competent authorities must keep in closer contact to be more fully aware of double tax situations, in addition to the allocation problems earlier mentioned, and other difficulties that their nationals may be experiencing through the defective meshing of two administrative determinations.

Currency of Tax Treaties

I believe the discussion so far has been sufficient—perhaps more than sufficient—to indicate that the technical substance and terminology of tax treaties are likely to undergo significant changes in the next few years. Moreover, this is a steadily evolving process in which the United States can play only its role in a large cast. As treaties are constantly written and revised between other countries, the new patterns that emerge are in turn related to our treaties. If, for example,

Germany enters into a revised treaty with France that embodies what both countries believe is an improvement over a standard clause, then either France or Germany in turn is likely to present the improvement to the United States when a protocol or revision of their treaty with us is under consideration. In other words, unlike domestic legislation, the pace of change in the treaty area is shaped by the thoughts and imagination of many Treasury Departments and Finance Ministries.

This constant pressure for change, and for changes that a variety of countries regard as appropriate, makes it difficult to keep our treaties current. A desirable change may be made in the technical definition of permanent establishment in a treaty we make with say, Germany. How do we proceed to incorporate this technical improvement into our other treaties? At the present the only course is to await a time when enough matters accumulate or an important event suddenly occurs to warrant a protocol or revision of a treaty with, say, France or Belgium and then seek to incorporate the German improved permanent establishment difinition. The process is of course shaped by the procedures of treaty approval — negotiation, initialing of a draft by the delegations, signature by the President's representative, hearing by the Senate Committee on Foreign Relations, and Senate ratification. Clearly, if possible we should avoid having the Senate Committee sit constantly to consider technical treaty changes.

Consequently, as the network of treaties expands, as the treaties grow in complexity, and as the pace of technical change becomes faster, it would appear desirable to see if a procedure can be devised which would permit more rapid accommodation of existing treaties to these developments. One possible avenue for exploration is to provide in each treaty that its technical provisions may be altered through an exchange of notes. The change would have to be in accordance with a provision already approved by the Senate in another treaty, so that the Senate would thereby have passed upon the substance of the matter involved. The Secretary of the Treasury would be authorized to make such a finding and would be required to notify the Senate Committee of all such exchanges of notes. Under this approach, a technical change in the definition of permanent establishment approved, say, in the German treaty could by an exchange of notes be applied to the Luxembourg treaty. The Senate Committee would, through new treaties or extensive revisions of existing treaties, be scanning all these technical provisions from time to time. It thus would be in a position in effect to keep under review the activities of the Executive Branch in these note exchanges, since if it decides in a new treaty not to approve a similar provision, the authority for future note exchanges respecting that particular point would end unless the Committee indicated otherwise. The entire procedure would of course be limited to technical matters and would not extend to basic substantive matters such as the rates of

withholding. Since, of course, treaty provisions essentially provide rules ameliorating national law so as to prevent double taxation and avoid inconveniences, such a procedure to keep the treaty rules current would be of distinct benefit to taxpayers. It is interesting in this regard to note that several of our existing treaties may by Executive action be extended to territories of the treaty country, "with such modifications as may be found necessary for special application in a particular case" (quoting from the United Kingdom treaty).

Estate Tax Treaties

The discussion above has been in terms of income tax treaties. The United States have twelve estate tax treaties, but this phase of the treaty process has never reached the pace of the income tax treaties. The OECD Fiscal Committee, however, is now turning its attention to a draft of a model estate tax convention. It is to be expected that this development, combined with the increasing number of taxpayers who are citizens of or residing in one country while holding investments in other countries, will cause an increased interest in these treaties. The Treasury Department is therefore commencing to re-examine the positions take in the existing treaties and the technical drafting of those treaties, together with a consideration of the matters in the estate tax area appropriate for international accommodation.

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CAPITAL GAINS TAXATION IN ISRAEL - MODIFICATIONS

DR. E.W. KLIMOWSKY, *advocate*

The new tax bill just published is intended to bring about an almost complete rounding-off ot capital gains taxation in Israel.

The first taxation ot capital gains was effected by the Land Betterment Tax Ordinance ot 1949 subsequent to the establishment ot the State. This tax was restricted to the transter ot legal ownership in land via registration with the Land Registry Office. It became apparent, especially within the past two years, that speculative real estate transactions remained untaxed because a majority ot the transactions was not registered but remained within the framework of a contractual relationship, most of them for only a very short duration. The legislature now imposed the Land Betterment Tax also on the acquisition and transfer of mere contractual rights in land and land owning corporations and this became effective August 22, 1963. The immediate repercussion was an almost complete standstill of speculative land transactions and a considerable reduction of land prices outside big cities.

Two measures of taxation were enacted regarding capital gains taxation of movable property, including intangibles i.e. copyrights, patents, etc. Gain from the sale of movable property used within the scope of the business and benefiting from an expressly prescribed percentage of depreciation allowance has been, since 1952, subject to a 25% capital gains tax; and since 1961 the profits derived from the sale of patents and copyrights by nonprofessional inventors and authors have been subject to the same 25% tax rate.

Now through this bill the treasury seeks to impose a capital gains tax on almost every item not subject to another specific tax i.e. the ordinary income tax and the Land Betterment Tax.

When the congress for the International Fiscal Association convened in Basle in 1960, and directed itself to the tax treatment of capital gains, the Swiss General Reporter made a salient point in his general survey that in countries where there has been a considerable devaluation of the currency, the corresponding increase in prices and capital profits should not unreservedly be exploited by the state. He recommended that the capital

gains tax in those cases be supplemented by index clauses and he suggested that the more the cost of living index rises the more the rate of tax on capital gains should be reduced. Even though under devaluation debtors of commercial and capital debts benefit greatly from the decreased value of their debts, no tax system has yet imposed a special equalizing tax on the savings of economic liabilities.*

It should be appropriately noted that the Israeli currency was devalued approximately 90% since the establishment of the State. The Israeli legislature is now trying to compensate for the devaluation of its currency by granting a tax rebate of 5% for each of the first 16 years that the property, which brought about the capital gain, was beneficially owned by the taxpayer. After a holding period of 20 years capital gains derived from the sale of that property will not be recognized.

To bridge gaps which were prevalent in the capital gains tax structure, the new bill expressly provides that profit from the *sale* of property, if at all possible, shall be deemed to have emanated from an enumerated source of income which is subject to ordinary income tax liability. See (section 89 (c)). A sale is deemed to be an exchange, waiver, transfer, transmission, conveyance, grant or any other transaction within which the beneficial control of the property is transferred from one person directly or indirectly to another person, except by way of a gift, legacy or bequest. The difference between the ordinary income tax for business profits and the capital gains tax is that the latter has a fixed rate of 25% and the former a number of progressive rates (section 91). Capital gains may be offset by capital losses.

Another important change which the law brings about is pertinent to the liquidation of a corporation. Upon liquidation of a corporation the distribution of capital assets is not considered to be tax free, but subject to the capital gains tax. The value of the distributed property is assessed as though it were sold at a voluntary sale. To avoid lengthy liquidation proceedings and belated payment of the capital profits tax (which is due at the end of the liquidation), the bill provides that after a period of two years the assets are deemed to have been distributed and only the Income Tax Commissioner may grant an extension.

* The German equalization tax law (Lastenausgleich) has a special characteristic due to the fact that it is linked not with the ordinary effects of devaluation but with very specific events connected with the political and economic repercussions of the Second World War.

The bill is also directed to the treatment of gain from the sale of stock which was acquired as a stock dividend. The stock dividend shares are deemed to have been acquired at the time when the original shares were acquired. The base upon which gain is recognized is determined by taking an overall average of the original shares and then averaging this with the stock dividend. This reduces the average price of each original share equally, and gives to the stock dividend a base upon which gain from a sale is calculated.

At present various items are exempt from capital profits tax: gain from the sale of debentures and bonds of the Government or with Governmental guaranty, and gains based on currency depreciation if the property in question has been associated with any contract clause directed either to the rate of exchange, the cost-of-living index or any other index. However, gains realized from the sale of securities listed on the Israeli Stock Exchange which were acquired within a year of the sale, are now made liable to a 20% profits withholding tax. Since June 10th, 1964 the Minister of Finance has been authorized to provide for a system of capital profits tax computation, either generally (with the consent of the Finance Committee of the Israeli legislative assembly) or by way of tax deduction at source.* For the computation of the profit the 'first in first out' method is to be applied and in case the securities were not originally deposited with an authorized dealer, the deposit date for the purpose of sale is deemed to be the date of acquisition of those securities certified as such by the dealer. Brokers' fees for acquiring and selling the securities, as well as for any other expenses connected with the acquisition and sale, may be deducted by a total of 2% of the sales proceeds. If the Assessing Officer is satisfied that the vendor of the securities would not be liable to income tax, he may instruct the authorized dealer in special cases to refrain from withholding the tax.** The bill also concerns itself with asset-for-shares transactions between corporations. Where assets for a corporation are sold for shares to another corporation and immediately after the sale the vendor is in possession of 90% of the voting stock of the vendee, any profit realized will not be recognized.

However, the newly acquired property or shares take as their bases the

* Book of Laws No. 426 of June 12, 1964, p. 114.

** Income Tax Rules (Deduction from the Proceeds of the Sale of Shares) 1964. Collection of Regulations No. 1592 of June 14, 1964, pp. 1407-8.

value of the property transferred. Upon a subsequent sale gain will be recognized from the above bases.

If a recent immigrant sells property within four years of his immigration, and this property was owned and located outside of Israel before his immigration, gain from the sale thereof will not be recognized (section 97).

Section 89(b) is of special significance to non-residents. The capital profits tax is now integrated into the system of income tax sources with the jurisdiction for the tax being based upon either profit being derived from Israel sources or accruing in Israel (or received in Israel). The bill provides that a capital profit shall be deemed to have been derived from or accrued in Israel if either the vendor is a resident of Israel or, if the vendor is a non-resident, the respective property is situated in Israel or, if the property is abroad, the right to the property is situated, directly or indirectly, in Israel. This means that not only all securities of Israeli companies yielding a capital profit to a non-resident will be subject to the capital profits tax, but also all contractual rights which a non-resident has in property situated outside Israel will be subject, upon sale, to the capital profits tax if any nexus exists between the contractual right and the State of Israel.

In addition to the proposed amendments to the Income Tax Ordinance, two other amendments to the laws of 1950 and 1959 for the Encouragement of Capital Investments have been submitted to the Israeli legislative assembly (Knesseth). Under these bills the capital profit from the sale of an approved investment or an approved building is exempt from capital profits tax; the same is true if an investment or property or undertaking has been included in an approved scheme prior to the enactment of the proposed amendment to the income tax ordinance. If property has been exchanged for other property and a capital profits tax has been paid, then upon a subsequent sale gain will be recognized on the difference between the sales price and the basis of the substituted property (section 96).

Further exemptions relate to the capital profit accruing from approved investment by both residents and non-residents.

II

WORLD TAX REVIEW

AUSTRIA

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Dr. Zapletal in 1962 started the publication of the text of the Austrian Income Tax Act, (part I) and the text of the tax treaties in this field, concluded by Austria (as part II) in one loose-leaf volume. In cooperation with Dr. Hofstätter a second loose-leaf volume, the third part of this work, has now been published. Following the specific articles of the Income Tax Act one finds a synopsis of all important decisions since 1945 of the High Tax Court. For every decision has been indicated whether the decision was made as a result of appeal of the taxpayer, the appeal of the tax administration or by the Tax Court in its own competence. This is the first publication in Austria in which all important income tax cases are to be found in one volume.

Finanzstrafgesetz, Textausgabe österreichischer Gesetze und Verordnungen, Abgabengesetze, Band I/3, Eisenstadt, Prugg Verlag, 1964, pp. 151, AS 60.

This booklet contains the text of and an explanation to the penalty provisions under the tax law. Not only are the actual measures set forth, but administrative and precedural rules are discussed as well. These rules are in a surveyable publication.

Kommentar zur Gesellschaftsteuer, Schriftenreihe der Österreichischen Steuer- und Wirtschaftskartei, No. 16, HUEMER, O., Wien, Industrieverlag Peter Linde, 1964, pp. 133.

Until the appearance of this book little has been written on the tax levied when stock is initially issued or when capital is provided to an enterprise. This book explains the law and gives the almost unknown text of the regulations pertaining to the Act on the initial acquisition of corporate rights etc. (Gesellschaftsteuergesetz). The author states that the Government must modify the Act of 1934 to make the law applicable to modern situations. One of the main problems, stemming from this book is the fact that loans to an enterprise may be deemed to be of a similar nature as the capital supplied by a stockholder in acquiring stock. This problem is dealt with in a lucid and comprehensible way, by the author who is a well-known contributor to various periodicals.

CANADA

TAX NEWS

New Legislation

The 1964 federal Budget Resolutions and certain technical amendments were added to the Income Tax Act by Chapter

13, Statutes of 1964 – assented to June 18, 1964. The amendments include the following items of interest -

1 Deductibility of the net cost of objecting to or appealing an income tax assessment or penalty.
2 The time during which new businesses may qualify as having commenced operations in designated areas of slow economic growth, so as to be exempt from income tax during the first three years of operation and to be eligible for accelerated depreciation on buildings and equipment, has been extended from December 5, 1965 (the original expiry date) to April 1, 1967.
3 Deductibility of expenditures of a current nature on scientific research carried on outside Canada.
4 The withholding tax on dividends paid to a nonresident by a resident corporation not having "a degree of Canadian ownership" is reduced from 20% to 15%. A similar reduction is made in the tax imposed on nonresident-owned investment corporations and on the nonreinvested profits earned by Canadian branches of foreign corporations. See Bulletin Vol. XVIII p. 221. As a consequence, the penalty tax that was to be imposed on corporations not having "a degree of Canadian ownership" that significantly increased their rate of dividend payments before the date the withholding tax was to rise from 15% to 20% has now been withdrawn, so that it never came into force.
5 The definition of "a degree of Canadian ownership" is greatly expanded. See Bulletin Vol. XVIII pp. 221-22.
6 The abatement of federal income taxation of individuals, designed to provide "room to tax" for the provinces, is increased from 19% to 21% for 1965 and from 20% to 24% for 1966.

Some technical amendments were also made to the Estate Tax Act. The provincial tax abatement is increased from 50% to 75% in the case of the estates of deceased persons who die domiciled or leaving property in British Columbia.

Judgments

Von Westphalen v. Minister of National Revenue, 64 Dominion Tax Cases 194 (Tax Appeal Board 1964). Ownership by a nonresident of a farm in Canada that he rented through his Canadian agent did not constitute carrying on business in Canada. Consequently the nonresident was not entitled to offset "personal exemptions" against his net rental income from the farm. Though here the nonresident was a resident of West Germany, the Canada-West Germany Income Tax Agreement was held inapplicable.

Technical Tape Corporation v. Minister of National Revenue, 64 Dominion Tax Cases 428 (Tax Appeal Board 1964). Amounts paid by a Canadian company to a nonresident for technical assistance and "know-how" were in the nature of royalty payments, from which tax must be withheld, when they were based on the payer's net sales but not when they were fixed fees.

Treaties

The Canadian Government has given notice that the Canada—U.K. Income Tax Agreement is to be terminated as of the end of 1964. It is the hope of the Canadian Government that a new agreement can be negotiated by that time. The background of these developments is provided by R.A. Short in 12 Canadian Tax Journals 264-66 (July-August 1964).

Reported by: Prof. E.C. Harris, Faculty of Law of Dalhousie University, Halifax.

COMMON MARKET

BIBLIOGRAPHY

Droit des Sociétés – Gesellschaftsrecht, JURA EUROPAE, Hefermehl, W., C. del Marmol, L. Dabin, D. Bastian, G.E. Colombo, M. Rotondi, B. Delvaux, W. van der Grinten, München – Paris, Verlag C.H. Beck, Editions Techniques Juris-Classeurs, 1964, loose-leaf, main volume about pp. 850, DM 95.—.

The effect of the economic integration of the Common Market countries in Europe fortunately manifested the cooperation of experts and editors from the various countries. Since the language barrier still exists and the laws of the countries are not easily attained by aliens, the urgent need was felt for a publication in which the different laws were collected.

A series Jura Europa was begun that encompass four loose-leaf volumes, dealing respectively with corporation-law; taxation-law; commercial-law; and social (labour)-law. The first volume recently appeared. It is written both in German and French. After an introductory survey on corporation-law, the existing forms of association are dealt with, not giving the text of the various acts, but explaining the law in a logical following up. As a conclusion the problems of mergers etc., foreign corporations, and the costs of establishing an enterprise are discussed.

CONGO

DOCUMENTS

REGIME FISCAL CONGOLAIS

La note jointe en annexe n° 1 contient un exposé concernant le régime fiscal en vigueur au Congo.

Les obligations fiscales principales auxquelles sont soumises les sociétés, telles qu'elles sont exposées dans cette note peuvent être résumées comme suit:

a) Sociétés de droit congolais:

Les bénéfices sont, pour le calcul de l'impôt, divisés en sept tranches, correspondant chacune à 2,5% du capital investi, sans pouvoir être inférieures à 150.000 Frs. La septième représente le surplus éventuel du bénéfice. Les taux de l'impôt sont fixés respectivement à 14, 17, 20, 24, 28, 32 et 40% pour chacune de ces branches successives; depuis le 1er janvier 1963, il est appliqué 3 décimes additionnels au profit de l'Etat au principal ainsi calculé.

En outre, une taxe mobilière de 25% frappe les revenus attribués aux actionnaires.

b) Succursales de sociétés étrangères, taux d'impôt uniforme de 3.5% plus 3 décimes additionnels.

La disposition la plus favorable à certains investissements importants est l'exemption fiscale. Les textes législatifs réglant les modalités d'application de ce principe figurent à l'annexe n° 2.

LE REGIME FISCAL

1) *Généralités*

Il n'existe aucune discrimination envers les entreprises ou redevables étrangèrs. Une disposition particulière prévoit cependant que les sociétés étrangères et tous autres redevables étrangers ayant dans le pays un ou plusieurs établissements quelconques tels que sièges d'opérations, succursales ou agences, sont tenus de faire agréer par l'administration au moins un représentant responsable établi dans le pays et offrant les garanties nécessaires de solvabilité.

En cas de décès de ce représentant, de retrait de son agréation où d'évènement entrainant son incapacité, il doit être pourvu à son remplacement dans le délai de deux mois.

En cas d'insuffisance des garanties offertes, les redevables et leurs repésentants sont tenus solidairement du paiement de l'impôt et des amendes éventuelles.

Nous n'exposerons ci-après que la partie du régime fiscal susceptible d'intéresser l'investisseur.

Nous ne dirons qu'un mot aussi des impôts indirects.

Ce sont d'abord les droits de douane, leur objectif étant d'alimenter le Trésor, ils ont un caractère essentiellement fiscal.

Citons encore toutes les taxes de consommation qui frappent l'alcool, la bière, le vin, les tabacs, les huiles minérales et quelques autres produits bien déterminés. Il s'agit enfin de tous les droits d'enregistrement; parmi ceux-ci il faut citer d'abord le droit de 1,20% sur le capital des sociétés par actions; il est perçu sur tous les actes portant constitution, augmentation de capital ou prorogation de société.

Il existe également un droit de mutation sur les transactions immobilières déjà enregistrées (6% entre vifs).

2 *L'impôt personnel*

L'impôt personnel est établi sur les bases suivantes:

1 Superficies des bâtiments occupés;
2 Superficies des terrains non bâtis dans les circonscriptions urbaines;
3 Nombre d'employés, de domestiques et d'ouvriers;
4 Bateaux, embarcations et véhicules divers;
5 Spectacles, jeux et paris;
6 Superficie des concessions minières.

Divers taux sont applicables à ces différentes bases sans discrimination entre redevables.

3) *Les impôts sur les revenus*

Nous examinerons successivement les trois impôts applicables aux contribuables domiciliés ou résidant dans le pays. Il s'agit des commerçants, employés, salariés, personnes exerçant une profession libérale, ainsi que des sociétés et associations qui y possèdent un siège d'exploitation.

a) Impôt sur les revenus locatifs

Cet impôt frappe les revenus provenant de la location d'immeubles (bâtiments et

terrains) y compris éventuellement le loyer des meubles, du matériel, de l'outillage, du cheptel et de tous objets quelconques.

La base de perception est le revenu net de l'année antérieure dont est déduit forfaitairement 1/5 pour frais divers plus les intérêts hypothécaires éventuels. Les immeubles occupés par leur propriétaires ne sont pas soumis à l'impôt.

Le taux est progressif et varie entre 10 et 30% suivant l'importance des revenus réalisés.

A noter que les sociétés sont assujetties à cet impôt mais déduits des bénéfices d'exploitation, soumis à la taxe professionnelle.

b) Taxe mobilière

La taxe mobilière s'applique à trois catégories de revenus de capitaux mobiliers investis au Congo:

1 Revenus d'actions ou parts attribués par les sociétés par actions de droit congolais: *taux de* 25%
2 Revenus d'obligations attribués par ces mêmes sociétés: *taux de* 25%
3 Revenus des capitaux empruntés à des fins professionnelles par des sociétés ou des personnes physiques qui ont au Congo leur domicile, leur résidence ou un établissement: *taux de* 15%

Le souci de simplicité qui caractérise la législation fiscale congolaise exclut les revenus mobiliers étrangers et les revenus d'emprunts à des fins privées de l'application de la taxe mobilière.

Dans les quinze jours qui suivent l'expiration du trimestre pendant lequel ces revenus ont été attribués ou mis en paiement, les sociétés doivent remettre au Receveur des Impôts du Gouvernement Central, une déclaration indiquant par catégorie le montant des revenus imposables ainsi que la date d'attribution ou de mise ne paiement.

Les sociétés ne sont pas soumises à la taxe mobilière du chef des revenus des prêts qu'elles ont consentis. Elles sont soumises à la taxe professionnelle.

c) Taxe professionnelle

Cette taxe frappe tous les revenus de l'activité économique c'est-à-dire:

1 les bénéfices des entreprises commerciales, industrielles artisanales, agricoles et immobilières;
2 les rémunérations diverses comprenant notamment les tantièmes des administrateurs, commissaires et liquidateurs des sociétés par actions;
3 les profits des personnes exerçant une profession libérale ou occupant une charge ou un office.

La base de perception de cet impôt est constituée par le revenu ou le bénéfice net, c'est-à-dire déduction faite des charges.

La loi autorise également la déduction des amortissements nécessaires de l'actif immobilisé en spécifiant que l'outillage, le matériel et le mobilier des entreprises industrielles et agricoles peuvent être amortis à concurrence des 2/3 de leur valeur au cours de la période couvrant la première moitié de la durée probable de leur utilisation.

Les barèmes de taxation sont différents suivant qu'il s'agit de personnes physiques ou de sociétés.

Les revenus des personnes physiques et des sociétés autres que par actions sont divisés en tranches de 30.000 Frs. jusqu'à 150.000 Frs. en tranches de 150.000 Frs. jusqu'à 600.000 Frs. et en tranches de 200.000 Frs. jusqu'à 1.000.000 Frs.

L'impôt dû pour la première tranche est fixé à 1.020 Frs. Pour les tranches suivantes, les taux sont de:

4,5%	pour la tranche de	30.001	à	60.000 fr
5%	pour la tranche de	60.001	à	90.000 fr
8%	pour la tranche de	90.001	à	120.000 fr
13%	pour la tranche de	120.001	à	150.000 fr
18%	pour la tranche de	150.001	à	300.000 fr
23%	pour la tranche de	300.001	à	450.000 fr
28%	pour la tranche de	450.001	à	600.000 fr
33%	pour la tranche de	600.001	à	800.000 fr
38%	pour la tranche de	800.001	à	1.000.000 fr

Les société spar actions de droit congolais se voient appliquer une taxe proportionnelle d'après le pourcentage que représente le bénéfice par rapport au capital investi (capital social libéré et réserves) réévalué s'il y a lieu par application des coefficients fiscaux et déduction faite de la valeur de porte-feuille. Les sociétés remettent au service compétent une déclaration énonçant le montant des bénéfices nets réalisés au Congo et à l'étranger.

Les taux suivants leur sont appliqués:

1ère tranche du bénéfice correspondant à 2,5% du capital investi avec minimum de 150.000 Fr.	taux: 14%
2ème tranche idem	taux: 17%
3ème tranche idem	taux: 20%
4ème tranche idem	taux: 24%
5ème tranche idem	taux: 28%
6ème tranche idem	taux: 32%
7ème tranche solde du bénéfice	taux: 40%

Les sociétés étrangères sont taxées uniformément au taux de 35% mais uniquement sur les bénéfices accusés par leurs sièges d'exploitation congolais.

Au principal de l'impôt déterminé suivant les modalités qui précèdent, il est ajouté 3 décimes additionnels au profit de l'Etat.

EXTRAIT DE LA LOI DU 10 JUILLET 1963 RELATIVE AUX IMPÔTS SUR LES REVENUS

Article 33

Le Ministre des Finances peut accorder, pour une période qui ne dépassera pas cinq ans, l'exonération totale ou partielle de la taxe professionnelle afférente aux revenus

réalisés dans leurs sièges d'exploitation situés au Congo, par les entreprises qui s'installent dans ce pays après le 1er janvier 1962 ou qui, y étant établies y installent de nouvelles unités de production.

Seules les entreprises dont l'activité est reconnue d'importance fondamentale pour le développement économique, d'après les critères déterminés par les Ministres des Affaires Economiques ou de l'Agriculture du Gouvernement Central peuvent bénéficier de cette exemption.

Reported by: J. Jadin, Congo-Léopoldville

DENMARK

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Skattetabeller 1964-65 *(svar på alle spørgsmål om beregning af skat)*, SPANG-THOMSEN, V., Copenhagen, Nyt Nordisk Forlag Arnold Busck, 19th edition, 1964, pp. 90, DKr. 16.75 incl. turnover tax.

This latest edition contains the combined national and local income tax rates presently in force in most municipalities; present rates of net wealth taxes and summaries of the most important provisions of the various acts. A summary in English is given at the end.

TAX NEWS

Special income tax law, June 4, 1964.

According to Danish law, profit on certain kinds of capital increases (capital gain) is liable to taxation. The ordinary rule is that the tax liability commences on April 1st in the year following the end of the income period. In order to prevent taxpayers from evading payment of tax on a realized capital gain by leaving the country before April 1st, the commencement of the tax liability for these categories is altered from the before mentioned date to the date of acquisition. The alteration becomes effective from July 1, 1964. The rule applies to persons only, as companies and associations are tax liable on all income up to the date of dissolution.

Reported by: V. Spang-Thomsen, Copenhagen

FRANCE

BIBLIOGRAPHY

La réforme des Aides au Développement Régional, Décrets du 21 Mai 1964 et textes d'application, Publication no. 149 en date du juillet 1964 de l'Association Nationale des Sociétés par Actions (A.N.S.A.), Paris 17e, 15, Place Malesherbes, juillet 1964, pp. 62.

Tax provisions with respect to tax incentives for the development of certain French areas are discussed in this booklet, which in addition contains the text of applicable decrees updated to the instruction of June 17, 1964, published in the Journal Officiel of June 24, 1964.

Livres Français de Droit, Sciences Politiques, Economiques, Sociales et Humaines 1957-1963, S.P.E.L.D., 29, rue Rousselet, Paris (7ème), 1963, pp. 204.

The Cultural Services of the French Embassy in the Netherlands have been kind enough to send us the above catalogue of French books on law, political and social sciences, and economics. 79 French publishers and organisations have cooperated in preparing this catalogue; their names and adresses are given in a list on pages 6-8.

In the section on law, chapter 3 is devoted to books on taxation. Similarly chapter 4, B of the section on economics mentions books on taxation. Other useful sections for attorneys are chapter 1, 6 on commercial law (companies in general, insurance companies, maritime and transport law) and chapter 1, 28 on international and comparative law. Furthermore special attention is drawn to chapter III, 3 (the theory of economics), III, 5 (money and credit); III, 6 (economics of business) and III, 7 (international economics, developing countries, Common Market).

GERMANY

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AFA-Lexikon, WONS, Heidelberg, Industrie-Verlag Carlheinz Gehlsen GmbH, vorm. Spaeth & Linde, 1964, pp. 194.

Lists and tables of the depreciation rates of business assets, as accepted by the tax authorities is set forth in this book. Applicable depreciation rates and the underlying legal provisions, as well as case law and administrative practice are also discussed.

Bewertungsgesetz, SCHMITT-DEGENHARDT H., H. GRUSS, H. LINDNER, Sachverlag für Wirtschafts- und Steuerrecht, Schäffer & Co. GmbH, Stuttgart, Buchreihe Finanzen und Steuer, no. 13, fünfte neu-bearbeitete Auflage, pp. 282.

This book gives an explanation of the provisions of the valuation-law.

Die steuerliche Abschreibung im In- und Ausland, GÜBBELS, DR. B., Heft 76 Institut „Finanzen und Steuern", Bonn am Rhein, Markt 14, August 1964, pp. 62.

Description and comparison of depreciation and investment allowances in Germany and other West-European countries, written by one of Germany's most respected experts on this subject.

Mehrwertsteuer und Aussenhandel, Institut „Finanzen und Steuern", Nr. 66, MESENBERG, H., Bonn, Institut „Finanzen und Steuern", 1964, pp. 58.

An inquiry into the effect of the proposed German turnover tax (on added value) on export activities, as compared with the existing one is the subject of this book. The author does not claim to weigh all relevant factors but makes use of available statistical data and has, as a starting point, compared both the existing law and the law as proposed. Therefore his conclusions may deviate if amendments are made to the latter. The brochure presents various turnover tax problems and the influence they may have on import- and export activities.

Rationelle Umsatzsteuer; *Unternehmen Abendland am Kreuzweg,* WÖRNER, A., Mayen, Maria E. Wörner Verlag, 1964, pp. 207.

The author has become the spokesman for a number of German entrepreneurs who strenuously object to the proposed tax on added value. A major portion of the book is devoted to arguments against the tax on added value, with an outline of the existing system.

Steuer – Fundhefte, Leitsätze der Entscheidungen, Literaturübersicht, Nachweis der Verwaltungsvorschriften, Band XI, 1963, ZIEMER, KALBHENN und FELIX, München und Berlin, Verlag C.H. Beck, July 1964, pp. 550, DM 58.—.

The 1963 taxation guide to court decisions, articles in periodicals, bookreviews and regulations in Germany and other selected countries makes this a practical book which caters to the practioners' wants.

INDIA

BIBLIOGRAPHY

Principles of Sales Tax Laws, AGRAWALA, M.L., Jagdish & Company, Surajpole, Udaipur, first edition 1961, pp. 65.

This book elucidates the general principles involved in sales tax laws in India, without having a direct reference to any State Sales Tax Law. It is written as a textbook to serve as a guide for students and trainees who want to have the knowledge of the principles laid in this branch of taxation. In general the principles dealt with in this book represent the provisions laid in the majority of State Sales Tax Laws. References are made with respect to the Purchase Tax and the Central Sales Tax, as well as covering almost all aspects related thereto such as basic principles, administration and adjudication.

The Law and Practice of Income Tax, KANGA, Sir J.B., Kt. and N.A. PALKHIVALA, A.S. PANDRA, for N.M. Tripathi Private Ltd., Bombay, fifth edition, 1963, 1st volume pp. 1123, 2nd volume 808 pp., Rs 70 for both volumes.

To quote the French author André Gide: "De mille aperceptions fragiles, je tisse un vêtement miraculeux" is not out of place in reviewing this monumental Bible on Law and Practice of Income Tax in India. The comprehensive treatise of a so complicated subject as Indian income tax so clearly and organized as the present writers do is, in itself, an achievement to be celebrated by those who are confronted in their daily work frequently with law and practice of income tax in India.

This work consists of two volumes. The first volume deals with the Income Tax Act 1961 and the commentary encompasses not only instructive notes, interpretation and explanation but it refers to case law throughout the book. The Income Tax Act of 1922 as amended is lucidly compared to the Income Tax Act 1961.

The second volume contains the text of the Income Tax Act 1922 and a comparative table referring to the sections in the old and the new Act with respect to similar provisions. Also double taxation relief with respect to Aden and the Dominions, as well as

tax treaties concluded by India for the avoidance of double taxation on income with Pakistan, Ceylon, Switzerland, Sweden, Denmark, Norway, Japan, Federal German Republic and Finland are included in the second volume. So are the Finance Acts from 1958 up to and including 1963, the Super Profits Tax Act and Rules 1963 and the Compulsory Deposit Scheme Act 1963.

TAX NEWS

The direct taxes (amendment) Bill, 1964

The Finance Minister, Mr. T.T. Krishnamachari moved the Direct Taxes (Amendment) Bill, 1964 in the Lok Sabha yesterday the 24th September, 1964. The Bill seeks to amend the Income-tax Act, 1961, the Estate Duty Act, 1953 and the Expenditure Act, 1957. The amendments to the last mentioned two Acts are minor but some important changes proposed in the Income-tax Act are summarised below:-

1 *Dividends*

Under the existing law 'dividend' includes any distribution made to shareholders of a company on its liquidation to the extent to which the distribution is attributable to the accumulated profits of the company immediately before its liquidation. The amendment now proposed gives a concession in a case where the liquidation is consequent on the compulsory acquisition of the company by the Government. In such a case that part of the distribution which is attributable to the accumulated profits of the company prior to three successive previous years immediately preceding the previous year in which the compulsory acquisition takes place shall not be treated as 'dividend'.

2 *Rent Allowance*

An exemption is proposed in respect of any special allowance specifically given to an employee to meet expenditure on rent in respect of residential accomodation occupied by the employee. Thus if an employee is not provided with rent free quarters but is given a rent allowance, he shall not pay any tax on such allowance subject to the following limits:-

(a) the exemption shall be restricted to the expenditure actually incurred, subject to a maximum of Rs. 300 per month; and

(b) to such other limits as may be prescribed by the Central Board having regard to the area or place in which accomodation is situated and other relevant considerations. Thus a restriction has been enforced on the basis of a maximum percentage on salary, such percentage varying with the city or town in which the employee is posted. The amendment will be effective from assessment year 1965/66 and will apply to salaries earned during the current financial year.

3 *Nehru Memorial Fund*

It is proposed to grant rebate of income-tax on donations to the Jawarharlal Nehru Memorial Fund without any upper limit on the amount of the donation on which the rebate may be given.

4 *Advancepayment of tax*

An amendment is being suggested to enable the Income-tax Officer to demand advance payment of tax on the basis of a provisional assessment or self assessment of a later year if such a demand will be higher than the demand on the basis of the latest completed regular assessment.

5 *Annuity Deposits*

An amendment is proposed to section 280B to provide that no annuity deposit should be made on any annuity or commuted value of annuities received by an individual.

6 *Restriction on Transfer of Property*

A new section is being added which prohibits the registration under the Indian Registration Act of any assignment or extinguishment of the right title or interest of any person to or in any property (other than agricultural land) valued at more than Rs. 50,000 unless a tax clearance certificate has been obtained by the transferor in respect of all his existing liabilities relating to direct taxation.

7 *Information by Contractors*

Another new section is being added to make it obligatory on every contractor who enters into a contract for the construction of a building for, or the supply of goods or services in connection therewith to, any other person, of a value exceeding Rs. 50,000, to furnish to his Income-tax Officer within one month of the making of the contract such particulars relating to the contract as may be prescribed.

8 *General*

Other amendments relate mainly to procedural matters, for example, rectification and revision of assessments, computation of advance deposits etc.

Reported by: K.C. Khanna, 16 Strand Road, Calcutta-I

LEBANON

BIBLIOGRAPHY

The Fiscal System of Lebanon, HIMADEH, Raja S., M.A. Khayat's Beirut, 1961, pp. 120.

The author, Head of the Financial Studies Service of the Lebanese Ministry of Finance, and Lecturer at the American University of Beirut, examines the budgetary and tax system of his country. The purpose of the study is threefold: first, and chiefly, to give a description of public receipts and expenditures of the Central Government in its ordinary and special budget; secondly, to appraise the main taxes and the direction of outlays; and thirdly, to evaluate the fiscal system from the standpoint of fiscal adequacy and effects on income distribution and production.

After a brief history of Lebanese public finance since the first world war (chapter I), chapter II discusses public receipts in the ordinary budget, in financiallyin dependent budgets, and in the development works fund extraordinary budget. Chapters III-VI give a survey of income tax, land and building tax, succession, gift and miscellaneous, direct taxes, and indirect taxes, such as tobacco monopoly, duties on alcoholics and salt, and custom duties. Public expenditures are discussed in chapter VII and the evaluation of the fiscal system is given in chapter VIII.

LUXEMBOURG

BIBLIOGRAPHY

Code de la Législation Fiscale Luxembourgeoise 4, Impôts Communaux, SINNER, J., Armand Peiffer, Editeur, Luxembourg, 1964.

Mr. Sinner has now published a 4th volume in the series on Luxembourg tax legislation. Earlier volumes discuss the individual and corporate income tax, the business tax, the net worth tax and some minor taxes, such as the land tax. This particular volume discusses the tax law in general with examples of the German tax legislation introduced during the war which remained effective. They are to be replaced by tax legislation which is still pending in Parliament. One of the most important laws incorporated in the book is the Loi d'Adaption Fiscale, which includes many significant definitions such as of residents, permanent establishment etc. and the Loi Générale des Impôts, including general principles of tax law. Other laws are those dealing with administrative penalties for overdue taxes, collection of taxes and the tax treaties which Luxembourg has concluded with Germany, Austria, Belgium and France.

NETHERLANDS

BIBLIOGRAPHY

Belastingrecht in wording, de ontwikkeling van de belastingontwerpen en de vergelijking met het bestaande recht. De nieuwe belastingwetgeving, Booy D., P. Noordhoff N.V., Groningen, Vuga-Boekerij, Arnhem, 1964.

A loose-leaf-service following developments in tax reform proposals and effective tax provisions for income, net wealth, wage, dividend and corporation income tax. The text of the articles effective now and that of the proposed bills are compared. Appended is a survey of the official documents where the discussions of and annotations to the taxes involved are set out.

Nederlandse regelingen van internationaal belastingrecht, Documentair handboek met teksten van en toelichtingen op de in Nederland geldende eenzijdige bepalingen van internationaal belastingrecht en de door Nederland gesloten belastingverdragen. Compiled by the International Bureau of Fiscal Documentation in Amsterdam under the editorship of J. van Hoorn Jr. and F.H. Fries, N.V. Uitgeversmaatschappij AE.E. Kluwer, Deventer-Antwerpen, 1964, aflevering 1.

This is the first part of a loose-leaf service giving detailed information on Dutch unilateral relief provisions and tax treaties concluded between the Netherlands and other countries to avoid double taxation on income and net wealth.

Voorraadwaardering, Fiscale Monografieën no. 8, Slot G., Deventer-Antwerpen, N.V. Uitgeversmaatschappij AE.E. Kluwer, 1964, second edition, pp. 147, fl. 9.75.

This reprint updates the volume re determining the value of business stock in computing profit. It deals with valuation of stock for tax purposes and also with valuation of stock according to theoretical business administration, based on recently published important case law, commentaries and writings.

NEW ZEALAND

BIBLIOGRAPHY

A guide to New Zealand Income Tax Practice 1963-64, STAPLES C.A., A.P.A.N.Z., F.I.A.N.Z., Wellington (N.Z.), Sweet & Maxwell (N.Z.) Ltd., 24th edition, 1964, pp. 436.

The present edition of this annual guide incorporates all changes having occurred since the previous edition, including those made by the Land and Income Tax (Annual) Act 1963, the Land and Income Tax Amendment Act 1963, and the Land and Income Tax Amendment Act (No. 2) 1963.

SWEDEN

BIBLIOGRAPHY

Om beskattning i Sverige vid in- och utflyttning samt vistelse i utlandet m.m., GEIJER, E., Stockholm 16, Svenska Handelsbanken, 9th edition 1964, pp. 215, price: free upon request.

The ninth edition of this treatise gives a survey of Swedish income and net wealth tax law with respect to non-residents and persons moving into and out of Sweden. Both unilateral and treaty provisions are considered and many practical examples are given. An English version of the same book is issued at greater intervals, the most recent being in 1959 (fourth edition) and is entitled "How Swedish Tax Laws Affect Persons Removing into or from Sweden or Residing Abroad".

UNITED KINGDOM

BIBLIOGRAPHY

A Concise Law Dictionary, OSBORN, P.G., London, Sweet & Maxwell, fifth edition, 1964, pp. 393, 25 s. net.

A new edition of this useful law dictionary contains definitions of legal words and terms and explanations of the meaning of Latin maxims and Roman law terms. A list of law reports with abbreviations is given in appendices.

UNITED STATES

TAX NEWS

At the time the Bulletin went to print the Internal Revenue Service announced that U.S. citizens living abroad may vote by absentee ballot without nullifying his status as a bona-fide resident of a foreign country within the meaning of section 911 (a) (1) of the Internal Revenue Code.

WEST AFRICA

BIBLIOGRAPHY

Mémento Fiscal et Social 1964, Numéro Spécial No. 14, 25 juin 1964.

Special release containing a survey of the taxes imposed in each of the countries of the West-African Union and Guinea. This release gives a comparative survey of all taxes and duties imposed in Dahomey, Guinea, Ivory Coast, Mali, Mauretania, Niger, Senegal and Upper-Volta, all former West-African French colonies. Included are such duties and taxes as: custom duties; duties on the exploitation of mines; schedular and general income taxes; turnover taxes; withholding taxes on income from movable capital; stamp and registration duties, as well as social security charges. The rates are given in the form of comparative tables so as to facilitate an appraisal of the various tax burdens on individuals, corporations and business in general. Special provisions and rates are set forth for the separate countries. Although the survey is succinct, it constitutes a very useful source of information.

Guides to Taxes in Ireland

A complete survey of the Irish tax system with special emphasis on Income tax, Surtax, Profits Tax, Double Taxation and Profits Tax Exemption. Property taxes, Turnover Taxes, Stamp duties and Customs and Excise duties are also covered.

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Survey of Belgian Income Tax

An analytical study of the new Tax Reforms with respect to the Belgian Income Tax Code. Contains a detailed discussion of the new Laws illustrated with practical examples and a discussion of the effect of the tax reform on Belgian tax treaties. The survey also contains a comparative analysis of the previous and present systems.

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Taxation of Intercorporate Dividends Received in Europe

A comparative survey on the tax treatment of intercorporate dividends, with special emphasis directed to the question of whether corporations are granted any form of relief from intercorporate double taxation on domestic or foreign dividends received.

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III

TREATIES

JAPAN - CANADA

CONVENTION BETWEEN JAPAN AND CANADA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

The Government of Japan and the Government of Canada,

Desiring to conclude a convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income,

Have agreed as follows:

ARTICLE I

1 The taxes which are the subject of this Convention are:

(a) in Japan:
the income tax and the corporation tax (hereinafter referred to as "Japanese tax");

(b) in Canada:
the income taxes, including the old age security tax on income, which are imposed by the Government of Canada (hereinafter referred to as "Canadian tax").

2 The Convention shall also apply to any other taxes of a character substantially similar to those referred to in paragraph 1 imposed by the Government of Japan or the Government of Canada after the date of signature of this Convention.

ARTICLE II

1 In this Convention, unless the context otherwise requires:

(a) the term "Japan", when used in a geographical sense, means all the territory in which the laws relating to Japanese tax are enforced;

(b) the terms "one of the Contracting States" and "the other Contracting State" mean Japan or Canada, as the context requires;

(c) the term "tax" means Japanese tax or Canadian tax, as the context requires;

(d) the term "resident of Japan" means any individual who is resident in Japan for the purposes of Japanese tax and not resident in Canada for the purposes of Canadian tax and any Japanese corporation; and the term

"resident of Canada" means any individual who is resident in Canada for the purposes of Canadian tax and not resident in Japan for the purposes of Japanese tax and any Canadian corporation;

(e) the terms "resident of one of the Contracting States" and "resident of the other Contracting State" mean a resident of Japan or a resident of Canada, as the context requires;

(f) the term "Japanese corporation" means

(i) any company,

(ii) any other kind of juridical person, or

(iii) any organization without juridical personality treated for the purposes of Japanese tax as a juridical person which has its head or main office in Japan and which is not managed and controlled in Canada;

(g) the term "Canadian corporation" means any corporation which is managed and controlled in Canada and which has not its head or main office in Japan;

(h) the terms "corporation of one of the Contracting States" and "corporation of the other Contracting State" mean a Japanese corporation or a Canadian corporation, as the context requires;

(i) the term "Japanese enterprise" means an industrial or commercial enterprise or undertaking carried on by a resident of Japan; and the term "Canadian enterprise" means an industrial or commercial enterprise or undertaking carried on by a resident of Canada;

(j) the terms "enterprise of one of the Contracting States" and "enterprise of the other Contracting State" mean a Japanese enterprise or a Canadian enterprise, as the context requires;

(k) (i) the term "permanent establishment" means a fixed place of business in which the business of the enterprise is wholly or partly carried on;

(ii) the term "permanent establishment" shall include especially:

(aa) a place of management;

(bb) a branch;

(cc) an office;

(dd) a factory;

(ee) a workshop;

(ff) a mine, quarry or other place of extraction of natural resources;

(gg) a building site or construction or assembly project which exists for more than twelve months;

(iii) the term "permanent establishment" shall not be deemed to include:

(aa) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;

(bb) the maintenance of a stock of goods or merchandise belonging to

the enterprise solely for the purpose of storage, display or delivery;

(cc) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

(dd) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or for collecting information for the enterprise;

(ee) the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research or for similar activities which have a preparatory or auxiliary character, for the enterprise;

(iv) a person acting in one of the Contracting States on behalf of an enterprise of the other Contracting State—other than an agent of an independent status to whom subparagraph (v) applies—shall be deemed to be a permanent establishment in the first-mentioned Contracting State if

(aa) he has, and habitually exercises in that first-mentioned Contracting State, an authority to conclude contracts in the name of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise, or

(bb) he maintains in that firstmentioned Contracting State a stock of goods or merchandise belonging to the enterprise from which he regularly fills orders on behalf of the enterprise;

(v) an enterprise of one of the Contracting States shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other Contracting State through a broker, general commission agent or any other agent of an independent status, where such person is acting in the ordinary course of his business;

(vi) the fact that a corporation of one of the Contracting States controls or is controlled by a corporation which is a corporation of the other Contracting State, or which carries on business in that other Contracting State (whether through a permanent establishment or otherwise), shall not of itself constitute either corporation a permanent establishment of the other;

(vii) an enterprise of one of the Contracting States shall be deemed to have a permanent establishment in the other Contracting State if

(aa) it carries on supervisory activities in that other Contracting State for more than twelve months in connection with a construction,

installation or assembly project which is being undertaken in that other Contracting State, or

(bb) it carries on a business which consists in whole or in part of providing in that other Contracting State the services of public entertainers referred to in paragraph 3 of Article X;

1 the term "competent authority" means, in the case of Japan, the Minister of Finance or his authorized representative; and, in the case of Canada, the Minister of National Revenue or his authorized representative.

2 In the application of this Convention by one of the Contracting States, any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of that Contracting State relating to the taxes which are the subject of this Convention.

ARTICLE III

1 The profits of an enterprise of one of the Contracting States shall not be subject to the tax of the other Contracting State unless the enterprise carries on business in that other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in that other Contracting State, but only so much of them as is attributable to that permanent establishment.

2 Where an enterprise of one of the Contracting States carries on business in the other Contracting State through a permanent establishment situated therein, there shall be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

3 In the determination of the profits of a permanent establishment there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the Contracting State in which the permanent establishment is situated or elsewhere.

4 No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

5 Paragraph 1 shall not be construed as preventing one of the Contracting States from imposing, in accordance with this Convention, tax on income, such as dividends, interest, rents or royalties arising in that Contracting State, of a resident of the other Contracting State, notwithstanding that such income

is not attributable to a permanent establishment situated in the first-mentioned Contracting State.

ARTICLE IV

Where

(a) an enterprise of one of the Contracting States participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or

(b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of one of the Contracting States and an enterprise of the other Contracting State,

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

ARTICLE V

1 Notwithstandig Articles III and IV, profits of an enterprise of one of the Contracting States from the operation of ships or aircraft shall be exempt from the tax of the other Contracting State, unless the ships or aircraft are operated wholly or mainly between places within that other Contracting State.

2 The Agreement between the Government of Japan and the Government of Canada constituted by the Notes exchanged at Ottawa on September 21, 1929, concerning reciprocal exemption from income tax on profits accruing from the operation of ships, shall not have effect in respect of any taxable year or taxation year for which this Convention has effect.

ARTICLE VI

1 The rate of tax imposed by one of the Contracting States on dividends paid by a corporation of that Contracting State to a resident of the other Contracting State shall not exceed 15 per cent, unless such dividends are attributable to a permanent establishment situated in the first-mentioned Contracting State.

2 Where a corporation of one of the Contracting States derives profits or income from within the other Contracting State, there shall not be imposed in that other Contracting State any form of taxation on dividends paid by the corporation unless such dividends are paid to a resident of that other Contracting State, or any tax in the nature of an undistributed profits tax on undistributed

profits of the corporation, whether or not those dividends or undistributed profits represent, in whole or in part, profits or income so derived.

ARTICLE VII

1 The rate of tax imposed by one of the Contracting States on interest arising in that Contracting State and paid to a resident of the other Contracting State shall not exceed 15 per cent, unless such interest is attributable to a permanent establishment situated in the first-mentioned Contracting State.

2 Interest shall be deemed to arise in one of the Contracting States when the payer is that Contracting State itself, a political subdivision, a local authority or a resident of that Contracting State. Where, however, the person paying the interest, whether he is a resident of one of the Contracting States or not, has in one of the Contracting States a permanent establishment in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment, then such interest shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

3 In this Article the term "interest" means interest on bonds, securities, notes, debentures or any other form of indebtedness as well as any excess of the amount repaid in respect of any form of indebtedness over the amount lent.

ARTICLE VIII

1 The rate of tax imposed by one of the Contracting States on royalties arising in that Contracting State and paid to a resident of the other Contracting State shall not exceed 15 percent, unless such royalties are attributable to a permanent establishment situated in the first-mentioned Contracting State.

2 In this Article the term "royalties" means payments of any kind received as consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including motion picture films and films or video tapes for use in connection with television, any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial, or scientific equipment, or for information concerning industrial, commercial or scientific experience.

3 Royalties shall be deemed to arise in the Contracting State in which the property referred to in paragraph 2 is to be used.

4 The rate of tax imposed by one of the Contracting States in respect of income arising in that Contracting State from the sale of any copyright of literary, artistic or scientific work including motion picture films and films or video tapes for use in connection with television, any patent, trade mark, design or model, plan, secret formula or process by a resident of the other Contracting

State shall not exceed 15 percent of the gross amount paid therefore, unless such income is attributable to a permanent establishment situated in the first-mentioned Contracting State.

5 Income from the sale of property referred to in paragraph 4 shall be deemed to arise in the Contracting State in which such property is to be used.

ARTICLE IX

1 Salaries, wages or similar remuneration paid by the Government of Japan or by any local authority of Japan to any individual for services rendered to that Government or local authority in the discharge of governmental functions shall be exempt from Canadian tax if the individual is a national of Japan and has not been admitted to Canada for permanent residence therein.

2 Salaries, wages or similar remuneration paid by the Government of Canada or by any political subdivision of Canada to any individual for services rendered to that Government or political subdivision in the discharge of governmental functions shall be exempt from Japanese tax if the individual is a citizen of Canada and has not been admitted to Japan for permanent residence therein.

3 This Article shall not apply to payments in respect of services rendered in connection with a trade or business.

ARTICLE X

1 Subject to Articles IX, XI, and XII, remuneration for personal (including professional) services received by a resident of one of the Contracting States shall not be subject to the tax of the other Contracting State unless the services are performed in that other Contracting State. If the services are so performed, such remuneration as is derived therefrom may be taxed in that other Contracting State. The services performed aboard a ship or aircraft operated by an enterprise of one of the Contracting States shall be deemed to be performed in that Contracting State.

2 Notwithstanding paragraph 1, remuneration received by a resident of one of the Contracting States for personal (including professional) services performed in the other Contracting State shall be exempt from the tax of that other Contracting State in any calendar year, if

(a) he is present within that other Contracting State for a period or periods not exceeding in the aggregate 183 days during that year,

(b) the services are performed for or on behalf of a resident of the first-mentioned Contracting State, and

(c) the remuneration is not borne by a permanent establishment which the payer of the remuneration has in that other Contracting State.

3 Paragraph 2 shall not apply to the remuneration received by public entertainers such as theatre, motion picture, radio or television artists, musicians and professional athletes.

ARTICLE XI

A professor or teacher who visits one of the Contracting States for a period not exceeding two years for the purpose of teaching at a university, college, school or other educational institution in that Contracting State and who is or was immediately before visiting that Contracting State a resident of the other Contracting State shall not be taxed by the first-mentioned Contracting State on the remuneration received for that teaching.

ARTICLE XII

Payments which a student or business apprentice who is or was formerly a resident of one of the Contracting States and who is present in the other Contracting State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed by that other Contracting State, provided that such payments are made to him from outside that other Contracting State.

ARTICLE XIII

1 Subject to the laws of Japan regarding the allowance as a credit against Japanese tax of tax payable in any country other than Japan, Canadian tax payable, whether directly or by withholding at the source, under the laws of Canada and in accordance with this Convention, shall be allowed as a credit against Japanese tax.

2 Subject to the laws of Canada regarding the allowance as a credit against Canadian tax of tax payable in any country other than Canada, Japanese tax payable, whether directly or by withholding at the source, under the laws of Japan and in accordance with this Convention, shall be allowed as a credit against Canadian tax.

ARTICLE XIV

1 The competent authorities of the Contracting States shall upon request exchange such information as is necessary for the carrying out of this Convention and of the laws of the Contracting States concerning taxes covered by this Convention insofar as the taxation thereunder is in accordance with this Convention. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons or authorities other than those concerned with the assessment or collection of the taxes which are the subject of this Convention.

2 In no case shall paragraph 1 be construed so as to impose on one of the Contracting States the obligation:

(a) to carry out administrative measures at variance with the laws or the administrative practice of that or of the other Contracting State;

(b) to supply particulars which are not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;

(c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy.

ARTICLE XV

1 Where a resident of one of the Contracting States considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with this Convention, he may, notwithstanding the remedies provided by the laws of those Contracting States, present his case to the competent authority of the Contracting State of which he is a resident.

2 The competent authority shall endeavour, if the objection appears to be justified and if the competent authority cannot arrive at an appropriate solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation not in accordance with this Convention.

3 The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this Convention. They may also consult together for the purpose of endeavouring to eliminate double taxation in cases not provided for in this Convention.

4 The competent authorities of the Contracting States may communicate directly with each other for the purposes of this Article.

ARTICLE XVI

Nothing in this Convention shall affect the fiscal privileges of diplomatic or consular officials under the general rules of international law or under the provisions of special agreements.

ARTICLE XVII

This Convention shall not be construed to restrict in any manner any exemption, deduction, credit or other allowance now or hereafter accorded by the laws of one of the Contracting States in determining the tax of that Contracting State.

ARTICLE XVIII

1 The nationals of one of the Contracting States shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of that other Contracting State in the same circumstances are or may be subjected.

2 In this Article the term "nationals" means all individuals possessing the nationality of either of the Contracting States and all corporations and other associations (with or without juridical personality) deriving their status as such from the laws in force in either of the Contracting States.

3 This Article shall not be construed as preventing one of the Contracting States from taxing non-residents of that Contracting State on a different basis from that on which it taxes residents of that Contracting State.

ARTICLE XIX

1 This Convention shall be ratified and the instruments of ratification shall be exchanged as soon as possible.

2 This Convention shall enter into force on the date of exchange of instruments of ratification and shall have effect -

(a) in Japan:
in respect of tax for the taxable years beginning on or after the first day of January in the calendar year in which the exchange of instruments of ratification takes place;

(b) in Canada:

(i) in respect of tax withheld at the source on amounts paid to non-residents on or after the first day of January in the calendar year in which the exchange of instruments of ratification takes place; and

(ii) in respect of other Canadian tax for taxation years beginning on or after the first day of January in the calendar year in which the exchange of instruments of ratification takes place.

3 Either of the Contracting States may terminate this Convention at any time after a period of three years from the date on which this Convention enters into force, by giving to the other Contracting State notice of termination, provided that such notice shall be given on or before the 30th day of June, and, in such event, this Convention shall cease to be effective -

(a) in Japan:
in respect of tax for the taxable years beginning on or after the first day of January in the calendar year next following that in which the notice is given;

(b) in Canada:

(i) in respect of tax withheld at the source on amounts paid to non-residents on or after the first day of January in the calendar year next following that in which the notice is given; and

(ii) in respect of other Canadian tax for taxation years beginning on or after the first day of January in the calendar year next following that in which the notice is given.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed this Convention.

DONE at Tokyo, Japan, in duplicate, in the Japanese and English languages, each text having equal authenticity this fifth day of September, 1964.

For Japan:
ETSUSABURO SHIINA

For Canada:
WALTER L. GORDON

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THE TAXATION OF PATENT ROYALTIES, DIVIDENDS, INTEREST IN EUROPE

This new publication is a looseleaf service which gives every tax (with basis and rates) levied on patent royalties, dividends and interest as each type of income flows from one European country to another and to the United States and Canada.
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HISTORY

Since its establishment in 1938, the International Bureau of Fiscal Documentation has served as an independent source of tax information and advice. After World War II its functions were broadened beyond mere simple fiscal documentation and assumed the character of supplying factual data on the tax systems of countries around the world in response to requests from various governmental and business organisations.

In 1946, the Bureau began publication of the *Bulletin for International Fiscal Documentation,* the official organ of the International Fiscal Association. This publication has been supplemented by various special publications. In 1961, the Bureau published the first issue of *European Taxation,* a fortnightly English language review of tax developments on the European Continent, in the United Kingdom and in Ireland, followed in 1963 by two loose-leaf services, *Supplementary Service to European Taxation* and *The Taxation of Patent Royalties, Dividends and Interest in Europe.* During that time span the Bureau also published the Germany original of the well-known book by Dr. Albert J. Rädler about taxation in the common market countries. The Bureau continuously assisted in translating and preparing tax materials for other publications. Additionally, its library was greatly expanded and now contains well over 7000 volumes on national and international tax matters, as well as more than 250 selected periodicals; many visiting researchers make use of these library facilities.

GOALS

The overriding goal of the Bureau is to serve the International community by collecting, evaluating and disseminating tax data in a manner which combines scientific objectivity with practical realism.

Organization

The Bureau is a public non-profit foundation established under Dutch law. Its policies are determined by a "Curatorium", or board of trustees, composed of outstanding representatives of the government, business and academic communities in various countries. A managing director is responsible for carrying out the goals articulated by the Curatorium.

The Bureau is separated into four divisions: Library and Documentation, which is responsible for acquisition and maintenance of tax materials; International Tax Service, which prepares reports for governmental, business and scholarly purposes; Publications Department, which is responsible for the whole gamut of the Bureau's publications; and the Administrative arm, which plans and coordinates Bureau activities.

Correspondents

Apart from its own Associates, who represent several nationalities, the Bureau avails itself of the cooperative services of a large number of expert correspondents throughout the world.

The program

1. *Training*

The Bureau seeks to prepare young lawyers and economists to meet the growing demand for international tax experts and offers to young post-graduates from developed and developing countries the opportunity to work with the Bureau.

2. *Research*

The Bureau is focusing its research efforts upon a significant contemporary problem—the relationship between capital exporting nations and developing countries. Other important research projects include studies of the tax aspects of economic integration and of the influence of tax incentives on economic growth.

3. *Education*

The Bureau seeks to stimulate, and participate in, seminars and discussion groups, lectures and publications.

4. *Library and Documentation*

The Bureau's program of cataloguing and completing its set of materials will be continued in the framework of its library facilities which were much improved as a result of the move in 1963 to new quarters in an old city gate of Amsterdam.

5. *Reports*

The Bureau prepares reports containing factual data and legal appraisals relating to countries other than the country of residence of the organization or individual who requests a report.

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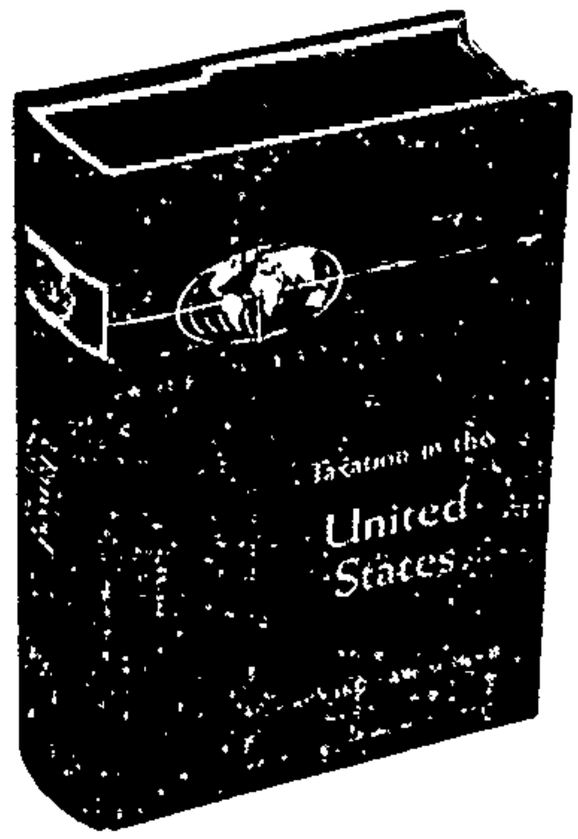

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I

THE UNITED STATES TAX SYSTEM AND INTERNATIONAL TAX RELATIONSHIPS — PERSPECTIVE IN 1964

Remarks by STANLEY S. SURREY

Assistant Secretary of the Treasury

before the Tax Executives Institute, Montreal, Quebec, Canada, Sept. 21, 1964

This is the second portion of the lecture which was delivered by Mr. Surrey. The first portion appeared in Bulletin No. 11, November 1964.

Less Developed Countries

The United States has concluded income tax treaties with practically all of the developed countries. But it has in force only two treaties with less developed countries, that with Pakistan ratified in 1959 and that with Honduras, which was ratified in 1957 but which on the initiative of Honduras is scheduled to terminate at the end of 1964 unless a new agreement now under discussion is reached. Curiosity alone would lead us to inquire as to the causes for this sharp contrast in treaty development. Indeed, the commitment of the United States to the economic growth of the less developed nations has involved the Treasury in a thorough exploration of the whole subject of tax treaties with these nations.

Desirability of Such Treaties

The first question is, why do we care at all about the present situation—in other words, is it in the interest of the United States to have treaties with less developed countries? Viewing this question from the standpoint of our citizens, some of the main benefits involved in such treaties would appear to be along the following lines: A treaty with appropriate source rules could provide predictability in this area, in contrast to the present uncertainty occasioned by the absence of formulated source rules in many countries; the application of the permanent establishment definition would free our traders of nuisance or hampering taxes and here also afford predictability in place of uncertainty; the application of treaty provisions regarding the taxation of business and cultural visitors would have similar results for our executives and professional persons traveling on business to these countries and our teachers temporarily in schools in these countries; adoption of a foreign tax credit approach by the less developed countries would aid our citizens living in those countries; the establishment of definite rules permitting the proper allocation of expenses and other items between a U.S.

parent and its foreign subsidiary and to foreign branches would produce a proper measure of net income in the less developed countries; a reduction in the dividend rate of withholding in situations where the combined corporate and withholding rates exceed our rate (especially in the absence of a grossing-up requirement in the parent's income) would eliminate unused foreign tax credit; the taxation of real estate rentals on a net basis and the exemption or reduced taxation of royalty income would produce more appropriate results; the adoption of a clause preventing discriminatory tax treatment of our individuals and corporations would prevent a disparity in treatment between the taxpayers of the country and our citizens with activities in that country; the establishment of a consultative mechanism between the two tax administrations and the general air of tax stability that can accompany a tax treaty would be reassuring to our investors and traders.

This is not to say that every treaty would necessarily exhibit this entire gamut of benefits, but certainly each could embody a reasonable number of these aspects as well as others that could be of benefit in particular situations. In sum, our investors and traders can receive benefits through such treaties, and these would be an item on the plus side when the question arises of investment or trade with the less developed countries. The United States, as a Government, is in turn interested in steps which improve the plus side of private U.S. activity in less developed countries.

Given these reasons for our having an interest in such treaties, how do they appear when seen by the less developed countries? Of course the benefits to our investors are one side of a coin of which the other side could be regarded by most less developed countries as distinctly helpful if it would increase U.S. private investment in their country. But they could also view the other side of the coin as involving losses in revenue—through lowered withholding rates, net income taxation, the impact of certain source rules or of the permanent establishment definition—resulting from reduced taxes on income leaving their borders for the U.S. Thus the question becomes that of seeing what for them is the other side of the coin—or, put more accurately since both of these effects are on the other side of the coin, how is the balance to be cast. It must be remembered that in large part this would be the only coin involved under the standard form of tax treaty. This form, however, was shaped by the economic and tax relationships existing between industrialized countries, where there are two coins, since the investors and traders of each country are aided. While each country has revenue losses reflecting the benefits obtained by the investors and traders of the other country, similarly in turn it has gains for its own investors and traders. But there are fewer investors and traders in less developed countries with activities in the United States, though it is true that the welfare of those that do exist may be of significance to these countries.

In addition to this lack of equivalent reciprocal benefits, the revenue losses involved in standard treaty provisions are likely to be a more significant percentage of the overall revenues of a less developed country. Also, as a psychological matter, as well as an absolute matter, a sacrifice of revenues from income accruing to foreigners is likely to be viewed by the less developed country as a more serious step. As a consequence less developed countries in the past have been concerned about entering into a tax treaty with the U.S. unless the standard treaty is altered to be more in their interest as they regard it than is the present form. Two lines of suggested departure can be seen: one is the adoption by the United States of an incentive—in addition to our unilaterally granted Code incentives, such as the lower Western Hemisphere Trade Corporation tax rate, a foreign tax credit, and the non-application of "grossing-up" to that credit—to our investors to invest in the less developed countries; the other is a scaling back of the revenue sacrifice which the standard treaty demands of the source country.

Treaty Incentives to U.S. Investment in Less Developed Countries

For a number of years it has appeared that an investment incentive feature has been regarded by many of the less developed countries as critical to the consideration of tax treaties with the United States. However, our treaty negotiations with less developed countries had led into the blind alley of "tax sparing". I need not here digress to consider at length the pros and cons of a credit for tax sparing. This matter had been carefully considered in 1961 and 1962 by the Department of State and the Treasury Department, and it was concluded that a tax treaty with a credit for sparing as a possible incentive had serious weaknesses. Those weaknesses were such as to outweigh the advantages of tax treaties with less developed countries. As a consequence the three tax sparing treaties (India, Israel, United Arab Republic) which had been pending before the Senate Committee on Foreign Relations since 1960 were withdrawn earlier this year.

Tax Credit for Investment

The Treasury Department late in 1962 had indicated that incentives tied to the act of new investment would seem to offer more fruitful possibilities than tax sparing. The view was then expressed that an approach similar to the investment credit enacted in 1962 to stimulate U.S. domestic investment deserved consideration. Our exploration of this approach since then has led us to conclude that an application through treaties of the principle of the 7 percent domestic investment credit to investment in a less developed country would be appropriate. Under such an approach, a United States investor investing in a domestic or a foreign corporation operating in a less developed country could be permitted through a treaty to obtain a credit against his U.S. tax, on income from any source, of 7

percent of the amount of the investment. In view of the fact that the Congress has in a variety of tax measures sought to grant a preference to investment in less developed countries as compared with developed countries, this extension to less developed countries of a type of investment incentive already approved by the Congress as desirable tax policy in the United States would thus appear appropriate in a tax treaty. It could be provided in the treaty that the adoption of this credit would be subject to re-examination after the expiration of a specified period, say five years.

The President has recommended that a 30 percent credit be granted by statute to stimulate investment in less developed countries. Such a large and direct tax preference to that form of investment should be authorized by statute rather than by a treaty. The amount of the credit involved, its simultaneous application across-the-board to the less developed areas, and its initial grant without the development of the types of appropriate complementary measures on the part of less developed countries considered above, are factors which underlie such a statutory approach rather than the treaty procedure. The extension in a treaty to an investment in a less developed country of a credit at the same 7 percent figure as applicable domestically is thus both a different matter and one not in any way at variance with the recommendation for a very much larger statutory credit. The technical detail used to implement the treaty credit could of course draw on the structural underpinning worked out in connection with the 30 percent credit proposal, since they would be similar in their basic structural aspects.

Deferral on Know-how Contributions

In addition to this 7 percent credit, two other measures which could operate as incentives are considered appropriate for inclusion in a treaty with a less developed country. The first is a provision for tax deferral where technical matter or information, such as patents, processes and know-how, or technical services are provided by a U.S. person to a foreign corporation in return for stock of that corporation. Under this provision, the recipient could elect not to include the stock in income for the purpose of both the U.S. tax and the foreign country tax, this deferral to continue until some later date, such as a sale of the stock. This procedure would avoid the cash problem involved in having to pay a current tax on the receipt of stock which the U.S. person desired to hold rather than sell. The second is a provision permitting a charitable deduction (within the statutory percentage limits) from the U.S. tax for a contribution made to an organization in the less developed country which is a charitable organization under the laws of both countries. (A similar provision is present in the U.S.-Canada treaty.) This would permit in some cases a simpler, direct procedure for the making of gifts to charitable activities in the less developed country.

Scaling Down of Revenue Sacrifice by Less Developed Countries

As to the second line of departure from the standard tax treaty, that of the scaling down of the revenue sacrifice of the source country, here the less developed country, it is clear that there is room for accommodation. In view of the United States tax credit, what must be weighed by the source country in the appraisal of a tax treaty is the balance between the loss of revenue that it may suffer when taxation at the source is restricted compared with the benefits to the foreign investor or trader, and in turn to the less developed country, of the elimination of inconvenience and travail. A lesser sacrifice of revenue by a less developed country, i.e., a less restrictive effect on source taxation than under the standard tax treaty, means ipso facto continued payment of tax to that extent by our investors and traders. In most cases, no problem of tax burden is involved in view of our foreign tax credit, and what remains may be the detail and inconvenience of filing tax returns, paying tax etc. to the less developed country in a situation where this would not be so as respects a developed country a party to a standard treaty. (Of course, where the developed country treaty provision only reduces the rate of taxation rather than providing exemption, then the detail and inconvenience are equally present whether the country is developed or less developed.) On the other hand, however, this drawback to our investors and traders would seem clearly outweighed by the benefits involved in having the treaty itself—certainly a modified type of treaty has advantages as against no treaty at all—and by the special incentives above described which would not be included in the standard treaty with a developed country. Consequently, if a less developed country desires to coast the balance more to its favor through a lessening of the restrictions on source jurisdiction, the United States, keeping in mind the benefits to be obtained from a treaty and the absence of the reciprocal factors usually present in many of the provisions in the case of industrialized countries, could in its own interest find it appropriate to concur in that approach. This is so, however, if the modifications from the standard treaty operate to involve only a smaller shrinkage in the amount of the resulting foreign tax credit granted by the United States than is produced by the standard form. In this event the U.S. Government is in effect bearing the revenue burden of the modifications rather than the taxpayer being affected through still paying a tax at the source in excess of the amount which it can credit against his United States tax. Moreover, the modifications should not swing too far from the standard treaty, so that the resulting new balance still remains acceptable overall.

With all this in mind, we are engaging in discussions with a number of less developed countries on the framework of a modified form of treaty which we would consider appropriate to our tax relations with those countries. The modified form would include the three incentives mentioned above—the extension of

the 7 percent credit, tax deferral for stock received for technical items, and a deduction for direct charitable contributions—and would, as respects the principal treaty clauses involved, develop along the following lines:

Dividends

The standard tax treaty generally provides rates of tax for dividend withholding of 15 percent for dividends on portfolio investment and from 5 to 15 percent for parent-subsidiary dividends, with 5 percent in the OECD Draft. For many less developed countries, such rates would be distinctly lower than their present rates and thus would present them with revenue considerations. The important aspect, as respects our investors, is that of parent-subsidiary investment and the concern is that the rate of tax on the foreign subsidiary combined with the present withholding rates produces in some countries a tax in excess of the United States tax, especially since there is no grossing-up for dividends from less developed countries. Any excess over our allowable foreign tax credit becomes an added tax burden on the investor. We therefore are seeking in our modified treaty to achieve whatever reduction in the dividend withholding rate of the less developed country is needed to prevent such an excess credit, and are pointing out the importance of this step to increased investment in the less developed country. We would not in appropriate cases, however, feel it necessary to refuse to enter into a treaty solely on the ground that the withholding rate was not reduced still further if the less developed country does not find it possible to do so.

Interest

The standard tax treaty generally reduces the withholding rate on interest to 15 percent or less, and often exempts interest entirely. We are pointing this out to less developed countries and are indicating that such a reduction could result in a reduction in the interest rates paid by their borrowers if the U.S. lending institutions are presently increasing their interest rates to pass on to the borrower the cost of the foreign withholding tax. However, some less developed countries are apparently not interested in sacrificing revenues to subsidize their borrowers, and would therefore object on revenue grounds to a reduction in their withholding rate on interest. If such objection is made, we would not insist, in otherwise appropriate situations, on following the standard treaty. Some less developed countries are willing to eliminate their withholding rate on interest paid on loans made by governmental organizations and perhaps charitable organizations which are tax exempt in the United States.

Royalties

The standard treaty often exempts royalty payments on patents, know-how,

motion picture rights and the like, from withholding, and in the case of natural resource royalties and real estate rentals provides for taxation on a net income basis. Many less developed countries appear unwilling to yield any revenue obtained from patent and know-how royalties, and hence many strongly object to outright exemption in such cases. In appropriate situations complete exemption need not be a sine qua non of the treaty. However, it would seem desirable to place the tax on a basis that reflects expenses involved in earning the royalty in cases where such expenses may be significant. In view of the concern that some less developed countries may have over administrative difficulties in this approach, it would be appropriate to seek a reduced rate of tax if the rate is to be based on the gross royalty payment, or some other ad hoc method of taking significant expenses into account. In the case of mineral royalties and real estate rentals, a net income approach appears desirable.

Business Visitors and Personal Service Income

The standard treaty, here reflecting the desire to avoid inconvenience to the temporary visitor, usually provides for exemption from taxation of the personal service income of business visitors where the stay is temporary and the income not large. Thus, many treaties use such standards as $5,000 and 180 days as dividing lines. We would regard the standard treaty approach as generally appropriate to a less developed country as well, for here the factor of eliminating inconvenience to the temporary visitor would seem more significant than the possible revenue loss to the less developed country. But this is an area where different countries are likely to cast the balance over a range of many possible variations, depending on their attitudes toward such visitors, and indeed to the various classes of visitors—employees of U.S. corporations, independent professional people such as engineers or lawyers, cultural visitors, entertainers and so on. Hence a variety of tests are likely to emerge, and it is difficult to stress too strongly any single approach. We do regard it as desirable to seek approaches that are simple and certain in their application, which are the attributes possessed by the standard treaty provision.

Permanent Establishment

The trend in the standard treaty is slowly to add more particularity to the definition of permanent establishment in the direction of contracting its scope. The result of course is favorable to traders, since it permits a greater range of activity without the inconvenience of a tax payment in the country to which he exports. But some less developed countries may not be as receptive to this freeing of the trader from tax contact with them if it means a loss of revenue. They are more likely to want to expand rather than contract the definition. Thus they are

troubled by the fact that exporting to a developed country may, because of the country's size, volume of imports, and the like require, if the trading is to be successful, a degree of activity that will often involve the trader in acquiring a permanent establishment status and thus subjecting itself to tax in the developed country. But in some less developed countries, their small size and small volume of trade may permit a successful trader to handle the trade through only short trips of his employees to the less developed countries. The degree of "presence" within the less developed country may in relative terms bear the same ratio to its volume of trade as in the case of exports to a developed country, but in absolute terms fall short of the "presence" required to constitute a permanent establishment under the standard treaty. Consequently, in a situation in which a less developed country feels that these issues are important, where otherwise appropriate we have explored adding to the definition of permanent establishment such factors as an agent who regularly secures orders in the less developed country, or maintains a stock of goods from which he regularly makes deliveries. Also, the use of an agent of independent status could constitute a permanent establishment if the agent acted almost exclusively for the exporter and engaged in these activities. In addition, it may not always be appropriate to eliminate the force of attraction principle.

Source of Income Rules

Many less developed countries do not have in their tax laws a formulated set of source rules sufficiently comprehensive to cover the usual run of international transactions. Since tax treaties depend for their operations on the existence of such rules, we desire that a treaty with a less developed country in such a situation embody as far as possible the standard source rules that have gained general international approval. We do not see any special reasons or situations which would make the same source rules less appropriate for less developed countries than for developed countries. Thus, we do not see that it is required in the case of a less developed country to adopt a rule that allocates the income from personal services to the country from which payment for those services is made, or as respects a country with significant exports of one or more commodities to adopt a rule that allocates the income of the trader (importing from that country) to the place of purchase if no other activity is there involved.

There are a few additional treaty provisions in which less developed countries may have an interest that may differ from that present in treaties between developed countries. For example, they may desire somewhat greater freedom from taxation in the U.S. for the students, trainees, teachers and government officials they send to the United States; they may seek some reasssurance that their tax administrations can cope with the provision which allows as deductions to a permanent

establishment executive and administrative expenses wherever incurred and can prevent the "overreaching" by the foreign taxpayer which they fear may exist under this provision. Here the reassurance may well lie in a discussion of the problems and careful analysis of their worries rather than any explicit treaty change, since the allowance of properly allocable expenses of this nature is important to arriving at the correct net income.

The Treasury believes that a modified tax treaty can be devised to form the basis of discussions with less developed countries. We are in effect developing two standard tax treaties, one for developed countries and one for less developed countries. Of course the division is not rigid and, depending on the particular countries, some treaties would involve an appropriate blending of the two forms. We have engaged in discussions with a number of countries and others are scheduled.

Agreements with Thailand and Philippines

Discussions with the Government of Thailand have resulted in substantive agreement at the working level. The proposed treaty would embody the 7 percent investment credit provision, and in many other respects follow the lines of development suggested above. This agreement is subject to the review and approval of both Governments, and we are very hopeful that final agreement can be reached in the weeks immediately ahead. Also, discussions with the Government of the Philippines have resulted, as previously announced, in the initialling of a draft agreement. While this agreement contains many of the approaches discussed above, it does not contain the 7 percent investment credit or the tax deferral for stock received for technical matters, nor does it contain any major reductions in the Philippine taxes on investment income. The two Governments believed the complex of provisions regarding investment requires further study and hence they were not incorporated at this time. But the Governments considered the agreement on the remaining matters to be of such importance as to warrent moving ahead with the draft agreement in that form at this time. The Philippine draft agreement, as also in the case of Thailand, does contain a provision preventing discriminatory tax treatment of the taxpayers of the other country, and this clause has been expanded to extend this protection to enterprises of one country that are owned by persons of the other country.

These two working agreements, both in their similarities and dissimilarities, demonstrate that the United States and less developed countries are able to enter into useful and mutually beneficial income tax treaties along the lines of approach I have discussed. These agreements also indicate that flexibility in the application of these approaches is important and necessary, and with that flexibility there is sufficient room within these approaches to meet the differing situations which

particular countries and the United States may face in their international economic relationships.

OECD Discussions

Many of the treaty matters which I have discussed in the context of negotiations with other countries are also presently being considered in the multi-national context of the OECD Fiscal Committee. This Committee will pursue the numerous questions marked for further study in the report accompanying its Draft Convention, as well as the questions that will arise from the intensive examination which that Draft will undergo in the course of treaty negotiations. The OECD Fiscal Committee is also studying on a broad basis such matters as tax incentives for investment in less developed countries, and the treaty problems growing out of differences in jurisdictional concepts of taxation.

II. UNITED STATES STATUTORY TAXATION OF FOREIGN INCOME

Our summary of the treaty area thus indicates we are in a period of considerable activity marked by a number of major new developments. These offer promise of taking us into an entirely new stage in the treaty process. When we turn to the unilateral aspects of our international tax relations, and consider first the United States statutory taxation of foreign income, the picture is that of quiet on the legislative side but activity on the administrative side.

Revenue Act of 1962

This is an expected and appropriate development in the light of the Revenue Act of 1962. That Act marked the most extensive range of tax legislation affecting the foreign area to be embodied in a single measure. It involved a revision of our statutory international tax rules designed to bring them into harmony with non-tax international developments and to end the abuses which had been cumulating in this area.

The principal features of the 1962 revision are based on a concept of "tax neutrality" between investment abroad in developed areas and in the United States. Under this concept it is inappropriate for our tax laws to offer artificial tax inducements to investments in developed countries, since given the growing similarity between the investment climates of the United States and the developed world it is no longer in our national interest to offer tax incentives designed affirmatively to encourage investment to leave our shores rather than to stay at home. The 1962 legislation was thus directed at the three principal tax inducements under prior

law: first, the so-called "tax haven" form of operation which combined the deferral feature of our law with patterns of foreign organization and operation to reduce materially the overall rate of taxation; second, those operations designed to combine the deferral feature with a final sale or liquidation at capital gain rates; and third, the failure in connection with our foreign tax credit to gross up dividends from foreign subsidiaries. While the deferral feature is retained for non-tax haven operations, changes in the United States tax law regarding domestic investment, such as reduced corporate tax rates, liberal depreciation guidelines, and the 7 per cent investment credit limited to domestic investment, are bringing our corporate income tax close to the major European corporate taxes, with only a few exceptions.

Alongside these policies, the 1962 Act continued the policy of using the tax system to encourage investment in less developed countries, primarily, as respects this legislation, through not extending the gross-up requirement to less developed country dividends, and excepting from the tax haven rules the holding company form of operation when interest and dividend income derived from less developed countries are reinvested in those areas.

In the field of personal taxation, the 1962 Act eliminated the abuses that had crept in through the unlimited exemption of earned income for residents abroad, the accumulation of tax-free income in foreign trusts, the use of foreign investment companies to convert dividend income into capital gain, and the investment in foreign real estate to escape our estate tax laws.

These new legislative rules necessarily required a fresh appraisal of tax planning and organization for foreign investment. It is probably too early to mark clearly definitive patterns, since there appears to be a rather wide range of responses. Thus, one gathers that the type of tax planning structured around the tax haven form of holding companies or sales companies is largely disappearing—certainly the number of new Swiss subsidiaries has plummeted downwards. As respects existing tax haven organizations, there appears to be a considerable number of orderly reorganizations designed either to eliminate those subsidiaries no longer important to the overall structure without the tax benefits they formerly provided or to convert them into corporations outside the scope of the tax-haven rules through adding non-tax haven income from sources such as manufacturing operations or sales activities involving unrelated corporations. Some of the reorganizations are designed to probe the possibilities of "de-control", as by increasing the share of a European partner or in rather closely held companies by spreading the United States ownership over a number of 9 per cent friendly-oriented owners, so as to reduce the relevant ownership below 50 per cent. There may be a trend toward a greater use of Western Hemisphere Trade corporations, as a result of the court interpretations of the applicable rules relating to these

corporations and the elimination of the 2 percent tax on consolidated returns. There also may be a trend toward a greater use of operations in branch form abroad rather than operations through a foreign subsidiary in response to the elimination of the consolidated returns tax and to the equilibrium levels being reached by our tax rates, taken in connection with the 1962 changes, and foreign rates. New patterns are being considered for new investments, such as joint ventures organized with a foreign partner with that partner retaining control of the selling corporation and the U.S. partner control of the manufacturing corporation. All of this tax planning has its frontiers on which the more venturesome operate, with an eye both to possible interpretations of the United States law and to possible tightenings in European tax rules dealing with their own tax haven and similar difficulties.

Regulations Under 1962 Act

The 1962 Act also necessitated an intensive concentration by the Treasury on the tax administration requirements of the new legislation. Especially in its tax haven provisions that legislation embodied a variety of techniques new to our statutory structure. The tax-haven legislation was a pioneering technical task, for which there was no international precedent to guide our tax technicans and draftsmen. This has happened before in our international tax history—for it was the United States that pioneered the foreign tax credit. Pioneering always involves a certain amount of complexity, which in the tax haven area was increased through the basic Congressional decision to retain a general deferral rule but to withdraw the deferral privilege from a wide variety of activities requiring particular delineation. In recognition of these aspects of the legislation, the Treasury has moved as rapidly as possible to issue comprehensive Regulations, so that all of the Regulations under the 1962 provisions will have been published by the end of this year. It has also acted to permit taxpayers to make the transition to the new rules in as informed and flexible a manner as possible. It has been aided in these steps by the very helpful assistance given to it by the Committee on Foreign Tax Problems of the American Bar Association Section of Taxation and the Committee on International Taxation of the New York State Bar Association, and by the thoughtful comments submitted by this Institute and other industry groups in connection with the proposed regulations.

Two of these Regulations merit special attention. The structure of much of the 1962 legislation turns on the concept of the "earnings and profits" of a foreign subsidiary. While this concept was involved in some aspects of prior law, such as the foreign tax credit, it had never been seriously implemented. Clearly the 1962 Act required a new technical approach to this concept, one that would produce a careful delineation of the operative rules. The Treasury was aware that the

accounting approach to a consolidated statement of the domestic and foreign operations of some of our international corporations also involved this concept. Consequently it formed an informal and ad hoc Committee composed of representatives from our major international accounting firms and chaired by Professor Gerhard G. Mueller of the University of Washington, an authority on international accounting. Working for over a year through many meetings and drafts this group has given the Treasury invaluable advice on its Regulations prescribing the determination of the earnings and profits of a foreign subsidiary. These regulations are essentially designed to merge accepted rules of international accounting with requirements of the tax Code. They may well become a strong impetus to a greater standardization of international accounting and to a more mature consideration of many of the basic concepts and rules, just as the presence of our domestic tax laws has meant so much to domestic accounting.

The Treasury intends to pursue this cooperative and informed approach to the development of international tax accounting. Thus, it now plans to have expert consultant guidance in the task of examining the laws and accounting practices of selected European countries so as to determine the adjustments appropriate or required to meet the standards set forth in the Regulations. Clearly such a careful and informed approach is needed to guide the Internal Revenue Service in its administration of the 1962 Act.

The other Regulation that is of special interest relates to the minimum distribution concept of the 1962 Act, which continues tax deferral for activities otherwise within the tax haven rules if the enterprise is taxed at a combined foreign and U.S. tax rate not substantially below the United States rate. Under this concept a schedule of overall effective foreign tax rates and corresponding percentages of income distributions to the United State—the lower the foreign rate the higher the percentage of distribution required—is provided which, if complied with, justifies foregoing the United States tax on the undistributed income of the foreign corporation. In such a case the foreign form of organization has not operated as a tax inducement to investment abroad nor involves abuse since no tax saving has been effected, either because of the level of rates paid abroad or the amount of foreign earnings that were actually repatriated or a combination of both. In the application of this concept, the Act sets a precedent for looking at the foreign activities of a United States corporation on a consolidated basis, as if together they comprised a single entity. In this respect the tax law is beginning to recognize the "international corporation" and to grapple with the technical tax problems which it involves.

Recognizing the importance of this concept, and its potential for ready differentiation between cases where deferral may be continued and where our tax should apply, the Treasury has attempted to make the application of the concept as

feasible as possible. Thus the Regulations permit the by-passing of much of the detail otherwise required for its operation by sanctioning a simplified approach under which the payment of a 47 percent tax rate (approximately 45 percent in 1965 and thereafter) on the foreign earnings operates as a "safe haven" under the tax haven sections. As tax technicians develop greater familiarity with the 1962 Act concepts, it is possible these Regulations may in turn be further simplified.

Improvement in Administrative Aspects - Section 482 Allocation, Section 367, and Related Matters

These aspects growing out of the 1962 Act are only one phase of developments in the field of tax administration relating to foreign income. The goal guiding the Treasury in this field is that we must develop as quickly as possible an informed tax administration capable of dealing wisely and expeditiously with the problems that our expanding foreign investment, our expanding foreign trade and—the inevitable and necessary response—our expanding tax rules will place before the Internal Revenue Service. The work in the earnings and profits area, both in the formulation of the Regulations and in the continuous informed research and guidance required for their sensible application, is one phase of this program.

Another phase of the program is the development of rules under section 482 responsive both to the scope of the problems arising under that section and the needs of taxpayers and revenue agents for rational guidance in meeting these problems. Thus we are preparing Regulations, expected to be issued in proposed form this year, formulating guidelines for determining the "arms length price" to be used as the allocation standard in a variety of situations. These guidelines will be as refined as possible and as closely related to the actual facts of the particular case as is possible. The situations encompass, for example, sales by United States companies to their foreign affiliates, sales by foreign companies to their U.S. affiliates, the use by one member of a controlled group of properties or patents owned by another member, and the payment by one member of the expenses of another member. These guidelines in turn will be supplemented by rules on a number of critical issues arising under the application of section 482, such as the treatment of interest-free loans, and whether reallocated income may be repatriated tax free.

These efforts to formulate appropriate standards to govern allocations under section 482 and similar matters are to be accompanied, as indicated above under the treaty discussion, by intensified efforts to achieve appropriate international techniques whereby the allocations of our taxpayers and administrators can be appropriately meshed with the rules and procedures of the other countries involved.

We are also aware of the problems that are arising as a result of section 482

allocations and are closely studying those problems. For example, one of the problems confronting us is the avoidance of double taxation for past years. The problem arises here because relief from any double taxation resulting from the section 482 allocation may not be available in the foreign country due to statutory limitations or legal or other administrative factors. One approach which the Internal Revenue Service is considering is that of adjusting any proposed deficiency by the amount of foreign taxes paid.

In much the same fashion the Service is moving to step up the pace of developing appropriated guidelines in its application of section 367, to be published this year in a comprehensive revenue procedure.

Another step in the process of keeping tax administration sufficiently informed and responsible in this area is the forthcoming Internal Revenue Service order which will place the existing Field Groups of the Office of International Operations under the supervision of the District Directors. This step will put issues in this area under the same procedures as any other matter as regards technical advice, rulings and audit review, thereby assuring close coordination between the field activities and Washington. The work of the Chief Counsel's Office in its interpretative and regulations activities will also be kept closely coordinated with problems arising in audit activity.

The activities of the Commissioner's Council on International Tax Administration is a phase of this overall development.

The combination of these steps should in large part eliminate present problems facing taxpayers and the Service alike in the transition to an improved tax administration capable of handling with wisdom and responsibility the tax issues involved in modern tax relationships.

Finally, we may note the statistical and other data which will become available to the Treasury for the first time as a result of the processing of the returns required by the 1962 Act. These data should be of material assistance in keeping abreast of issues and developments respecting the foreign operations of U.S. taxpayers.

In sum, our energies are here being directed to seeing that tax administration respecting foreign income comes of age, just as has happened in one area after another on the domestic side in response to new problems—and, I might add, just as other Governments are beginning to recognize in their handling of their foreign income problems.

Study of European Indirect Taxes

To complete this consideration of the U.S. statutory taxation of foreign income mention would be made of two matters that take us beyond the 1962 Act and the tax administration consequences we have been discussing. The first of these relates to the effects which the European tax systems, in their greater emphasis on indi-

rect taxation, may have on the foreign trade of those countries and of the United States. In recent years considerable and increasing attention has been given to the international trade aspects of those taxes—the rebates which free European exports from their scope and the compensating taxes which are levied on their imports—our exports—to bring them within their network. The first round of attention brought assertions that these foreign components and the very presence of these indirect taxes discriminated adversely against our foreign trade, and the quick remedy suggested was a tax subsidy under our income tax for our exports. But careful study of that remedy disclosed many problems, ranging from a large waste of revenue if the proposed tax benefits were extended to existing exports on to the complexities and dislocations in accepted patterns of exporting if the benefits were offered only to increases in exports, and involving difficult questions of just how and in what areas a tax subsidy would either be appropriate or helpful and what would be the balance between revenue lost and benefits obtained. Approaching these questions in difficulty were the issues relating to international factors. Thus, would such a subsidy be permissible under GATT rules; if permissible, would the adoption of such a subsidy by a major exporting country set in motion a chain reaction of retaliatory adoptions by other countries.

The policy and technical difficulties presented by the subsidy approach were sufficiently serious to shift attention to an approach which involves an intensive analysis of the European situation, and discussions within the OECD, to see if the existing rules have a sound economic basis. At the same time the U.S. in the OECD has pressed for a stand-still in rebates and compensatory taxes to maintain the status quo as far as possible pending the results of this study. The basic need for additional economic data and further analysis of the economic issues involved has become evident as the work progresses.

30% Tax Credit for Investment Abroad

The second matter to be mentioned, and to which reference was made in the discussion of tax treaties with less developed countries, is that of the President's recommendation in connection with the AID legislation of a 30 percent credit against United States tax for investment in less developed countries. The technical structure of such a credit, as developed by the Treasury Department in conjunction with the AID agency and the State and Commerce Departments, is embodied in the bill, H. R. 11524, introduced by Congressman Boggs. It is presumed that hearings will be held on this subject next year. The credit would operate as an incentive to such investment and rests on the judgment of the AID Administration and others both that an incentive of this nature appears needed to increase the rate and amount of our private investment in these countries and that such a development is important as respects our policies regarding less developed

countries, and the further view that the tax system under these circumstances is an appropriate method of effecting this type of incentive.

III. UNITED STATES STATUTORY TAXATION OF FOREIGNERS

The past few years have thus witnessed extensive legislative changes in 1962 respecting the U.S. statutory taxation of foreign income followed now by a period of intensive administrative activity aimed at improving and modernizing tax administration in this area. When we turn, however, to the topic of the United States statutory taxation of foreigners receiving income from this country, we perceive an almost complete absence of activity in either the legislative or administrative field. Nor has this quietude been a feature of only the recent past. For a long period of time the taxation of foreigners has represented a corridor of our tax Code in which the dust gathered and was rarely disturbed. But now this corridor is being opened for a careful examination which is quite likely to produce significant legislative changes.

Interestingly enough, the main cause of the searching inquiry into this hitherto little noticed aspect of our tax law illustrates the importance of non-tax factors on international tax relationships, and underscores the imperative need periodically to consider whether our tax rules are responsive to basic changes in the economic and other aspects of international affairs. The most significant economic aspect of our international position has for several years been the balance of payments situation of the United States. We have seen how this was one of the factors responsible for a re-examination of our taxation of foreign income. We have also witnessed how balance of payments problems were responsible for the adoption of a brand new tax, the Interest Equalization Tax—a device which broke new ground in making a tax system available as one of the ways in which a country could meet temporary balance of payments problems. It thereby significantly widened the flexibility and scope of our manoeuverability in this area. And now we find that the balance of payments situation is the factor which has prompted the study of our statutory taxation of foreigners.

All this does not mean that basic provisions of our revenue laws should swing to and fro in response to balance of payments movements. Of course a tax device which is designedly temporary and which can be temporarily added without affecting the rest of the tax system, such as the Interest Equalization Tax, is a proper short-range response. But clearly, many if not most of our tax provisions require a stability of concept and structure that would be impaired if they had to bend this way or that to each shift in balance of payments or other vital aspects of our economic well-being. On the other hand, current imperatives can be the

occasion for a searching check of tax concepts and structures to ascertain if they embody clearly outmoded patterns which would not serve us well for as far as we can reasonably read the future. So it was with the Revenue Act of 1962, where the study showed both a need to move toward greater tax neutrality and—and here is the important relationship to balance of payments—that such a move at that time was consistent with our present balance of payments goals and hence could appropriately be made at that time.

The examination of our statutory taxation of foreigners is of the same nature. Our balance of payments position is such that it is desirable for us at this time to obtain a higher level of foreign investment in the United States. In seeking ways to achieve and encourage that investment it is proper to ask whether our tax laws affecting foreigners operate as a barrier to investment in this country by foreigners. If so, here also a shift to a more neutral position—i.e., a position which would make U.S. taxes as neutral a factor as possible in the decision of a foreigner whether to invest at home, in another country or in the U.S.—would seem appropriate. Such a shift of course would have to be consistent with other tax policies. But assuming that this consistency existed, then here also we can say that a change at this time is appropriate since change now is in harmony with our balance of payments program. In other words, balance of payments objectives can prompt the study of tax provisions and can properly affect the timing of desirable basic changes in tax concept. But as far as possible, excepting measures specifically linked to a temporary period—such as the Interest Equalization Tax—the basic changes should be of such a nature that it would be proper to retain the new provisions even if our balance of payments posture were to alter.

Coming now more directly to the taxation of foreigners, a Presidential Task Force on Promoting Increased Foreign Investment in U.S. Corporate Securities and Increased Foreign Financing for U.S. Corporations Operating Abroad (the Fowler Report) recommended to President Johnson on April 27, 1964, a series of tax and non-tax measures to achieve the objectives its title embodied. The Treasury Department was consulted by this Task Force in the preparation of its report, and at the request of the President is now engaged in intensive consideration of its tax recommendations. Practically all of the tax recommendations relate to the taxation of foreigners investing in the U.S., and represent in basic approach a reduction in the extent to which the United States now taxes such foreigners. The consideration of these recommendations and their implementation has involved the Department in the study of matters beyond the specific recommendations of this Task Force. In large part the questions under consideration can be grouped into several main subjects. The discussion is here, as elsewhere in this paper, confined to the income tax, though it should be noted that the application of our estate tax to foreign decedents is also under examination.

Application of Progressive Rates

The United States applies a basic 30 percent withholding tax, except as reduced under treaties, to most compensation and investment income flowing to foreign individuals, but then subjects the foreigner's total income from U.S. source to our progressive individual income tax rates if the latter produce a higher tax. At 1965 rates the point where the progressive rates cut in is $21,200 of income. Few foreign individuals with incomes above that level, however, in fact pay these progressive rates, escaping them legally by making their U.S. investments through personal holding companies incorporated abroad, or illegally through the use of nominees to disguise their real ownership or other devices which make it impossible for the Service to cumulate the various income payments. Thus less than $1 million in taxes is collected from the application of progressive rates on non-residents. Given this situation, is it desirable to continue the present approach in the case of investment income? While it might be regarded as correct in theory, although most countries do not use this approach, is its complexity in administration worth the effort? Would elimination of this approach lead Americans to give up their citizenship while still retaining their investments in this country, and if so, should this be met by some specific provision?

Relating to this matter of the progressive rates is the present application of our personal holding company provisions to foreign corporations having U.S. investment income, which application is now required since this form of holding would otherwise permit avoidance of the progressive rates. If progressive rates were to be dropped, then consideration could be given in turn to dropping application of the personal holding company tax. Some troublesome problems would have to be solved such as a personal holding company with some U.S. shareholders, or a company in a treaty country, favored by a reduced U.S. withholding rate under the treaty, but owned by non-residents of that country who would secure the lower U.S. treaty rate. Related also to the progressive rates is our present source of income rule which treats a dividend from a foreign corporation deriving its income from U.S. sources as itself from U.S. sources. If the progressive rate approach is dropped, could this "second dividend" tax likewise be dropped at least where the U.S. source income of the foreign corporation is itself dividend income rather than trade or business income?

The dropping of the progressive rate approach means that returns would not be required from any foreigner having only investment income, so that his tax contact with the U.S. would be only through the withholding system.

Foreign Investor Also Engaged in U.S. Trade or Business

As indicated above, a foreigner investing in the United States can have his investment income subjected to rates above the 30 percent withholding rate if the

income is large enough to bring into play the progressive rates. But, under another rule, even investment income below $21,200 can be subject to progressive rates if the foreigner is engaged in trade or business in the U.S., since then our Code requires that he be taxed on all his U.S. source income at the regular U.S. rates. The question here is whether this joining of the two types of income should occur, or whether instead the investment income, assuming it is not related to the trade or business, should be kept separate and thereby subjected only to the withholding tax. This joinder rule is, it may be noted, one of the "bitter-sweet" tax rules, since some taxpayers benefit by the joinder. Thus, a taxpayer with income from real estate not regarded as a trade or business can, through joinder with a trade or business, transform a 30 percent rate on the gross rentals into a tax at regular rates but on a much lower net income. Royalty income is another example. The allowance of a dividend received deduction to a foreign corporation which both receives dividends from U.S. sources and is engaged in trade or business in the U.S. is still another example. Hence any change in the joinder rule would require careful consideration of the gross income approach now applied to rental or royalty income to see whether a net income concept is more appropriate, even though the activity is not regarded by itself as a trade or business.

Capital Gains

The United States system of taxing U.S. capital gains of foreigners places great stress on the physical presence of the foreigner in the U.S.—if he is here when the gain is realized, or if he is here for a total of 90 days, then he is subject to our capital gains tax on his U.S. gains. Such a rule would seem to invite only careful planning for its avoidance, so that it is productive of nuisance but not revenue. Consideration could be given to its abandonment, except perhaps where the presence in the U.S. is of longer duration, such as six months, and perhaps where the gains are also more speculative in nature, as short term gains.

Withholding System

The issues discussed above indicate that we now place great reliance on our withholding system to collect taxes on foreigners, and may place even greater reliance on that method in the future. Naturally, this leads to the question whether that withholding system is functioning satisfactorily; for example, does it reach all recipients; does it confine the various lower treaty rates to the recipients intended to be benefited or are others as well, such as residents of non-treaty countries, riding the coattails of the treaties; is our exemption of U.S. citizens from this withholding being abused by foreigners claiming to be citizens? Prudence would require that we give the withholding system a careful scrutiny.

Basic Problems

These represent some of the matters currently being studied by the Treasury Department. Since the overall thrust of the possible changes is that of reduced U.S. taxation of foreigners investing in the U.S., it can be argued that such changes would attract more investment to the U.S. This is the belief of the Presidential Task Force mentioned earlier. The types of investors who would respond and the extent of the response are probably not subject to empirical demonstration. Certainly changes of this nature should, however, at the very least improve the U.S. investment climate for foreign investors. But the case for re-examination of these rules need not be pitched on proof of a large absolute increase in foreign investment in the U.S. Rather, it is necessary to consider whether changes are appropriate from the standpoint of a more rational application of our tax to foreigners, and hopefully one that would be somewhat simpler.

This approach in turn leads us to two important questions. The first is that of ascertaining what are the criteria of rationality when we are seeking to frame a tax structure applicable to foreigners. Clearly we must keep in mind that we are here dealing with international tax relationships. This means we should see that any new rules are in conformity with acceptable international norms. The U.S., with its large flows of capital and goods in and out of our country, has a responsibility to take a major role in developing a proper international tax framework against which the tax rules of any particular country can be considered. One basic factor in this respect is a fair and sensible allocation among the various countries of income from activities that reach across international borders. Another factor is a proper balance between the tax paid by our citizens on their U.S. income and that paid by foreigners on the same income. Still another factor is the desirability of maintaining as far as possible the free movement of capital and goods, with taxes in any country as neutral a factor as possible consistent with the domestic policies to be served by a tax system.

For example, care must be taken to see that in making changes designed to remove unwarranted tax barriers to investment in the U.S. we do not thereby turn the U.S. into a tax haven country vis-à-vis foreign investors. Moreover, we must be careful to prevent our adopting tax rules for foreigners that could be combined with the tax rules of another country to transform that country into a tax haven that would attract foreigners seeking to invest in the U.S. We have ourselves seen the problems which tax havens can cause for our tax system and economic policies, and hence have our own obligations not to place such holes in the international tax fabric. The recent changes in the Netherlands Antilles income tax treaty were made for this reason, since the former treaty when combined with the tax laws of the Antilles had made it an artificial way station for foreigners investing in the U.S. We now recognize that in all of our treaties we must be

careful to avoid another Antilles situation, and the provision in the Luxembourg treaty guarding against this possibility is an example of our approach. We must also keep in mind the problems that can exist if our tax rules are so attractive that we drain off capital from less developed areas, such as Latin America, which are badly in need of that capital at home.

Relationship to Tax Treaties

The second question involves the relationship of these statutory tax rules respecting foreigners to our income tax treaties. Both these statutory rules and the treaties involve the same subject matter—that of the U.S. taxation of the income of foreigners derived from U.S. sources. The Code rules considered above represent our statutory or unilateral approach; the treaties represent our bilateral approach. The treaties have the function, in this respect, of placing restrictions on the unilateral rules, in that the treaty rules are more favorable to foreigners than the Code rules. When we examine many of the statutory changes under consideration, we find they are similar to the changes discussed earlier in our new approach to income tax treaties. Thus both move along parallel lines—e.g., lessened taxation of capital gains, the elimination of the force of attraction of a trade or business (statutory) or of a permanent establishment (treaty).

Any changes made unilaterally could thus present us with distinct difficulties in the treaty area. For treaties are bilateral and the restrictions are reciprocal. The concessions we make in a treaty to the foreigners of Country X investing in the U.S. are usually matched by the concessions Country X makes in the treaty to our citizens investing in that country. Hence, if we decide in a treaty to eliminate our taxation of the U.S. capital gains of foreigners or to eliminate the force of attraction of a permanent establishment in the U.S. for the investment income of a foreigner owning that establishment, we expect to receive similar treaty concessions from the other country. Such concessions both benefit our investors and traders abroad, and through lowered foreign taxes, and hence lowered foreign tax credits, provide us with a revenue increase to balance the revenue lost through our concessions. What, therefore, happens to our bargaining powers if these concessions are unilaterally made by the U.S. through a statutory change? This problem is a very real one, since many treaty negotiations develop essentially into formidable contract bargaining.

The desire to protect our revenues and own investors and traders, and caution as well, would thus point to making any changes, otherwise appropriate, only through treaties and not unilaterally. The principal offsetting factor is that of time—treaties do move slowly and all else being equal if the changes are desirable they should be made at this time. The problem thus becomes one of searching for a mechanism which will protect the treaty process and still permit unilateral

change. One possibility worth consideration is that of making the unilateral statutory changes but providing in the Code that the Secretary of the Treasury can rescind the more important of these changes as respects the residents of any foreign country if he finds that the country is not taking reasonable steps in treaty negotiations to grant relief to our citizens similar to the relief granted to its citizens by our statutory changes. Several present Code sections could be regarded as consistent, if not direct, precedents: Section 883 excluding from our tax the profits from the operation of foreign documented ships or aircraft if the country of documentation grants an equivalent exemption to our shipping and aircraft; and section 891 authorizing the President to double the rates of our tax as to citizens of a foreign country which he finds is subjecting our citizens to discriminatory or extra-territorial taxes. The objective in exploring the mechanism suggested, or others that may be suitable, is to achieve a flexibility in approach to our international tax relationships that will permit us to move in harmony both through statutory changes and treaty revisions.

CONCLUSION

The Treasury Department is engaged in a wide ranging program of improving our international tax relationships in the interest of increased international trade and investment and of the increased economic development of less developed areas. The above description of this program is necessarily lengthy and detailed. The program covers a range of activities reaching from tax treaties and multinational tax discussions to United States statutory legislation and on to Treasury Regulations and operating procedures of the Internal Revenue Service. Moreover, in the tax field the full meaning and scope of any provision, be it in a treaty, statute, regulation or other form, lie in the details of that provision. Taxation is a technical subject and the details count.

A program of this breadth requires time for its full completion, and the persistent, patient activities of not only our tax officials but also those of many countries. It can also be immeasurably aided by the informed and patient cooperation of private tax experts, through associations or in their private capacities, who can bring their experience and problems to the shaping of the solutions. The Treasury welcomes this cooperation. It believes that the goals involved in this program will commend themselves to those concerned with international economic problems and that the accomplishment of those goals will represent a significant step forward in our international tax relationships.

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- ☐ Retirement plans
- ☐ Robinson-Patman Act
- ☐ Sales taxes
- ☐ Securities regulation
- ☐ SBIC
- ☐ Social Security
- ☐ State taxes
- ☐ Stock rights
- ☐ Stock transfer taxes
- ☐ Taft-Hartley Act
- ☐ Trusts
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II

WORLD TAX REVIEW

ARGENTINA

TAX NEWS

Major summaries of company taxation in 1964

National Companies

1. General income tax
   taxable base: income from Argentine sources
   tax rate: 33%
   20% emergency surcharge
2. Income tax on dividends
   taxable base: amount of dividends (stock dividends included)
   tax rate: 8%
   20% emergency surcharge
3. Substitute inheritance tax
   taxable base: net worth
   tax rate: 1%

Foreign Companies

1. General income tax
   taxable base: income from Argentine sources
   tax rate: 38.36%
   20% emergency surcharge
2. Substitute inheritance tax
   taxable base: net worth of branches
   tax rate: 1%

Taxation of Interest

taxable base: amount of interest. (50% in case of loans from outside; interests paid to foreign residents to finance industrial equipment are exempt).
tax rate:
a—For interest on loans:
normal income tax rate if paid to resident.
38.36% plus 20% emergency surcharge if paid to non-residents.
b—For interest on debentures:
whose owner is an individualized resident
8% (on account of the general income tax).
20% Emergency surcharge

other debentures 38.36%
20% Emergency surcharge

Taxation of Royalties

taxable base: amount of royalties
(If there are research expenses, the Law assumes them to be a minimum of 50% of royalties for foreign companies. If expenses are higher than a 50% of royalties, a higher equivalent percentage may be deducted).
tax rate:
normal income tax if paid to residents.
38.36% plus 20% emergency surcharge, if paid to foreigners.

Reported by: Horacio Hirsch, Las Heras 2881 Piso 9, Buenos Aires.

AUSTRALIA

TAX NEWS

Tax reforms were introduced by the Government Treasury to close loopholes and increase revenue. The reforms are aimed specifically at companies, family trusts and

partnerships which use pension and deferred compensation schemes to avoid tax.

The bill also proposes that tax rebates on dividends between interlocking companies be reduced to one half of their present level. The Government also intends to tighten up the provisions dealing with the transfer of source on "loss-companies". In the future losses of a previous year will not be allowed as a deduction against the income of any year unless there is beneficial ownership by the same shareholders in the company, that carried at least 40% of voting and dividend rights and 40% of entitlements to distributions of capital in the event of a company being liquidated or having its capital reduced.

The bill also provides that a special tax rate of 10s in the pound be imposed on the trusts of unmarried minor children of tax payers, where the income of the trust is being accumulated. Individuals who assign income from assets for a period of less than 7 years will, under the new measure, be taxed as though they had not made the assignment.

GHANA

TAX NEWS

A bill has been proposed in Ghana taxing capital gains realized from chargeable assets, if these gains have not been subject to the income tax. The rate of taxation on these capital gains will be 50% and the assets to be included consist of

a) building of a temporary or permanent nature;
b) land (other than agricultural land) which is to be used for commercial purposes;
c) business assets and goodwill;
d) receipts that have accrued from the transfer, sale or surrender of rights over the assets specified in paragraph (a) + (b);
e) any other assets declared chargeable by the legislature.

The taxes will be imposed on any gains realized from a change of ownership brought about by a sale, transfer (including transfer by gift) or surrender of any rights to the property. The gain is computed by subtracting the cost (including capital expenditures) from the sum received (whether by cash or other property). Capital gains must be reported to the Commission of Inland Revenue within thirty days and the Commission may disregard the transaction if the main purpose was the avoidance or reduction of this tax.

INDIA

TAX NEWS

The Central Finance Ministry has outlined the conditions under which foreign professors, teachers and research workers are eligible for exemption from income tax permissible under the Finance Act, 1964. It has also clarified the benefits available to them under this provision of the Act.

To be eligible for the exemption, a professor or a teacher employed in a university or an educational institution in

India must not be a citizen of India and he should not have been resident in this country in any of the four financial years immediately preceding the financial year in which he arrived in this country. Furthermore, his contract of service must be approved by the Government of India before or within one year of the commencement of his services.

In the case of professors and teachers whose service started before 1st April, 1964, the Central Government's approval must be obtained before 1st October, 1964.

Exemption in the case of research workers will be subject to two conditions, namely (i) the Central Government's approval to the research scheme is obtained before 1st October of the relevant assessment year, namely before 1st October, 1964 for the current assessment year 1964-65, and (ii) the emoluments for undertaking the research work is payable or paid directly or indirectly by a foreign Government or any institution or association or other body established outside India.

According to the benefits provided under the Finance Act, a professor or a teacher will not be required to pay tax on the remuneration received by him or due to him during the 36 months commencing from the date of his arrival in India. When he continues to remain in employment in India after the expiry of this period and the tax on his income chargeable under the head "salaries" is paid by the university or the educational institution concerned to the Central Government the tax so paid for a period not exceeding 24 months will also not be treated as his taxable income.

A foreign research worker will not be required to pay tax on any sum due to or received by him during the 24 months commencing from the date of his arrival in India for undertaking the research work.

Requests for the Central Government's approval of the contract of service in the case of professors and teachers, and for the Central Government's approval to the research scheme in the case of research workers should be addressed to the Secretary, Central Ministry of Education, New Delhi.

The Ministry of Education has prescribed a pro forma for this purpose and applications seeking the Government's approval should be made in that pro forma. Copies of the pro forma are available from the Ministry of Education.

Requests for approval should be made sufficiently in advance so that the Government's decision may be communicated before the due date.

Treaty Developments

India—United Arabic Republic

In Cairo, the Indian and the U.A.R. delegations drew up a draft agreement which is comprehensive, covering all sources and types of incomes. It is based on the principles followed by necessary modifications to suit the conditions prevailing in the U.A.R. and India. The agreement will come into force after the draft is approved by the two Governments and instruments of ratification have been exchanged.

India—France

In Paris, the Indian delegation completed the pending negotiations for an agreement with a tax delegation of the French Government. The discussions resulted in a settlement of the outstanding points

relating to an earlier draft agreement for the avoidance of double taxation of incomes between the two countries on a comprehensive basis. This draft also embodies the princples which have been followed by India with other countries. A formal agreement is now expected to be concluded shortly.

Reported by: K.C. Khanna, 16, Strand Road, Calcutta-1.

ISRAEL - UNITED STATES

The treaty concluded between Israel and the United States which was before the Senate for ratification, has been recently withdrawn. The indication is that the reason for the withdrawal was the inclusion in the treaty of a "tax sparing" provision.

A new draft was prepared on a double taxation agreement between the two countries by Mr. Ariel Ariely, outgoing Commissioner of Government Revenue for Israel and Mr. Stanley S. Surrey, Assistant Secretary of the Treasury for the United States of America.

The new draft provides that U.S. residents and firms investing in Israel will receive a 7% rebate on the U.S. tax. The investment allowance includes all industries as well as banking and other services, provided the investment is not repatriated within three years. A further 7% tax credit is granted for one half on any sum reinvested.

A provision is included whereby know-how and other services may be transferred for shares in a company without creating a current tax liability in either of the two countries.

MALAYSIA

TAX NEWS

An Income Tax Bill has recently passed the House of Representatives on July 23, 1964 and has been approved by the Senate.

The Bill proposes certain changes to the Income Tax laws of the four member countries of Malaysia mainly with the object of bringing the laws more into harmony.

The tax rate on the income of a non-resident (subject to paragraphs 5 and 6) will be a flat 40% in the States of Malaya, Singapore and Sabah, while Sarawak will retain its schedular taxes.

In addition, the tax rate applicable to estates and trusts will be standardised at 40% in Malaya, Singapore and Sabah but the income of beneficiaries from the estate or trusts will continue to be taxed at the rates applicable to the individuals concerned after making deductions for personal reliefs, etc.

The special relief previously accorded unilaterally to all non-resident Commonwealth citizens and British protected persons with income in Malaya, Singapore and Sabah will in future be more restricted in scope. In future the relief will be available to Malaysian citizens resident outside Malaysia and to the residents of other

countries where Double Taxation Agreements contain articles providing for reciprocal treatment.

Apart from giving relief to Malaysian citizens, the new law will give similar relief to all pensioners, including annuitants, deriving their pensions from Malaysia, whatever the country of their residence, but the relief will relate to the pension only.

The effect of the relief is to give an abatement of the tax such as would be obtainable by a resident with the same income but modified by the ratio of the Malaysian income to the world income. There are various transitional provisions in respect of the relief due to residents of one part of Malaysia from income arising in other parts.

The power to approve and withdraw approval in respect of Pension or Provident Funds for the whole of Malaysia has now been vested in the Comptroller-General of Inland Revenue. Approval for income tax purposes of a Provident or Pension Fund involves exemption from tax of the investment income of the Fund and entitles to both employer and employee to a tax deduction in respect of their contributions to the Fund.

Reported by: H.W.T. Pepper, Director of Tax Planning and Research, Suleiman Building, Kuala Lumpur.

MEXICO

TAX NEWS

The tax treatment of patent royalties received in Mexico varies considerably from the treatment of "know-how" royalties. The former is taxed under Schedule VIII which provides that ". . . people receiving habitual or occasional income. ." from patents or any other consideration derived from the exploitation of patents, trademarks, tradenames or copyright by any individual or corporation are subject to various progressive rates. The rates range from a minimum of 10 %(from 0.01-2,000 m$n) to 50% on over m$n 840,000. Although the tax is computed on an annual basis, the appropriate per cent. is withheld on each individual payment. At the close of the fiscal year an adjustment is made between the tax witbeld and the tax due on the final income. Royalties for "know-how" or other technical assistance, on the other hand, are taxed under Schedule I, which applies generally to commercial income. Up to m$n 2,000 is exempt and the maximum rate of 39% is applied to royalties of over m$n 2,000,000.

When a non-resident receives "know-how" royalties from sources within Mexico the tax on these royalties is limited to 20%; whereas no such special benefit exists when a non-resident receives patent royalties. Theoretically, "know-how" royalties may be subject to the excess profits tax if these payments either alone or in conjunction with other profits exceed m$n 300,000 and 15% of the net worth. However, presently there is difficulty in determining the net worth of non-residents.

Income from patents or "know-how" are subject to both a federal and state turnover tax at m$n 18 per 1000 and m$n 12 per 1000 respectively.

For specific rates for the above please communicate with the editor of the Bulletin.

POLAND

TAX NEWS

Les modifications intervenues au cours du premier semestre de 1964 *et concernant l'économie non socialisée consistent dans de nombreuses exonérations et franchises fiscales. Dans l'ordre chronologique ces modifications sont les suivantes*:

1. La prolongation jusqu'à la fin de l'année 1965 de la période d'application d'une franchise fiscale en faveur des investissements nouveaux, réalisés dans les éxploitations agricoles individuelles, situées dans certaines régions limitativement énumérées (ca 1/4 de la superficie du pays). Cette franchise est de 30% de la valeur des investissements et ne peut dépasser 30.000 zl. (Règlement du Ministre des Finances du 10 février 1964, publié au Journal officiel de la République populaire de Pologne Monitor Polski No 12).
2. L'exonération d'impôt sur le revenu des femmes de plus de 60 ans et des hommes de plus de 65 ans, de même que des personnes qui ont été classées parmi le I ou le II groupe des invalides, dans le cas de leur prestation de services pour la population ou pour l'agriculture concernant l'artisanat ou d'autres services pour la population, limitativement énumérées. L'application de l'exonération ci-dessus est subordonnée à des conditions supplémentaires. Ainsi par exemple, le chiffre d'affaires global annuel ne peut depasser 40 000 zl. (Ordonannce du Ministre des Finances du 6 mars 1964, publiée au Journal officiel de la République populaire de Pologne Dziennik Ustaw No 13).
3. La prolongation de la période d'application des franchises des impôts: sur le chiffre d'affaires et sur le revenu en faveur des établissements d'artisans qui instrusent des apprentis. La franchise est appliquée actuellement pendant 24 mois (auparavant 12 mois) après que les apprentis aient subi leur examen de compagnon. (Ordonnance du Ministre des Finances du 23 mars 1964, Dziennik Ustaw No 13).
4. L'exonération d'impôts sur le chiffre d'affaires et sur le revenu au cours de deux ans de recettes des personnes physiques limitativement énumérées qui vont fonder un établissement d'artisans jusqu'à l'année 1965 dans localité de 20 000 habitants. L'exonération est applicable sous certaines conditions. (Ordonnance du Ministre des Finances du 23 mars 1964, Dziennik Ustaw No 13).
5. L'exonération d'impôts sur le chiffre d'affaires et sur le revenu des recettes tirées de la vente des repas (le petit déjeuner, le déjeuner, le dîner) par les personnes physiques. La quantité de chaque repas ne peut surpasser 20 par jour. L'exonération ne s'applique par si la vente des repas est unie à la vente des boissons titrant l'alcool. (Ordonnance du Ministre des Finances du 28 avril 1964, Dziennik Ustaw No 17).
6. La franchise appliquée dans l'imposition des locaux qui sont occupés pas des établissements gastronomiques privés sous la condition qu'ils ne vendent pas des boissons titrant plus de 18° d'alcool. La franchise est diversifiée selon l'étendue de la localité. Elle est de 75% dans les localités ayant 25.000 d'habitants et dans les autres

localités de 50%. (Règlement du Ministre des Finances du 9 mai 1964, Monitor Polski No 35).

7. La franchise en faveur des investissements et des réparations réalisées dans des entreprises privées de meunerie jusqu'à 31 décembre 1966. La franchise est de 100% du montant qui a été dépensé pour les investissements et les réparations. Elle ne peut pas cependant dépasser 14% du chiffre d'affaires constituant la base imposable. La franchise peut être réparti sur plusieures années, mais pas plus longtemps que 10 ans (Règlement du Ministre des Finances du 19 mai 1964, Monitor Polski No 35).
8. L'application de l'impôt sur les salaires à certaines recettes qui ont été auparavant assujetties à l'impôt sur le chiffre d'affaires et à l'impôt sur le revenu. Cette imposition est plus favorable aux contribuables. Entre autres les recettes des personnes louant des chambres garnies—pas plus de 3 chambres et dans les localités balnéaires de villégiature et de tourisme—sous certaines conditions—plus que 3 chambres. (Ordonnance du Ministre des Finances du 22 mai 1964, Dziennik Ustaw No 19 et le règlement du Ministre des Finances du 22 mai 1964, Monitor Polski No 35).

Outre les modifications exposées ci-dessus sous la forme d'exonérations et de franchises a eu lieu la diminution des taux d'impôt sur le chiffre d'affaires pour les entreprises gastronomiques privées. Les taux ont été diversifiés selon que ces entreprises vendent ou ne vendent pas des boissons titrant l'alcool (2% pour les entreprises que ne vendent pas des boissons titrant l'alcool et de 3 à 8% pour celles qui en vendent). (Ordonnance du Ministre des Finances du 23 mai, Dziennik Ustaw No 20).

Tax Concessions granted by the Polish Government

The Polish Government has made various tax concessions and allowances for different types of enterprises. They have also extended the period for which these exemptions and deductions may be taken.

To encourage investment in agricultural enterprises in various regions (as set forth by the Minister of Finance), individuals may deduct from their income 30% of the value of their investment, not to exceed Zl. 30.000.

An exemption is granted for income received by aged men and women (over 60 and 65 years of age respectively), and invalids, provided they have rendered services in either the agricultural field, various artisan services, or other services elaborated by the Minister of Finance. The above exemption is applicable only if the world wide income does not exceed Zl. 40.000.

Skilled vocational teachers have been granted a deduction from the turnover tax and the income tax when their incomes emanated from instructing student artisans. The prior period for this deduction was 12 months from the time the instructor was licensed: the period has now been extended to 24 months.

Further exemptions are granted to artisans who establish and perform their services in towns having a population of at least 20.000 inhabitants. To be eligible for the exemption certain conditions must be met and the exemption is valid only for 2 years subsequent to the establishment of the enterprise.

Restaurants are also granted exemptions under the new decree. Small restaurants, i.e. those serving less than 20 meals per day and not serving any alcoholic beverages are granted an exemption from the turnover tax and the income tax from the sale of their meals. Other restaurants which serve mild alcoholic beverages (less than 18% alcohol) may be eligible for deduction for local taxes. This deduction varies with the size of the town. Other tax concessions for restaurants vary with the type of alcoholic beverages served.

To encourage the establishment of small boardinghouses (those renting less than 3 rooms) in tourist areas the Government eliminated the turnover tax and the income tax on these establishments and has substituted a wage tax on the proprietors of these establishments.

The new decree also permits an enterprise to deduct expenses in repairing capital assets used for the grinding and milling of flour. These repairs must be made prior to December 31, 1966. The deduction is equal to 100%, but it is limited to a maximum of 14% of the taxable base for the turnover tax. This deduction may be carried forward for 10 years.

Reported in French by: A. Kostecki Kraków
Extract translation by: KSJ and PBL

UNITED KINGDOM

TAX NEWS

Sales of "know-how"

In the last few years three cases involving the sale of what is now referred to as "know-how" have received the attention of United Kingdom Courts. In each case the Supreme Court, i.e. the House of Lords, delivered judgment.

These cases are important in themselves because it can be anticipated in a technological age that increasingly will companies seek to acquire or to sell the knowledge of otherwise secret production methods. If a United Kingdom seller is involved, the buyer would be well advised to consider carefully the U.K. tax aspects since these will colour the bargaining and indeed might affect the form of the eventual agreement.

These cases are important from a wider viewpoint. They give further indication of the sometimes fine distinction which the United Kingdom courts draw between what is a "capital" receipt or expense and therefore not taxable or allowable, and what on the other hand is a "revenue" receipt or expense and therefore to be taken into account for tax purposes.

The three taxpayers involved typify the technological age. The first case concerned Evans Medical Supplies Ltd., a company prominent in the international pharmaceutical field. The second and third cases concerned companies prominent in the aircraft industry, namely Rolls-Royce Ltd. and English Electric Ltd.

All these companies sold "know-how" to overseas buyers. "Know-how" was defined by one judge as including the Company's knowledge of "processes of preparation, packing and preservation of their products".

In each case the U.K. company received a lump sum. In the case of Evans Medical Supplies Ltd., the Courts held that the lump sum was a capital receipt and not taxable and in the other two cases the

Courts held that the lump sums represented trading income and were therefore taxable. Clearly these apparently conflicting judgments can only be reconciled on the basis that the facts in the case differed to a degree which was significant in the light of U.K. law.

In Evans' case there was an isolated agreement to sell "know-how"—a single transaction. This sale was to the Burma Government and the important point was that by parting with its secret knowledge, the company was assisting in the creation of an "entirely new and competing industry to be set up". As this industry grew the company's Burma branch would be affected. One judge summed up the situation as follows:—

> "This would mean that Evans Medical would be forced out of the Burma market, or at any rate would lose a good deal of business there. Their goodwill in that country would be diminished in value."

The other two cases differed from the Evans case in that there were several transactions involving the sale of know-how and there was no evidence in either case that the company's business in any territory was being prejudiced. It is probably this latter factor which decided that the receipts were taxable. This would be in line with the decision in other U.K. cases not involving know-how. For instance, where a taxpayer has received compensation for the termination of an agreement, the deciding factor has been whether or not the agreement being cancelled "related to the whole structure of the appellant's profit-making apparatus" (see Van den Berghs Ltd .v. Clark). The distinction is thus between a loss or sale of property, i.e. the business or part of the business itself and the use of that property to derive an income. This was put very succinctly in the House of Lords in the English Electric case, viz:

> "Where as in Evans Medical Supplies Ltd, know-how is imparted as one element of a comprehensive arrangement by virtue of which a trader effectively gives up his business in a particular area, the monies paid for the "know-how", whether or not independently quantified may properly rank as capital receipts. But the Rolls Royce case provides a different context in which the imparting is no more than a service, of however special a kind, attendant upon an activity that arises out of the Appellant's trading."

It seems safe to conclude that the normal rule will be that receipts from the sale of know-how will be subject to U.K. tax with just the possibility of exemption if a taxpayer can demonstrate, as did Evans Medical Supplies Ltd. that the sale involved a loss or disposal of a part of its "profit making apparatus".

Note: Cases discussed:
Evans Medical Supplies Ltd. v. Moriarty
Rolls Royce Ltd. v. Jeffrey
Musker v. English Electric Co. Ltd.

Reported by: T.W. Elliott, Unilever House, Blackfriars, E.C.H.

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