# BULLETIN

FOR
INTERNATIONAL
FISCAL
DOCUMENTATION

*Bulletin de Documentation Fiscale Internationale*

*Official Organ of the Int. Fiscal Association I.F.A.*
*Organe Officiel de l'I.F.A.*

Vol. XXIV, 1970

International Bureau of Fiscal Documentation
Bureau Intern. de Documentation Fiscale

Muiderpoort, 124 Sarphatistraat
Amsterdam.

THE INTERNATIONAL BUREAU OF FISCAL DOCUMENTATION was founded in 1938. 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," and in the Series "Studies on Taxation and Economic Development."
These series have been supplemented by various special publications. Since 1961 the Bureau has published *European Taxation*, at first as a fortnightly English language review of tax developments on the European Continent, in the United Kingdom and in Ireland, but since January, 1970, as an expanded monthly periodical published in two parts. A loose-leaf service, "Tax News Service", first published in 1965, brings rapid information of world-wide tax developments. Two loose-leaf services were started in 1963: "Supplementary Service to European Taxation" and "Guides to European Taxation". The latter series includes three published volumes:
"The Taxation of Patent Royalties, Dividends and Interest in Europe", "Corporate Taxation in the Common Market" and "The Taxation of Private Investment Income".
In 1966, a new loose-leaf service was started: "Tax Treaty Guides". The first volume is "Handbook on the United States-German Tax Convention". The second volume is "The Dutch-German Tax Convention." In April, 1970, a new loose-leaf service, "Corporate Taxation in Latin America" was published.

LE BUREAU INTERNATIONAL DE DOCUMENTATION FISCALE fut fondé en 1938. Pour des raisons de caractère organisatoire, ce Bureau est établi comme une fondation séparée conformément au droit civil néerlandais. Le Bureau est une institution scientifique, indépendante, sans but lucratif et sans objet politique, dont le but est défini dans les statuts comme suit:
*(art. 2)* Le but du Bureau International de Documentation Fiscale est d'établir et de maintenir un bureau international de documentation tendant à fournir des informations concernant la législation fiscale et l'application du droit fiscal, ainsi qu'à stimuler l'étude de la science fiscale.
*(art. 3)* C'est par les moyens suivants que le Bureau se propose d'atteindre ce but:

a. en établissant une bibliothèque fiscale d'ouvrages, revues et autres publications;
b) en fournissant des informations;
c) en procurant à tous ceux qui s'y intéressent l'occasion de consulter ces ouvrages;
d) en publiant un périodique;
e) en recourant à tout autre moyen adéquat.

Le Bureau veut, en coopération avec l'IFA et l'aide d'experts d'un grand nombre de pays, rassembler toutes les données possibles dans le domaine du droit fiscal national et international. De cette façon, le Bureau est à même de fournir des renseignements détaillés sur 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 les séries: Publications du Bureau International de Documentation Fiscale, et Etudes sur le développement fiscal et économique.
Ces séries ont eu des suppléments spéciaux et variés. Depuis 1961 le Bureau a publié la revue European Taxation, d'abord comme une revue bi-mensuelle en langue anglaise portant sur les développements fiscaux dans le continent européen, le Royaume Uni et l'Irlande, puis à partir de janvier 1970 il devenait un mensuel en deux parties. Tax News Service publié à partir de 1965 et présenté sur feuillets mobils donne rapidement une information fiscale à l'échelle mondiale. En 1963 paraissaient, toujours sur feuillets mobiles, d'une part "Supplementary Service to European Taxation" et d'autre part les "Guides to European Taxation". Cette dernière série comprenait la publication de trois volumes, *en langue anglaise:*
"Régime fiscal des redevances, dividendes et intérêts en Europe", "L'imposition des sociétés de capitaux dans les pays du Marché Commun" et "L'imposition de revenu des investissements privés".
En 1966 un nouveau service à feuilles mobiles a été établi: "Les guides des conventions fiscales". Le premier volume en est le: "Manuel relatif à la convention fiscale Allemagne-Etats-Unis", *en langues anglaise et allemande*. Le second volume est: "La convention fiscale Les Pays-Bas-Allemagne", *en langue allemande*. En avril 1970 paraît une nouvelle publication sur feuillets mobiles "Corporate Taxation in Latin America".

# INTERNATIONAL BUREAU OF FISCAL DOCUMENTATION

"Muiderpoort" - Sarphatistraat 124, Amsterdam (C) - Tel. 944944

Managing Director: J. van Hoorn Jr.

Deputy Directors: D.A. van Waardenburg, ec. drs. and Dr. J.C.L. Huiskamp

## BOARD OF TRUSTEES 1970

President: Prof. Dr. K.V. Antal, Professor of Tax Law at the University of Leyden

Hon. Treasurer: P. Smit, Tax Auditor, Alkmaar

Members:
Dr. A.D.J. Brantenaar, Managing Director, Cornelis Swarttouw's Stuwadoors Maatschappij N.V., Rotterdam
A.G. Davies, Member of the Board of Directors, Rio Tinto Group, London
Dr. K.H. Dronkers, Former General Secretary, International Fiscal Association, Amsterdam
A.A. Haak, Secretary Unilever Ltd., London
Prof. E. Krings, Professor at the Free University of Brussels
W. Polak, Alderman of Finance, Amsterdam
W. Rehbock, President Chamber of Commerce and Industry, Amsterdam
Prof. Dr. D.C. Renooij, Managing Director of the Algemene Bank Nederland N.V., Amsterdam
J.B. Schaafsma, Member of the Board of Directors of Philips' Gloeilampenfabrieken N.V., Eindhoven
Dr. h.c. F. Silcher, Member of the Board of Directors, Farbenfabriken Bayer A.G., Leverkusen
K. Soesbeek, President of Algemene Kunstzijde Unie N.V., Arnhem
Prof. Dr. A.J. van den Tempel, Professor of Tax Law at the University of Amsterdam.

## ADVISORY BOARD 1970

**AUSTRALIA**
John McKellar White, Director, Australian Tax Foundation, Sydney.

**AUSTRIA**
Dr. Helmuth Slaik, former Director-General, Austrian Savings-Bank, Vienna.

**BELGIUM**
Prof. Edgar Schreuder, Professor at the Free University of Brussels.

**BRAZIL**
Dr. Rubens Gomes de Sousa, São Paulo.
Dr. Gilberto de Ulhôa Canto, Rio de Janeiro.

**CANADA**
J. Harvey Perry, Executive Director, The Canadian Bankers' Association, Toronto.
R. Robertson, Member McCarthy and McCarthy, Toronto.

**DENMARK**
Jacob la Cour, Secretary, Erhvervenes Skattesekretariat, Copenhagen.

**FINLAND**
E. Schrey, Director of the Centr. Ass. of Finnish Woodworkers Industries, Helsinki.

**FRANCE**
Marcel Martin, Member of the Conseil d'Etat and Senator, Paris.
Max Laxan, Gouverneur of Crédit Foncier de France, Paris.

GERMANY
Dr. H. Vogel, Ministry of Finance, Bonn.
Dr. h.c. W. Mersmann, Munich.

ITALY
Prof. D.U. Papi, Professor at the University of Rome.
Dr. Victor Uckmar, Diritto e Pratica Tributaria, Genova.

LUXEMBOURG
J. Kauffman, Director, Service du Contentieux, A.R.B.E.D. and Member of the State Council, Luxembourg.
L. Schaus, Director-General of Direct Taxation and Member of The State Council, Luxembourg.

NORWAY
L.B. Bachke, Adjunct-Director, Norges Industriforbund, Oslo.
K.L. Bugge, Director, Riksskattestyret, Oslo.

PORTUGAL
Dr. V.A. Duarte Faveiro, Director-General Tax Administration, Ministry of Finance.

SPAIN
Prof. F. Sainz de Bujanda, Professor at the University of Madrid.

SWITZERLAND
Dr. Hans Herold, Secretary, Swiss Union of Trade and Industries, Zurich
Prof. Dr. Ernst Höhn, Institut für Finanzwirtschaft und Finanzrecht an der Hochschule St. Gallen.

UNITED KINGDOM
Douglas A. Clarke, Member of the Board, Institute of Chartered Accountants of England and Wales, London.

UNITED STATES OF AMERICA
Dr. Henry S. Bloch, Director, E.M. Warburg & Co., New York.
Norris Darrell, A senior partner in the law firm of Sullivan and Cromwell, New York.
Nathan Gordon, Director for International Tax Affairs, Office of the Secretary, United States Treasury Department, Washington, D.C. 20025.
Prof. L. Hart Wright, Professor of Law, University of Michigan, Ann Arbor, Michigan.

# INTERNATIONAL FISCAL ASSOCIATION

*Executive Committee*

| | |
|---|---|
| President<br>Président | Dr. Mitchell B. Carroll |
| General Secretary<br>Secrétaire Général | Prof. Dr. J.H. Christiaanse |
| General Treasurer<br>Trésorier Général | Mr. D. Coutinho |

*Comité Directeur*

| | |
|---|---|
| Dr. Paul Gmür<br>Prof. E. Schreuder<br>Alun G. Davies | vice-presidents |
| Prof. N. Amorós Rica<br>Prof. Dr. K.V. Antal<br>Dr. R. Bechinie<br>Prof. Charles Cardyn<br>Mr. J. Desmyttère<br>Dr. E.W. Klimowsky<br>Dr. F. Silcher<br>Dr. R. Valdés Costa<br>M. Andresen | members |

* * *

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

*Aim*

(*art. 2*) The aim of the Association is the study and advancement of international and comparative law in regard to public finance and especially international and comparative fiscal law and the financial and economic aspects of taxation.

*Plan of action*

(*art. 3*) The Association shall endeavour by all legal means to realise this aim:

a) by scientific research;
b) by holding congresses and conferences;
c) by publications;
d) by co-operation with all data collecting organisations, especially the International Bureau of Fiscal Documentation in Amsterdam;
e) by all other appropriate methods.

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

*Objet*

(*art. 2*) L'association a pour objet l'étude et la promotion du droit international et comparé en matière de finances publiques, et spécialement le droit fiscal international et comparé ainsi que les aspects financiers et économiques de la fiscalité.

*Plan d'Action*

(*art. 3*) L'association tendra par toutes voies légales à réaliser cet objet;

a) par la recherche scientifique;
b) par la tenue de congrès et de colloques;
c) par des publications;
d) par la collaboration au fonctionnement de tous organismes de documentation, notamment le Bureau International de Documentation Fiscale à Amsterdam;
e) par tous autres moyens appropriés.

* * *

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

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

| | | |
|---|---|---|
| ARGENTINA | Dr. Enrique J. Reig, Florida 142-p1-of. 193, Buenos Aires | ARGENTINE |
| AUSTRALIA | C.J. Berg<br>Commercial Bank Chambers (9th Floor) 62 Margaret Street, Sydney | AUSTRALIE |
| AUSTRIA | Dr. A. Hörtlehner, Bennoplatz 4, 1080 Vienna | AUTRICHE |
| BELGIUM | Dr. Raymond van Rolleghem, 88 Rue Bosquet, Bruxelles 6 | BELGIQUE |
| BRAZIL | M. Caldeiro de Andrade, Av. Almte. Barroso 81 – S/1222-1238, Rio de Janeiro | BRESIL |
| DENMARK | M. Østergaard<br>Dansk Skattevidenskabelig Forening, Kronprinsessegade 8, Copenhagen K. | DANEMARK |

| | | |
|---|---|---|
| EGYPT | Prof. Nagib Yousef, 46 Falaky Street, Cairo | EGYPTE |
| FINLAND | Mauno Turunen, Kansallis-Osake-Pankki, Aleksanterinkatu 42, Helsinki 10 | FINLANDE |
| FRANCE | A. Jacot, 5 rue Cardinal Mercier, Paris IXe | FRANCE |
| GERMANY | Dr. A. Heining, Habsburgerring 2-12 Köln 10 | ALLEMAGNE |
| GREAT BRITAIN | D.N.C. Gray, 6, St. James's Square, London S.W.1 | GRANDE-BRETAGNE |
| GREECE | Dem. Tsingris, 9, Rue D. Soutsou, Athènes (6) | GRECE |
| ISRAEL | Dr. J.F. Pick, 18, Rothschild Blvd., Tel-Aviv | ISRAEL |
| ITALY | Prof. Cesare Cosciani, Piazza Venezia 11, Roma | ITALIE |
| LUXEMBOURG | R. van Rolleghem, 88 rue Bosquet, 1060 Brussels | LUXEMBOURG |
| MEXICO | Lic. Margarita Lomelí Cerezo, Louisiana 93, Col. Nápoles, Mexico 18 D.F. | MEXIQUE |
| NETHERLANDS | J.F. Spierdijk, Alexander Gogelweg 30, The Hague | PAYS-BAS |
| PORTUGAL | Dr. J. Lopes Alves, Rua Portas Santo Antao, 89, Lisbon-2. | PORTUGAL |
| SPAIN | Prof. Narciso Amorós Rica, General Mola 15, Madrid | ESPAGNE |
| SWEDEN | B. Villard, c/o Swedish Institute of Foreign Law, Box 5513, 11485 Stockholm 3 | SUEDE |
| SWITZERLAND | Dir. Eugen Isler<br>c/o Schweiz. Treuhandgesellschaft, St. Jakobs-Strasse 25, Basel | SUISSE |
| UNITED STATES OF AMERICA | Harold S. Sommers<br>280 Park Avenue, New York, 10017 N.Y. | ETATS-UNIS D'AMERIQUE |
| URUGUAY | Cdor. Mario E. Pravia, Casilla de Correo 237, Montevideo | URUGUAY |

## COVERS

Those who wish to receive a cover for Vol. XXIV are kindly requested to send us their orders as soon as possible. At the same time orders can be sent for covers of other volumes.

*Price per cover:* **Dfl 6, US $ 2.00**

*For residents in the Netherlands there will be a TVA surcharge.*

## RELIURES

Les lecteurs désirant avoir une reliure pour le Vol. XXIV sont priés de bien vouloir adresser dès à présent leurs commandes au Bureau au plus tôt possible. On peut en même temps commander des reliures pour les volumes précédents.

*Prix par reliure:* **Fl 6, US $ 2,00**

*En ce qui concerne les résidents des Pays-Bas ce prix doit être augmenté de TVA.*

## EINBANDDECKEN

Sie können Ihre Bestellung für die Einbanddecke von Band XXIV ab sofort aufgeben. Gleichzeitig können Umschläge für andere Bände bestellt werden.

*Preis pro Einband:* **Hfl. 6, US $ 2,00**

*Für Bezieher in den Niederlanden erhöht sich der Preis um die Mehrwertsteuer (BTW).*

# BULLETIN FOR INTERNATIONAL FISCAL DOCUMENTATION



## CORRESPONDENTS

| | |
|---|---|
| ALGERIA | Me Max Hubert Brochier |
| ARGENTINA | Horacio Hirsch, M. & M. Bomchil |
| AUSTRALIA | Charles J. Berg |
| AUSTRIA | Dr. Jur. Robert Halpern |
| BERMUDA | The Colonial Secretary |
| BOLIVIA | Prof. Dr. Eduardo Nava, Dr. C. Aguirre |
| BRAZIL | J.E. Monteiro de Barros |
| BURUNDI | A.R.C. Grégoire |
| CAMBODIA | Phan Thul |
| CAMEROON | G. Crozes |
| CANADA | Prof. Edwin C. Harris |
| CENTRAL AMERICAN COMMON MARKET | Lic. Sergio T. García Granados |
| CEYLON | S. Ambalavaner |
| CHILI | Claro y Cia |
| COLOMBIA | Cavalier Venegas & Esguerra |
| COSTA RICA | Dr. Fernando Fournier A. |
| CYPRUS | Phidias C. Kypris and George Phylactis |
| DENMARK | V. Spang-Thomsen |
| DOMINICAN REP. | Oficina Troncoso |
| ECUADOR | Bustamante & Crespo |
| ETHIOPIA | Chamber of Commerce of Addis Ababa |
| FINLAND | Eero Schrey |
| FRANCE | J.C. Goldsmith |
| GAMBIA | G.M.P. Val-Phatty |
| GREECE | G.A. Nezis |
| GUADELOUPE and MARTINIQUE | Georges Colpaert |
| GUATEMALA | Lic. Salvador Saravia Castillo |
| GUYANA | E.D. Hayden |
| INDIA | K.C. Khanna |
| INDONESIA | Muhd. Husni, T.A. Tanutama and Dr. R. Soemitro |
| IRAN | Terence J. Grove |
| IRAQ | Miss Siham Kamil Sharif |
| IRELAND | Institute of Chartered Accountants in Ireland |
| ISRAEL | Ben Ami Zuckerman and Dr. E.W. Klimowsky |
| ITALY | Dott. Giancarlo Croxatto |
| IVORY COAST | J. Gailhard |
| JAPAN | Hideyasu Iwasaki and Yoichi Takegoshi |
| JORDAN | Saad Al-Nimry |
| KENYA | Nizar Jetha |
| KUWAIT | Haytham Malluhi |
| LAOS | Bon Non Siripano |
| LEBANON | Karim G. Khouri |
| LIBERIA | Gul Bharwaney |
| LIECHTENSTEIN | Dr. Jur. Dr. Rer. Pol. Alfred Bühler |
| LUXEMBOURG | George Faber and Jean Olinger |
| MADAGASCAR | Georges Déjean |
| MALAYSIA | M.K. Mathai |
| MALTA | G.L. Borg |
| MEXICO | Roberto Casas |
| NEW ZEALAND | Dr. G.A. Lau |
| NICARAGUA | Orestes Romero Roias, |
| NORWAY | S. Fagernaes |
| PAKISTAN | Rashid Ahmed |
| PANAMA | M.M. Fabrega Lopez y Pedreschi |
| PARAGUAY | Dr. Carlos A. Mersan, S.V. Gross Brown |
| PERU | Estudio Lavalle |
| POLAND | Dr. Apolionusz Kostecki |
| PORTUGAL | Dr. P. de Pitta e Cunha |
| PUERTO RICO | Frank K. Haszard |
| EL SALVADOR | J.A. Rivera Hijo |
| SENEGAL | C. Bardin |
| SINGAPORE | Leon Chee Seng |
| SOUTH AFRICA | Dr. E. Spiro |
| SPAIN | Dr. Narciso Amorós Rica |
| SWEDEN | Sten F. Bille |

| | | | |
|---|---|---|---|
| SWITZERLAND | Dr. Alfred Burckhardt and Dr. Heinz Masshardt | UNITED STATES | Alan R. Rado |
| SYRIA | Nizar Al-Rafii | URUGUAY | Juan Carlos Peirano Facio, Bado, Kuster, Zerbino & Rachetti |
| TOGO | Jean Vanroyen | | |
| TRINIDAD | Frank A. Dowdy | VENEZUELA | Alberto Pieraldi Palacios; Estudio Bentata |
| TURKEY | Fehamettin Ervardar | | |
| UNITED KINGDOM | Alun G. Davies | *no fixed country* | H.W.T. Pepper |

---



Conditions of subscription to the Bulletin: 1971 Subscription with Supplements Fl.45—$ 12.50
For European Taxation subscribers and for I.F.A. Members: 1971 Subscription with Supplements Fl. 36.—$ 10.00

★ *For subscribers resident in the Netherlands there will be a TVA surcharge.*

MEMBERS of the International Bureau of Fiscal Documentation may receive the Bulletin with Supplements and Tax News Service in return for their membership fee. In addition, the following services and discounts are offered:

—free access to the library
—free information on tax literature
—reports and information at request, up to a value which varies for each membership category
—discounts to a maximum of 20% on certain occasional publications of the Bureau

Full details of membership will be sent on request.

For an index of Articles, Documents, Developments in International Tax Law, Bibliography and Supplements to the Bulletin, published in 1970 and a list of authors, see page 564 et seq.

# CONTENTS

of the January 1970 issue

# DEVELOPING COUNTRIES AND INTERNATIONAL FISCAL LAW

In the series of the Forschungsinstitut der Friedrich-Ebert-Stiftung an interesting book by Arthur Bergmann, member of the Council of Directors of the Maritime Bank, Tel Aviv, has been published under the title "Developing Countries and International Fiscal Law"[1]. The book is especially interesting because the author views the problems not from a theoretical point of view but from a purely practical one.

The author deals *inter alia* with problems surrounding the balance of payments and international fiscal law, problems of the taxation of interest, insurance premiums, film rentals, shipping profits and wages, and the credit method and administrative assistance.

The author stresses the need of developing countries for administrative co-operation, and refers to the special treaty between India and Pakistan under which India recovers from its residents taxes which are payable to the Pakistan tax authorities and Pakistan undertakes reciprocal activities on behalf of the Indian tax authorities.[2]

Administrative delays in obtaining refunds add weight to the difficulties which the taxpayer faces. It is not sufficient to provide for refunds on paper (in either conventions or statutes); the relief must be obtainable, and obtainable without undue delay and expense. Examples of this problem are given by the author. To these may be added, for example, the existing practical difficulties of which we have been informed in obtaining a (partial) refund of the Italian dividend tax; the refund being allowed under Dutch-Italian treaty provisions. In a period of expanding international trade and investment existing procedures may have become inappropriate; an important goal for international fiscal law will be to seek new ways of protecting the taxpayer against unnecessary work, and delay, arising from taxation by two (or more) sovereign states. This new study from the point of view of the developing countries, is worthy of consideration by all international tax experts.

---

1 Forschungsinstitut der Friedrich-Ebert-Stiftung, Germany; Bad Godesberg, Gotenstrasse 27; Verlag für Literatur und Zeitgeschehen, Hannover, 1968 (102 pp). Price 14.80 D.M.

2 We may refer to the provisions of sect. 228 Indian Income Tax Act 1961 and sect. 46 of the Pakistan Income Tax Act 1922.

# * * * * ARTICLES * * * *

YOSHIMASA KUBOUCHI*:

# DEBATES ON REFORM OF CORPORATION TAX IN JAPAN REGARDING INTRODUCTION OF A SEPARATE CORPORATE PROFITS TAX

The Japanese tax scene in recent years has been dominated by debates on the reform of corporation tax. The "Inquiry Commission for the Tax System",[1] as a consultative organ to the Prime Minister, has just started its investigation into the present taxation system for interest and dividends, and corporate income. These questions are very difficult as they are connected with the readjustment of a complicated taxation system and of the diverse interests involved. In particular, with respect to the existing tax treatment of dividends there are two opposing views. One school of thought holds that the existing system in which tax credit is allowed to the shareholder is justified because shareholders have already been taxed indirectly when corporations pay corporation tax. The other view maintains that special tax relief must be abolished because dividend receivers enjoy a tax privilege in comparison with wage and salary earners because of the dividend-tax-credit.

I would like to stress the point that the corporation tax must be reconsidered from three angles: equity, economic effects and international aspects.

## A. INTRODUCTION

The taxation of dividends is the most essential element of corporate income tax. Many countries are still dissatisfied with their system, though there have been a remarkable variety of developments in recent years in the attitude of governments and industrial organizations to the taxation of company profits and dividends. In this respect, Japan is not an exception. There is a somewhat unique controversy and confusion about the taxation of corporations and dividends that we cannot find in other areas of taxation. The source of the difficulty may arise from the conflict between the business need for retained earnings and the desire to favor distribution under the corporate income tax. Some people are afraid that dividend taxation has fallen into a situation in which, internationally, no rational philosophy or set of common principles is discernible.[2]

It was a new landmark in the history of corporation tax when the U.K. Labour Government replaced the old "grossed up" system with the new corporation tax in 1965 and in the same year France introduced a 50% grossed up system (similar to the old British system) in the opposite direction.

Many discussions took place in Parliament during 1965 about the way in which the low level of the proposed British corporation tax would encourage plough-back and enhance the prospects of growth. But I learned from tax experts of the Confedera-

---

*) Economist of Financial Affairs Division, Federation of Economic Organizations (Keidanren).

1. This commission, established in 1968, was requested to determine means to improve the tax system and divide the tax burden between national and local taxes on an appropriate basis.
2. Principles for Taxation of Company Profits and Dividends, International Chamber of Commerce, July 1968.

tion of British Industry (C.B.I.) that most British companies have since attempted to maintain dividends even in a period of profits squeeze, and the combined effect of corporation tax and withholding tax on company cash flow has been more adverse than the old two-tier profits tax and income tax on companies. Post-1965 industrial history does not show that the new tax system has encouraged plough-back, rather the reverse.

C.B.I. insists that the change in corporation tax of 1965 has brought about a very large disturbance in the conduct of corporate business.[3]

In sharp contrast to the British change, the French chose the old British system after having studied the German split rate system.

The aim of this article is to describe an outline of Japanese corporate income tax since the Shoup Recommendation and to analyze the main arguments for and against the reform of the corporation tax in Japan in the light of those in other countries. The article, it is hoped, will be of interest and use, since it contains comprehensive arguments as to taxation of dividends. Responsibility of this article is, of course, attributable to the writer himself and not the Federation of Economic Organizations.

## B. JAPANESE CORPORATION TAX SYSTEM

A Corporate Income Tax was instituted in 1899. Until then, legal entities were not taxed, unlike natural persons who were taxed in accordance with the income tax law. The corporation tax rate was 2.5 per cent, when it was first introduced.

There has been a split rate of corporation tax since 1964. The existing Japanese Corporation Tax is based upon the recommendation of the Shoup Mission of 1950. The tax reforms then forged and those made year to year since 1951 represented efforts to readjust the tax system to the actual conditions prevailing in Japan.

The following briefly outlines the Shoup Recommendation and how the tax system has since been readjusted.

### (1) *Shoup's Recommendation*

Shoup's Recommendation was based upon a concept that a corporation was but a particular kind of aggregation of individuals, formed for the purpose of carrying on a given business. Based upon this concept, the following points were proposed:

(a) a tax of 35% on the net income of each corporation;

(b) a credit for each individual stockholder against his individual income tax of an amount equal to 25% of the dividends he receives from corporations subject to the tax imposed under (a), (assuming, of course, that such dividends are themselves included in net income of the stockholder in computing his tax);

(c) an interest surcharge on the corporation of one percent each year of aggregate earned reserves accumulated out of the net earnings of the fiscal period; and

(d) discontinuation of the withholding tax deducted by corporations on dividends paid to stockholders. In addition, there is no occasion for the continuation of the tax that is collected from corporations when they liquidate. Any difference between the realization amount and the cost of the stock should be treated as a capital gain or loss.

### (2) *Developments after 1951*

(a) Abolition of interest surcharge on retained profit (1951).

---

3. The Budget 1968: Representations to the Chancellor of the Exchequer, C.B.I. February 1968.

In view of the important role of profit retention in business financing, the interest surcharge on retained profit was abolished.
(b) Reintroduction of withholding tax at source on dividends (1952).
In order to collect individual income tax on dividends easily, a withholding tax at source was reintroduced.
(c) Non-taxable treatment of capital gains from security transactions and reintroduction of liquidation income tax (1953).
In 1953, capital gains from securities transactions were made exempt from tax not only because the taxation of capital gains hampered the development of a securities market, but also because the tax on such gains was technically difficult to collect. As an alternative, income of corporations at liquidation was again made taxable for corporate income tax purposes.
(d) Split rate system (1961).
To promote business capital accumulation, the split rate system was introduced.

(3) *Present System*
(a) tax rates

| | Regular rate | Reduced rate |
|---|---|---|
| Corporation with capital over Y100 million..... | 35% | 26% |
| Corporation with capital of Y100 million or less: | | |
| First Y3,000,000 (per annum)..... | 28% | 22% |
| Remainder ..... | 35% | 26% |

The reduced rates are applicable to the portion of ordinary taxable income of a domestic corporation which is earmarked for dividends (amount to be distributed as stock or cash dividends less dividends received from domestic corporations).
*Note:* The corporation tax rate applicable to public corporations, registered associations or foundations and unincorporated associations is a flat rate of 23% (19% on the portion of taxable income to be distributed).
With respect to a domestic family corporation, there is a graduated surtax of 10 percent, 15 percent or 20 percent on the excess of the undistributed earnings of the current accounting period over the greater of 30 percent of taxable income for the period on Y1,500,000. However, the tax is applicable only to the extent that the aggregate retained earnings at the end of the period exceed 25 percent of paid-in capital.
A domestic corporation winding up its business is subject to a 30 percent tax on the amount of assets to be distributed to the shareholders in excess of the sum of the capital, capital reserve and retained earnings previously taxed.

(b) family corporations
If any three shareholders of a corporation, together with their relatives or affiliated corporations, own 50 percent or more of the total shares of a corporation, such a corporation is deemed a family corporation. In the case of four shareholders this ownership qualification is 60 percent and for five it is 70 percent.

(c) avoidance of double taxation
The Japanese income and corporation tax systems are intended to avoid double taxation in so far as this is possible. However, the method used for this purpose is complicated. Both a dividends-received-credit approach and a dividends-paid-deduction approach (as mentioned above, 26% reduced tax rate applied to dividends payment) are used.
Credit for withholding tax on dividend income is allowed if the dividend income is aggregated with other income. In addition, there is a special tax credit of 15 percent (7.5 percent if total taxable gross income exceeds

Y10,000,000) of aggregated dividends received from Japanese corporations.

*Note:* Up to March 31, 1970, as a general rule, all dividends paid by a Japanese corporation are subject to a 15 percent withholding tax, and the recipient aggregates such dividend income with his other income, applies the progressive tax rates, and claims credit for the tax withheld and for the special deemed tax credit. However, the following dividends do not have to be aggregated with the recipient's other income and are only subject to the withholding tax; (i) dividends from security investment trusts (mutual funds); (ii) dividends received up to December 31, 1969 from one Japanese corporation not in excess of Y50,000 per annum (Y25,000 per semiannual period); (iii) dividends received from one Japanese corporation not in excess of Y500,000 per annum (Y250,000 per semiannual period) to qualify for separate taxation at a 20 percent withholding tax rate.

### C. MAIN POINTS IN THE DEBATE ON REFORM OF CORPORATION TAX

In recent years, the arguments for a reform of corporation tax have been increased. The main points of reasoning for or against the introduction of an independent corporate profits tax are set out below.

#### Arguments For

(1) The corporation is a distinct entity in law and in economic characteristics from its shareholders, hence the corporation's income should be taxed as such, and the income distributed to the shareholders should be taxed again in their hands in the same manner as any other income received by them. The corporate profit tax is in compliance with the actual situation of the Japanese economy, especially in the case of large companies. Those who have followed this line of argument advanced for the introduction of a corporation tax separate from the individual income tax are supported by adding the fact that most Western countries, notably the United States and leading members of EEC and EFTA, deal with the taxation of corporate income in this manner.

(2) The existing corporation tax system is too complicated to be understandable. If corporation tax is considered as an advance payment of individual income tax, the corporation must declare gross dividends with corporation tax deducted therefrom. In reality corporations do not make such a declaration, thus the dividend tax credit is misunderstood as privileged treatment under income tax law.

(3) Those who receive dividends are very much favoured in tax treatment to the disadvantage of wage and salary earners. In fact, in the case of dividend income, the married person with three children is immune from tax for the minimum taxable amount of Y2,830 thousand, while in case of wages and salaries this is Y930 thousand.

Based on these reasons, the officials of the Ministry of Finance proposed the following schemes to the Inquiry Commission for the Tax System of October, 1967—

1) the taxable base to be net corporation profits.
2) the uniform tax rate to be applicable to both retained and distributed profits (if any increase in the total tax burden of corporations is to be avoided, the rate should fall within the range of 30–32%).
3) for small-medium companies the reduced tax rate (for example 25%) is to be applicable.
4) abolition of dividend credit for individual shareholders.

5) dividends received to be included in taxable income (except for dividends received by subsidiaries).
6) in accordance with these changes, the individual income tax rate is to be reduced (taking account of abolition of dividend credit for individual shareholders).

Arguments Against

Against these proposals, there are very strong opposing opinions, such as:

(1) International tax discussions for many years seem to have boiled down to acknowledging the need for integration of corporation tax and income tax on dividends.

In the "Segré Report", prepared in 1966 by a group of experts appointed by the EEC Commission and the "EEC Commission's Programme for Harmonization of Direct Taxes," of June 1967, recommended ways for avoiding or eliminating double taxation. Based upon the same reasoning several other methods were also proposed by other organs.[4]

(2) Economic double taxation of company profits and dividends cripples the one form of business organization adapted to the marriage of large financial resources with the economics, and the efficient application, of modern technology, marketing and management techniques.[5]

(3) It is true that the corporation is a distinct entity from shareholders, but a distinction is

---

4. The *Segré Report* suggests that should a system similar to the German system be adopted, the reduced rate of tax on distributed profits should be the same in all Member States and that if the Member States apply a system of indirect credit, a similar credit should be granted to non-resident shareholders.

The *EEC Commission's Programme for the Harmonization of Direct Taxes* notes that, as a long-term objective, a continued policy of relieving the burden of economic double taxation should require all Member States to apply either the same indirect credit system or German system of reduced corporation tax rates on distributed profits.

*Recommendation of Canadian Royal Commission on Taxation* (1966)

Proposal: Corporation tax of 50% grossed up and credited against personal income.

*Gutachten zur Reform der Direkten Steuern* (Einkommensteuer, Körperschaftsteuer, Vermögensteuer und Erbschaftsteuer) in der Bundesrepublik Deutschland erstattet vom Wissenschaftlichen Beirat beim Bundesministerium der Finanzen) (1967)

Proposal: Corporation tax of 62.5% grossed up and credited against personal income.

*Principle for Taxation of Company Profits and Dividends*, International Chamber of Commerce (1968)

Proposal: A company tax may be imposed exclusively on undistributed profits; or

A company tax may be imposed on total profits, shareholders being entitled to a credit ("avoir fiscal") at the same rate of tax against their personal liability on the dividends which they receive (the credit being included in the amount assessable).

*The Budget 1968: Representations to the Chancellor of the Exchequer*, C.B.I. (1968)

Proposal: Dividends received by individuals or by corporate bodies should be regarded as franked from any further liability to income tax.

5. *Principles for Taxation of Company Profits and Dividends*, International Chamber of Commerce 1968.

In addition, CBI summarizes the advantages of incorporation as follows.

(a) a corporation has perpetual succession.
(b) a corporation holds property in its own name so that no change of ownership take place on a change in ownership of shares.
(c) a corporation contracts in its own name and is liable on its contracts to the exclusion of its members.
(d) shares in a company can be transferred or mortgaged without the consent of the other shareholders.
(e) the members of a corporation are not liable for its debt but the partners of an unlimited partnership are each liable for all the debts of the firm.

not in itself a just basis for a difference of tax treatment. In truth, the more strongly the separateness of the company and its shareholders is argued, the more apparent is the absence of justification for double economic taxation, since the argument itself leads to the conclusion that dividends are a cost of capital which should be deductible in arriving at the taxable profits of the company as such.[6]

(4) The split tax rate system was introduced taking into account the Japanese characteristics of companies' high pay out ratio. Thus, if the reduced tax rate for distributed profits is increased, many companies would have a higher tax burden.

(5) If a single tax rate (30–32%) is applied, a large disturbance of tax burdens between companies and industries will arise. The chart on page 9 shows how the tax burden will change according to industries.

(6) The proposed corporation tax must be studied and criticized in the light of the practical experience of the United Kingdom of 1965.

"We have reached the conclusion that the present system has a number of defects. The most important of these are: that it imposes a heavy burden of tax on income from equity investments, a particularly serious failing since the function of risk-taking ought to be encouraged and not penalized; that it distorts the pattern of company finance by taxing share capital raised from the market more heavily than share capital generated by a firm internally; and that it creates difficulties for close companies generally and makes incorporation by small concerns prohibitively expensive. . . ."[7]

D. EQUITY

Many people are prone to think that equity in taxation means taxation according to ability to pay, that is, people with equal ability should contribute the same amount (horizontal equity) and people with greater ability should contribute more (vertical equity). But this definition seems too narrow. Equity in taxation must include, in addition to what is mentioned above, equal treatment of income from foreign and domestic sources, and equal treatment of the cost of different types of financing. The ultimate tax borne by a taxpayer on investment income should be the same, regardless of whether he receives his dividends or interest payments from domestic or foreign sources.

Also, the corporation tax on the cost of different methods of financing should be the same, regardless of whether the corporation pays interest on externally borrowed money or dividends on equity capital. If this reasoning is justified, it does follow that the withholding tax rate at source on dividends and interest should be the same and that dividend payments must be deductible for corporate income tax purpose, or dividend tax credit should be permitted as a requirement for eliminating economic double taxation on dividends.

However, as has already been mentioned above, there is a strong opposing view that the dividend tax credit is not in compliance with Japanese social and economic situations, since it is deemed as privileged treatment under income tax law and the corporation does not declare gross dividend with corporation tax deducted therefrom.

E. ECONOMIC EFFECTS

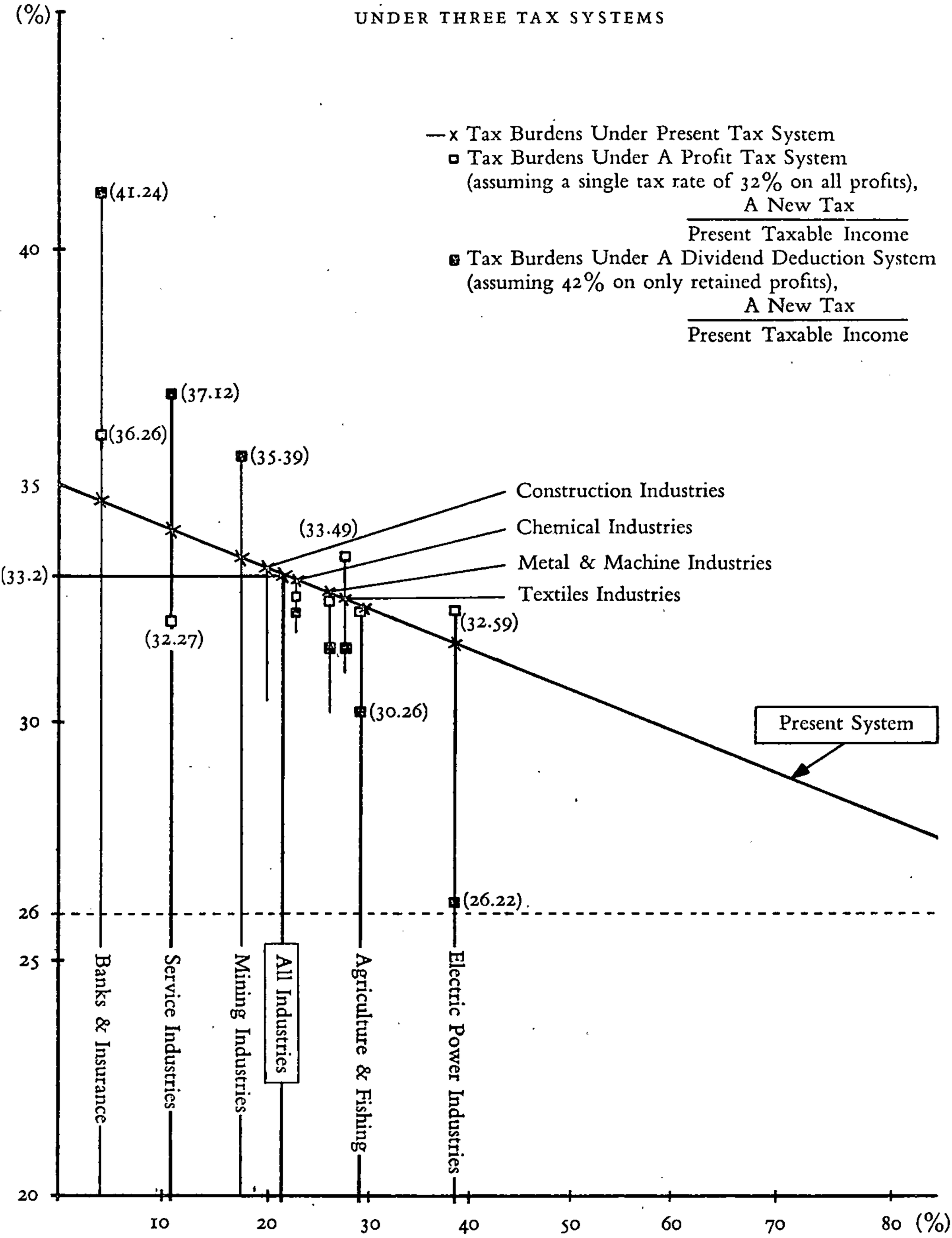
How would the avoidance of dividend tax credit and the allowance of dividend deduction influence the capital market and corporation dividend and investment policy?

---

6. *Ibid.*

7. The Budget 1968: Representations to the Chancellor of the Exchequer. CBI. February 1968.

## TAX BURDENS' DIFFERENTIAL BY INDUSTRIES UNDER THREE TAX SYSTEMS




Note: Assumed rates of 32 percent and 42 percent are those calculated to keep the total tax burden of all industries unchanged.

Japan has used the split tax rate system since 1961. It is, of course, difficult to present a detailed analysis of capital market development from 1961 until the present. It is also difficult to prove with accuracy exactly which causes have influenced its development and it is equally difficult to define those causes qualitatively or quantitatively. However, it cannot be denied that if the system was not introduced, the capital market would have been more depressed in 1964 and 1966 and we could not have had an effective capital market as at present. In recent years, the big corporations have been able to pay adequate dividends because of the split tax rate system. If the dividend deduction is allowed, the corporations can increase retained earnings. Also, the effect of dividend deduction will cancel the demerits of the avoidance of indirect credits.

The capital market may come to suffer from discrimination against equity capital. The proposed corporation tax will tend to depress the amount of capital raised by the issue of new capital. As a result the issue of ordinary shares may be discouraged. Companies may be induced to increase their pay-out-ratio beyond the level they consider appropriate, and this may result in greater risk of accelerating financial difficulties in a period of unprofitable trading, and the pattern of company financing may gear itself more heavily towards debenture finance.

If company directors regard the maintenance of after tax dividends as a prime call on profits, retained profits may be reduced as a result of the introduction of a new corporation tax.

### F. INTERNATIONAL ASPECTS

We must eliminate tax obstacles standing in the way of free capital movement. Taxation should no longer favour or discriminate among investment decisions so as to influence the country where an investment is made, or whether funds are invested directly or through an intermediary.[8]

France adopted integration at the shareholder level in 1965 by granting a tax credit of 25%. But no credit for corporation tax was offered to non-resident shareholders. This means that integration at the shareholder level discriminates against investors and threatens the free movement of capital.

This gave rise to the fundamental question of whether this sort of taxation is compatible with the objectives of integration and of the EEC. There are two import defects in an indirect credit system, namely, (1) dividends on foreign shares do not qualify for tax credit, (2) non-residents cannot claim any tax alleviation.[9]

On the other hand, a dividend deduction system is applied on all dividends, whether or not the shareholder has his residence in the country where the dividend is paid. In this respect, this method seems to be the best.

However, a really serious problem may arise in connection with a dividend deduction system, namely a certain discrimination in favour of foreign parent corporations. Apart from taxation at source by Japanese withholding tax, the corporate income will not be subject to the Japanese corporation tax, if total profits are distributed to a parent company. This would mean a loss of revenue otherwise collectable as corporation tax from the foreign subsidiaries.

If a dividend deduction system is adopted in Japan, and should other countries not follow Japan, only a portion of Japanese revenue

---

8. The Taxation of Dividends and Interest in the EEC and Resulting Obstacles to Free Capital Movements (European Taxation Vol. 7 1967 at 212).
9. EEC's Programme for the Harmonization of Direct Taxes.

from corporation tax collectable from foreign subsidiaries residing in Japan will be reduced. Since international trade and international investment will contribute to peace and prosperity among nations, tax experts may be able to make some slight contribution to international peace and prosperity by their endeavours dedicated to the removal of international tax barriers.

The Federation of Economic Organizations insists that our Japanese corporation tax has a long history and occupies a firm position in our economic and social life, and therefore the fundamental change of corporation tax which is the most essential element of the corporate taxation system) must be considered more carefully, taking account of the reasons and economic effects of such a change and practical experience in the United Kingdom.

KENNETH T. CANN*:

# FEDERAL REVENUE SHARING IN BRAZIL, 1946-1966

## I. INTRODUCTION

Despite growing interest in revenue sharing among the constituent elements of political federations,[1] a description of the Brazilian system of revenue sharing is not generally available even though it has been in operation for more than twenty years. This paper seeks to fill that void by providing a brief description of revenue sharing between the federal government and the state and local levels in Brazil during the period of the Third Republic, from 1946 to 1966.

Brazil has had a federal system of government since the proclamation of the Republic of the United States of Brazil in 1890.[2] The Constitution of 1891, which was modeled after that of the United States, elevated the former imperial provinces to the rank of states, giving them a large measure of political and fiscal autonomy. The Brazilian federation was not "pure" in the sense of being "a voluntary union of a number of originally independent states,"[3] but it was a "quasi-federation" which had more of the characteristics of "federalism by devolution," i.e., "federation which grew out of former unitary, colonial type structures" than "federalism by aggregation" similar to the North American example.[4] Moreover, the Brazilian system tended to be "centralized" rather than "peripheral" in the sense that "the rulers of the federation have . . . greater influence over what happens in the society as a whole than do the rulers of all the subordinate governments."[5] At first the Brazilian states tended to take an exaggerated view of their role in a federation. "Every big state looked upon itself as an independent power with smaller states in its sphere of influence," thereby converting federalism into "narrow and intransigent regionalism."[6] In time, however, the Union reasserted its power through the presidency. Centralism reached a peak between 1937 and 1945 when the federal system was replaced by the *Estado Novo* of Getúlio Vargas, a fascist-corporate state which suspended states rights and political autonomy.[7] With the overthrow of the Vargas dictatorship, quasi-federalism was re-established by the Constitution of 1946. "Under the Constitution of 1946 the national government retains considerable power over the states, enough for it and not the states to predominate within the federal structure."[8]

The tax system under the Brazilian federal structure may be described as a "constitu-

* Associate Professor of Economics at Western Kentucky University, U.S.A.

1. Walter Heller, *New Dimensions of Political Economy*, Harvard Univ. Press, New York, 1967; Joint Economic Committee, United States Congress, *Revenue Sharing and Its Alternatives: What Future for Fiscal Federalism,* Vol. I, II, and III, GPO, Washington, D.C., 1967.
2. Unlike the former Spanish colonies in South America, which founded republics after independence, Brazil established a constitutional monarchy in 1822 and maintained it for sixty-seven years.
3. S.P. Aiyer, Federalism and Social Change, Asia Publishing House, London, 1961, p. 3.
4. A.R. Prest, *Public Finance in Underdeveloped Countries*, Praeger, New York, 1962, p. 144.
5. William H. Riker, *Federalism: Origin, Operation, and Significance,* Little, Brown, Boston, 1964, pp. 6–7.
6. José Maria Bello, *A History of Modern Brazil,* Stanford Univ. Press, Stanford, 1966, p. 255.
7. José Maria Bello, p. 299.
8. Phyllis Peterson, "Brazil: Institutionalized Confusion," *Political Systems of Latin America,* Martin C. Needler, ed., Van Nostrand, New York, 1964, p. 502.

tional distribution system."[9] All the federal constitutions determined which levels of government would have taxing powers, allocated specific and exclusive tax instruments among them in a hierarchical manner, and forbade tax duplication. The system had several important implications. First, it functioned as an effective means for preventing the growth of separate yet overlapping spheres of government at the local level. The Constitution of 1946 awarded tax powers to three levels of government: federal, state, and municipal. All governmental functions below the state level were concentrated in the municipality or *município*, which is typically composed of one principal city or town plus an extensive rural area, making it somewhat similar to the North American county. Cities, towns, villages and other lesser administrative districts do not exist independently of the município because they are neither recognized nor given the means to raise revenues under constitutional law.[10] Second, each constitutionally recognized level of government had the exclusive use of specific tax instruments as determined by statute. Each level was generally free to administer its own tax instruments as long as it did not encroach on the powers of other levels, and could generally spend revenues at its own discretion.

Lastly, the allocation of specific tax instruments by constitutional law, coupled with the express prohibition against duplication, created uniformity in the system but minimized flexibility. Inflexibility resulted from the fact that state and local units of government were not generally free to innovate in the area of public finance in response to changing needs and obligations. The central government always had the power to devise and levy new taxes. Local government never had such prerogatives. The states occupied an intermediate position. They occasionally had limited powers to develop new tax instruments that did not duplicate existing federal or local levies, but their freedom of action in this respect was so legally circumscribed that few of them engaged in tax innovation. The imposition of new taxes by state and local government required prior sanction in the form of a constitutional amendment or a wholly new constitution. Since fundamental legal changes of that nature were usually slow to materialize, the tax system was basically inflexible. Brazilians were aware of the inherent inflexibility of a constitutional distribution system of tax powers, and several attempts were made to solve the problem. All solutions fell into two categories. First, repeated efforts were made to fashion a more equitable tax system by rearranging the allocation of tax powers so that all three levels of government received reasonably adequate revenues. Four new constitutions and several constitutional amendments containing changes in the tax structure, passed between 1891 and 1966, attest to that effort. Specific allocation of tax powers by constitutional law, however, was never abandoned. Second, in 1946 Brazil turned to revenue sharing among levels of government in an apparent effort to achieve a greater degree of flexibility. Presumedly, it was recognized that all tax instruments do not have the same fiscal productivity, no matter how well they may be administered, and that there is a limited number of distinct tax instruments that may be assigned exclusively to individual levels of government.

---

9. Paul Hugon, "O Sistema Tributário do Brasil: O Problema da Distribuição," *Digesto Econômico*, Maio, 1949, p. 73.
10. Diogo Lordello de Mello, *A Moderna Administraçao Municipal,* IBGE, Rio de Janeiro, 1960, p. 7.

## II. FEDERAL REVENUE SHARING UNDER THE 1946 CONSTITUTION

Fiscal federalism was strengthened by the Constitution of 1946. It not only gave exclusive tax powers to each level of government, treating the municípios with unprecedented generosity, but it initiated revenue sharing, largely on a "no-strings" basis, for the benefit of states and local governments. The allocation of tax powers was as follows:[11] the federal government had the exclusive use of income and consumption taxes, customs duties, rural land taxes, taxes on the transfer of funds abroad, and taxes on the production, distribution and consumption of electric energy, petroleum products, and minerals. The states were permitted to tax sales and consignments, inheritances, and the export of goods produced within the state. Finally, municípios raised revenues by means of taxes on urban land, buildings, industries and professions, amusements, and licenses. All three levels of government had the right to charge fees and to levy a betterments tax.

The federal revenue sharing programs, developed over twenty years between 1946 and 1966, were as follows:

A. Federal Transfers to Municípios
1. 15% of income tax collections
2. 10% of consumption tax collections
3. 80% of rural land tax collections
4. 10% of electric tax collections
5. 12% of the National Highway Fund (generated from the tax on petroleum products)

B. Federal Transfers to States
1. 50% of electric tax collections
2. 48% of the National Highway Fund

States and local governments participated independently and directly in the revenues generated by specific federal tax instruments on a regular and recurring basis. Since constitutional law formed the legal basis for all sharing programs, there was no need for periodic legislative enactments or appropriations. Although portions of some revenue transfers were tied to federally determined spending goals, they were not grants-in-aid or loans, but shared revenues in the strict sense of the word.[12]

The states were not permitted to administer transfers to local governments in their political jurisdictions. Federal authorities reserved the right to make transfer payments directly to individual municipalities thereby circumventing the states. The reasons for bypassing the states are not clear. It may have been simpler for the federal government to make all transfers to only twenty states rather than over three thousand local governments in addition to the states, but there is some basis for believing that federal authorities, including the framers of the constitution, feared state misappropriation of municipal transfers. Furthermore, the central government may have wished to diminish the fiscal powers of the states within the federal structure. Whatever the specific justifications, it is reasonably clear that Brazilians recognized the need for some mechanism that would subsidize local government, offset the traditional fiscal drain from the countryside to the federal and state capitals, and return a portion of excise tax revenues to states and municipalities for spending on highway construction and electric energy facilities. Revenue sharing appeared to provide a solution.

---

11. The list of tax powers and shared revenues reflects the situation as it existed in 1966, including the accumulated provisions of the Constitution of 1946 and its amendments.

12. D.E. Riggert, "Federal Grants-in-Aid and Shared Revenues Briefly Defined," *National Tax Journal*, March, 1961, p. 105.

*The Income Tax Transfer*

Article 15 of the Constitution of 1946 provided that "the Union shall grant to the municípios, with the exception of those of the state capitals, ten per cent of total collections from the . . . income tax, making the distribution in equal parts . . ."[13] The states did not participate. That part of the ten per cent share received by each local government was called a "quota", and annual quotas were determined by dividing the total share by the number of local governments in existence on December 31 of the preceding year. No effort was made to distribute individual municipal transfers in proportion to population, land area, fiscal need, or any other criterion. As a result, each unit of local government received the same annual lump-sum amount.

The income tax sharing program went into effect in 1948, but as provided for by law, only five per cent of income tax collections was divided among municípios for that year.[14] Between 1949 and 1961 ten per cent of income tax receipts should have been made available to local governments as a whole. Late in 1961 Amendment #5 to the Constitution of 1946 liberalized income tax sharing further by increasing the portion subject to sharing from ten to fifteen per cent of total collections.[15]

An effort was made to tie one-half of municipal income tax quotas to local expenditures for rural development. Article 15 of the constitution also required that at least fifty per cent of any income tax transfers be allocated "for the benefit of rural areas."[16] A good deal of confusion grew out of that vaguely worded requirement. The specific kinds of local expenditures that would be of primary benefit to rural areas were never spelled-out in the constitution or any other public document. Subsequently, however, the state of Minas Gerais adopted a list of public works and local services it considered to be in harmony with the spirit of the constitution.[17] A few other states and local governments officially adopted the Minas Gerais criteria, but many did not. Although the federal government never took exception to the Minas Gerais "rural benefits code", it eventually took steps to clear-up the intent of the constitution by stating in Constitutional Amendment #5 that "benefits to rural areas will be considered to be any service that may be initiated or public work that may be realized with the objective of improving the economic, sanitary, and cultural conditions of the population in rural areas."[18] It is difficult to imagine, however, how more than a handful of municípios may have had problems with this tying provision considering the fact that most of them are rural in nature. The great majority could have allocated one-half of their income tax quotas for the benefit of rural areas without seriously disrupting other local services.

*The Consumption Tax Transfer*

The sharing of federal consumption tax revenues exclusively with local governments was initiated with the passage of Constitutional Amendment #5. It provided that ten per cent of annual consumption tax collec-

---

13. Brasil, *Constituiçao da República dos Estados Unidos do Brasil,* 1946, Saravia, São Paulo, 1963, p. 10.
14. Brasil, "Ato das Disposições Constitucionias Transitorias, Art. 13." *Constituiçao da República dos Estados Unidos do Brasil,* 1946, pp. 95-6.
15. Brasil, "Emenda Constitucional #5," *Constituiçao da República dos Estados Unidos do Brasil,* 1946, p. 114.
16. Brasil, Constituição da República dos Estados Unidos do Brasil, 1946, p. 10.
17. A.M. de Oliveira, "A Conceituação dos Benefícios do Ordem Rural," *Revista de Finanças Públicas,* Maio, 1957, pp. 48-50.
18. Brasil, "Emenda Constitucional #5," p. 114.

tions be divided equally among the municípios. The consumption tax fell at varying rates on many kinds of consumer and producer goods, but most revenues originated from the sale of tobacco products, alcoholic beverages, textiles and clothing, fabricated metal products, and electric machinery and equipment. The method used to determine individual municipal quotas was the same as that used to establish income tax quotas: the total ten per cent share was divided equally among existing units of local government, thereby generating equal, lump-sum quotas for each município.

The consumption tax transfer differed slightly from the income tax transfer in two respects: no effort was made to exclude state capital municípios from participating, and no portion was tied to federally determined spending goals. Local governments were free to use consumption tax transfers for any expenditures normally associated with their duties and obligations.

*The Rural Land Tax Transfer*

Rural land taxes were administered by all three levels of government at different times during the federal period.[19] It was an exclusive state levy from 1891 to 1961. In 1962 the power to tax rural land was awarded to local governments under the provisions of Constitutional Amendment #5. In 1964, however, as a result of agrarian reform legislation, this tax was transferred to federal administration. Both Constitutional Amendment #10 and the *Estatuto da Terra* (Land Statute) provided for central government administration of the land tax so that it could be used as an instrument of agrarian reform.[20] It was argued that the rural land tax needed to be centrally administered by the Agrarian Reform Institute for it to have any substantial influence on the reallocation of land resources and the stimulation of agricultural production. Federal authorities, therefore, have the power to set uniform tax rates, make cadastres and assessments, and generally establish uniform rules and regulations.

The rural land tax was not put into federal hands in order to centralize the fiscal system or generate revenues for the federal government. It is doubtful that it could have functioned as an effective tool of agrarian reform as long as its administration remained fragmented in the hands of over three thousand units of local government, most of which lacked the motivation, courage, and means to increase assessments or rates high enough for the tax to have any force. Since federal authorities did not want control for financial reasons, the Agrarian Reform Law provided for the sharing of land tax revenues with municípios of origin. Rural land tax revenues are granted-back to the municípios in which they were collected less a small service charge to cover administrative expenses incurred by the Agrarian Reform Institute.[21] In practice and where feasible, local governments actually collect the tax, retaining approximately eighty per cent for their own use.[22]

Total rural land tax transfers, however, cannot be counted as a net gain for local governments. If states had never shared their receipts from this levy with municípios,[23]

19. The rural land tax has always been administered separate and distinct from other real property taxes in Brazil.

20. Brasil, Instituto Brasileiro de Reforma Agrária, "Emenda Constitucional #10," Estatuto da Terra, Dept. de Imprensa Nacional, Brasilia, 1965, pp. 5-6.

21. Brasil, Estatuto da Terra, Dept. de Imprensa Nacional, Brasilia, 1965, p. 28.

22. James W. Rowe, "The Week of the Land in the Brazilian Sertão," *American Universities Field Staff Reports*, Vol. XII, #1, Feb. 1966, p. 6.

23. Some of the states voluntarily shared rural land tax receipts with municípios of origin when the tax was under their control.

or if local governments had never administered the tax themselves, it would be appropriate to consider every *cruzeiro* transferred as a clear marginal income increase. Since this was not the case, only the excess of land tax transfers over what municípios would have collected themselves may be counted as a net gain. It is expected, however, that all local governments will realize some marginal increase because the Agrarian Reform Institute reassessed land values at amounts substantially higher than those that existed when the tax was municipally administered.[24]

*The Petroleum Products Tax Transfer*

The sharing of federal revenues from the tax on petroleum products has a longer history than any of the other programs. The federal government began to share revenues from this source with the states in 1934, but it was not until 1947 that the municípios received direct transfers for spending on road construction and repair. In 1948 it was provided that the National Highway Fund, the depository for all petroleum products tax revenues, be divided among the three levels of government in the following manner: forty per cent to the National Highway Department of the federal government, forty-eight per cent to the states, and twelve per cent to local government.[25]

Federal legislation passed in 1952 reallocated the revenues from this tax in order to finance a capital expansion program for *Petrobras,* the Brazilian government's petroleum production and refining enterprise.[26] Twenty-five per cent of total revenues were reserved for *Petrobras,* leaving seventy-five per cent for the National Highway Fund and subsequent division among the three levels of government in accordance with the 1948 criteria. This law called for an eventual return of the twenty-five per cent portion to the National Highway Fund following the completion of the *Petrobras* expansion program, and that promise became a reality following a 1962 Presidential Decree.

State and municipal quotas from the National Highway Fund were not allocated to individual units of government in equal, lump-sum amounts similar to either the income or consumption tax shares. Two sets of criteria determined the allocation of quotas to individual states and municípios: one for tax receipts from the sale of petroleum products made from imported crude oil and another for tax receipts from the sale of products made from domestically produced crude oil.[27] In both cases allocations were made in proportion to land area, population, and consumption of petroleum products per state and município. Those states and municípios that produced crude oil received an additional small part of the quota in proportion to petroleum production.

Either set of criteria assured the largest quotas to those units of government with the largest populations and gasoline consumption. The consumption criterion, moreover, was based upon the number of licensed motor vehicles in each state and município. Consequently, highly urbanized states and municípios containing large populations of people and motor vehicles received the largest transfers, while rural areas received relatively small quotas. In 1961, for example, the state of São Paulo contained thirty-two

---

24. An estimate made for the state of Rio Grande do Sul reveals an approximate mean increase of 1.700 per cent.

25. G.A. da Silva, "Fundo Rodoviário Nacional," *Revista de Finanças Públicas*, Jan-Fev. 1953, p. 9.

26. G.A. da Silva, p. 12.

27. "Entrega das Quotas do Fundo Rodoviário Nacional," *Revista de Finanças Públicas,* Jul-set. 1962, p. 49.

per cent of all licensed motor vehicles in Brazil. Guanabara was second with fourteen per cent, and Rio Grande do Sul third with eleven per cent.[28] These three states, then, which make-up only seven per cent of the land area of Brazil, contained fifty-five per cent of the motor vehicles, and most of them were licensed in the capital municípios.

By the time the twenty-five per cent portion of tax revenues going to *Petrobras* was returned to the National Highway Fund, the value of state and municipal quotas increased substantially, not only by the amount reallocated to the Fund, but because of substantial increases in the consumption of petroleum products. The single most important event affecting the volume of transfers, however, was the decision to stop subsidizing the importation of crude oil. After the establishment of *Petrobras* in the 1950s, all oil importation and refining operations were concentrated in its hands. *Petrobras* then sold refined products to private distributors at prices that did not cover all operating costs, principally the cost of crude oil imports. The resulting deficit was financed by the national treasury from general tax revenues. By 1964, however, Brazil's international trade account deficit grew to an intolerable level. As a result, the Department of Money and Credit issued orders prohibiting *Petrobras* from selling refined products at prices that did not cover all costs. The real cost of petroleum products was thenceforth borne by the consumers of those products rather than the tax paying public in general.

Although Brazil took that action in order to reduce its foreign deficit, the National Highway Fund and the recipients of shares and quotas from the Fund realized benefits in the form of increased transfers. Since the removal of the subsidy on crude oil imports caused the retail price of gasoline and other refined products to increase, and since the demand for such products is presumed to be price inelastic, the ad valorem tax generated rising revenues. It was estimated that total receipts from the petroleum products tax increased by approximately Cr$ 100 billion for 1965.[29] Therefore, the states should have gained an additional Cr$ 48 billion and the local governments an additional Cr$ 12 billion.

*The Electric Energy Tax Transfer*

The Constitution of 1946 gave the federal government exclusive power to tax the consumption of electric energy, and provided for the sharing of resulting revenues with states and local governments. The sharing program did not actually begin until 1955, however, at which time forty per cent of collections was retained by federal authorities, fifty per cent transferred to the states, and ten per cent awarded to municípios.[30] Individual state and municipal quotas were calculated in proportion to population, electric consumption, land area, and electric energy production.[31] These criteria assured the largest quotas to those states and municípios with the largest populations and electricity consumption.

The law regulating quota distribution also required that all funds from this source be used only for investments and operating costs related to the production and distribution of electric energy. All quotas were deposited in and held by the National

28. *Transportas,* Editôra Banas, Rio de Janeiro, 1962, p. 15.
29. "Fundo Rodoviário Nacional, Reforço de 100 Bilhões," *Correio do Povo,* Pôrto Alegre, 23 de Junho de 1965.
30. "Impôsto sôbre o Consumo de Energia Elétrica," *Conjuntura Ecônomica,* Junho, 1961, pp. 77-84.
31. Brasil, "Lei #2.944 de 8 de Novembro de 1956," *Diário Oficial,* 10 de Novembro de 1956.

*Table 1*

FEDERAL TAX REVENUES SHARED WITH STATE AND LOCAL GOVERNMENTS, BRAZIL, 1948-1966, CR$ MILLIONS (1)

| | MUNICIPAL SHARES | | | | | | STATE SHARES | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| Year | Income Tax | Consumption Tax | Rural Land Tax | Electric Tax | Fuels Tax (2) | Municipal Total | Electric Tax | Fuels Tax | State Total | Grand Total |
| 1948 | 210 | 0 | 0 | 0 | 129 | 339 | 0 | 549 | 549 | 888 |
| 1949 | 378 | 0 | 0 | 0 | 136 | 514 | 0 | 579 | 579 | 1,093 |
| 1950 | 558 | 0 | 0 | 0 | 164 | 722 | 0 | 692 | 692 | 1,414 |
| 1951 | 810 | 0 | 0 | 0 | 205 | 1,015 | 0 | 864 | 864 | 1,879 |
| 1952 | 999 | 0 | 0 | 0 | 247 | 1,246 | 0 | 1,040 | 1,040 | 2,286 |
| 1953 | 1,164 | 0 | 0 | 0 | 250 | 1,414 | 0 | 1,952 | 1,952 | 3,366 |
| 1954 | 1,534 | 0 | 0 | 0 | 361 | 1,895 | 0 | 2,020 | 2,020 | 3,915 |
| 1955 | 1,926 | 0 | 0 | 84 | 324 | 2,334 | 411 | 1,794 | 2,205 | 4,539 |
| 1956 | 2,452 | 0 | 0 | 106 | 357 | 2,915 | 532 | 1,980 | 2,512 | 5,427 |
| 1957 | 2,702 | 0 | 0 | 120 | 987 | 3,809 | 598 | 5,009 | 5,607 | 9,416 |
| 1958 | 3,186 | 0 | 0 | 139 | 1,189 | 4,514 | 693 | 6,632 | 7,325 | 11,839 |
| 1959 | 4,639 | 0 | 0 | 148 | 2,019 | 6,805 | 742 | 11,306 | 12,048 | 18,853 |
| 1960 | 6,223 | 0 | 0 | 170 | 2,200★ | 8,593 | 850 | 12,000★ | 12,850 | 21,443 |
| 1961 | 8,370 | 0 | 0 | 191 | 2,800★ | 11,361 | 957 | 12,500★ | 13,457 | 24,818 |
| 1962 | 17,335 | 20,424 | 0 | 217 | 12,000★ | 49,976 | 1,083 | 37,500★ | 38,583 | 88,559 |
| 1963 | 36,442 | 40,806 | 0 | 1,194 | 12,500★ | 90,942 | 5,968 | 38,000★ | 43,968 | 134,910 |
| 1964 | 72,362 | 88,002 | 0 | 3,262 | 13,000★ | 176,626 | 16,309 | 39,000★ | 55,309 | 231,935 |
| 1965 | 153,393 | 130,753 | 0 | 9,714 | 25,000★ | 318,860 | 48,568 | 82,000★ | 130,568 | 449,423 |
| 1966 | 200,911 | 221,496 | 21,071 | 19,358 | 26,000★ | 488,336 | 96,792 | 85,000★ | 181,792 | 670,128 |

(1) Current *cruzeiros*

(2) Petroleum products tax

★ Incomplete data – estimated amounts

*Source:* The table was constructed from raw tax revenue data, some of which was incomplete, as reported in the *Anuário Estatístico do Brasil*, 1948 through 1967, and in accordance with sharing criteria set forth in the Constitution of 1946, its amendments, and other public documents. The amounts shown should be considered maxima per annum rather than actual money amounts transferred.

Development Bank until such time as the units of government involved submitted criteria established by the National Water and Electric Energy Council.[32] This added requirement was particularly troublesome for local governments because many of them did not have sufficient technical talent or other resources at their disposal to draw-up the necessary plans and specifications required by the law as a prerequisite for transferring quotas.

## III. THE FINANCIAL DIMENSIONS AND EFFECTS OF FEDERAL REVENUE SHARING

Due to the absence of specific statistical data, it is impossible to give a precise accounting of the amounts transferred to state and local governments for each federal tax instrument per annum. It is unfortunate that neither the statistical yearbook of the Brazilian government, nor the reports of individual departments and agencies contained data series in a form permitting one to make a clear assessment of the programs. A measurement of the financial dimensions would be much simpler if that were the case. Since it was not, estimations were made on the basis of annual gross collections per tax instrument and the rules and regulations established for allocating transfers. The results of that estimate are shown in Table 1.

Although the figures shown in Table 1 are approximations, they permit a general appraisal of the main thrust of the revenue sharing programs. An examination of the absolute amounts reveals that electric and fuels tax transfers to the states were generally five times greater than municipal receipts from those sources. A comparison of total transfers to states and municípios, however, yields a different picture. Total state receipts from shared revenues were only slightly larger than total municipal receipts from 1948 through 1961. After 1962 municipal receipts exceeded state receipts, and tended to increase at a greater annual rate. It was the income tax transfer that put local government on a par with the states, and the initiation of the consumption tax transfer in 1962 that caused local government receipts to exceed state receipts. The relative impact of revenue sharing on state and local finance, however, was significantly different. The greater influence was exerted on local government finance as indicated by Table 2. *(See for table page 21).*

Table 2 shows that shared revenues never represented less than twelve per cent of municipal income for Brazil as a whole. The portion remained relatively stable at about seventeen per cent from 1951 through 1961, but from 1962 on, it rose to approximately fifty per cent of income. By way of contrast, the state portion never exceeded eight per cent, and it tended to remain stable over time averaging approximately five per cent annually. Shared revenues, moreover, represented a much larger portion of total income for many individual municípios than the figures in Table 2 indicate. In 1956, for example, sixty-two per cent of local governments received more from the income tax transfer alone than from the combined revenues of locally administered taxes.

Although Table 1 clearly shows the absolute amounts of shared revenues going to state and local government rising over time, this does not completely explain the growing disparity between the relative impacts of state and local finance. Shared revenues were a higher portion of total income for municípios than for states partly because local

32. "Impôsto Unico sôbre Energia Elétrica," *Revista Brasileira dos Municípios,* Jul-Dez. 1956, pp. 249-50.

*Table 2*

SHARED REVENUES AS A PORTION OF TOTAL STATE AND LOCAL GOVERNMENT INCOME, 1948-1966

| Year | States % of total income | Municípios % of total income | Year | States % of total income | Municípios % of total income |
|---|---|---|---|---|---|
| 1948 | 5% | 12% | 1958 | 7% | 17% |
| 1949 | 4 | 14 | 1959 | 8 | 20 |
| 1950 | 4 | 15 | 1960 | 6 | 19 |
| 1951 | 4 | 18 | 1961 | 4 | 18 |
| 1952 | 4 | 19 | 1962 | 8 | 53 |
| 1953 | 6 | 16 | 1963 | 5 | 51 |
| 1954 | 5 | 19 | 1964 | 3 | 42 |
| 1955 | 4 | 18 | 1965 | 4 | 60 |
| 1956 | 4 | 17 | 1966 | 4 | 48 |
| 1957 | 7 | 17 | | | |

*Source: Anuário Estatístico do Brasil,* IBGE, 1950-1967.

government shared in income and consumption tax receipts, whereas the states did not. In addition, the municipal relative share was higher because collections from locally administered tax instruments tended to be income inelastic during the entire period under consideration, while state revenues were not, or at least not to the same degree. Since revenue increases from local taxes were inelastic in relation to increases in national income, while income and consumption tax collections were income elastic, transfers tended to represent a higher and higher portion of total municipal income. Electric and fuels tax revenues, the only source of shares for states, were elastic in relation to national income, as was the sales tax, the principal source of state revenues. As a result, revenue transfers as a portion of total state income remained at comparatively low and stable levels for the entire twenty year period. The federal government allocated an average of nine per cent of total tax collections to revenue sharing between 1948 and 1966. The relative amounts going to state and local government are shown in Table 3.

*Table 3*

SHARED REVENUES AS A PORTION OF FEDERAL REVENUES 1948-1966

| Year | Portion going to States | Portion going to Municípios | Total |
|---|---|---|---|
| 1948 | 3% | 2% | 5% |
| 1949 | 3 | 3 | 6 |
| 1950 | 4 | 4 | 8 |
| 1951 | 3 | 4 | 7 |
| 1952 | 3 | 4 | 7 |
| 1953 | 5 | 4 | 9 |
| 1954 | 4 | 4 | 8 |
| 1955 | 4 | 4 | 8 |
| 1956 | 3 | 4 | 7 |

| | | | |
|---|---|---|---|
| 1957 | 6 | 4 | 10 |
| 1958 | 6 | 4 | 10 |
| 1959 | 8 | 4 | 12 |
| 1960 | 5 | 4 | 9 |
| 1961 | 4 | 4 | 8 |
| 1962 | 7 | 11 | 17 |
| 1963 | 5 | 9 | 14 |
| 1964 | 3 | 9 | 12 |
| 1965 | 4 | 9 | 13 |
| 1966 | 3 | 8 | 11 |

*Source: Anuário Estatístico do Brasil,* IBGE, 1950–1967.

Table 3 generally shows that the federal government allocated approximately seven per cent of its tax collections to revenue sharing between 1948 and 1956, but about twelve per cent thereafter. The states received an average of four per cent of federal income, and local government five per cent for the entire period. Although the portion going to local government remained stable at four per cent until 1961, it doubled to about nine per cent after 1962.

The foregoing analysis indicates that the financial impact of revenue sharing was substantially greater on local government than on the states. It would not be an exaggeration to say that federal revenue sharing was a fiscal lifesaver for many municípios because most were never able to raise sufficient revenues from tax instruments at their disposal to adequately finance the most rudimentary kinds of local services. Moreover, most municípios were rural, but their assigned tax powers were oriented toward urban economic activities. As a result, their tax base was inadequate. In a very real sense the added income received from federal sources made the difference between the maintenance of some semblance of local government or its demise.

Several reasons may be advanced for the poor condition of local finance in Brazil, but the primary factor appears to be the uneven pattern of regional economic development and income generation. There are two Brazils economically speaking. One comprises the southern region of the country, including the state of São Paulo. It is economically advanced and dynamic in comparison with the other and larger portion of Brazil which is economically backward.[33] The existence of this economic dichotomy had important consequences for public finance at the local level: a few municípios in the advanced, high income producing areas raised substantial amounts of revenues from authorized tax instruments, but those municípios located in economically stagnant or frontier regions generated very low revenues. Municipal income from local taxes was low in many areas of the country primarily because the level of income generation was low, not necessarily because Brazilians had a higher propensity toward tax evasion, dishonesty, or administrative laxness than the people of other countries.

Local government benefits from revenue sharing might have been greater however, in the absence of several difficulties and side effects involving the proliferation of local governments, inflation, and delayed transfer payments. Although most states had enacted controls over the creation of new units of local government, there is little evidence to indicate that the states enforced them because between 1945 and 1966 the number of local governments doubled without any increase in the land area of the country.[34] At the end of 1966 there were 3,965 municípios in Brazil as against 1,669 in 1945. Some increase in the number of local governments would

33. Jaques Lambert, *Os Dois Brasís,* Ministerio da Educacão e Cultura, Rio de Janeiro, 1959.

34. R.R. de Oliveira, "Organização Municipãl Brasileira," *Revista Brasileira dos Municípios,* Jan-Junho, 1962, pp. 1-5.

have occurred as the economic frontier moved inland from the coastal area, but many Brazilians think that municipal proliferation was induced by the income and consumption tax transfers.[35]

Since the income and consumption tax shares were divided equally among municípios, giving them equal, lump-sum quotas per annum, newly created municípios were assured some minimum amount of income regardless of how much they managed to collect from local taxes. The states, moreover, may have viewed the federal transfer programs as a means of attracting a larger portion of tax payments back to their jurisdictions if they allowed the number of local governments to increase. The two revenue transfers under consideration tended to encourage the creation of new municípios in all states through a process of successive fragmentation of existing municípios into units with smaller and smaller geographic areas. A low income generating state benefited from more municipios because the more it had, the greater were the sum of municipal quotas. High income producing states also benefited because the more municípios they had, the smaller were the negative income redistribution effects from the sharing programs. In other words, assuming that high income producing states provided the bulk of tax receipts for the federal government, and the transfer programs tended to redistribute the tax shares in favor of low income producing areas, the creation of additional units of local government in high income states tended to cause a larger portion of income and consumption taxes paid to flow back to their local governments.

Whatever the specific causes of local government fragmentation and proliferation, it seems clear that uncontrolled increases in the number of municípios contributed materially to eroding income tax transfers. Between 1949 and 1961, or those years when the income tax share was ten per cent, the number of municípios increased at an average rate of five per cent annually. Given that rate of increase and assuming constant tax collections, annual municipal quotas would have fallen from Cr$ 285 thousand in 1949 to about Cr$ 168 thousand by 1961. Actual quotas did not fall during this period, however, primarily because income tax revenues increased at a rate of twenty-seven per cent per annum. Quotas in current *cruzeiros* actually rose to Cr$ 2,954 thousand, but if no new municípios had been created after 1946, the 1961 quota would have been approximately Cr$ 4,881 thousand, or sixty-five per cent greater than it actually was.

Inflation also eroded the real values of transfers. If current income tax quotas are deflated by the national income accounts implicit deflator for Brazil, it may be demonstrated that real quotas rose from Cr$ 285 thousand to only Cr$ 364 thousand by 1961 or only 1.3 times. By 1966 the real value of the income tax quota had risen to only Cr$ 580 thousand even though the current quota stood at Cr$ 50,531 thousand. If inflation had not occurred nor the number of municípios increased after 1949, the quota for 1966 would have amounted to Cr$ 119,803 thousand. The difference between 580 and 119,803 is Cr$ 119,223 thousand, and it is equivalent to the value of the quota eroded away by the combined effects of inflation and municipal proliferation. Of that difference, Cr$ 49,951 thousand was eroded away by inflation.[36] and Cr$ 69,272 thous-

35. Esio F. Macedo, "A Criação de Municípios e a Geografia Financeira," *Revista de Finanças Públicas*, Mar-Maio, 1959, p. 26.

36. The 1966 current quota of Cr$ 50,531 thousand less the 1966 real quota of Cr$ 580 thousand.

and by increases in the number of local governments.[37] Inflation, therefore, accounted for fifty-eight per cent and municipal proliferation forty-two per cent of total erosion.

A final appraisal of the financial impact of revenue sharing must take into account the fact that transfers were sometimes delayed or partially made. Generally speaking, the federal payment record was best with respect to petroleum and electric tax transfers. Since federal highway authorities wanted to see greater state and local efforts in the area of road construction and repair, there were few delays or partial payments of fuels tax transfers. By 1959, for example, better than ninety per cent of local governments were receiving fuels tax transfers on a regular basis. The states apparently had no difficulty in receiving electric transfers, but the municípios experienced some problems. Many municípios apparently never submitted acceptable plans and specifications for new electric facilities, therefore, the National Development Bank did not make disbursements from the trust accounts. As a result, up to 1960 Cr$ 4.6 billion was deposited in the Bank, but only Cr$ 2 billion released to local governments.[38]

Federal authorities also failed to carry-out income and consumption tax transfers to local governments to the letter of the law. Available evidence is sketchy and incomplete, but it is sufficient to indicate that transfers were frequently delayed or only partially made. Two independent analyses of the income tax transfer revealed that partial payments were made between 1949 and 1955 at the times provided for by law. The municípios eventually received the balances due to them, but they often had to wait as long as five years.[39] This situation has continued. Specific information is not available from government sources, but numerous newspaper reports confirm the fact that municípios have not been receiving full quota payments on time. An article appearing in the newspaper *Correio do Povo* of Pôrto Alegre, for example, pointed out that income and consumption tax quotas had been paid irregularly to Rio Grande do Sul municípios since 1960, and that in August, 1964 local governments had not yet received full payment of the 1962 consumption tax quota.[40]

## IV. INCOME REDISTRIBUTION EFFECTS

Brazilians claim that private markets tend to redistribute income away from the poorer regions of the country, such as the Northeast, to the developed Southern region, particularly São Paulo.[41] This occurs, it is argued, because of acute economic imbalances among regions brought about by climatic conditions, unequal resource distribution, and a concentration of industry and diversified agriculture in the south. It may be demonstrated, however, that some of the federal revenue transfers have an offsetting effect. The electric, fuels, and rural land tax transfers do not have significant income redistribution effects because payments are made either in proportion to population and consumption or to municípios of origin. The income and consumption tax transfers, how-

37. The maximum possible quota for 1966 of Cr$ 119,803 thousand less the 1966 current quota of Cr$ 50,531 thousand.

38. "Impôsto sôbre o Consumo de Energia Elétrica," p. 80.

39. D.R. da Silva, "O Município e o Impôsto de Renda," Revista Brasileira dos Municípios, Jan-Mar. 1954, pp. 15-21; "Participação dos Municípios no Impôsto de Renda," Revista de Finanças Públicas, Set. 1955, pp. 14-17.

40. Assembleia Legislativa – Municípios," *Correio do Povo,* Pôrto Alegre, 12 de Agôsto de 1964.

41. Celso Furtado, *The Economic Growth of Brazil,* Univ. of California Press, Berkeley, 1963, pp. 258-70.

ever, did have income redistribution effects. Since these two transfers were allocated on a lump-sum basis, each município received the same annual amount regardless of population, land area, fiscal need, or the volume of income and consumption tax payments.

Four states generate approximately two-thirds of Brazil's national income. In 1960, for example, the state of São Paulo led with thirty-two per cent of national income. It was followed by Guanabara with thirteen per cent, Minas Gerais with ten per cent, and Rio Grande do Sul with nine per cent. The other seventeen states accounted for the remaining one-third of national income. Since only a few states and municípios generated the bulk of national income, they also paid the largest portions of income and consumption taxes. All municípios, however, received equal, lump-sum annual quotas from those taxes. Consequently, the income and consumption tax transfers also functioned as a vehicle for redistributing income from the rich to the poor regions.

Table 4 illustrates that phenomenon with respect to income tax collections and transfers aggregated by states for the years 1950, 1960, and 1963.

*Table 4*

AN INDEX OF TOTAL MUNICIPAL INCOME TAX QUOTAS RECEIVED RELATIVE TO INCOME TAXES PAID, BY STATE

| State | 1950 | 1960 | 1963 |
|---|---|---|---|
| Amazonas | 52 | 45 | 122 |
| Pará | 45 | 27 | 83 |
| Maranhão | 139 | 188 | 390 |
| Piauí | 150 | 202 | 397 |
| Ceará | 73 | 89 | 109 |
| Rio Grande do Norte | 142 | 188 | 256 |
| Paraíba | 75 | 138 | 302 |
| Pernambuco | 18 | 23 | 42 |
| Alagoas | 54 | 91 | 177 |
| Sergipe | 103 | 163 | 199 |
| Bahia | 36 | 44 | 127 |
| Minas Gerais | 40 | 26 | 47 |
| Espírito Santo | 45 | 42 | 56 |
| Rio de Janeiro | 14 | 12 | 17 |
| Guanabara (a) | – | – | nil |
| São Paulo | 5 | 4 | 4 |
| Paraná | 20 | 22 | 36 |
| Santa Catarina | 28 | 24 | 44 |
| Rio Grande do Sul | 7 | 8 | 9 |
| Mato Grosso | 90 | 109 | 143 |
| Goiás | 162 | 145 | 116 |

(a) Former Federal District

*Source:* Anuário Estatístico do Brasil, IBGE, 1951, 1962, 1964.

The index numbers were calculated by dividing total municipal income tax quotas received per state by total income tax payments per state for the years shown. An index number of 100 indicates total municipal quotas equal to taxes paid. An entry of less than 100 shows that total quotas were less than tax payments, and an index of more than 100 indicates that total quotas were greater than tax payments. An inspection of the table reveals wide divergencies. São Paulo municípios for example, received total quotas equal to only four per cent of tax payments in 1963. Piauí municípios, on the other hand, received quotas equal to 397 per cent of tax payments. In 1963 eight states show total quotas less than tax payments. With the exception of Pará, they were all high income producing states. Conversely, eleven states recorded total quotas greater than tax payments. They were all low income producing states located in the North, Northeast, and Central-West regions.

These estimates lead one to the conclusion that income tax collections from the high income generating states were used to make transfer payments via the revenue sharing program to municípios in low income generating states. Although it is not known whether these fiscal policy induced income redistributions exactly compensated areas suffering from private market income drains, they must certainly have tended to have that effect.

## V. SUMMARY

Much of the foregoing description and analysis may be reduced to a set of simple identities. Assume the following letter symbols for the variables:

S1 = Shared revenues received by local government
Ss = Shared revenues received by the states
I = Income tax collections
C = Consumption tax collections
L = Rural land tax collections
P = Petroleum products tax collections
E = Electric energy tax collections

For local government then: S1 = .151 + .10C + .80L + .12P + .10E, and for the states: Ss + .48P + .50E. Finally, S = S1 + Ss or total federal revenues allocated to sharing equals municipal plus state shares.

1946 marked the beginning of a major new phase in Brazilian public finance. The Constitution of 1946 and its amendments began an experiment in federal revenue sharing with the states and local governments. The Brazilian system was somewhat unique because federal authorities made direct transfers to individual units of state and local government on a permanent basis at fixed rates. The states shared in the revenues generated by two federal tax instruments, but had no control over federal-municipal tax sharing relationships. The larger financial impact was felt by local governments, and in time, they also received the major absolute amounts of shared revenues. Although some transfers were tied to federally determined spending goals, the major portion of municipal shares, at least in recent years, were free of such controls. Local governments could spend all consumption and land tax transfers, and one-half of income tax transfers at their discretion. The states never had that freedom since they did not participate in un-tied transfers.

The most fundamental effect of revenue sharing was that it subsidized local government. The programs cultivated and nurtured a system of local public administration at a time when municípios were scarcely able to function autonomously given the paucity of local resources at their disposal. The financial support of local government was weakened, however, by inflation and uncontrolled increases in the number of new municípios.

Although the constitution blocked the growth of semi-independent, overlapping local governments within the município, it apparently did not anticipate that revenue sharing would encourage the fragmentation and proliferation of municípios.

If one assumes that some form of local public organization is necessary for the orderly economic development of vast backland areas in an enormous country like Brazil, then the allocation of federal revenues to the support of local government may be economically sound. It is possible, of course, that federal expenditures on specific development projects may have been greater than the total of revenue transfers in some areas during given time periods, but one must not lose sight of the fact that the development of a viable system of local government within the federal structure was itself a national goal of high priority. The political effects of revenue sharing, moreover, may be of equal importance to the economic effects. During most of the federal period Brazilian political events were controlled by a landed plutocracy. The emergence of Getúlio Vargas diminished the influence of the old power structure, but he eventually dominated Brazilian politics by establishing a dictatorship. Both political systems were centralized, the states lost political autonomy under the Vargas regime, and neither system was especially stimulatory to the growth and development of local government. With few exceptions, therefore, Brazilian local government was traditionally weak, ineffective, and without influence. Moreover, local government did not function well as a point of entry or training ground for those aspiring to political careers. The nurturing and preservation of a system of local government through revenue sharing may, therefore, yield several beneficial results. It permits greater popular participation in matters affecting the local community and this may serve to create a greater degree of national identity and unity. It also provides a means of entry into politics, as well as a competitive training for the development of public servants. The cost of subsidizing local government may be small, therefore, in comparison with the potential political and economic benefits that may accrue to the nation.

## E.E.C.

DIRECTIVE DU CONSEIL DU 17 JUILLET 1969 CONCERNANT

# LES IMPOTS INDIRECTS FRAPPANT LES RASSEMBLEMENTS DE CAPITAUX

(69/335/CEE)

*The Directive for the harmonization of indirect taxes on the formation of capital has been approved by all Member States and has been published in the Official Gazette of the EEC, October 3, 1969. The main features are:*

1. *harmonization will be effected as of January 1, 1972;*
2. *stamp duties on shares and bonds will be abolished;*
3. *the rate of tax on capital contributions to companies will be harmonized; this rate will be determined by the Council following a proposal to be submitted by the EEC Commission before January 1, 1971. Until the rate has been determined, the Member Countries may levy a tax on capital contributions from 1% to 2% which may be reduced by one half in the case of company mergers and similar transactions.*
4. *the rates of the tax on capital contributions with respect to holding companies and investment companies would be reduced to 0.50% up to January 1, 1973 and would be 1% for subsequent years.*

*An English translation of this Directive will be published in Supplementary Service to European Taxation. The original French text is published below.*

## TEXTE:

LE CONSEIL DES COMMUNAUTÉS EUROPÉENNES,

vu le traité instituant la Communauté économique européenne, et notamment ses articles 99 et 100,

vu la proposition de la Commission,

vu l'avis de l'Assemblée[1],

vu l'avis du Comité économique et social[2],

considérant que l'objectif du traité est de créer une union économique ayant des caractéristiques analogues à celles d'un marché intérieur et qu'une des conditions essentielles pour y accéder est de promouvoir la libre circulation des capitaux;

1. Journal officiel des Communautés européennes n° 119 du 3.7.1965, p. 2057/65.
2. Journal officiel des Communautés européennes n° 134 du 23.7.1965, p. 2227/65.

considérant que les impôts indirects qui frappent les rassemblements de capitaux, actuellement en vigueur dans les États membres, à savoir le droit auquel sont soumis les apports en société et le droit de timbre sur les titres, donnent naissance à des discriminations, des doubles impositions et des disparités qui entravent la libre circulation des capitaux et qui doivent, par conséquent, être éliminées par voie d'harmonisation;

considérant que l'harmonisation de ces impôts frappant les rassemblements de capitaux doit être conçue de sorte que les répercussions budgétaires pour les États membres soient limitées au minimum;

considérant que la perception d'un droit de timbre par un État membre sur les titres des autres États membres introduits ou émis sur son territoire est contraire à la conception d'un marché commun ayant les caractéristiques d'un marché intérieur; qu'il est apparu, en outre, que le maintien du droit de timbre sur l'émission des titres nationaux d'emprunt, de même que sur l'introduction ou l'émission sur le marché d'un État membre de titres étrangers n'est pas souhaitable du point de vue économique et s'écarte, par ailleurs, de l'orientation suivie par le droit fiscal des États membres dans ce domaine;

considérant que dans ces conditions il convient de supprimer le droit de timbre sur les titres, que ceux-ci soient représentatifs des capitaux propres de sociétés ou de capitaux d'emprunt, et quelle que soit leur provenance;

considérant que la conception d'un marché commun ayant les caractéristiques d'un marché intérieur suppose que l'application aux capitaux, rassemblés dans le cadre d'une société, du droit sur les rassemblements de capitaux ne puisse intervenir qu'une seule fois au sein du marché commun et que cette taxation, afin de ne pas perturber la circulation des capitaux, doit être d'un niveau égal dans tous les États membres;

considérant, dès lors, qu'il convient de procéder à une harmonisation de ce droit, en ce qui concerne tant sa structure que ses taux;

considérant que le maintien d'autres impôts indirects présentant les mêmes caractéristiques que le droit d'apport ou le droit de timbre sur les titres risque de remettre en cause les buts poursuivis par les mesures prévues par la présente directive et que, dès lors, leur suppression s'impose,

A ARRETÉ LA PRÉSENTE DIRECTIVE:

*Article premier*

Les États membres perçoivent un droit sur les apports à des sociétés de capitaux, harmonisé conformément aux dispositions des articles 2 à 9 et dénommé ci-après droit d'apport.

*Article 2*

1. Les opérations soumises au droit d'apport sont uniquement taxables dans l'État membre sur le territoire duquel se trouve le siège de direction effective de la société de capitaux au moment où interviennent ces opérations.

2. Lorsque le siège de direction effective d'une société de capitaux se trouve dans un pays tiers et son siège statutaire dans un État membre, les opérations soumises au droit d'apport sont taxables dans l'État membre où se trouve le siège statutaire.

3. Lorsque le siège statutaire et le siège de direction effective d'une société de capitaux

se trouvent dans un pays tiers, la mise à la disposition, d'une succursale située dans un État membre, de capitaux investis ou de capitaux d'exploitation, peut être imposée dans l'État membre sur le territoire duquel la succursale est située.

*Article 3*

1. Par société de capitaux au sens de cette directive, il faut entendre:

a) les sociétés de droit belge, allemand, français, italien, luxembourgeois et néerlandais, dénommées respectivement:

- société anonyme/naamloze vennootschap, Aktiengesellschaft, société anonyme, società per azioni, société anonyme, naamloze vennootschap;
- société en commandite par actions/commanditaire vennootschap op aandelen, Kommanditgesellschaft auf Aktien, société en commandite par actions, società in accomandita per azioni, société en commandite par actions, commanditaire vennootschap op aandelen;
- société de personnes à responsabilité limitée/personenvennootschap met beperkte aansprakelijkheid, Gesellschaft mit beschränkter Haftung, société à responsabilité limitée, società a responsabilità limitata, société à responsabilité limitée;

b) toute société, association ou personne morale dont les parts représentatives du capital ou de l'avoir social sont susceptibles d'être négociées en bourse;

c) toute société, association ou personne morale poursuivant des buts lucratifs, dont les membres ont le droit de céder sans autorisation préalable leurs parts sociales à des tiers et ne sont responsables des dettes de la société, association ou personne morale qu'à concurrence de leur participation.

2. Est assimilée aux sociétés de capitaux, pour l'application de la présente directive, toute autre société, association ou personne morale poursuivant des buts lucratifs. Toutefois, un État membre peut ne pas la considérer comme telle pour la perception du droit d'apport.

*Article 4*

1. Sont soumises au droit d'apport les opérations suivantes:

a) la constitution d'une société de capitaux;

b) la transformation en une société de capitaux d'une société, association ou personne morale qui n'est pas une société de capitaux;

c) l'augmentation du capital social d'une société de capitaux au moyen de l'apport de biens de toute nature;

d) l'augmentation de l'avoir social d'une société de capitaux au moyen de l'apport de biens de toute nature rémunéré, non par des parts représentatives du capital ou de l'avoir social, mais par des droits de même nature que ceux d'associés, tels que droit de vote, participation aux bénéfices ou au boni de liquidation;

e) le transfert d'un pays tiers dans un État membre du siège de direction effective d'une société, association ou personne morale dont le siège statutaire se trouve dans un pays tiers et qui est considérée, pour la perception du droit d'apport, comme société de capitaux dans cet État membre;

f) le transfert d'un pays tiers dans un État membre du siège statutaire d'une société, association ou personne morale dont le siège de direction effective se trouve dans un pays tiers et qui est considérée, pour la perception du droit d'apport, comme société de capitaux dans cet État membre;

g) le transfert d'un État membre dans un autre État membre du siège de direction effective d'une société, association ou personne morale qui est considérée, pour la perception

du droit d'apport, comme société de capitaux dans ce dernier État membre, alors qu'elle ne l'est pas dans l'autre État membre;
h) le transfert d'un État membre dans un autre État membre du siège statutaire d'une société, association ou personne morale dont le siège de direction effective se trouve dans un pays tiers et qui est considérée, pour la perception du droit d'apport, comme société de capitaux dans ce dernier État membre, alors qu'elle ne l'est pas dans l'autre État membre.

2. Peuvent être soumises au droit d'apport les opérations suivantes:
a) l'augmentation du capital social d'une société de capitaux par incorporation de bénéfices, réserves ou provisions;
b) l'augmentation de l'avoir social d'une société de capitaux au moyen de prestations effectuées par un associé qui n'entraînent pas une augmentation du capital social, mais qui trouvent leur contrepartie dans une modification des droits sociaux ou bien qui sont susceptibles d'augmenter la valeur des parts sociales;
c) l'emprunt que contracte une société de capitaux, si le créancier a droit à une quote-part des bénéfices de la société;
d) l'emprunt que contracte une société de capitaux auprès d'un associé, du conjoint ou d'un enfant d'un associé, ainsi que celui contracté auprès d'un tiers, lorsqu'il est garanti par un associé, à la condition que ces emprunts aient la même fonction qu'une augmentation du capital social.

3. N'est pas une constitution au sens du paragraphe 1 sous a), une quelconque modification de l'acte constitutif ou des statuts d'une société de capitaux et notamment:
a) la transformation d'une société de capitaux en une société de capitaux d'un type différent;
b) le transfert d'un État membre dans un autre État membre du siège de direction effective ou du siège statutaire d'une société, association ou personne morale qui est considérée, pour la perception du droit d'apport, comme société de capitaux dans chacun de ces États membres;
c) le changement de l'objet social d'une société de capitaux;
d) la prorogation de la durée d'une société de capitaux.

*Article 5*

1. Le droit est liquidé:
a) dans le cas de constitution d'une société de capitaux, de l'augmentation de son capital social ou de l'augmentation de son avoir social, opérations visées à l'article 4 paragraphe 1 sous a), c) et d): sur la valeur réelle des biens de toute nature apportés ou à apporter par les associés, après déduction des obligations assumées et des charges supportées par la société du fait de chaque apport; les États membres ont la faculté de ne percevoir le droit d'apport qu'au fur et à mesure des libérations effectives.
b) dans le cas de transformation en société de capitaux ou du transfert du siège de direction effective ou du siège statutaire d'une société de capitaux, opérations visées à l'article 4 paragraphe 1 sous b), e), f), g) et h): sur la valeur réelle des biens de toute nature appartenant à la société au moment de la transformation ou du transfert, après déduction des obligations et charges qui pèsent sur elle à ce moment;
c) dans le cas de l'augmentation du capital social par incorporation de bénéfices, de réserves ou de provisions, visée à l'article 4 paragraphe 2 sous a): sur le montant nominal de cette augmentation;
d) dans le cas de l'augmentation de l'avoir social visée à l'article 4 paragraphe 2 sous b):

sur la valeur réelle des prestations effectuées, après déduction des obligations assumées et des charges supportées par la société du fait de ces prestations;
e) dans les cas d'emprunts visés à l'article 4 paragraphe 2 sous c) et d): sur le montant nominal de l'emprunt contracté.

2. Dans les cas visés au paragraphe 1 sous a), b) et c), le montant sur lequel le droit est liquidé ne peut cependant être inférieur à la valeur réelle des parts sociales attribuées ou appartenant à chaque associé, ou bien au montant nominal de ces parts sociales, si ce dernier est supérieur à leur valeur réelle.

3. Le montant sur lequel le droit est liquidé en cas d'augmentation du capital social ne comprend pas:
- le montant des avoirs propres de la société de capitaux qui sont affectés à l'augmentation du capital social et qui ont déjà été soumis au droit d'apport;
- le montant des prêts contractés par la société de capitaux qui sont convertis en parts sociales et qui ont déjà été soumis au droit d'apport.

*Article 6*

1. Chaque État membre peut exclure de la base imposable, déterminée conformément aux dispositions de l'article 5, le montant de l'apport qu'effectue un associé indéfiniment responsable des obligations d'une société de capitaux, ainsi que la quote-part d'un tel associé dans l'avoir social.

2. Si un État membre fait usage de la faculté prévue au paragraphe 1, sont soumis au droit d'apport:
- le transfert du siège de direction effective de la société de capitaux dans un autre État membre qui ne fait pas usage de cette faculté;
- le transfert du siège statutaire de la société de capitaux, dont le siège de direction effective se trouve dans un pays tiers, dans un autre État membre qui ne fait pas usage de cette faculté;
- toute opération par laquelle la responsabilité d'un associé est limitée à sa participation dans le capital social, notamment lorsque la limitation de la responsabilité résulte d'une transformation de la société de capitaux en une société de capitaux d'un type différent.

Le droit d'apport est liquidé dans tous ces cas sur la valeur de la quote-part qui, dans l'avoir social, appartient aux associés indéfiniment responsables des obligations de la société de capitaux.

*Article 7*

1. Jusqu'à l'entrée en vigueur des dispositions à arrêter par le Conseil conformément au paragraphe 2:
a) le taux du droit d'apport ne peut dépasser 2% ni être inférieur à 1%;
b) ce taux est réduit de 50% ou plus lorsqu'une ou plusieurs sociétés de capitaux apportent la totalité de leur patrimoine, ou une ou plusieurs branches de leur activité, à une ou plusieurs sociétés de capitaux en voie de création ou préexistantes.

Cette réduction est subordonnée à la condition que:
- les apports soient exclusivement rémunérés par l'attribution de parts sociales, les États membres ayant la faculté d'étendre l'octroi de la réduction aux cas où les apports sont rémunérés par l'attribution de parts sociales conjointement à un versement au comptant de 10% au maximum de leur valeur nominale,
- les sociétés parties à l'opération aient leur

siège de direction effective ou leur siège statutaire sur le territoire d'un État membre;

c) le taux du droit d'apport peut être réduit à 0,50% jusqu'au 1er janvier 1973 et à 1% à partir de cette date en cas de constitution ou d'augmentation du capital social de sociétés de participation financière, ayant pour seul objet la prise de participations dans d'autres entreprises ainsi que la gestion et la mise en valeur de cette participation à condition que ces sociétés n'aient aucune activité industrielle ou commerciale propre et qu'elles n'exploitent pas un établissement commercial ouvert au public.

2. En vue de permettre au Conseil de fixer les taux communs du droit d'apport avant la fin de la période de transition, la Commission soumettra au Conseil une proposition à ce sujet avant le 1er janvier 1971.

3. En cas d'augmentation du capital social conformément à l'article 4 paragraphe 1 sous c), faisant suite à une réduction du capital social effectuée en raison de pertes subies, le taux peut être réduit pour la partie de l'augmentation correspondant à la réduction du capital, à la condition que cette augmentation intervienne dans les quatre ans après la réduction du capital.

4. Lorsqu'un État membre fait usage de la faculté visée à l'article 4 paragraphe 2, le droit d'apport peut être perçu à un taux réduit.

*Article 8*

Un État membre peut exonérer totalement ou partiellement du droit d'apport les opérations visées à l'article 4 paragraphes 1 et 2 concernant:

- les sociétés de capitaux qui fournissent des services d'utilité publique, telles que les entreprises portuaires ou de fourniture d'eau, de gaz ou d'électricité, dans le cas où l'État ou d'autres collectivités territoriales possèdent au moins la moitié du capital social;
- les sociétés de capitaux qui, conformément à leurs statuts et en pratique, poursuivent uniquement et directement des objectifs culturels, de bienfaisance, d'assistance ou d'éducation.

*Article 9*

Certaines catégories d'opérations ou de sociétés de capitaux peuvent faire l'objet d'exonérations, de réductions ou de majorations de taux pour des motifs d'équité fiscale ou d'ordre social, ou pour mettre un État membre en mesure de faire face à des situations particulières. L'État membre qui envisage de prendre une telle mesure, en saisit la Commission en temps utile et aux fins de l'application de l'article 1012 du traité.

*Article 10*

En dehors du droit d'apport, les États membres ne perçoivent, en ce qui concerne les sociétés, associations ou personnes morales poursuivant des buts lucratifs, aucune imposition, sous quelque forme que ce soit:

a) pour les opérations visées à l'article 4;

b) pour les apports, prêts ou prestations, effectués dans le cadre des opérations visées à l'article 4;

c) pour l'immatriculation ou pour toute autre formalité préalable à l'exercice d'une activité, à laquelle une société, association ou personne morale poursuivant des buts lucratifs peut être soumise en raison de sa forme juridique.

*Article 11*

Les États membres ne soumettent à aucune

imposition, sous quelque forme que ce soit:
a) la création, l'émission, l'admission en bourse, la mise en circulation ou la négociation d'actions, de parts ou autres titres de même nature, ainsi que de certificats représentatifs de ces titres, quel qu'en soit l'émetteur;
b) les emprunts, y compris les rentes, contractés sous forme d'émission d'obligations ou autres titres négociables, quel qu'en soit l'émetteur, et toutes les formalités y afférentes, ainsi que la création, l'émission, l'admission en bourse, la mise en circulation ou la négociation de ces obligations ou autres titres négociables.

*Article 12*

1. Par dérogation aux dispositions des articles 10 et 11, les États membres peuvent percevoir:
a) des taxes sur la transmission des valeurs mobilières, perçues forfaitairement ou non;
b) des droits de mutation, y compris les taxes de publicité foncière, sur l'apport à une société, association ou personne morale poursuivant des buts lucratifs, de biens immeubles ou de fonds de commerce situés sur leur territoire;
c) des droits de mutation sur les biens de toute nature qui font l'objet d'un apport à une société, association ou personne morale poursuivant des buts lucratifs, dans la mesure où le transfert de ces biens est rémunéré autrement que par des parts sociales;
d) des droits frappant la constitution, l'inscription ou la main-levée des privilèges et hypothèques;
e) des droits ayant un caractère rémunératoire;
f) la taxe sur la valeur ajoutée.

2. Les droits et taxes visés au paragraphe 1 sous b), c), d) et e) sont les mêmes, que le siège de direction effective ou le siège statutaire de la société, association ou personne morale poursuivant des buts lucratifs se trouve ou non sur le territoire de l'État membre percevant l'imposition. Ces droits et taxes ne peuvent pas non plus être supérieurs à ceux qui sont applicables aux opérations similaires, dans l'État membre percevant l'imposition.

*Article 13*

Les États membres mettent en vigueur au 1er janvier 1972 les dispositions législatives, réglementaires et administratives nécessaires pour se conformer aux dispositions de la présente directive et en informent immédiatement la Commission.

*Article 14*

Les États membres veillent à communiquer à la Commission le texte des dispositions essentielles de droit interne qu'ils adoptent ultérieurement dans le domaine régi par la présente directive.

*Article 15*

Les États membres sont destinataires de la présente directive.

Fait à Bruxelles, le 17 juillet 1969.

*Par le Conseil*

*Le président*

H. J. WITTEVEEN

# BIBLIOGRAPHY

## BOOKS

### BELGIUM

LA T.V.A. PRATIQUE, comment remplir votre declaration? Published by l'Administration de la T.V.A. et l'Institut belge d'information et de documentation, Brussels, 1969, 26 pp.
Official brochure explaining the filing of Tax on Value Added returns. The text is also available in Dutch.

Library International Bureau of
Fiscal Documentation no. B.3989.

### BENELUX

FISCAL HARMONIZATION IN THE BENELUX ECONOMIC UNION, by Krauss, M. Published by the International Bureau of Fiscal Documentation, Amsterdam, 1969, 89 pp.
This book contains a concise review of the present theory of customs and tax unions and includes a description and an analysis of the Benelux fiscal harmonization programme.

Library International Bureau of
Fiscal Documentation no. B.3869.

### CHILE

THE CHILEAN TAX SERVICE REORGANIZATION AND MODERNIZATION, by Nowak, N.D. Published in Argentina, June 1968, 123 pp.

Library International Bureau of
Fiscal Documentation no. B.3877.

RECOPILACION Y SISTEMATIZACION de Antecedentes en Derecho Económico. Tomo III: Comercio exterior y tributación fiscal externa. Published by Departamento de Derecho Económico, Facultad de Ciencias Jurídicas y Sociales, Universidad de Concepción, Chile, 1968.
Vol. III of a survey on economic law in Chile, dealing with international commerce and taxation.

Library International Bureau of
Fiscal Documentation no. B. 3871.

RECOPILACION Y SISTEMATIZACION de Antecedentes en Derecho Económico. Tomo IV: Derecho Económico aplicable a actividades especiales. Published by Departamento de Derecho Económico, Facultad de Ciencias jurídicas y sociales, Universidad de Concepción, Chile, 1968. Vol. IV of a survey on economic law in Chile, dealing with special economic activities and including tax incentive laws.

Library International Bureau of
Fiscal Documentation no. B.3872.

### FRANCE

LES IMPOTS EN FRANCE. Traité Pratique de la fiscalité française, et plus particulièrement des impôts dus par les entreprises. Published by Editions Francis Lefebvre, Paris, 1969, 367 pp.
Explanation of the tax system in France, with emphasis on the taxation of businesses.

Library International Bureau of
Fiscal Documentation no. B.3985.

### GERMANY

DIE BESTEUERUNG DEUTSCHER PRIVATINVESTITIONEN IN GRIECHENLAND. Unter Berücksichtigung des neuen Doppelbesteuerungsabkommens, by Mahlmann, L. Published by Verlag Neue Wirtschafts-Briefe, Herne/Berlin, 1969, 109 pp.
Survey of the taxation of German investment in Greece, including considerations on the new tax treaty between Greece and Germany.

Library International Bureau of
Fiscal Documentation no. B.3884.

DIE BESTEUERUNG DEUTSCHER PRIVATINVESTITIONEN IN ISRAEL. Unter Berücksichtigung des neuen Doppelbesteuerungsabkommens, by Klimowsky, E.W., and A.J. Rädler. Published by Verlag Neue Wirtschafts-Briefe, Herne/Berlin, 1969, 143 pp.
Survey of the taxation of German private investment in Israel, including considerations on the new tax treaty between Germany and Israel.

Library International Bureau of
Fiscal Documentation no. B.3882.

ECONOMIE DE L'ENTREPRISE. LA PRODUCTION, by Gutenberg, E. Translated from German by L. Rives and D. Ploux. Published by Sirey, Paris, 1967, 403 pp.

French translation of a German book, on the economic problems of a manufacturing enterprise.

Library International Bureau of
Fiscal Documentation no. B.3909.

HANDBUCH DER GmbH. PRAKTISCHE RECHTSHILFE FÜR DIE ORGANE DER GmbH UND IHRE BERATER, by Wilke, O., K. Berg, H. Gottschling, D. Gaul. Published by Verlag Dr. Otto Schmidt, Cologne, third edition, 1969, 1412 pp.
Third revised edition of a book concerning the "GmbH" entity which will be updated by supplements. The full text of the "GmbH" law, explanations of the entity form as well as the taxation and accounting and labour aspects thereof, are also included. Examples of the texts of "GmbH" agreements are appended.

Library International Bureau of
Fiscal Documentation no. B.3884.

TAXATION IN THE FEDERAL REPUBLIC OF GERMANY, by Gumpel, H.J. World Tax Series prepared by the Harvard Law School, International Tax Program. Second edition, 1969.
This new edition specifically gives an integrated picture of the entire tax system of West Germany and a point-by-point analysis of each separate tax is involved. A comprehensive study of both statutory and case law, it joins related rules and principles to give a complete picture of West Germany's revenue system. The material in this work is expanded and updated as of the end of 1968. Thus including a treatise on the Tax on Value Added. In addition, tax return forms, translated and reproduced in both German and English are appended.

Library International Bureau of
Fiscal Documentation no. B.4037.

UMWANDLUNGSTEUERGESETZ. Gesetz über steuerliche Massnahmen bei Änderung der Unternehmensform, by Bronner, H. Published by Fachverlag für Wirtschafts- und Steuerrecht Schäffer & Co., Stuttgart, 1969, 296 pp.
Survey on the new law concerning tax privileges for purposes of company transformations and mergers, with reference to literature and case law. The text of the new law as well as other relevant laws are appended.

Library International Bureau of
Fiscal Documentation no. B.3881.

VEREINIGTE STAATEN VON AMERIKA, INTERNATIONALE STEUERN, by Walter, O.L., and E.C. Stiefel. Published by Titz Verlag, Mondorf/Rhein, third edition, 1969, 119 pp.
Third revised edition which explains federal income tax, gift and death duties and some references to the taxes levied by the states. The text and an explanation of the U.S.A.—Germany tax treaty is appended.

Library International Bureau of
Fiscal Documentation no. B.3876.

## GREECE

DIE BESTEUERUNG DEUTSCHER PRIVATINVESTITIONEN IN GRIECHENLAND (See Germany)

GREECE INVESTMENT GUIDE. Published by the Hellenic Industrial Development Bank, Athens, 1969, 189 pp.
Basic information on the Greek economy and on the general frame of business activities essential to attract foreign capital investment.

Library International Bureau of
Fiscal Documentation no. B.3887.

## INTERNATIONAL

LA EVOLUCION DEL IMPUESTO SOBRE LA RENTA A PARTIR DE LA PRIMERA GUERRA MUNDIAL, by Mutén, L. Published by Universidad del Zula, Facultad de Ciencias Económicas y Sociales, Maracaibo, Venezuela, 1969, 120 pp.
This work is a Spanish translation of the third chapter of the book, "Developments in Taxation Since World War I", and concerns the development of income taxation throughout the world.

Library International Bureau of
Fiscal Documentation no. B.3861.

GEOGRAPHICAL DISTRIBUTION OF FINANCIAL FLOWS TO LESS DEVELOPED COUNTRIES, 1966-1967. Published by the Organisation for Economic Co-operation and Development, Paris, 1969, 90 pp.
This report contains data on the disbursements of financial resources in 1966 and 1967 and is a sequel to the volumes already published for the years 1960-1964 and 1965.

Library International Bureau of
Fiscal Documentation no. B.3886.

PUBLIC EXPENDITURES IN COMMUNIST AND CAPITALIST NATIONS, by Pryor, F.L. Published by George Allen & Unwin Ltd, Park Lane Hemel Hempstead, 1968, 543 pp.
Study in the field of comparative economic systems—both socialist and capitalist economies—using modern economic theoretical and statistical methods.

Library International Bureau of
Fiscal Documentation no. B.3862.

## ISRAEL

DIE BESTEUERUNG DEUTSCHER PRIVATINVESTITIONEN IN ISRAEL (See Germany).

## ITALY

LA DETERMINAZIONE ANALITICA E INDUTTIVA DEL REDDITO FISCALE NELLA IMPOSIZIONE TRIBUTARIA, by Pellingra, G. Published by A. Giuffre, editore, Milano, 1969, 346 pp.
Computation of taxable income.

Library International Bureau of
Fiscal Documentation no. B.3880.

TASSAZIONE DEGLI STRANIERI SOCIETA E DITTE ESTERE INVESTIMENTI DI CAPITALI ESTERI IN ITALIA, by Piazza, G. Published by Edizioni consulente delle Aziende, Milano, third edition, 1969, 574 pp.
Third edition of a handbook on the taxation of foreign corporations engaged in business activities in Italy and on the taxation of foreign capital, invested in Italy

Library International Bureau of
Fiscal Documentation no. B.3875.

## JAPAN

GUIDE TO JAPANESE TAXES 1969-70, by Taizo Hayashi. Published by Zaikei Shoho Sha, Tokyo, 1969, 223 pp.
Annual publication which provides information on the main features of the Japanese tax system based on laws, regulations and circulars.

Library International Bureau of
Fiscal Documentation no. B.3988.

## NETHERLANDS

BELASTINGWETTEN. Published by AE. E. Kluwer, Deventer, 1969, 393 pp.
Compilation of the text of Dutch tax laws.

Library International Bureau of
Fiscal Documentation no. B.3878.

FAMILIERECHTELIJKE BETREKKINGEN VOLGENS NIEUWE BURGERLIJK WETBOEK, by Melis, J.C.H. Published by AE. E. Kluwer, Deventer, 1969, 204 pp.
Revised second edition on family law, the new Civil Code, including a short survey on inheritance tax.

Library International Bureau of
Fiscal Documentation no. B.3879.

DE RECHTSGROND VAN DE SUCCESSIEBELASTING, by Nispen tot Sevenaer, C.M.O. van. Published by AE. E. Kluwer, Deventer, 1969, 156 pp.
Study on the legal principles of Netherlands death duty levies, with references to similar levies in other European countries. A conclusion and a list of literature are appended.

Library International Bureau of
Fiscal Documentation no. B.3864.

## O.E.C.D.

NATIONAL ACCOUNTS OF O.E.C.D. COUNTRIES. 1958-1967. Published by the Organisation for Economic Co-operation and Development, Paris, 382 pp.
Compilation of national accounts statistics, 1958-1967 prepared on the basis of statistical information reported to the O.E.C.D. Council by member countries in the Annual Economic Statistical Questionnaire, 1968.

Library International Bureau of
Fiscal Documentation no. B.3885.

## PERU

ANUARIO BIBLIOGRAFICO PERUANO 1961-1963. Published by Ediciones de la Bibliotheca Nacional, Lima, 1966, 803 pp.
Bibliography of the publications made in Peru during the period 1961-1963, including the names of periodicals.

Library International Bureau of
Fiscal Documentation no. B.3910.

## SPAIN

ANUARIO DEL MERCADO ESPANOL 1969. Published by Banco Español de Credito, Madrid, 1969, 682 pp.
Economic statistical data.

Library International Bureau of
Fiscal Documentation no. B.3870.

## SWITZERLAND

ABSCHREIBUNGEN UND RÜCKSTELLUNGEN IM SCHWEIZERISCHEN STEUERRECHT, by Lenhard T.W. Published by Verlag Paul Haupt, Bern, 1969, 260 pp.
Thesis on the provisions for depreciation and reservation in Swiss tax law.

Library International Bureau of
Fiscal Documentation no. B.3992.

DIE STEUERLICHEN AUSWIRKUNGEN DER FUSION VON AKTIENGESELLSCHAFTEN AUF DIE BETEILIGTEN UNTERNEHMEN, by Fleischli, E. Published by P.G. Keller, Zurich, 1969, 279 pp.
Thesis on the tax treatment of mergers under Swiss tax legislation.

Library International Bureau of
Fiscal Documentation no. B.3991.

## TURKEY

TURKISH INDIVIDUAL AND CORPORATE INCOME TAXATION SYSTEMS, by Turan S. Kivanç. Published by Turan Kivanç, Ankara, 1969, 289 pp.

Library International Bureau of
Fiscal Documentation no. B.3986.

## UNITED KINGDOM

BUTTERWORTHS ESTATE DUTY STATUTES. Published by Butterworth & Co. Ltd., London, 1969, 332 pp.
Full text of the Estate Duty legislation as currently in force, up to and including the Estate Duty provisions of the 1969 Finance Act. All provisions are printed as amended by subsequent legislation and repealed provisions are omitted.

Library International Bureau of
Fiscal Documentation no. B.3875.

ESTATE DUTY CHANGES 1969. The estate duty provisions of the Finance Act 1969 with full explanations, by Sims, B.J. Published by Butterworths, London, 1969, 66 pp.

Library International Bureau of
Fiscal Documentation no. B.3863.

MERGERS, A Guide to Board of Trade Practice. Published by Her Majesty's Stationery Office, London, 1969, 82 pp.

This handbook deals essentially with the administration by the Board of Trade, of the powers in relation to mergers given by the Monopolies and Mergers Act, 1965, which provides a procedure for investigating particular mergers to see whether or not they are contrary to the public interest and, if so, to prevent them from going through.

Library International Bureau of
Fiscal Documentation no. B.3867.

TAX APPEALS, by Voil, P.W. de. Published by Butterworths, London, 1969, 139 pp.
Introductory handbook on the procedure of tax appeals concerning income tax (including surtax), corporation tax, capital gains tax and Selective Employment tax.

Library International Bureau of
Fiscal Documentation no. B.3883.

CHARLESWORTH'S COMPANY LAW, by Cain, T.E. Published by Stevens & Sons, London, Ninth edition, 1968, 484 pp.
Explanation of the Company Act 1967, with emphasis on registered companies, whether public or private, limited by shares.

Library International Bureau of
Fiscal Documentation no. B.3908.

THE BRITISH SYSTEM OF TAXATION. Published by Her Majesty's Stationery Office, London, 1969, 62 pp.

Library International Bureau of
Fiscal Documentation no. B.3866.

WHEATCROFT ON CAPITAL GAINS TAXES. THIRD CUMULATIVE SUPPLEMENT. Up to date to September 1, 1969, by Wheatcroft, G.S.A., A.E.W. Park, P.G. Whiteman. Published by Sweet & Maxwell etc., London, 1969 and W. Green & Son, Edinburgh, 1969.
This third supplement brings the main work up-to-date in the light of the Finance Act 1967, the Land Commission Act 1967 and the Finance Acts 1968 and 1969.

Library International Bureau of
Fiscal Documentation no. B.3907.

## U.S.A.

GUIDE TO FEDERAL SECURITIES CONTROLS. Published by Commerce Clearing House, Inc., New York, 1969, 64 pp.

Library International Bureau of
Fiscal Documentation no. B.3866.

STATE TAX HANDBOOK. As of October 1, 1969. Published by Commerce Clearing House, Inc., Chicago, 1969, 226 pp.
Brief description of the tax system of each state, including the District of Columbia.

Library International Bureau of
Fiscal Documentation no. B.3890.

TAX IMPACTS ON COMPENSATION. Symposium conducted by the Tax Institute of America, October 3-4, 1968. Published by the Tax Institute of America, Princeton, 1969, 215 pp.

Library International Bureau of
Fiscal Documentation no. B.3990.

VEREINIGTE STAATEN VON AMERIKA, INTERNATIONALE STEUERN (See Germany).

## U.S.S.R.

ESSAYS ON SOVIET ECONOMY, by Kazuo Nonomura. Published by the Kinokuniya Bookstore Co. Ltd., Tokyo, 1969, 178 pp.
A collection of several articles previously written by the author, on soviet economy.

Library International Bureau of
Fiscal Documentation no. B.3987.

## VENEZUELA

MEMORIA Y CUENTA. Correspondiente al ejercicio fiscal 1968. Published by Republica de Venezuela Ministerio de Fomento, Caracas, 1969. Annual Report of the Ministry of Development.

Library International Bureau of
Fiscal Documentation no. B.3826.

# LOOSE-LEAF SERVICES

Releases from November 1 – November 30, 1969

## BELGIUM

BELASTING OVER DE TOEGEVOEGDE WAARDE, releases 14, 15.
C.E.D. Samsom N.V., Brussels.

DOORLOPENDE DOCUMENTATIE INZAKE B.T.W./LE DOSSIER PERMANENT DE LA T.V.A., release 8.
Editions Service, Brussels.

IMPOTS ET TAXES, release 187.
C.E.D. Samsom N.V., Brussels.

## CANADA

CANADA ESTATE TAX SERVICE, release 44.
Richard de Boo Ltd., Toronto.

CANADA TAX SERVICE-LETTER, release 141.
Richard de Boo, Toronto.

MC. DONALD'S CURRENT TAXATION, releases 40–42.
Butterworth & Co., Toronto.

PROVINCIAL TAXATION SERVICE, release 244.
Richard de Boo, Toronto.

## DENMARK

SKATTEBESTEMMELSER
- KILDESKAT, release 14.
- SKATTEBESTEMMELSER, release 45.
- SKATTENYTT, release 40.
- SKATTEBESTEMMELSER – OMSAETNINGSAFGIFT, release 18.

A.S. Skattekartoteket Informationskontor, Copenhagen.

## E.E.C.

HANDBOEK VOOR DE EUROPESE GEMEENSCHAPPEN B. VERDRAGSTEKSTEN EN AANVERWANTE STUKKEN, release 63, N.V. Uitgeversmij. AE. E. Kluwer, Deventer.

## FRANCE

DICTIONNAIRE FISCAL PERMANENT, release 25.
Editions Législatives et Administratives, Paris.

DROITS DES AFFAIRES, releases 18, 19.
Editions Législatives et Administratives, Paris.

JURIS CLASSEUR FISCAL: CHIFFRE D'AFFAIRES, release 1556.
Editions Techniques, Paris.

JURIS CLASSEUR FISCAL: IMPÔTS DIRECTS, release 157.
Editions Techniques, Paris.

MEMENTO LAMY:
SOCIAL: release J.
FISCAL: release K, L.

## GERMANY

A.O. KOMMENTAR - Hubschmann - Hepp-Spitaler, release: 61, 62.
Verlag Dr. Otto Schmidt KG., Köln-Marienburg.

DEUTSCHE GESETZE. Schönfelder, release: September.
Verlag C.H. Beck, München.

KOMMENTAR ZUM MEHRWERTSTEUERGESETZ - Schomburg/Kuhr, release 14.
Hermann Luchterhand, Neuwied.

LASTENAUSGLEICH - KOMMENTAR von R. Harmening, release 42.
C.H. Becksche Verlagsbuchhandlung, München.

RWP RECHTS- UND WIRTSCHAFTS-PRAXIS STEUERRECHT, releases 93 and 94.
Forkel Verlag Stuttgart-Degetoch.

STEUERERLASSE IN KARTEIFORM, release 96-98.
Verlag Dr. Otto Schmidt, Köln-Marienburg.

UMSATZSTEUERGESETZ (MEHRWERTSTEUER) KOMMENTAR von Dr. G. Rau, Dr. E. Durrwachter, release 10.
Verlag Dr. Otto Schmidt, Köln-Marienburg.

UMSATZSTEUER UND MEHRWERTSTEUER, KOMMENTAR Peter, releases 19-21.
Verlag neue Wirtschafts-Briefe GmbH. Herne.

UMSATZSTEUERGESETZ (MEHRWERTSTEUER) KOMMENTAR VON A. Hartmann, G.Wauer, G. Knopp, F. Müller, release 10.
Erich Schmidt Verlag, Bielefeld.

## NETHERLANDS

BELASTINGBESCHOUWINGEN, release 33.
N. Samsom N.V., Alphen a.d. Rijn

FED'S FISCAAL REGISTER, release 27.
N.V. Uitgeverij FED, Amsterdam.

FED'S FISCAAL REPERTORIUM, releases 4-6.
N.V. uitgeverij FED, Amsterdam.

FED'S LOSBLADIG FISCAAL WEEKBLAD, releases 1225-1228.
N.V. Uitgeverij FED, Amsterdam.

HANDBOEK VOOR IN- EN UITVOER
A. BELASTINGHEFFING BIJ INVOER, releases 102-103.
B.1 TARIEF VAN INVOERRECHTEN, release 130.
B.2 TARIEF VAN INVOERRECHTEN, release 72.

KLUWER'S TARIEVENBOEK, release 77.
N.V. Uitgeversmij. AE. E. Kluwer, Deventer.

NEDERLANDSE BELASTINGWETTEN. W.E.G. de Groot, release 57.
N. Samsom N.V., Alphen a.d. Rijn.

NEDERLANDSE WETBOEKEN B, releases 100-102.
N.V. Uitgeversmij. AE. E. Kluwer, Deventer.

REGELINGEN EUROMARKT, release 90.
Vermande en Zonen, IJmuiden.

DE SOCIALE VERZEKERINGSWETTEN, release 35.
N.V. Uitgeversmij. AE. E. Kluwer, Deventer.

VADEMECUM VOOR IN- EN UITVOER, releases 411-412.
N.V. Uitgeversmij. AE. E. Kluwer, Deventer.
N. Samsom N.V., Alphen a.d. Rijn.

DE ZEGELWET 1917. Van Steenbergen en Schuttevâer, release 25.
N. Samsom N.V., Alphen a.d. Rijn.

## NEW ZEALAND

NEW ZEALAND TAXATION BOARD OF DECISIONS REVIEW, releases 25, 26.
Butterworth & Co., Wellington, New Zealand.

## NORWAY

SKATTE-NYTT
A. release 11.
B. release 14.
Norsk Skattebetalerforening, Huitfeldts, Oslo.

## SWITZERLAND

DIE PRAXIS DER BUNDESSTEUERN von K. Locher (III), release 15.
Verlag für Recht und Gesellschaft AG, Basel.

DIE STEUERN DER SCHWEIZ – LES IMPOTS DE LA SUISSE (IV), release 16.
Verlag für Recht und Gesellschaft AG, Basel.

## UNITED KINGDOM

BRITISH TAX ENCYCLOPEDIA, Vol. 1-5, release 31.
Sweet & Maxwell, London.

INCOME TAXES IN THE COMMONWEALTH, release 10.
Her Majesty's Stationery Office, London.

## U.S.A.

FEDERAL TAX GUIDE REPORTS, Vol. 53, releases 3-7.
Commerce Clearing House, Inc., Chicago.

FEDERAL TAXES REPORT BULLETIN, releases 42-45.
Prentice Hall, Inc., Englewood Cliffs.

FEDERAL TAXES REPORT BULLETIN - TREATIES, release 16,
Prentice Hall, Inc., Englewood Cliffs.

STATE TAX GUIDE, releases 440-441.
Commerce Clearing House, Inc., Chicago.

TAX IDEAS - REPORT BULLETIN, releases 30-31.
Commerce Clearing House, Inc., Chicago.

TAX TREATIES, release 213.
Commerce Clearing House, Inc., Chicago.

# Books of the series "Afrika-Studien" Economics

edited by the Ifo-Institute of Economic Research, Munich

Heinz-Günter Geis

**DIE GELD- UND BANKSYSTEME DER STAATEN WESTAFRIKAS**

(The Monetary and Banking Systems of the Countries of West Africa)

Afrika-Studien Nr. 20

428 Seiten, 50 Tabellen, 2 Schaubilder und 1 Übersichtskarte. Steifband, DM 54,—, US $ 13,50.

A study of the present state of the West African monetary and banking systems — including the operational channels, agricultural and co-operative credits and all other institutions with banking functions — their development since World War II and their various problems. A comparative, critical analysis. The author is an assistant lecturer at the Institute for Banking and Credit Economy of the Free University of Berlin.

---

Ernst-Josef Pauw

**DAS BANKWESEN IN OSTAFRIKA**

(Money and Banking in East Africa) Afrika-Studien Nr. 35

2784 Seiten, 37 Tabellen im Text, 8 Tabellen im Anhang. Steifband, DM 44,—, US $ 11,—,.

Presentation and analysis of the development, structure and functions of the East African banking system (Kenya, Tanzania, Uganda); critical discussion of recent banking policy. The author is a specialist in banking and financial affairs.

---

**African Studies — Special Series "Information and Documentation"**

## AFRIKA-VADEMECUM

Grunddaten zur Wirtschaftsstruktur und Wirtschaftsentwicklung Afrikas (Basic data on the economic structure and development of Africa), bearbeitet von F.H. Betz (prepared by F.H. Betz)

African Studies — Special Series „Information and Documentation" (with English and French headings).

163 Seiten, 81 Tabellen, 12 Schaubilder und 8 Karten. Flexibler Balacronband, DM 16,—, US $ 4,—.

Clearly arranged summary of economic data on Africa which are not always easily available emphasizing population structure, gross national product, centres of production, industrialisation, transport and communication, export trade, and development assistance. Focus on Africa's position in the world economy. The compiler worked for the Bayerische Statistische Landesamt (Bavarian Statistical Office), the former Statistische Reichsamt (Statistical Office of the German Reich) and in the statistical department of the former League of Nations at Geneva.

---

## ENTWICKLUNGSBANKEN UND -GESELLSCHAFTEN IN AFRIKA

bearbeitet von H. Harlander/D. Mezger (Development Banks and Institutions in Africa, prepared by H. Harlander/D. Mezger)

211 Seiten, flexibler Balacronband, ca. DM 26,—, US $ 6,50.

Reference book covering approximately 100 African development finance institutions, arranged in order of countries, with concise information on functions, capital, organisation, operating policies, investments etc. Hildegard Harlander is assistant to the President at the Ifo Institute for Economic Research, Munich. Dorothea Mezger is a member of the scientific staff of the African Studies Centre of the Ifo Institute for Economic Research, Munich.

---

Write for comprehensive Prospectus

**WELTFORUM VERLAG, 8 München 19, Hubertusstrasse 22**

Sole Distributor in the UK: C. Hurst & Co.,
13 James Street, Covent Garden, London W.C.2.

---

## PUBLIC FINANCE/FINANCES PUBLIQUES

INTERNATIONAL QUARTERLY JOURNAL

founded by J.A. Monod de Froideville

REVUE TRIMESTRIELLE INTERNATIONALE

fondée par J.A. Monod de Froideville

PUBLISHER/EDITEUR

Foundation Journal Public Finance/Fondation Revue Finances Publiques
(Stichting Tijdschrift voor Openbare Financiën)

BOARD OF DIRECTORS/COMITE DE DIRECTION

B. Schendstok, M. Frank, A.T. Peacock, P. Senf

Vol. XXIV 1969 No. 4




*Note on IIPF/Notes sur l'IIFP*

In the respective No. 2 of every volume PUBLIC FINANCE/FINANCES PUBLIQUES publishes the papers and proceedings of the Congress of the International Institute of Public Finance held respectively the preceding year. The articles published in No. 1, 3 and 4 in English, German or French are followed by summaries in the respective two other languages. Please address all correspondence to Professor Dr. Paul Senf, Universität des Saarlandes, Saarbrücken 17, Federal Republic of Germany. Annual subscription rate (4 numbers): Dfl. 45.— (US$ 12.50, L 5/4/—). Orders may be sent to your local bookseller or directly to the Administration of the Journal PUBLIC FINANCE/FINANCES PUBLIQUES, Postbus 2853, The Hague, Netherlands.

# CONTENTS

of the February 1970 issue

# "THIN CAPITALIZATION"

Interest payments between parent and subsidiary companies may give rise to fiscal problems. High interest rates are often disallowed as a deduction against profits made by the subsidiary company; but it may be that the subsidiary company pays interest at a normal rate but to excessive amounts as a result of an unusual method of financing caused by the fact that interest is a deductible and dividends a non-deductible item. Tax treaties do not restrict the amounts paid as they do in respect of high interest rates; in the latter case the difference between the high and the normal rate will be treated as a dividend.

In the Canadian White Paper[1] (Proposals for Tax Reform 1969) a "thin capitalization" rule is proposed, according to which some loans to a company from its shareholders could be treated as shares. Consequently the interest would not be a deductible expense. The Canadian government proposes to restrict the deductibility of non-arm's-length interest wherever the ratio of shareholder debt to equity exceeds three to one. It is stated in the White Paper that such a provision is necessarily arbitrary and it is difficult to administer, and it may have to be altered at a later date in the light of experience.

Since, as far as we know, no country has yet found a satisfactory tax solution to this "thin capitalization" problem, we think this a worthwhile subject of investigation.

DR. J.C.L. HUISKAMP

1. See the article of Dr. T.J. Kennedy in this Bulletin issue.

# * * * * ARTICLES * * * *

NORMAN D. NOWAK★:

## TAX ADMINISTRATION
### — theory and practice —

The tax system of a nation should reflect the social, economic and political aims of the Government, and the administrative machinery should be able to implement it equitably and efficiently. As a nation's economic goals expand and its policy objectives change, as its industry grows, diversifies, and shifts geographically, tax policy alters. The administrative machinery must change with it, or the policy changes are not effectuated. The freezing of old thought patterns and bureaucratic inflexibility combined with the gradual rather than the dramatic change in the economic and social structure are usually the cause of inadequate tax administration. The tax system shows the signs of strain in that evasion increases, administration if not corrected progressively deteriorates, and this results in a sense of growing injustice felt by the taxpayers; this in turn leads to increased evasion.

If tax administration becomes more effective, the policy-makers in government are permitted a wider range of action patterns and combinations. If the administration remains inadequate, the policy must of itself be inadequate in that only the less sophisticated alternatives are practically available. If the administration is so poor that the evasion rate is extremely high, then the policy decisions become basically an exercise in futility. The government thus depends on "charitable" contributions rather than upon predetermined payments according to an economic plan. Tax administration, therefore, is the key to effective tax policy rather than the reverse.

In many countries the lack of capital or the generally paternalistic culture has made Government an important factor, if not the most important factor, in the economic development of these countries. To carry out this role the need of the government to encourage public sector savings is greater than those of the other countries, since the availability of private capital is less.

In trying to carry out their role, most developing governments have run aground on the traditional aversion to payment of taxes. The evasion rate in many countries runs 35% to possibly 70%. This is usually combatted by passing each year more and more substantive legislation to the point where honesty becomes impossible, in that, if all legal taxes were actually paid, in many cases and in many countries, the individual or corporation would pay close to 100% of their income.

One major additional factor is the unwillingness of the power structure, whatever it may be in each country, to permit change. This power is used not only against the passage of substantive legislation, but possibly, even more, for the insurance of bad administration that permits the continued

---

★ Norman D. Nowak, Chief of the Tax Modernization Divisions of Chile and Argentina, is writing a book on the subject "Tax Administration—Theory and Practice". This article is an introduction to the book. Mr. Nowak applies his examples specifically to Chile throughout his book. An article of his hand on the Chilean Tax System has been published in the Bulletin 1966, p. 477 et seq.

evasion of the laws that have been passed.

We may have, therefore, an impasse where the Government, to carry out its functions, to assist the economy and to advance the social welfare of its people, has to resort to borrowing to the limit of its credit. The interest on these loans little by little eats up more of its income and finally ends in an untenable economic position. This may trigger a change of government but does not alter the basic economic facts of the situation. An effective tax administration in the hands of the government becomes a major weapon against chronic inflation, one of the main causes of instability. It permits the planning boards of all countries not only to plan, but actually to set target dates, years in advance, to achieve major objectives. With a poor tax administration, this is almost impossible and restricts planning boards to immediate objectives, since it is the individual taxpayer not the government who decides the tax intake.

With an effective tax administration, it is the government which decides which are the economic sectors that will be assisted and which will not be assisted, instead of the individual taxpayer making that decision according to his ability or willingness to evade.

By freeing the country from the onerous debt which in time eats up most of the tax intake, an effective tax administration permits greater independence of thought and action and increases the national confidence, without which no real forward motion is possible.

It is of great importance to emphasize that a capable and effective administration of taxes must be neutral. Its job is not to make policy nor to make decisions as to who should or should not pay. It is the effective instrument to carry out the decision made by the government in power. Without an effective machine, the policy decisions of each government in power become merely words and noise. This, being recognized by the people, undermines the authority of the government not only in the tax area, which is the more obvious, but also in all other areas.

The way out of this vicious circle is a competent, modern and effective tax administration, that, as its efficiency improves, will permit a practical rewriting of the substance of legislation on the basis of the economic good of the country. Such action will foster a moral climate in which each sector to be taxed will pay according to the policy set by the government, and at a rate enabling it to pay and continue in business.

Some concomitant points in fiscal policy that are basic to the development of good tax administration are:

1. Clarity and simplicity of the substantive law worded in order to facilitate administration and to permit broad understanding on the part of the taxpayers. Simplicity makes evasion difficult.
2. The broader the base of personal and corporation income taxes the easier to obtain adequate revenues without allowing the rates to reach such high levels that evasion becomes profitable.
3. Avoidance of an illogical or irrational tax system, an excessive or poorly distributed tax burden, or waste of the moneys collected which gives moral justification to evaders.
4. Any tax reform to be realistic must take into account the possibility of obtaining complete and trustworthy information about the object or service being taxed.

Effective administration depends, among other things, on whether the taxpayers can be convinced (a) that the tax is being effectively administered, so that the person who pays, willingly or otherwise, is not being

discriminated against, and (b) that there is some relation between the payment of taxes and benefits received from public expenditures.

Probably nothing is so detrimental to taxpayer morale than the belief or knowledge that other taxpayers are not being required to carry their part of the load. Tax administrators, then, must maintain an aggressive attitude concerning the correctness of taxpayers' actions. Some taxpayers fail to file or make mistakes through ignorance or neglect; others deliberately cheat. A passive attitude by the authorities toward the errors and falsifications will soon undermine the entire structure, since the diligent and honest taxpayers will, almost in self-defense, be forced to the level of the careless and the dishonest.

A tax administration which seeks compliance must protect those who comply or else compliance will diminish. Here you have a sort of "vicious circle" in which tax administration is adversely affected by the tolerance of the public toward non-compliance, while simultaneously the attitude of the public may be affected by tax administration. The place to break the circle is to improve the administration.

Tax change is a complex and difficult process. Those who specialize in the area of adapting tax systems to the needs of various countries emphasize the need to adapt these systems and policies to the stages of economic development and to the existing institutional setting of any given country.

In discussing the problem of institutional barriers to the application of fiscal policy, Dr.Walter Heller points out that „taxation is itself an instrument of social change. It does not need to wait passively until restrictive and binding social institutions are changed, but can itself help hasten the change". In answer to those who argue that those in control of governments will not follow a course of change if it conflicts with their own interests, Dr. Heller cites the growing realization on the part of governing groups that their enlightened self interest for the longer run lies in the direction of economic development.

E.D. HAYDEN:

# GUYANA: NOTES ON TAXATION PROPOSALS IN THE 1970 BUDGET SPEECH

## COMPANY INCOME TAX

The Minister of Finance in presenting his Budget for 1970 stated that it was his intention to redistribute the burden of taxation by taxing more heavily companies and financial institutions whilst giving some relief for personal taxation. His proposals give no incentives to foreign investors and the introduction of withholding tax and depreciation of assets during tax holidays are likely to act as strong disincentives to such investors. Despite the strong and repeated advice of this firm that the introduction of Corporation Tax would only add to the difficulties of an Inland Revenue Department already unable to cope with the comparatively simple tax legislation now in effect, the Budget proposes that income tax on companies should be replaced by a Corporation Tax and a Company Profits Tax. The rate of tax on commercial companies (apparently companies which are not concerned with production) has been raised to 55%. In addition, inter company dividends and dividends payable to non-resident individuals will be subject to a withholding tax at rates varying with the type of company and the size of the dividend.

Certain anomalies and apparent arithmetical inaccuracies in the examples quoted in the Budget Speech make it difficult to be precise about the intentions and effect of the new Corporate Taxes, but they appear to be as set out in the Appendix.

## HEAD OFFICE EXPENSES

Allowable expenses of foreign head offices are to be limited to:-

1) Non-Commercial firms - 1% of sales
2) Commercial firms - 0.5% of sales

## TAX HOLIDAY COMPANIES

Companies which have been granted a tax holiday must now apply wear and tear to their assets and initial allowances will be granted on the written down value of the assets at the end of the tax holiday period. *Presumably, this requirement applies to companies for which the tax holiday has not yet commenced.*

## PROPERTY TAX

Fixed interest and non-interest bearing securities formerly considered liabilities for property tax purposes will now be limited to:-

20% of the value of the assets of a Company
50% of the value of the assets of an individual.

The discharge of Property Tax by investment in Government securities will no longer be permitted.

## CAPITAL GAINS TAX

Net capital gains will be taxed on–

Realisation within 7 years of acquisition – as income

Realisation within 7 and 25 years of acquisition – 20%

Realisation within 25 years or more after acquisition – NIL

## LIFE INSURANCE COMPANIES

The Budget proposes that only the investment income of these companies should be taxed. Only expenses incurred in the earning

of investment income (and restricted to 12% of such income) will be allowed. The remainder will be taxed at 45%.
Tax of 15% will be deducted at source from the proceeds of a surrendered policy.
The Budget also proposes that life insurance companies must invest in Guyana 95% of their statutory funds and other reserves held against policies sold in Guyana, and must invest in Guyana Government securities 20% of annual additions to such funds.
Every insurance company operating in Guyana will deposit $250,000 in securities with the Treasury.
Bonuses paid on fire insurance policies will be subject to a withholding tax of 15% for individuals and 45% for companies where the premiums have been allowed as an expense in computing profits.
*Query:* How does the bonus paying company determine that the premiums have been deducted for tax by the recipients of the bonus?
Alle premiums paid to non-life insurance companies resident outside Guyana will be subject to 10% withholding tax.
All agents who receive premiums on behalf of non-resident non-life insurance companies will pay a licence of $1,000.

FILM DISTRIBUTORS
Taxable profits will be considered to be not less than 60% of income and will be subject to a flat tax of 30%.

INDIVIDUALS
Earned income allowance of 5% of all earned income of employees up to $10,000 and a wife's earned income allowance of $400 per annum will become effective from year of income 1970.
Individuals will be expected to assess themselves and enclose cheques for any tax owing with their Tax Return.
The period of limitation for assessment of tax will be extended from five to seven years.

BOARD OF REVIEW
Appeals to the Board of Review will require a payment of 2/3 of the tax assessed pending determination of the appeal. Should a further appeal be made to the High Court the remaining 1/3 will have to be paid.

*Note:* It is assumed that all taxation provisions proposed in the Budget Speech will become effective during Year of Assessment 1971.

# APPENDIX

*Definitions*

A Commercial Company is one which is engaged not less than 75% in trading.

Trading appears to mean the process of buying and selling but also includes commission earned from commercial agencies.

A non-commercial company is one which is engaged in production.

It is not clear how enterprises engaged in both commercial and manufacturing activities are to be categorised but it is assumed that some such basis as rate of turnover will be taken.

*Rates of Tax*

| | Non Commercial Company | Commercial Company |
|---|---|---|
| CORPORATION TAX | 25% | 35% |
| COMPANY PROFITS TAX | 20% | 20% |
| WITHHOLDING TAX | | |
| (1)Corporate shareholder | 35% | 40% |
| (2) non-resident individual | | |
| * on gross dividend of $8,000 or lower | 27% | 31% ($10,000 or lower) |
| on gross dividend of over $8,000 | 30% | 40% (over $10,000) |

* for the purposes of computing the rate of withholding tax on dividends payable to non-resident individuals, gross dividend is considered to be the dividend declared less Corporation Tax.

There are, therefore, three different rates of withholding tax applicable to commercial and three to non-commercial companies—six rates in all.

Presumably, the dividend paying companies will be required to determine into which category each shareholder falls and make deductions accordingly.

The attached examples show the effect of the rates of taxation on various types of shareholder.

Attention is drawn to the statement of the Minister that the effective rate of tax for companies distributing to corporate shareholders will be 51.25%. This statement is not understood: the effective rate in the examples attached is considerably higher. Treasury officials have not so far been in a position to clarify this anomaly.

## EXAMPLES

### 1 NON COMMERCIAL COMPANIES

(a) Distributions to Corporate Shareholders (both resident and non-resident):-

| | | |
|---|---|---|
| Dividend of | $1,000 (G) to Associated Company | |
| Corporation Tax | 250 | (not available for set-off) |
| | $ 750 | |
| Company Profits Tax | 200 | (available for set-off) |
| | $ 550.00 | |
| *Less:* | | |
| Withholding Tax @ 35% | 192.50 | |
| Net Dividend | $ 357.50 | |
| Effective Rate of Tax | 64.25% | |

(b) Shareholder is non-resident individual

| | Under $8,000 | Over $8,000 |
|---|---|---|
| Dividend | $1,000 (G) | $10,000 (G) |
| Corporation Tax | 250 | 2,500 |
| | $ 750 | $ 7,500 |
| Company Profits Tax | 200 | 2,000 |
| | $ 550 | $ 5,500 |
| Add back | 200 | 2,000 |
| | $ 750 | $ 7,500 |
| *Less:* | | |
| Withholding Tax @ 27%/35% | 202.50 | 2,625 |
| Net Dividend | $ 547.50 | $ 4,875 |
| Effective Rate of Tax | 45.25% | 51.25% |

### 2 COMMERCIAL COMPANIES

(a) Corporate Shareholders

| | |
|---|---|
| Dividend | $1,000 |
| Corporation Tax @ 35% | 350 |
| | $ 650 |
| Company Profits Tax @ 20% | 200 |
| | $ 450 |
| *Less:* | |
| Withholding Tax @ 40% | 180 |
| | $ 270 |
| Effective Rate of Tax | 73% |

(b) Non-resident individual shareholders:-

| | Under $10,000 | Over $10,000 |
|---|---|---|
| Dividend | $1,000 (G) | $20,000 (G) |
| Corporation Tax | 350 | 7,000 |
| | $ 650 | $13,000 |
| Company Profits Tax @ 20% | 200 | 4.000 |
| | $ 450 | $ 9,000 |
| Add back | 200 | 4,000 |
| | $ 650.00 | $13,000 |
| *Less:* | | |
| Withholding Tax @ 31%/40% | 201.50 | 5,200 |
| | $ 448.50 | $ 7,800 |
| Effective Rate of Tax | 55.15% | 61% |

THOMAS J. KENNEDY*:

# THE CANADIAN WHITE PAPER: INTERNATIONAL TAX PLANNING

## (Part I – Foreign Source Income of Canadians)

### I. INTRODUCTION

The Canadian government published its long-awaited White Paper on tax reform[1] on November 7, 1969 and it was tabled by the House of Commons on the same day. The White Paper proposals—adopting many but not all of the previous Carter Report's recommendations of 1967[2]—call for a thorough reform of the Canadian system of income taxation which is generally expected to go into effect not earlier than January 1, 1971, and in the international field 1974 or later. A lengthy period of debate and further Government "White Papers" on, e.g. the new capital gains proposals, are expected before a tax reform bill is introduced in the Commons—assumedly in late 1970.

The proposals affecting foreign source income of Canadian individuals and corporations and those revising the taxation of nonresidents are rather less radical than the Carter Report's, but nevertheless call for a complete review of tax planning by all taxpayers having international income taxable or potentially taxable in Canada. This holds true for, especially, foreign investors in Canadian securities; Canadian investors in Canadian and/or foreign securities; Canadian -based companies with controlled foreign subsidiaries (especially those receiving investment income and located in tax havens); and off-shore and special statute companies presently avoiding the Canadian tax net.

What the White Paper proposes is, basically, to set up—by January 1, 1974 or later—"two international tax systems: a tax treaty system which would apply (favorably) to income flowing to and from treaty countries, and an (unfavorable) system which would apply in non-treaty circumstances".[3] Canada's tax treaty system will be extended so that most international operations fall within conventions based generally on the OECD draft convention of 1963. Presently, Canada has bilateral tax treaties with most developed countries[4] but the important omissions include Switzerland, most tax haven countries, and all South American countries.

Three problems will arise as new treaties are concluded and existing ones amended:

a) Resistance is expected to taxation of nonresidents' Canadian-source capital gains

---

* The author is currently editor of *European Taxation* with the International Bureau of Fiscal Documentation, Amsterdam.

1. Proposals for Tax Reform (Ottowa, 1969) (hereinafter cited as "White Paper").
2. Report of the Canadian Royal Commission on Taxation 1967 (hereinafter cited as the "Carter Report"). See E. Harris, "What should Canada do with the Carter Report", XXI BULLETIN FOR INTERNATIONAL FISCAL DOCUMENTATION 531 (Dec. 1967).
3. White Paper, para. 6.50. All references to White Paper proposals on international taxation are to Chapter Six (paras. 6.1 to 6.51) of the text. Only where the Government proposal is outside Chapter Six will a specific reference be made.
4. Canada currently has bilateral income tax treaties with: Australia, Denmark, Finland, France, Germany, Ireland, Japan, the Netherlands, New Zealand, Norway, South Africa, Sweden, Trinidad and Tobago, the United States and the United Kingdom.

—which violates, e.g., the present U.S. and U.K. treaties[5].

b) Offshore trading and holding companies, based in tax havens will have to re-arrange their structures—and in some cases their locations—to either come within the preferred treaty country system or operate otherwise (e.g. as trusts) where international competitive conditions necessitate sheltering of income. International Shipping Companies and offshore mutual funds would be two examples of the latter.

c) Many of the complex problems (e.g. reallocation of parent-controlled foreign subsidiary profits, arm's length inter-company transactions, qualification for foreign tax credit, treatment of foreign trusts with Canadian beneficiaries, etc.) which are not covered or insufficiently covered by the White Paper will hopefully be included in the ultimate tax reform bill and the new treaties. If they are not, serious administrative headaches—especially in the area of controlled foreign corporations under the proposed "passive income" (i.e. U.S. "Support F"-type) rules—and litigation will result.

The following article discusses, in two parts, the international tax reforms of the White Paper with reference to: the current taxation of each item; the changes proposed in the White Paper; the effect on international business and investment; and finally the international tax planning required in each instance. Part I discusses the White Paper proposals affecting Foreign Source Income of Canadians. Part II (to be published in the next issue of "Bulletin") concerns the proposals for taxation of nonresidents with Canadian source income.

## II. FOREIGN-SOURCE INCOME OF CANADIANS

### A. *General*

The Government states that the purpose of the proposals concerning foreign-source income of Canadians is neither to provide an "incentive" to invest abroad nor to place hurdles in their path. Nevertheless, the provisions on the whole employ the carrot and stick technique of encouraging Canadian investment in domestic enterprises while cracking down finally on the use of controlled foreign corporation to avoid or evade the Canadian tax net on, especially, "passive" investment income. On the whole, substantial portfolio investment is expected to flow from foreign (e.g. New York and London) stock exchanges to Toronto, etc., due to the capital gains provisions favoring domestic company shareholding. It remains to be seen whether Canadian investors and off-shore companies will fall in line and opt for the government's favored system of domestic and treaty country taxation or employ foreign trusts and other devices to shield investment income. Since Canadian taxation of foreign-source income will come to approximate more and more that of the United States, business and financial patterns closely resembling those used to cope with the U.S. Subpart F Rules after 1962 are expected to emerge.

### B. *Controlled Foreign Corporations*

#### i) Dividends

At present, dividends received by a Canadian corporation from, *inter alia*, a controlled foreign corporation—more than 25% of whose issued voting shares are owned by the receiving corporation—are exempt from any Canadian corporation income tax under section 28 (1) (d) of the Income Tax Act

5. See Canada—United States Income Tax Treaty, art. VIII; Canada-United Kingdom Income Tax Treaty, Art. 12.

1952.[6] The White Paper proposes to continue this exemption in its present form until at least January, 1974. After the tax treaty network has been revised and extended the exemption would apply only for dividend from "25% or more" controlled foreign corporations located in tax treaty countries. In addition, "passive income"—vaguely defined by the Government as "foreign dividends, rents and royalties, shipping income and some export profits"—would no longer qualify for dividend exemption and would be taxed currently under provisions similar to Subpart F of the United States Internal Revenue Code.[7]

Dividends from Canadian controlled foreign corporations not located in treaty countries will be subject to corporate income tax on a gross-up basis, set-off by credit for withholding tax imposed on dividends and foreign corporation tax on underlying business profits.

The obvious problem that results from this system is the disadvantageous position of controlled foreign corporations located in non-treaty countries. Switzerland is the main omission here as well as the tax havens such as Bermuda, the Bahamas, Nassau, etc. In order to qualify under the new dividend exemption provisions, Canadian controlled foreign corporations will have to meet several tests:

a) incorporation in a tax treaty country; for offshore trade or holding companies the Netherlands should be the prime candidate here, as well as tax havens benefiting from Canadian tax treaties with, e.g. the United Kingdom (Jamaica);

b) "bona fide business operations"[8] (as opposed to tax-haven conduits passing on mainly "passive" investment income); and

c) satisfaction by the Canadian parent of the "25% or more" voting share ownership requirement.

Note that the location of a controlled foreign corporation in a tax treaty country will mean that dividend withholding tax abroad will be imposed at the normal 15% rate which Canada generally applies (and intends to continue) in its treaties. The Canada-Netherlands tax treaty calls for a 15% withholding rate but the Netherlands imposes no tax on dividends paid to a resident company by a 5%-owned foreign company.[9] Under the present treaty network the Netherlands would seem the most attractive location for a foreign base company of a Canadian parent in this context.

The Government has indicated that negotiations to revise tax treaties with countries which favor investment income distributions (such as Netherlands and Germany) and tax sparing countries (such as Ireland) will fully cover the problems which are certain to arise in this area. One of these is the definition of "substantial holdings" which receive privileged tax treatment in most countries—but whose percentages vary from 5%

6. The Income Tax 1952 will hereinafter be cited as "ITA". Dividends from Canadian taxable corporations, exempt "mines" and over 25% owned "foreign business corporations" are also exempt by means of deduction in computing taxable income of the corporate shareholder. The exempt, inter-corporate dividends are eventually taxable to the individual shareholders of the recipient through inclusion in "undistributed income on hand." For the definition of "dividends" see ITA, sec. 6(1) (a). *Cf.* ITA, sec. 28(2) for non-deductible dividends.

7. "Subpart F" of the United States Internal Revenue Code includes sections 951-964 thereof.

8. White Paper, para. 6.20.

9. Corporate Income Tax Law 1969, art. 13. The "Wet op de Vennootschapsbelasting 1969" was published in "het Staatsblad van het Koninkrijk der Nederlanden, 1969/469". See, for a discussion, M.J. van Rooyen, "The Substantial Holding Privilege in Netherland Corporate Income Tax", XXIII Bulletin for International Fiscal Documentation, 337(July/Aug./Sept. 1969).

(Netherlands) to 25% (Canada, Germany, Luxembourg etc.). The calculations of net foreign and Canadian tax on dividends received under the proposed system is also vital. Generally, the new system would favor exempt dividends over those flowing from non-treaty countries to a substantial degree, but the net dividend retained would vary in both cases vis à vis the present system. Thus Canadian corporations and shareholders will have several decisions to make:

1) whether to accrue or distribute foreign business profits (other than "passive income") and perhaps face reduced net cash flows;

2) upon distribution to the Canadian parent, whether to allow dividends to "flow through" to shareholders or to retain at least part of the foreign income to obtain maximum tax advantage;

3) timing—this is the most vital point in terms of 1970—i.e. whether to distribute dividends in 1970 before "valuation day" and thus avoid paying capital gains tax on eventual sale of the foreign shares. Some forward dividend stripping would seem inevitable here, though recent cases have made this difficult and reduction of market value is also to be carefully avoided. These considerations will be more thoroughly discussed under capital gains and losses (see section VII, *infra*).

ii) "Passive Income"

Section 28 (1) (d) of the ITA has been the subject of abuse since it exempts dividends received from controlled foreign corporations—wherever located and whatever the nature of the dividend. The use of tax havens to avoid or delay payment of Canadian tax on "passive" investment income—dividends, interest, royalties, transhipped profits, etc. derived without active conduct of a business or trade—has led the Government to propose a separate tax system for such income. The United States "Subpart F" rules[10] will be used as a model and passive investment income will be taxed currently to controlling shareholders—whether or not distributed. Note especially that all foreign source "passive income" would be currently taxable and thus, by implication, excluded from dividend exemption whether received from treaty or non-treaty countries. The White Paper merely proposes that this principle be adopted and no details are given. The Government emphasizes "bona fide business operations" and simultaneously omits discussion of companies which, although often incorporated in tax havens, carry on substantial business activities from which they receive income which could—conceivably—come within the disfavored "passive" category. These include patent and related know-how holding companies, shipping companies, captive insurance companies, mineral exploration companies and equipment leasing and service companies. Most of these companies must accumulate and reinvest foreign income to remain competitive and a large gap exists in the White Paper concerning them. Again, foreign business trusts might be one of the devices which become necessary should these borderline cases come within the proposed "Subpart F"-type rules. Another complication concerns the many Canadian subsidiaries of U.S. parents who will have to deal with two countries' Subpart F rules—quite probably disparate. Assumedly, the follow-up "White Papers" will include the details of Canada's "Subpart F"-type rules. Further discussion of this complicated subject would be fruitless here and one can only note that Canadian tax counsel and the tax administration might soon find themselves in the lap of Pandora should this provision go through Parliament.

10. See note 7, *supra*.

## III. OTHER FOREIGN INVESTMENT INCOME

The present tax treatment of Canadian individuals' and corporations' other investment income (i.e. other than controlled foreign corporation dividends) will remain substantially unchanged according to the White Paper. Currently, such investment income (minus foreign "earned" income) is included in the corporation's or individual's taxable income and foreign income taxes paid are deducted from Canadian tax thereon.[11]
A surtax of 4% is imposed on that part of foreign-source investment income exceeding $ 2,400 (or the total of personal exemptions, whichever is greater).[12]
First, the Government proposes abolishment of the 4% surtax in line with other rate charges.[13] More important, the rate of withholding tax on portfolio investment income (undefined) flowing between Canada and tax treaty countries would be limited to a maximum of 15%. Concomitantly, the foreign tax credit available on such income would also be limited to 15%. These provisions would go into effect no earlier than 1974.

## IV. FOREIGN BUSINESS PROFITS AND WAGES EARNED ABROAD

The present treatment of foreign source business profits and wages earned abroad by Canadian corporations or individuals would be retained.[14] Such income is taxed as earned and credit given for foreign income taxes paid thereon. Three changes will be introduced in this area:
a) provisions to prevent transfer of foreign branch operations which have suffered losses in order to avoid Canadian taxes on subsequent branch profits. This will be accomplished by recapture of subsequent profits which equal or exceed the previously deducted losses.
b) carry-over of excess foreign tax credits to subsequent gains. The details of this carry-over are not given.
c) credit or deduction for foreign income taxes imposed by potential subdivisions on a reciprocal basis (i.e. if foreign countries grant a similar credit for provincial taxes).

## V. FLOW-THROUGH OF FOREIGN WITHHOLDING TAXES

Canadian individual shareholders may presently credit against Canadian income tax, foreign withholding tax imposed on dividends received directly from foreign corporations. As mentioned above, this credit will – by 1974 – be limited to a 15% maximum under the White Paper proposals.
Canadian individual shareholders of resident corporations which receive dividends from foreign corporations[15] may not credit foreign withholding tax but are granted a flat 20% dividend tax credit.[16] This latter rule creates

---

11. ITA, sec. 32 (4).
12. ITA, sec. 32 (3).
13. White Paper, para. 2-37.
14. An exception applies to partnership which would be forced to opt for the accrual method of income computation. See White Paper, para. 5.46.
15. The Canadian receiver corporation may deduct from income an amount determined by applying to it a percentage of profits which the foreign payer corporation has earned and paid tax thereon in Canada. See ITA, secs. 28 (10) and 30.
16. ITA, secs. 38 (1) and (2). This 20% tax credit is also granted for dividends received from certain foreign corporations whose shares are quoted in Canadian Stock Exchanges, at least 85% of its income is Canadian source and it is subject to Canadian tax. In this case, the credit is limited to 20% of the dividend net of foreign tax. Nonresidents do not qualify for this 20% credit.

problems where the Canadian corporation has both foreign subsidiaries and shareholders—i.e. two or more withholding taxes will frequently be imposed before the dividend reaches the individual shareholder. To alleviate this problem, the White Paper proposes that individual shareholders of Canadian corporations be granted a tax credit up to 15% of all foreign withholding taxes on dividends received and branch profits earned abroad.[17] This "flow-through" procedure would apply indirectly to foreign individual shareholders of Canadian corporations as well. Note that this flow-through would apply to both controlled and non-controlled foreign corporation dividends.

The result desired is to equalize the taxation of Canadian shareholders receiving foreign dividends directly with those receiving same from Canadian corporations (including mutual funds). Foreign shareholders would also be able to receive the same net dividend as a Canadian shareholder—presently the Canadian shareholder receives a $ 85 net dividend from a $ 100 foreign dividend (assuming $ 15 foreign withholding tax) while a nonresident receives a $ 72.25 net dividend (after further imposition of Canadian withholding tax at 15%).

The result would be to yield higher net dividends received for foreign shareholders but for Canadian shareholders the computation must take Canadian individual income tax into account and this complicates the procedure. Generally, the net dividend income retained by Canadian shareholders would seem—under the proposals—to increase for non-controlled foreign corporate dividends and decrease for controlled foreign corporation dividends. Further details from the Government are expected in this complicated area.

In terms of international tax planning, little can be said until the Government provides these details and tax treaty negotiations deal with the many problems involved in the flow-through procedure. The main problem would seem to be how foreign countries such as the United States and the United Kingdom will treat the higher net dividends received—i.e. whether allowance will be made for the flow-through tax credit.

## VI. "FOREIGN BUSINESS CORPORATIONS"

The income tax exemption of the special status "foreign business corporations" granted by ITA, sec. 71 will be eliminated gradually—i.e. in 1974 for business profits (or whenever the "Subpart F"-type system for taxing "passive income" is introduced) and over five years for business profits. The latter profits will come under the foreign tax-credit system. The Government indicates that such corporations will assumedly qualify their foreign operations as controlled foreign corporations before the transitional period is over—assumedly in 1975.

The first effect of this proposal will be to bill the traffic in foreign business corporation charters—only those incorporated before 1959 now qualify for tax exemption and even these will now be anachronisms. The second effect will be a forced re-alignment of such corporations' structures and the main problem here is that most escape foreign tax as well as Canadian tax by location of foreign operations in tax havens. Non-treaty tax havens will be extremely disadvantageous locations for Canadians by 1974. Sauve qui peut!

---

17. The amount qualifying for flow-through would, in all cases, be limited to the lesser of a) the foreign tax, or b) 15% of the foreign earnings net of all foreign taxes, including withholding tax.

## VII. FOREIGN SOURCE CAPITAL GAINS AND LOSSES

Capital gains are presently exempt from income tax in Canada. The White Paper's proposal[18] is that, generally, capital gains (and losses) be included in income and be taxed (or deducted) at progressive income tax rates. However, only half of the capital gains on shares of widely-held Canadian corporations would be included in income and one half of the losses deductible. Revaluation of these shares would be required at five-year intervals and one half of the gain or loss included in income in that year. Widely-held Canadian corporations would pay a special 33% capital gains tax to avoid double taxation. Conversely, capital gains on shares of foreign or closely-held Canadian corporations (as well as profits on bonds, mortgages, real estate and agreements for sale) would be fully taxable and losses fully deductible. The five-year revaluation/taxation rule would not, of course, apply to foreign corporations' shares.

These capital gains proposals undoubtedly will induce many Canadian investors to put their money in widely-held Canadian corporate shares but the five year revaluation /taxation rule will exert a countervailing influence in favor of foreign shares.

Two specific capital gains proposals disfavor sales of shares of or to foreign corporations: First, rollover relief[19] would not be granted in the case of transfers of assets by a shareholder to a wholly-owned foreign corporation[20], nor to corporate reorganizations or mergers involving foreign corporations.[21] This latter proposal would seem to unduly prejudice reorganization of, especially, controlled foreign corporations and wholly-owned subsidiaries of Canadian parent corporations. Hopefully, the Government and taxpayers will thrash out this problem before the reforms are finally enacted.

Second, the capital gains proposals are specifically extended to gains and losses on shares of controlled (as well as non-controlled) foreign corporations. In most cases the 33-1/3% rate for corporations would apply fully to such sales. A special avoidance measure would limit deductible capital losses to actually-realized loss, minus an amount equal to the dividends received from the corporations which had not borne full Canadian corporation tax.

Ultimate capital gains tax liability would, of course, be reduced by declaration of dividends before sale of the shares. Since such dividends are/or will be either exempt (see section II, *supra*) or subject to foreign tax credit provisions, an ex-dividend sale procedure would seem the preferable route. Spin-offs of selected controlled foreign subsidiaries should also be contemplated during 1970 in order to avoid the capital gains provisions which will go into effect either in late 1970 or early 1971.

---

18. White Paper, paras. 3.13-3.38.
19. Rollover relief will consist of nonrecognition of gain in cases where the taxpayer uses the whole of the proceeds of a sale of a capital asset to purchase similar property within a year of receipt of the proceeds. The gain would be treated as a reduction in the cost to him of the new property and not be taxable until and when he disposes of the replacement property.
20. White Paper, para. 3.47.
21. White Paper, para. 3.51.

# DEVELOPMENTS IN INTERNATIONAL TAX LAW

1. *The new Protocol to the German-French tax convention of July 21, 1959, signed on June 9, 1969, provided* inter alia *a special tax credit to be granted by Germany with respect to dividends distributed by French companies to their German shareholders. This special credit ("avoir fiscal" in French and "Steuergutschrift" in German) would amount to one half of the dividend received and would be creditable against the German income tax. The above mentioned credit is not applicable to parent companies. The Protocol provides for an exemption from French withholding tax (15%) for dividend distributions by French subsidiaries to their German parent companies, provided that such parent companies own 25% or more of their subsidiaries' capital.*
   *The official* French *explanation and text of this important Protocol is reproduced below.*★.

2. *It is stated in the Loi des finances 1970 that the French Government will attempt to make similar arrangements with other countries for dividends distributed in 1970. For this purpose tax conventions must be concluded or renegotiated. On December 3, 1969, an additional clause to the Franco-Swiss tax convention of September 9, 1966, was signed whereby the "avoir fiscal" is to be extended to shareholders resident in Switzerland.*
   *The official* Swiss *explanation and text of this Protocol is reproduced on p. 68*★★

**Avenant à la Convention du 21 juillet 1959 entre la République française et la République fédérale d'Allemagne**

## I. Exposé des motifs français[1]

Le 9 juin dernier a été signé à Bonn un avenant à la Convention fiscale du 21 juillet 1959 entre la France et la République fédérale d'Allemagne.

Cet avenant a essentiellement pour objet de modifier l'accord précité, qui règle les relations fiscales entre la France et l'Allemagne fédérale en ce qui concerne les impôts sur le revenu et sur la fortune ainsi qu'en matière de contributions foncières et des patentes, pour l'adapter aux changements introduits dans la législation française par la loi n° 65-566 du 12 juillet 1965 portant réforme du régime d'imposition des bénéfices des entreprises et des revenus de capitaux mobiliers.

A cet égard, il doit être rappelé qu'en vertu de ladite loi, les dividendes distribués par les sociétés françaises à des personnes domiciliées en France ouvrent droit depuis le 1er janvier 1966 à un avoir fiscal d'un montant égal à la moitié des sommes distribuées. En revanche, lorsqu'ils bénéficient à des personnes n'ayant pas leur domicile en France, ces mêmes dividendes restent soumis

★ The text of the convention of July 21, 1959, has been published in Supplementary Service to European Taxation, Section C.

★★ The text of the convention of September 9, 1966, has been published in Supplementary Service to European Taxation, Section C.

1. Le 26 novembre 1969: Projet de loi no. 909 Assemblée Nationale 1969/70.

à une retenue à la source au taux de 25%, réduite toutefois à 15% au plan des rapports franco-allemands par l'effet de la Convention du 21 juillet 1959.

Les perspectives offertes par la coopération économique internationale ont conduit, dès septembre 1967, le Gouvernement à accepter d'étendre, par la voie d'accords négociés, le bénéfice de l'avoir fiscal aux résidents de pays étrangers et en premier lieu, aux résidents des pays membres de la Communauté économique européenne. Les pourparlers engagés à ce sujet avec notre plus important partenaire au sein de la C.E.E. ont pu aboutir rapidement à un accord de principe en raison d'une convergence évidente entre les préoccupations françaises et le système d'imposition appliqué en République fédérale dans le domaine considéré. C'est cet Accord, intervenu à Paris en février 1968 lors d'une rencontre entre les Ministres des Finances français et allemand, que consacre l'Avenant signé à Bonn le 9 juin 1969. Le texte soumis à votre approbation, règle également un certain nombre de questions subsidiaires et apporte à la Convention du 21 juillet 1959 les adaptations de forme rendues nécessaires par le changement fondamental survenu dans le domaine considéré au plan des rapports fiscaux franco-allemands.

Le préambule de l'avenant comporte une référence aux relations particulières établies entre les pays membres de la C.E.E. et aux préoccupations communes de ces Etats dans le domaine de la fiscalité. Toutefois, cette mention d'un choix prioritaire effectué par la France n'implique en aucune façon qu'un accord de même nature ne pourra pas être conclu avec d'autres pays étrangers intéressés.

Les articles du texte peuvent être classés suivant deux catégories selon qu'ils concernent:

— les dispositions se rattachant à l'attribution de l'avoir fiscal aux résidents allemands;

— les dispositions diverses.

En premier lieu, l'article 1er du Protocole dispose que les sociétés allemandes ayant un établissement stable en France ne seront plus soumises à l'impôt de distribution prévu par l'article 115 *quinquies* du Code général des impôts. En conséquence, le texte dudit article 1er se substitue à celui de l'article 8 de la Convention de 1959 qui permettait précisément l'assujettissement de ces sociétés à un impôt de cette nature.

Par ailleurs, les articles 2 et 3 de l'avenant modifiant respectivement les articles 9 et 20 de la Convention de 1959, l'application combinée des dispositions nouvelles doit être entendue de la façon suivante.

D'une part, en vertu des articles 9–3 et 20–1 (*b* bb) ainsi modifiés de la convention, l'avoir fiscal attaché aux dividendes distribués par les sociétés françaises sera accordé, dans les mêmes conditions qu'aux contribuables domiciliés en France, aux personnes physiques résidentes d'Allemagne fédérale et aux sociétés allemandes qui, ne détenant pas au moins 25% du capital social de la société distributrice française, ne bénéficient pas, de fait, du régime des sociétés mères et filiales (Schachtelprivileg) pour leurs dividendes de source française.

Cet avoir fiscal, qui correspond actuellement à la moitié du dividende distribué, constituera un revenu supplémentaire pour le bénéficiaire et devra, par suite, être ajouté au montant du dividende distribué pour la détermination de la base de l'imposition allemande. En contrepartie, il sera imputable sur l'impôt allemand et éventuellement restituable dans la mesure où il n'aura pu être imputé en totalité.

Il donnera lieu à remboursement par le Trésor français au Trésor allemand sous déduction toutefois d'un abattement de 15% correspondant à la retenue à la source normalement exigible par application de l'article

9 (§ 2) de la Convention. Ainsi, pour un dividende de 100 ouvrant droit à un avoir fiscal de 50, l'abattement s'élèvera à (100 + 50) × 15% = 22,5 et le remboursement à effectuer par le Trésor français à 50 — 22,5 = 27,5, c'est-à-dire 27,5% du montant du dividende distribué.

D'autre part, conformément à la disposition figurant au paragraphe 4 nouveau de l'article 9 de la Convention (art. 2 de l'avenant *b*, 2e alinéa) les dividendes distribués par une filiale française à une société mère allemande qui détient 25% au moins de son capital n'ouvriront pas droit à l'avoir fiscal au profit de la société mère allemande mais ne donneront lieu à aucune perception en France au titre de la retenue à la source. Ils seront donc transférés en République fédérale sur la base de leur montant net. En outre, ces dividendes n'ouvrant pas droit à l'avoir fiscal, le précompte éventuellement prélevé lors de la distribution sera remboursé à la société allemande.

Quant au paragraphe 7 nouveau de l'article 9 de la Convention (art. 2-2 de l'avenant) il permet notamment à la France de soumettre à la retenue à la source, réduite au taux de 15% conformément à l'article 9 (§ 2) de l'Accord, les produits distribués par les sociétés de personnes soumises au régime des sociétés de capitaux et, en particulier, les produits revenant aux commanditaires résidents allemands dans les sociétés en commandite simple françaises. Toutefois, ces mêmes revenus n'étant pas compris dans les bases de l'impôt allemand, n'ouvrent pas droit, bien entendu, à l'attribution de l'avoir fiscal.

Par ailleurs, l'article 20 nouveau de la Convention précitée énonce les modalités selon lesquelles sera évitée la double imposition.

Le paragraphe 1 *a* dudit article fixe le régime fiscal appliqué en Allemagne fédérale aux revenus dont l'imposition est attribuée à la France par la Convention. Ces revenus ne sont pas imposables en République fédérale, mais cet Etat peut néanmoins les prendre en compte pour la détermination du taux de l'impôt applicable éventuellement aux autres revenus dont la taxation lui est attribuée.

La portée de la disposition précédente est précisée par le paragraphe 1 (*b* aa) du même article 20 en ce qui concerne les dividendes. A l'égard de ces revenus, la disposition précitée du paragraphe 1 *a* ne trouve pas à s'appliquer, réserve faite du seul cas des dividendes exonérés de retenue en France en vertu du paragraphe 4 susvisé de l'article 9 de la Convention, c'est-à-dire des dividendes versés par une société française à une société mère allemande qui détient 25% de son capital. Ces produits ne sont pas soumis à l'impôt sur les sociétés en Allemagne.

Quant à l'impôt français perçu sur les dividendes n'ouvrant pas droit à l'avoir fiscal selon la législation française ainsi que sur les tantièmes, jetons de présence et autres allocations des membres des conseils d'administration des sociétés, il est imputé sur l'impôt allemand afférent à ces mêmes revenus (Avenant, art. 3; Convention art. 20 (§ 1 *c*).

Du côté français, les revenus imposables en République fédérale en application de la Convention, à l'exception des dividendes provenant d'Allemagne fédérale et des rémunérations des membres des conseils d'administration, continueront d'être exonérés en France. Toutefois l'impôt afférent aux autres revenus dont la taxation est attribuée à notre pays sera calculé au taux correspondant à l'ensemble des revenus imposables selon notre législation interne, afin de ne pas réduire indûment la charge fiscale des bénéficiaires de la Convention (art. 20 nouveau de la Convention [§2*a*]). Ces dispositions réalisent une adaptation de simple forme. Elles ne s'écartent pas, en substance, de celles qui figurent avec une portée analo-

gue dans le texte initial de la Convention.
S'agissant de l'impôt allemand perçu sur les dividendes, limité à 15% conformément aux dispositions de l'article 9 (§ 2) de la Convention, il s'imputera sur l'impôt français dû par le bénéficiaire de ces produits. Il sera éventuellement remboursé, selon les modalités prévues en matière d'avoir fiscal, dans la mesure où il n'aurait pu être imputé en totalité (art. 20 nouveau de la Convention (§ 2 *b*).
Quant à l'impôt allemand perçu à la source sur les rémunérations des membres des conseils d'administration des sociétés, visées à l'article 11 de la Convention, il sera imputable sur l'impôt français afférent à ces produits, dans la limite de cet impôt.
Parmi les clauses diverses de l'avenant, figurant sous les articles 4 à 8 de ce texte, il convient de citer:
— La disposition stipulant que les autorités administratives des deux Etats contractants s'entendront pour que les mesures prévues aux articles 8, 9 et 20 nouveaux de la Convention qui, on le rappelle, règlent notamment les modalités d'attribution de l'avoir fiscal, ne puissent bénéficier à des personnes qui ne seraient pas des résidents de la République fédérale (art. 4 de l'Avenant; art. 26-3 nouveau de la Convention).
— L'obligation pour les autorités compétentes de chaque Etat d'informer les autorités de l'autre Etat des modifications apportées à leurs législations fiscales respectives en matière d'impôts sur les sociétés et de distribution et l'engagement pris par les deux Etats contractants de se concerter pour apporter à la Convention les aménagements rendus nécessaires par lesdites modifications (art. 5 de l'Avenant; art. 30 *bis* de la Convention),
— le champ territorial des dispositions de l'avenant qui pourront s'appliquer au Land Berlin (art. 6 de l'Avenant).
— Les modalités suivant lesquelles l'Avenant qui fera partie intégrante de la Convention, entrera en vigueur et pourra être dénoncé (art. 7 et 8 de l'Avenant). A cet égard il est à remarquer que si l'Avenant doit entrer en vigueur à la date de l'échange des instruments de ratification, ses dispositions s'appliqueront cependant pour la première fois:
- en ce qui concerne les sociétés de la République fédérale allemande qui ont un établissement stable en France aux impôts exigibles au titre de l'exercice 1968;
- en ce qui concerne les dispositions relatives au nouveau régime d'imposition des dividendes aux impôts exigibles sur les produits de cette nature mis en paiement à compter du 1er janvier 1968.

Aussi bien, en raison de cette portée rétroactive, dont l'application s'avère délicate au plan technique, est-il souhaitable que l'entrée en vigueur de ce texte intervienne le plus rapidement possible. Enfin, l'Avenant restera en vigueur aussi longtemps que la Convention du 21 juillet 1959 sera elle-même applicable.
En réalisant, au plan des rapports franco-allemands, les conditions d'un équilibre fiscal, le présent Avenant doit favoriser le développement des relations économiques et financières entre les deux Etats. En outre, par sa valeur exemplaire, il ouvre la voie vers la conclusion d'accords analogues avec les autres partenaires économiques de la France dans le domaine considéré.
Telles sont les principales dispositions de l'Avenant à la Convention fiscale franco-allemande précitée qui vous est aujourd'hui soumis en vertu de l'article 53 de la Constitution.

# ANNEXE

## II. Texte

Désireux, dans le cadre des relations entre les pays membres de la Communauté économique européenne, de favoriser le développement économique des deux pays et de rapprocher, dans la mesure du possible, la charge fiscale sur les bénéfices réalisés par des sociétés résidents de l'un ou l'autre Etat qui sont distribués à des résidents de chacun de ces Etats, le Président de la République française et le Président de la République fédérale d'Allemagne ont décidé de modifier en conséquence certaines dispositions de la Convention fiscale, signée à Paris le 21 juillet 1959, et ont nommé à cet effet, pour leurs plénipotentiaires:

Le Président de la République française: Son Excellence M. François Seydoux de Clausonne, Ambassadeur de France;

Le Président de la République fédérale d'Allemagne: M. Willy Brandt, Ministre Fédéral des Affaires étrangères, et M. Walter Grund, Secrétaire d'Etat au Ministère fédéral des Finances,

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

*Art. 1er.* — L'article 8 de la Convention est remplacé par le disposition suivante:

*Article 8*

Les sociétés résidents de la République fédérale qui possèdent en France un établissement stable ne sont pas soumises à l'impôt de distribution visé à l'article 115 *quinquies* du Code général des Impôts.

*Art. 2.* — L'article 9 de la Convention est modifié de la façon suivante:

*Article 9*

*a*) Le paragraphe 1 est remplacé par la disposition suivante:

1. Les dividendes payés par une société qui est un résident d'un Etat contractant à un résident de l'autre Etat contractant sont imposables dans cet autre Etat.

*b*) Après le pagraphe 2 sont insérés les paragraphes suivants:

3. Par dérogation au paragraphe 2 les dividendes payés à un résident de la République fédérale par une société résident de France, dont les distributions, si elles étaient faites au profit d'une personne résident de France, ouvriraient droit à un avoir fiscal, ne donnent pas lieu au prélèvement de l'impôt français, cet impôt étant acquitté par le règlement visé à l'article 20 (§ 1 *b* et *bb*).

4. Par dérogation aux paragraphes 2 et 3, les dividendes payés par une société de capitaux résident de France à une société de capitaux résident de la République fédérale qui détient au moins 25 p. 100 du capital social de la première société ne peuvent pas être imposés en France. Le précompte éventuellement prélevé lors du versement de ces dividendes est remboursé à cette société de la République fédérale.

*c*) Le paragraphe 3 devient le paragraphe 5.

*d*) Le paragraphe 4 devient le paragraphe 6 et la référence qui y est faite au paragraphe 5 est remplacée par une référence au nouveau paragraphe 7.

*e*) Le paragraphe 5 est remplacé par le nouveau paragraphe 7 ci-dessous:

7. Dans la mesure où les dispositions des articles 4 et 6 confèrent à la France le droit d'imposer les bénéfices des sociétés mentionnées au paragraphe 3 de l'article 4, les revenus provenant de ces bénéfices, qui sont regardés comme des dividendes au sens de la législation française, sont imposables selon

les dispositions du paragraphe 2 du présent article.

*f*) Le paragraphe 6 devient le paragraphe 8 et la référence qui y est faite aux paragraphes 1 à 3 est remplacée par une référence aux paragraphes 1 à 5.

*Art. 3.* — L'article 20 de la Convention est remplacé par les dispositions suivantes:

*Article 20*

1. En ce qui concerne les résidents de la République fédérale, la double imposition est évitée de la façon suivante:

*a*) Sous réserve des dispositions des alinéas *b* et *c*, sont exclus de la base de l'imposition allemande les revenus provenant de France et les éléments de la fortune situés en France qui, en vertu de la présente Convention, sont imposables en France. Cette règle ne limite pas le droit de la République fédérale de tenir compte, lors de la détermination du taux de ses impôts, des revenus et des éléments de la fortune ainsi exclus.

*b*) aa) En ce qui concerne les dividendes, les dispositions de l'alinéa *a* ne sont applicables que dans le cas où les dividendes sont versés par une société de capitaux résident de France à une société de capitaux résident de la République fédérale qui détient au moins 25 p. 100 du capital social de la première société. Sont également soumises à cette règle, les participations dont les dividendes tomberaient sous le coup de la phrase précédente.

bb) Les dividendes non visés au sous-alinéa aa ci-dessus et distribués par une société résident de France, visée à l'article 9 (§ 3), sont soumis au régime suivant:

Le résident de la République fédérale bénéficie d'un avoir fiscal égal à celui qui est accordé aux résidents de France au moment de la distribution des dividendes pour des produits de même nature; le montant de cet avoir fiscal correspond actuellement à la moitié du dividende distribué. Cet avoir fiscal qui constitue un revenu supplémentaire pour le bénéficiaire est ajouté au montant du dividende distribué pour la détermination de la base de l'imposition allemande. L'avoir fiscal est imputé sur l'impôt allemand afférent au dividende ainsi majoré. Dans la mesure où l'avoir fiscal excède cet impôt allemand, l'excédent est remboursé lorsqu'il ne peut pas être compensé par l'impôt allemand afférent à d'autres revenus. Le Trésor français rembourse au Trésor allemand un montant égal à cet avoir fiscal; cependant le Trésor français déduit de ce montant une somme correspondant à la retenue à la source calculée au taux de 15 p. 100 sur le total composé du dividende et de l'avoir fiscal. Sur la base d'un avoir fiscal égal à la moitié du dividende distribué, le montant du remboursement à effectuer par le Trésor français s'établit actuellement à 27,5 p. 100 de ce même dividende.

*c*) L'impôt français perçu conformément à la présente Convention sur les dividendes autres que ceux visés à l'alinéa *b* ci-dessus ainsi que sur les revenus visés à l'article 11 qui proviennent de France est imputé sur l'impôt allemand afférent à ces mêmes revenus.

Les revenus mentionnés au paragraphe 7 de l'article 9 ne sont pas considérés comme des dividendes pour l'application du présent alinéa.

2. En ce qui concerne les résidents de France, la double imposition est évitée de la façon suivante:

*a*) Sous réserve des dispositions des alinéas *b* et *c* sont exclus de la base de l'imposition française les revenus provenant de la République fédérale qui, en vertu de la présente Convention, sont imposables en République fédérale. Cette règle ne limite cependant pas le droit de la France de tenir compte, lors de la détermination du taux de ses impôts, des revenus ainsi exclus.

*b*) L'impôt allemand perçu conformément aux dispositions de l'article 9 (§ 2) sur les dividendes provenant de la République fédérale est imputé sur l'impôt français dû par le bénéficiaire de ces produits. L'excédent éventuel est remboursé au contribuable selon les modalités prévues par la législation fiscale française en matière d'avoir fiscal.

*c*) L'impôt allemand perçu conformément aux dispositions de l'article 11 (§ 2) sur les produits visés dans cette disposition est imputé sur la part de l'impôt français afférent aux mêmes produits.

*Art. 4.* — Il est ajouté à l'article 26 de la convention le paragraphe suivant:

3. Les autorités compétentes s'entendront pour que les mesures prévues aux articles 8, 9 et 20 de la présente Convention ne bénéficient pas à des personnes qui ne seraient pas résidents de la République fédérale.

*Art. 5.* — Il est inséré dans la Convention l'article suivant:

*Article 30 bis*

1. Les autorités compétentes de chaque Etat contractant sont tenues d'informer les autorités compétentes de l'autre Etat des modifications apportées à leur législation fiscale respective dans le domaine de l'imposition des sociétés et des revenus distribués. Cette information doit être donnée dès la promulgation de ces modifications.

2. Les Etats contractants se concerteront pour apporter aux dispositions de la présente Convention les aménagements qui seraient rendus nécessaires par les modifications visées au paragraphe 1 ci-dessus.

*Art. 6.* — Le présent Avenant s'appliquera également au Land Berlin, sauf déclaration contraire faite par le Gouvernement de la République fédérale d'Allemagne au Gouvernement de la République française, dans les trois mois qui suivent son entrée en vigueur.

*Art. 7.* — 1. Cet Avenant sera ratifié et les instruments de ratification seront échangés à Paris dans le plus bref délai.

2. L'Avenant entrera en vigueur à la date de l'échange des instruments de ratification; ses dispositions s'appliqueront pour la première fois:

En ce qui concerne l'article 1er, aux impôts exigibles au titre de l'exercice 1968 des sociétés résidents de la République fédérale qui ont un établissement stable en France;

En ce qui concerne les article 2 et 3, aux impôts exigibles tant en France qu'en République fédérale sur les dividendes mis en paiement depuis le 1er janvier 1968.

*Art. 8.* — Le présent Avenant fait partie intégrante de la convention du 21 juillet 1959 et restera en vigueur aussi longtemps que la Convention sera applicable.

En foi de quoi les plénipotentiaires des deux Etats ont signé le présent Avenant et y ont apposé leur sceau.

Fait à Bonn, le 9 juin 1969, en deux originaux, chacun en langue française et en langue allemande, les deux textes faisant également foi.

Pour la République française:
F. Seydoux

Pour la République fédérale d'Allemagne:
W. Brandt
W. Grund

# Zusatzabkommen zu dem zwischen der Schweiz und Frankreich abgeschlossenen Abkommen zur Vermeidung der Doppelbesteuerung auf dem Gebiete der Steuern von Einkommen und vom Vermögen

## I. Botschaft des schweizerischen Bundesrates an die Bundesversammlung*

Am 3. Dezember 1969 ist in Paris ein Zusatzabkommen zu dem am 9. September 1966 zwischen der Schweiz und Frankreich abgeschlossenen Abkommen zur Vermeidung der Doppelbesteuerung auf dem Gebiete der Steuern vom Einkommen und vom Vermögen unterzeichnet worden. Wir beehren uns, Ihnen dieses Zusatzabkommen, das die Bestimmungen des geltenden Abkommens über die Besteuerung von Dividenden wesentlich verbessert, hiemit zur Genehmigung zu unterbreiten.

### I. ALLGEMEINES

1. Das schweizerisch-französische Abkommen vom 9. September 1966 zur Vermeidung der Doppelbesteuerung auf dem Gebiete der Steuern vom Einkommen und vom Vermögen (AS *1967* 1079) hat für die Schweiz gegenüber dem vorangegangenen Abkommen vom 31. Dezember 1953 eine spürbare Verschlechterung mit sich gebracht. Um einen vertragslosen Zustand zu vermeiden, musste die Schweiz Quellensteuerrückbehalten von 15 Prozent auf Dividenden, 10 Prozent auf Zinsen und 5 Prozent auf Lizenzgebühren zustimmen (Art. 11, 12 und 13 des Abkommens). Im weiteren ist der Wohnsitzstaat des Empfängers solcher Einkünfte verpflichtet, die dem Quellenstaat zugestandene Steuer an seine eigenen Steuern anzurechnen (für die Schweiz vgl. Art. 25 Buchst. *B* Abs. 2 des Abkommens). Trotz den Bemühungen der schweizerischen Unterhändler konnte damals für die schweizerischen Aktionäre eine Vergünstigung, die der nach internem französischen Steuerrecht den in Frankreich ansässigen Aktionären zustehenden Steuergutschrift („avoir fiscal") entspricht, nicht erreicht werden (vgl. Botschaft vom 18. Okt. 1966; BBl *1966* II 580/81, 584 und 588). Die französische Delegation hatte dagegen zugesichert, die Frage in einem späteren Zeitpunkt erneut zu erörtern, falls Frankreich einem dritten Staat für dort ansässige Aktionäre französischer Gesellschaften einen besonderen Vorteil zugestehe, der der Steuergutschrift Rechnung trage, sofern dieser Vorteil sich nicht auf besondere, dem dritten Staat gegenüber bestehende Gründe stütze. Die Bundesversammlung (am 8. März 1967 der Ständerat und am 7. Juni 1967 der Nationalrat) hat die Genehmigung des Abkomens vom 9. September 1966 nur unter grössten Bedenken ausgesprochen. In Postulaten ihrer Kommissionen haben der Nationalrat und der Ständerat den Bundesrat u.a. eingeladen, bei nächster Gelegenheit neue Verhandlungen mit Frankreich einzuleiten, mit dem Ziel, ein den schweizerischen Auffassungen besser entsprechendes Abkommen abzuschliessen. Ferner hat Nationalrat Eisenring den Bundesrat in einem Postulat ersucht, Aufschluss zu geben über den Stand der Anstrengungen zur baldigen Revision des Abkommens, die namentlich den Gesellschaften mit wesentlichen Beteiligungen eine günstigere Regelung verschaffen sollte, wie sie inzwischen Frankreich den Vereinigten Staaten von Amerika zugestanden hat (Postulat Nr. 9910 vom 12. März 1968).

---

* Vom 15. Dezember 1969.

2. Die Gelegenheit, Verhandlungen über eine solche Revision zu eröffnen, zeigte sich im November 1967, als die französische Generaldirektion der Steuern der Eidgenössischen Steuerverwaltung mitteilte, Frankreich habe mit verschiedenen europäischen Staaten Gespräche darüber aufgenommen, wie die steuerliche Belastung der Empfänger französischer Dividenden auszugleichen sei, und anregte, dieses Problem auch im Hinblick auf die schweizerisch-französischen Beziehungen zu untersuchen. Eine erste Begegnung zwischen schweizerischen und französischen Experten fand am 30. und 31. Januar 1968 in Bern statt; sie beschränkte sich auf einem Meinungsaustausch. Die französischen Unterhändler unterstrichen von vornherein, dass es nicht Zweck der Verhandlungen sein könne, die im Abkommen von 1966 vereinbarten Bestimmungen wieder aufzugreifen, sondern nur, eine Lösung zur Milderung der von der französischen Gesetzgebung bewirkten Benachteiligung schweizerischer Empfänger von französischen Dividenden gegenüber französischen Aktionären zu suchen.

3. Am 27 März 1968 bestellte der Bundesrat eine schweizerische Delegation aus Vertretern der Eidgenössischen Steuerverwaltung, des Eidgenössischen Politischen Departements und der interessierten Wirtschaftskreise; sie wurde beauftragt, über die teilweise Revision des Abkommens von 1966 zu verhandeln. Die Besprechungen wurden im April 1968 in Paris weitergeführt. Die französischen Unterhändler erklärten sich zwar bereit, die Steuergutschrift („avoir fiscal") im Betrage von 50 Prozent der erklärten Dividende auch den in der Schweiz ansässigen Empfängern französischer Dividenden zu gewähren; sie wollten aber ursprünglich den Kreis der Begünstigten auf schweizerische Aktionäre beschränken, die auf diesen Einkünften die vollen schweizerischen Steuern entrichten. Dadurch wären alle in der Schweiz ansässigen Gesellschaften, die für ihre Dividendeneinkünfte eine Entlastung (Holdingprivileg) geniessen, von der Steuergutschrift ausgeschlossen worden. Die schweizerische Delegation konnte diesem französischen Vorschlag nicht zustimmen, da er die bedeutendsten schweizerischen Aktionäre von der Anwendung günstigerer Bestimmungen auf dem Gebiet der Dividendenbesteuerung ausgeschlossen hätte. Die Ereignisse vom Frühjahr 1968 verhinderten eine Fortführung der Verhandlungen; sie wurden erst im Herbst 1969 wieder aufgenommen, nachdem Frankreich mit der Bundesrepublik Deutschland ein Abkommen mit weit günstigeren Bestimmungen abgeschlossen hatte, als sie bisher der Schweiz angeboten worden waren.

Auf schweizerisches Begehren wurden die Verhandlungen vom 6. bis 9. Oktober 1969 in Bern fortgesetzt. Die französische Delegation bestand darauf, dass die Änderung des Abkommens für den schweizerischen und den französischen Fiskus ausgewogen sei; die französische Regierung könne nicht einer Änderung zustimmen, die in der französischen Öffentlichkeit und im Parlament, die beide für wirtschaftliche und budgetäre Zusammenhänge sehr hellhörig seien, Kritik hervorrufen könnte. Den schweizerischen Unterhändlern wurde auch bedeutet, dass das französisch-deutsche Abkommen vom 9. Juni 1969 keinesfalls als Grundlage für die Verhandlungen mit der Schweiz dienen könne, da dieses Abkommen eher auf politischen denn auf technischen Überlegungen beruhe und unter Umständen abgeschlossen worden sei, die im schweizerisch-französischen Verhältnis keine Parallelen fänden. Die französische Delegation sicherte aber zu, dass die Lösung für die Schweiz keinesfalls ungünstiger ausfallen werde als für andere Staaten, mit welchen Frankreich gegenwär-

tig über dasselbe Problem verhandle.
Die schweizerische Delegation strebte hierauf zugunsten der in der Schweiz ansässigen Personen, die auf den Dividenden keine Steuern entrichten und die Frankreich beharrlich von der Steuergutschrift ausschliessen wollte, einen Ausgleich für diese Benachteiligung an. Die französische Delegation konnte sich nicht dazu entschliessen, den Quellensteuerrückbehalt auf Dividenden ganz aufzuheben, wie dies schweizerischerseits gewünscht worden war; sie war aber schliesslich bereit, diesen Rückbehalt für die von der Steuergutschrift ausgeschlossenen Gesellschaften von 15 auf 5 Prozent herabzusetzen. Die schweizerische Delegation stimmte dieser Lösung erst zu, nachdem sie ihre Gesprächspartner hatte veranlassen können, diesen Satz von 5 Prozent für beide Seiten (unter Vorbehalt der in Ziff. 4 Buchst. *b* Abs. 2 hienach erwähnten Fälle) und für alle in einem Vertragsstaat ansässigen Empfänger von aus dem anderen Vertragsstaat stammenden Dividenden anzunehmen. Dieser allgemein anwendbare Satz von 5 Prozent wird anstelle des gegenwärtig gültigen Satzes von 15 Prozent treten und auch dann weitergelten, wenn in der französischen Gesetzgebung die Steuergutschrift fallengelassen würde. Es gelang der schweizerischen Delegation ferner, die Steuerlast schweizerischer Gesellschaften mit Betriebsstätten in Frankreich herabzusetzen, indem die Bestimmungen des Artikels 10 des Abkommens gemildert wurden. So konnten die Besprechungen vom Oktober 1969 mit der Paraphierung des Entwurfs zu einem Zusatzabkommen abgeschlossen werden; dieses Zusatzabkommen wurde, wie erwähnt, am 3. Dezember 1969 in Paris unterzeichnet.
4. Kurz zusammengefasst enthält das Zusatzabkommen folgende Lösungen:

*a. Natürliche Personen und Gesellschaften ohne wesentliche Beteiligungen*
Es wird vorgesehen, die den in Frankreich ansässigen Aktionären zustehende Steuergutschrift („avoir fiscal") auf die in der Schweiz ansässigen natürlichen Personen und Gesellschaften mit einer Beteiligung von weniger als 20 Prozent am Kapital der die Dividenden zahlenden Gesellschaft auszudehnen, wobei aber der Steuerrückbehalt, berechnet zum Satz von 15 Prozent auf dem um die Steuergutschrift erhöhten Betrag der ausgeschütteten Dividende, abgezogen wird. Im Ergebnis erhält, nach dem heutigen Stand der französischen Gesetzgebung, der schweizerische Aktionär bei einer erklärten Dividende von 100 insgesamt 127,50 (nämlich 150 abzüglich des Rückbehalts von 22,50, d.h. eine Erhöhung um 42,50; dies ist die Hälfte mehr als nach der zur Zeit geltenden Regelung, unter der der schweizerische Aktionär bei gleicher Dividende nur 85 erhält); ferner kann er für 22,50 (d.h. 15% von 150) beim schweizerischen Fiskus die pauschale Steueranrechnung beanspruchen. Damit wird der schweizerische dem französischen Aktionär gleichgestellt.

*b. Gesellschaften mit wesentlicher Beteiligung*
Ausser in dem im zweiten Absatz genannten Fall können die in der Schweiz ansässigen Gesellschaften, die eine wesentliche Beteiligung am Kapital der die Dividenden zahlenden französischen Gesellschaft besitzen, für die Dividenden eine Herabsetzung des Quellensteuerrückbehalts auf 5 Prozent beanspruchen, sofern sie die Bedingungen von Artikel 14 Absatz 1 des Abkommens erfüllen. Diese Gesellschaften erhalten bei einer erklärten Dividende von 100 in Zukunft 95 statt nur wie bisher 85. Ausserdem können sie die Rückerstattung der allenfalls erhobenen Vorauszahlung („précompte") unter Abzug von nur 5 (statt wie bisher 15) Pro-

zent verlangen.

Die Schweiz musste einer Ausnahme zustimmen: Denjenigen in der Schweiz ansässigen Gesellschaften mit wesentlicher Beteiligung, an denen nicht in der Schweiz ansässige Personen überwiegend, unmittelbar oder mittelbar, durch Beteiligung oder in anderer Weise interessiert sind, wird die Herabsetzung des Steuerrückbehalts auf den normalen Satz von 5 Prozent nur dann zugestanden, wenn sie die Bedingungen von Artikel 14 Absatz 1 des Abkommens erfüllen und wenn ausserdem entweder ihre Aktien oder diejenigen der die Dividenden zahlenden Gesellschaft an der Börse kotiert sind oder ausserbörslich gehandelt werden. Ausländisch beherrschte Gesellschaften, die diese zusätzliche Bedingung nicht erfüllen, bleiben dem bisherigen Quellensteuerrückbehalt von 15 Prozent unterworfen.

*c. Besteuerung französischer Betriebsstätten schweizerischer Gesellschaften*

Die Änderung von Artikel 11 des Abkommens machte eine Anpassung von Artikel 10 nötig. Die schweizerische Delegation hat bei dieser Gelegenheit die Aufhebung von Artikel 10 des 1966 abgeschlossenen Abkommens verlangt, der Frankreich erlaubt von schweizerischen Gesellschaften mit Betriebsstätte in Frankreich den Quellensteuerrückbehalt zum Satz von 15 Prozent auf zwei Dritteln des Betriebsstättegewinns zu erheben. Die französischen Unterhändler erklärten, der völligen Streichung dieser Besteuerung nicht zustimmen zu können. Es war jedoch möglich, die erwähnte Bestimmung in dem Sinne zu mildern, dass der Steuersatz künftig auf 5 Prozent herabgesetzt, aber auf den Gesamtgewinn angewendet wird. Im Vergleich zum heutigen Zustand bedeutet das immerhin eine Herabsetzung der Steuerlast auf die Hälfte.

*d. Inkrafttreten des Zusatzabkommens*

Das Zusatzabkommen findet ab 1. Januar 1970 Anwendung. Die französische Delegation hat eine rückwirkende Anwendung seiner Bestimmungen wegen administrativer Schwierigkeiten und vor allem deshalb abgelehnt, weil sie die französische Staatskasse zu teuer zu stehen käme.

Die schweizerische Delegation stand in engem Kontakt mit den Vertretern der Kantone und der interessierten Kreise der Wirtschaft, mit denen sie die französischen Vorschläge und das Vorgehen in den Verhandlungen unter Beachtung der Instruktionen des Bundesrates besprochen hat. Die zuständigen Vertreter der befragten Kantone und Kreise der Wirtschaft haben das mit Frankreich erzielte Verhandlungsergebnis positiv aufgenommen.

## II. BEMERKUNGEN ZUM ZUSATZABKOMMEN

*Artikel 1*

Die zur Zeit geltende Fassung des Artikels 11 wird wie folgt geändert:

Artikel 11 Absatz 2 sieht vor, dass der Quellenstaat in der Regel auf Dividenden keine 5 Prozent übersteigende Steuer erheben kann (Buchst. b). Von dieser Regel sind Dividenden ausgenommen, die den unter Buchstabe a fallenden Gesellschaften mit wesentlicher Beteiligung zufliessen, welche die zusätzlichen Bedingungen nicht erfüllen (vgl. I 4 b hievor). In diesem Fall unterliegen die Dividenden dem vollen Quellensteuerrückbehalt von 15 Prozent. Eine weitere Ausnahme gilt für Dividenden, welche Aktionären zufliessen, die im Genuss der Steuergutschrift („avoir fiscal") stehen (Abs. 3).

Absatz 3 handelt von den in der Schweiz ansässigen Aktionären, denen die Steuergutschrift („avoir fiscal") zugestanden wird. Diese Bestimmung ist derart abgefasst, dass

allfällige Änderungen des Satzes der Steuergutschrift durch die französische Gesetzgebung auch unter dem schweizerisch-französischen Abkommen Anwendung finden, ohne dass eine Abkommensänderung nötig wäre. Es ist auch darauf hinzuweisen, dass für die in Absatz 3 genannten, in der Schweiz ansässigen Personen nur Artikel 11 Absatz 2 Buchstabe b gelten wird, falls die französische Gesetzgebung die Steuergutschrift („avoir fiscal") einmal fallen lassen sollte. Dies gibt zumindest die Gewissheit, dass der Quellensteuerrückbehalt auf ausgeschütteten Dividenden künftig 5 Prozent nicht mehr übersteigen wird.

Absatz 4 wird aus dem geltenden Abkommen (Abs. 6) übernommen, wird aber auf die von der Vergünstigung der Steuergutschrift ausgeschlossenen Gesellschaften beschränkt.

In Absatz 5 wird die Definition des Ausdrucks „Dividenden" durch die ausdrückliche Erwähnung der Steuergutschrift und der Vorauszahlung („précompte") ergänzt, die praktisch als Bestandteile der Dividende betrachtet werden können.

Absatz 6 entspricht Absatz 5 des geltenden Artikels 11; er wurde durch einen zweiten Unterabsatz ergänzt, welcher eine französische Verwaltungspraxis zugunsten französischer Betriebsstätten ausländischer Gesellschaften verankert.

Hervorzuheben ist schliesslich, dass Absatz 3 des geltenden Artikels 11, der nach Auffassung beider Delegationen überflüssig ist, in der neuen Fassung von Artikel 11 fehlt.

Die beiden Delegationen konnten sich über die Grundsätze des Verfahrens zur Anwendung des revidierten Abkommens einigen. Die Steuerreduktion wird künftig für alle Aktionäre auf dem Weg der Rückerstattung erfolgen. Die Aktionäre erhalten den Betrag des Quellensteuerrückbehalts, der den abkommensmässigen Satz übersteigt, und gegebenenfalls auch den Betrag der Steuergutschrift zurück. Für die in der Schweiz ansässigen Aktionäre, denen die Steuergutschrift zusteht, ist folgendes Verfahren vorgesehen: Die französische Dividende von beispielsweise 100 wird ihnen vorerst unter Abzug des von der französischen Gesetzgebung vorgesehenen Quellensteuerrückbehalt von 25 Prozent überwiesen, d.h. die Aktionäre erhalten beim Einlösen ihrer Coupons einen Betrag von 75. Daraufhin müssen sie einen Rückerstattungsantrag auf Formular R-F stellen. Auf Grund dieses Antrags werden ihnen einmal der Quellensteuerrückbehalt (25) zurückerstattet und ausserdem, als Steuergutschrift, 27,50 Prozent der von der Gesellschaft erklärten Dividende, insgesamt also ein Betrag von 52,50 Prozent der von der Gesellschaft erklärten Dividende, vergütet. Die schweizerischen Empfänger müssen eine Bruttodividende von 150 deklarieren und können für den französischen Quellensteuerrückbehalt von 22,50 (d. h. 15% von 150) die pauschale Steueranrechnung verlangen. Es ist vorgesehenen, dass die französischen Zahlstellen diese Rückerstattung im Lauf des zweiten Quartals des Kalendersjahres vornehmen, welches auf das Jahr der effektiven Dividendenzahlung folgt. Eine kurzfristigere Rückerstattung würde die schweizerischen Aktionäre gegenüber den französischen bevorzugen, was die französische Delegation nicht zugestehen konnte.

*Artikel 2*

Die Änderung des Artikels 10 Absatz 1 des Abkommens durch Artikel 2 des Zusatzabkommens bewirkt eine Herabsetzung der gegenwärtigen Steuerlast schweizerischer Gesellschaften mit französischer Betriebsstätte auf die Hälfte.

## III. FINANZIELLE AUSWIRKUNGEN

Obwohl das Zusatzabkommen auf einen

Gegenstand begrenzt ist, bringt es doch eine fühlbare Verbesserung des Abkommens von 1966, und zwar in einem Punkt, der in der Schweiz zu heftigen Kritiken Anlass gegeben hatte. Es konnte zwar die Diskriminierung zwischen schweizerischen und französischen Aktionären nicht voll (vor allem nicht für Gesellschaften mit wesentlichen Beteiligungen) beseitigt, aber doch eine starke Herabsetzung der Steuerlast erreicht werden. Nutzniesser der Änderung sind nicht nur die in der Schweiz ansässigen Empfänger von französischen Dividenden, sondern auch die schweizerischen Fisken; denn den höheren Einkünften der Steuerpflichtigen entspricht ein steigender Steuersatz auf einer erhöhten Besteuerungsbasis. Man darf auch nicht unterschätzen, dass bei dieser Änderung des Abkommens die Quellensteuer auf Dividenden allgemein auf einen Satz herabgesetzt werden konnte, der wesentlich näher bei dem von der Schweiz von jeher angestrebten Niveau liegt. Die strengeren Anforderungen an gewisse in der Schweiz ansässige Gesellschaften für die Herabsetzung des Quellensteuersatzes auf 5 Prozent treffen die angestammten schweizerischen Interessen nicht. Schliesslich sei daran erinnert, dass die Steuerlast für aus französischen Betriebsstätten stammende Gewinne schweizerischer Gesellschaften nochmals halbiert werden konnte.

## IV. VERFASSUNGSMÄSSIGKEIT

Das Zusatzabkommen vom 3. Dezember 1969 zur Änderung des Abkommens vom 9. September 1966 hat seine verfassungsmässige Grundlage in Artikel 8 der Bundesverfassung, der dem Bund die Befugnis verleiht, Staatsverträge mit dem Ausland abzuschliessen. Für die Genehmigung des Abkommens ist nach Artikel 85 Ziffer 5 der Bundesverfassung die Bundesversammlung zuständig. Das zur Genehmigung unterbreitete Zusatzabkommen wird einen integrierenden Bestandteil des Abkommens von 1966 bilden; dieses Abkommen ist auf unbestimmte Zeit abgeschlossen, kann aber, unter Einhaltung einer Frist von mindestens 6 Monaten, auf das Ende jedes Kalenderjahres gekündigt werden. Der Genehmigungsbeschluss unterliegt deshalb nicht dem Staatsvertragsreferendum von Artikel 89 Absatz 4 der Bundesverfassung.

## V. ANTRAG AUF ABSCHREIBUNG EINES POSTULATS

Mit der Änderung des Abkommens wird das Postulat von Nationalrat Eisenring vom 12. März 1968 (Nr. 9910), welches die Verbesserung des Abkommens von 1966 anstrebte, mehr als erfüllt; wir beantragen deshalb, es abzuschreiben.

Andererseits war es aber zur Zeit noch nicht möglich, die in den Postulaten der ständerätlichen und der nationalrätlichen Kommission (die vom Ständerat am 8. März 1967 und vom Nationalrat am 7. Juni 1967 angenommen worden sind) vorgebrachten Wünsche voll zu verwirklichen, da die französische Delegation darauf bestand, die Verhandlungen auf die mit der Besteuerung von Dividenden zusammenhängenden Fragen zu beschränken. Einige der in diesen Postulaten aufgeworfenen Fragen werden zur Zeit noch geprüft.

## VI. SCHLUSSFOLGERUNG

Da das vorliegende Zusatzabkommen das schweizerisch-französische Abkommen vom 9. September 1966 zur Vermeidung der Doppelbesteuerung auf dem Gebiete der Steuern vom Einkommen und vom Vermögen fühlbar verbessert, beantragen wir Ihnen, dem beiliegenden Entwurf zu einem Bundesbeschluss zuzustimmen.

## II. Text*

Der Bundesrat der Schweizerischen Eidgenossenschaft und der Präsident der Französischen Republik, vom Wunsche geleitet, das Abkommen zwischen der Schweiz und Frankreich vom 9. September 1966 abzuändern, haben zu diesem Zweck zu ihren Bevollmächtigten ernannt:

*Der Schweizerische Bundesrat:*

Herrn Pierre Dupont, ausserordentlichen und bevollmächtigten Botschafter der Schweizerischen Eidgenossenschaft in Frankreich.

*Der Präsident der Französischen Republik*

Herrn Gilbert de Chambrun, bevollmächtigten Minister, Direktor der Verwaltungsabkommen und der Konsularangelegenheiten im Ministerium für auswärtige Angelegenheiten,

die nach Austausch ihrer in guter und gehöriger Form befundenen Vollmachten folgendes vereinbart haben:

*Artikel 1*

Artikel 11 des Abkommens wird durch folgende Bestimmungen ersetzt:

*Artikel 11*

„1. Dividenden, die eine in einem Vertragstaat ansässige Gesellschaft an eine in dem anderen Vertragstaat ansässige Person zahlt, können in dem anderen Staat besteuert werden.

2. Diese Dividenden können jedoch, vorbehältlich des Absatzes 3, in dem Vertragstaat, in dem die die Dividenden zahlende Gesellschaft ansässig ist, nach dem Recht dieses Staates besteuert werden; die Steuer darf aber nicht übersteigen:

*a.* 15 vom Hundert des Bruttobetrages der Dividenden, wenn der Empfänger eine Gesellschaft ist, die im Zeitpunkt der Ausschüttung unmittelbar über mindestens 20 vom Hundert des Kapitals der die Dividenden zahlenden Gesellschaft verfügt, und wenn an der die Dividenden empfangenden Gesellschaft nicht im anderen Staat ansässige Personen überwiegend, unmittelbar oder mittelbar, durch Beteiligung oder in anderer Weise interessiert sind und die Aktien weder der einen noch der anderen in Rede stehenden Gesellschaft an der Börse kotiert sind oder ausserbörslich gehandelt werden;

*b.* 5 vom Hundert des Bruttobetrages der Dividenden in allen anderen Fällen.

3. Die von einer in Frankreich ansässigen Gesellschaft gezahlten Dividenden, die zu einer Steuergutschrift („avoir fiscal") berechtigten, falls sie von in Frankreich ansässigen Personen bezogen würden, geben Anspruch auf eine Vergütung in Höhe der Steuergutschrift, nach Abzug des Quellensteuerrückbehalts zum Satze von 15 vom Hundert, berechnet auf den aus der ausgeschütteten Dividende und der Steuergutschrift gebildeten Bruttodividenden, wenn die Dividenden gezahlt werden

*a.* an eine in der Schweiz ansässige natürliche Person;

*b.* an eine in der Schweiz ansässige Gesellschaft, die im Zeitpunkt der Ausschüttung über weniger als 20 vom Hundert des Kapitals der ausschüttenden Gesellschaft verfügt.

4. Eine in der Schweiz ansässige Person, die Dividenden von einer in Frankreich ansässigen Gesellschaft bezieht, kann, wenn sie keinen Anspruch auf die in Absatz 3 vorgesehene Vergütung hat, die Rückerstattung der auf diese Dividenden entfallenden Vorauszahlung („précompte") verlangen, die ge-

* Übersetzung des französischen Originaltextes.

gebenenfalls von der ausschüttenden Gesellschaft erhoben worden ist. Frankreich kann auf den zurückzuerstattenden Beträgen den in Absatz 2 dieses Artikels vorgesehenen Quellensteuerrückbehalt zu dem Satz abziehen, der für die Besteuerung der Dividenden, auf die die Rückerstattung entfällt, gilt.
5. Der in diesem Artikel verwendete Ausdruck „Dividenden" bedeutet Einkünfte aus Aktien, Genussaktien oder Genussscheinen, Kuxen, Gründeranteilen oder anderen Rechten – ausgenommen Forderungen – mit Gewinnbeteiligung sowie aus sonstigen Gesellschaftsanteilen stammende Einkünfte, die nach dem Steuerrecht des Staates, in dem die ausschüttende Gesellschaft ansässig ist, den Einkünften aus Aktien gleich gestellt sind. Im Falle von französischen Dividenden umfasst der Ausdruck auch die Steuergutschrift („avoir fiscal") und die Vorauszahlung („précompte").
6. Die Absätze 1, 2, 3 und 4 sind nicht anzuwenden, wenn der in einem Vertragstaat ansässige Empfänger der Dividenden in dem anderen Vertragstaat, aus dem die Dividenden stammen, eine Betriebstätte hat und die Beteiligung, für die die Dividenden gezahlt werden, tatsächlich zu dieser Betriebstätte gehört. In diesem Fall ist Artikel 7 anzuwenden.
Der französischen Betriebstätte einer in der Schweiz ansässigen Gesellschaft wird jedoch die Vorauszahlung („précompte") unter Abzug des zum Satz des internen Rechts berechneten Quellensteuerrückbehalts erstattet."

*Artikel 2*
Artikel 10 Absatz 1 des Abkommens wird durch folgenden Bestimmung ersetzt:

„In der Schweiz ansässige Gesellschaften, die in Frankreich eine Betriebstätte haben, bleiben in Frankreich dem Quellensteuerrückbehalt nach Massgabe des innerstaatlichen französischen Rechts unterworfen, wobei Einverständnis darüber besteht, dass der anwendbare Satz 5 vom Hundert beträgt."

*Artikel 3*
Dieses Zusatzabkommen soll ratifiziert und die Ratifikationsurkunden sollen so bald wie möglich in Bern ausgetauscht werden.
Es tritt mit dem Austausch der Ratifikationsurkunden in Kraft.
Seine Bestimmungen finden erstmals Anwendung auf Dividenden, die am oder nach dem 1. Januar 1970 zahlbar werden.

*Artikel 4*
Dieses Zusatzabkommen bildet einen integrierenden Bestandteil des Abkommens und bleibt in Kraft, solange das Abkommen anwendbar ist.

Zu Urkund dessen haben die Bevollmächtigten der beiden Staaten dieses Zusatzabkommen unterzeichnet und mit ihren Siegeln versehen.
Ausgefertigt in doppelter Urschrift, in Paris, am 3. Dezember tausendneunhundertneunundsechzig.

Für den Schweizerischen Bundesrat,

(gez.) Pierre Dupont

Für den Präsidenten der Französischen Republik,

(gez.) Gilbert de Chambrun

# * * * * BIBLIOGRAPHY * * * *

## BOOKS

### AUSTRALIA

TAXATION STATISTICS 1967-68, published by Commonwealth Government Printing Office, Canberra, 1969, 236 pp.
Second Supplement to the Forty-Seventh Report to Parliament of the Commissioner of Taxation.

Library International Bureau of
Fiscal Documentation no. B. 3930

### BELGIUM

EERSTE TOELICHTINGEN BIJ DE BTW, 2 vol. Published by Belgisch Instituut voor Voorlichting en Documentatie, Brussel, 1969, Vol. I, 232 pp. Vol. II. 60 pp.
Two booklets entitled "First Explanation of the Tax on Value Added", which aim to explain the Belgian Tax on Value Added. The text of the Tax on Value Added Code (Law of July 3, 1969) and the Royal Decree of July 23, 1969 are appended.

Library International Bureau of
Fiscal Documentation no. B 3944

### CANADA

FISCAL NEED AND REVENUE EQUALIZATION GRANTS, by Clark, D.H., Published by Canadian Tax Foundation, Toronto, 1969, 56 pp.
Explanation to the federal revenue equalization payment arrangements to lower income provinces which came into effect in 1967.

Library International Bureau of
Fiscal Documentation, B 3993

### COMMON MARKET

ECONOMIC SURVEY OF EUROPE IN 1968. Published by United Nations, New York, 1969, 275 pp. The European Economy in 1968.

Library International Bureau of
Fiscal Documentation no. B 3920

EUROPEES KARTELRECHT IN ONTWIKKELING, published by AE.E. Kluwer, Deventer, 1966. 111 pp.
Publication of lectures, held during 1966-67 at the University of Utrecht, on the development of Competitive regulations in Europe.

Library International Bureau of
Fiscal Documentation no. B 3997

DE EUROPESE GEMEENSCHAP EN DE INDUSTRIE-POLITIEK, published by AE.E. Kluwer, Deventer, 1968. 133 pp.
Publication of lectures held at universities during 1965-66 on the industrial policy in the EEC.

Library International Bureau of
Fiscal Documentation no. B 3995

HET VERVOER IN DE EUROPESE GEMEENSCHAPPEN, published by AE.E. Kluwer, Deventer, 1969. 160 pp.
Publication of lectures on transportation developments and policy in the E.E.C.

Library International Bureau of
Fiscal Documentation no. B 3996

### FRANCE

FUSIONS ET SCISSIONS DE SOCIÉTÉS by Retail, L. Published by Librairie Sirey, Paris, 4th ed. 1968. 185 pp.
Study on the financial, juridical and taxation aspects regarding Mergersand divisions of companies, as in effect on December 31, 1967.

Library International Bureau of
Fiscal Documentation, no. B 4003

LES IMPOTS EN FRANCE, published by Editions Francis Lefebvre, Paris, 1969. 367 pp. Traité pratique de la fiscalité française et plus particulièrement des impôts dus par les entreprises.
Explanation of the tax system in France with emphasis on the taxation of businesses.

Library International Bureau of
Fiscal Documentation, no. B 3985

### GERMANY

BUNDESHAUSHALTSPLAN FÜR DAS RECHNUNGSJAHR 1969, published by Bundesdruckerei, 1969. 3369 pp.
Official publication explaining the German federal budget for 1969.

Library International Bureau of
Fiscal Documentation, no. B 3954

EINKOMMENSTEUER, KÖRPERSCHAFTSTEUER - LOHNSTEUER. GESETZE, VERORDNUNGEN, ERGÄNZUNGSVORSCHRIFTEN UND TABELLEN published by C.H. Beck'sche Verlagsbuchhandlung, München, 32nd ed. 1969. 634 pp.
Revised edition of the text of the Individual Income Tax Law, its implementary ordinance and regulations as well as relevant statutes and annotations, the material of which has been updated as to May 1, 1969.

Library International Bureau of Fiscal Documentation, no. B 4480

HANDBUCH ZUR VERMÖGENSTEUER-HAUPTVERANLAGUNG 1969, published by Verlag C.H. Beck etc., München, Berlin, 1969. 390 pp.
Text of the net worth tax law, its implementary Ordinance and Regulations, as well as the Valuation tax law as far as relevant for the assessment year 1969.

Library International Bureau of Fiscal Documentation, no. B 4021

DIE MEHRWERTSTEUER IM RECHNUNGSWESEN. BUCHHALTUNG, KALKULATION UND FINANZIERUNG NACH DEM MEHRWERTSTEUERGESETZ, published by C.H. Becksche Verlagsbuchhandlung, München, 2nd ed. 1968. 294 pp.
Second revised edition explaining the accounting aspects of the Tax on Value Added System.

Library International Bureau of Fiscal Documentation, no. B 4477

OPTISCHES STEUERRECHT, Heft 1, 2, 3, 4 und 5, published by Verlag NeueWirtschafts-Briefe, Herne-Berlin, 1969. "Visual Tax Law" which aims to visualize each tax law in various diagrams:
no. 1 by Pierchalla,W., containing twenty-two diagrams which aim to put the German Fiscal Code into perspective;
no. 2, by Stoppkotte, H.W., containing eighteen diagrams which aim to put the German Individual Income Tax Law into perspective;
no. 3, by Pohlner, K., containing sixteen diagrams which aim to put accounting and balance sheet principles into perspective;
no. 4, by Pohlner, K., containing sixteen diagrams which aim to put the Tax on Value Added into perspective;
no. 5, by Heisel, K., containing sixteen diagrams which aim to put the Valuation Law and the NetWorth Tax Law into perspective.

Library International Bureau of Fiscal Documentation nos. (1) B 3888 (2) B 3887, (3) B 3886, (4) B 3889, (5) B 3885

UMWANDLUNGSTEUER-PRAKTIKUM, FÜR BERATER UND UNTERNEHMER, published by Verlag Dr. Otto Schmidt KG, Köln-Marienburg, 1969. 174 pp.
Explanation of the new tax legislation concerning company transformations and mergers as amended by the law on tax measures with respect of company transformation, of August 14, 1969.

Library International Bureau of Fiscal Documentation, no. B 4493

UMWANDLUNGS-STEUERGESETZ 1969, UMWANDLUNG FUSION/EINBRINGUNG, published by Verlagsbuchhandlung des Instituts der Wirtschaftsprüfer GmbH, Düsseldorf, 1969. 459 pp.
Explanation with reference to literature and case law as available on October 1969 concerning company transformations and mergers as amended by the law on tax measures in respect of company transformation of August 14, 1969.

Library International Bureau of Fiscal Documentation, no. B 4497

## INDIA

THE LAW RELATING TO FOREIGN EXCHANGE, by Vakil, S.R. Published by N.M. Tripathi Private Ltd., Bombay, fourth ed. 1969. 623 pp.
Commentary on the Foreign Exchange Regulation Act (Act VII of 1947) entirely revised and rewritten.

Library International Bureau of Fiscal Documentation, no. B 4004

## INTERNATIONAL

THE INDIVIDUAL INCOME TAX AND ECONOMIC GROWTH, by Tanzi, V. Published by John Hopkins Press, Baltimore, 1969. 136 pp.
An international comparison on France, Germany, Italy, Japan, United Kingdom, and U.S.A.

Library International Bureau of Fiscal Documentation, no. B 3955

## LATIN AMERICA

MONTEVIDEO TREATY, Published by Latin America Free-Trade Association, Montevideo, 1967. 40 pp.

Treaty establishing a free-trade area and instituting the Latin American Free-Trade Association (February 18, 1969). English translation of the text of the treaty establishing the Latin American Free Trade Association (LAFTA) between Argentine, Brazil, Chile, Mexico, Paraguay, Peru and Uruguay.

Library International Bureau of
Fiscal Documentation no. B 3982

## NEW ZEALAND

A GUIDE TO NEW ZEALAND INCOME TAX PRACTICE 1968-1969. Published by Sweet & Maxwell, Ltd., Wellington, 29th edition, 1969. 585 pp.
The text of the Land and Income Tax Act 1954, which has been updated by three amending acts passed during 1968. Also included are the changes notified in the Department's Public Information Bulletins, published since the last edition appeared.

Library International Bureau of
Fiscal Documentation, no. B 3940

## UNITED KINGDOM

TAXATION KEY TO INCOME TAX AND SURTAX 1969–70. FINANCE ACT 1969. by Hughes, P.F., J.M. Cooper. Published by Taxation Publishing Co. Ltd., London, sixty-eighth ed. 1969. 249 pp.
New thumb-indexed guide to the income tax and surtax, including Finance Act 1969 amendments.

Library International Bureau of
Fiscal Documentation, no. B 3925

BUTTERWORTHS TAX HANDBOOK, AMENDED TEXT OF THE INCOME TAX ACTS, CORPORATION TAX ACTS, AND ACTS RELATING TO CAPITAL GAINS AS OPERATIVE DURING 1969–1970. Published by Butterworths, London, 1969. 1018 pp.
This publication contains an annotated text of the Income Tax Act 1952 incorporating all amendments and repeals effected by subsequent enactments up to and including the Finance Act 1969 and current provisions of subsequent acts covering income tax, corporation tax and capital gains tax, as set out and as known on September 1, 1969.

Library International Bureau of
Fiscal Documentation, no. B 3970

## U.S.A.

1969 N.Y. STATE BAR ASSOCIATION, antitrust law symposium. Published by Commerce Clearing House, Inc., Chicago, 1969. 51 pp.
Publication of the statements addressed by speakers at the 1969 meeting concerning antitrust in a changing society.

Library International Bureau of
Fiscal Documentation, no. B 3969

TAX CHOICES IN ORGANIZING A BUSINESS. Published by Commerce Clearing House, Inc., Chicago, 1969. 192 pp.
This report is designed for use in conjunction with the CCH Standard Federal Tax Reports.

Library International Bureau of
Fiscal Documentation, no. B 3968

TAX ANGLES IN PATENTS, TRADEMARKS, COPYRIGHTS. Published by Commerce Clearing House, Inc., Chicago, 1968. 103 pp.
This brochure is designed for use in conjunction with the CCH Standard Federal Tax Reports.

Library International Bureau of
Fiscal Documentation, no. B 3967

NEW CONSOLIDATED RETURN RULES, by Crestol, J., A.P. Rua. Published by Commerce Clearing House, Inc., Chicago, 1968. 255 pp.
Explanation of the new consolidated return rules. Full texts of the Internal Revenue Code and Income Tax Regulations covering consolidated returns are included for quick and easy reference to official material. Also appended is a Supplement to the main text in this book regarding the Treasury issued new proposed regulations concerning allocation of the consolidated tax liability.

Library International Bureau of
Fiscal Documentation, no. B 3971

FEDERAL TAX GUIDE, Vol. 1, 1970. Published by Commerce Clearing House Inc. Chicago, 1969.
Vol. 1 of a series of four, containing explanations of income, estate and gift taxes with illustrative examples, tax planning, rate tables and new withholding tax tables.

Library International Bureau of
Fiscal Documentation, no. B 3966

SIX PAPERS ON THE SIZE DISTRIBUTION OF WEALTH AND INCOME, by Soltow, L.

Published by National Bureau of Economic Research, New York, 1969. 264 pp.
This volume contains most of the papers presented at the Conference on the Size Distribution of Income and Wealth held on March 24-25, 1967 at the Annenberg School of the University of Pennsylvania.



# LOOSE-LEAF SERVICES

## Releases from December 1 – December 31, 1969

### AUSTRIA

DIE STILLE GESELLSCHAFT IM ABGABENRECHT, release 4. Wirtschaftsverlag Dr. A. Orac, Wien.
DIE UMSATZSTEUER, release 8.
Wirtschaftsverlag Dr. A. Orac, Wien

### BELGIUM

Fiscale Documentatie Vandewinckele
BOEK DER BAREMA'S
Tome I, release 22.
Tome XI, release 44.
Tome VIII, release 96.
Tome V, release 8.
E.K. Vandewinckele, Brugge/C.E.D. Samsom, Brussels.

IMPOTS ET TAXES, releases 188, 189.
C.E.D. Samsom N.V., Brussels

### CANADA

CANADA ESTATE TAX SERVICE, release 45.
Richard de Boo Ltd., Toronto.

CANADA TAX SERVICE LETTER, releases 142-144.
Richard de Boo Ltd., Toronto.

CANADA TAX SERVICE RELEASES, releases 284, 285.
Richard de Boo Ltd., Toronto.

MC. DONALD'S CURRENT TAXATION, releases 43-51.
Butterworth & Co., Toronto.

### E.E.C.

DROITS DES AFFAIRES DANS LES PAYS DU MARCHE COMMUN, release 59. E.D. Jupiter, Paris.

Handboek voor de Europese Gemeenschappen
B. VERDRAGSTEKSTEN EN AANVERWANTE STUKKEN, releases 64-66.
N.V. Uitgeversmij. AE.E. Kluwer, Deventer.
TARIEFLIJSTEN, release 93.
N.V. Uitgeversmij. AE.E. Kluwer, Deventer.

### FRANCE

CODE ANNOTE DES CONTRIBUTIONS DIRECTES, releases 52, 53.
Editions Seteca, Paris.

DICTIONNAIRE FISCAL PERMANENT, releases 26, 27.
Editions Législatives et Administratives, Paris.

DROITS DES AFFAIRES, releases 20-22.
Ed. Législatives et Administratives, Paris.

Juris Classeur Fiscal
COMMENTAIRE CHIFFRE D'AFFAIRES, release 6069.
Editions techniques, Paris.

### GERMANY

ABC FÜHRER LOHNSTEUER, release supplement 70.
Fachverlag für Wirtschafts- und Steuerrecht, Schäffer und Co., Stuttgart.

KOMMENTAR ZUR EINKOMMENSTEUER EINSCHL. LOHNSTEUER UND KÖRPERSCHAFTSTEUER, releases 87, 88.
Verlag Dr. Otto Schmidt KG., Köln-Marienburg

KOMMENTAR ZUM MEHRWERTSTEUERGESETZ, Schomburg/Kuhr, releases 15, 16.
Hermann Luchterhand, Neuwied.

RWP RECHTS- UND WIRTSCHAFTS-PRAXISSTEUERRECHT, release 96.
Forkel Verlag Stuttgart-Degetoch.

UMSATZSTEUERGESETZ (MEHRWERTSTEUER)
Kommentar von A. Hartmann, G. Wauer, G. Knopp, F. Müller, release 11.
Erich Schmidt Verlag, Bielefeld.

## INTERNATIONAL

STEUERN IN DEUTSCHLAND, release.
Eidg. Steuerverwaltung, Bern.

## NETHERLANDS

BELASTINGBERICHTEN, release 211.
N. Samsom N.V., Alphen a/d Rijn.

BELASTINGBERICHTEN DIVIDENDBELASTING, release 1.
N. Samsom N.V., Alphen a/d Rijn.

BELASTINGBERICHTEN, BTW, releases 30–37.
N. Samson N.V., Alphen a/d Rijn.

BELASTINGWETGEVING, release 5.
Brouwer en Zn., Arnhem.

BELASTINGWETTEN, release 23.
D. Brouwer en Zn., Arnhem.

FED'S FISCAAL REGISTER, release 28.
N.V. Uitgeverij FED, Amsterdam.

FED'S LOSBLADIG FISCAAL WEEKBLAD, releases 1229–1234.
N.V. Uitgeverij FED, Amsterdam.

FISCALE WETTEN, release 31,
N.V. Uitgeverij FED, Amsterdam.

GEMEENTELIJKE BELASTINGEN, release 85, 86.
Vuga Boekerij, Arnhem.

Handboek voor in- en uitvoer:
a) BELASTINGHEFFING BIJ INVOER, releases 104, 105.
b1) TARIEF VAN INVOERRECHTEN, releases 131, 132.
b2) TARIEF VAN INVOERRECHTEN, releases 73, 74.
N.V. Uitgeversmij. AE.E. Kluwer, Deventer.

KLUWER'S FISCAAL ZAKBOEK, releases 31, 32.
N.V. Uitgeversmij AE.E. Kluwer, Deventer.

KLUWER'S TARIEVENBOEK, release 78.
N.V. Uitgeversmij AE.E. Kluwer, Deventer.

NEDERLANDSE WETBOEKEN B. releases 103, 104.
N.V. Uitgeversmij AE.E. Kluwer, Deventer.

VADEMECUM VOOR IN- EN UITVOER, releases 413, 414.
N.V. Uitgeversmij. AE.E. Kluwer, Deventer.
N. Samsom N.V., Alphen a/d Rijn.

De Vakstudie Fiscale Encyclopedie LOONBELASTINGEN 1964; releases 37-39.
N.V. Uitgeversmij AE.E. Kluwer, Deventer.

VENNOOTSCHAPPEN, VERENIGINGEN EN STICHTINGEN, DEEL C, release 22, supplement op 22.

## NORWAY

SKATTE-NYTT, release B 16.
Norsk Skattebetalerforening Huitfeldts, Oslo.

## SOUTH AFRICA

LAW AND PRACTICE OF SOUTH AFRICAN INCOME TAX
Service and Statutes Volume, release 18.
Bound Volume Service, release 26.
Butterworth & Co., Durban.

## SWITZERLAND

DAS SCHWEIZERISCH-DEUTSCHE DOPPELBESTEUERUNGSABKOMMEN/Locher.
Teil I, release 42.
Teil III, release 38.
Verlag für Recht und Gesellschaft, Basel.

## U.S.A.

FEDERAL TAX GUIDE REPORTS, Vol. 53, releases 8–13.
Commerce Clearing House, Inc., Chicago.

FEDERAL TAXES REPORT BULLETIN, releases 46–50.
Prentice Hall, Inc., Englewood Cliffs.

FEDERAL TAXES REPORT BULLETIN – TREATIES, release 17.
Prentice Hall, Inc., Englewood Cliffs.

STATE TAX GUIDE, releases 442-444.
Commerce Clearing House, Inc., Chicago.

TAX IDEAS – REPORT BULLETIN, releases 32, 33.
Prentice Hall Inc., Englewood Cliffs.

TAX TREATIES, release 214.
Commerce Clearing House Inc., Chicago.

*Dr. Helmut Debatin*

# ANALYSIS OF THE GERMAN TAX SYSTEM

## 1969. 160 pp.

**General Principles — Taxation of Income and Capital**
**Unilateral Measures for the Avoidance of Double Taxation**

*Sections A 2.1, A 3.1, A 4.1 and A 4.2 of "Handbook on the United States - German Tax Convention" (Volume 1 of 'Tax Treaty Guides'), by Dr. Helmut Debatin and Dr. Otto L. Walter, in collaboration with Ernst Weber and Henry Conston.*

Written from the point of view of the English-speaking tax practitioner, by Dr. Helmut Debatin, Head of the Department of International Tax Affairs of the German Ministry of Finance, this penetrating study (consisting of about 160 pages) discusses the principles of the German tax system with particular emphasis on the taxation of income and capital, and unilateral measures for the avoidance of double taxation in German tax law. The principal headings are as follows:

- The constitutional basis
- Structure of the tax system - tax burden, types of taxes and tax yield
- Detailed information about important taxes not included in the taxation of income covered by the convention
- Tax law sources
- Rules of tax administration
- Method of applying the laws
- Tax administration offices
- Tax procedure
- Legal remedies
- Forms of international double taxation
- Unilateral tax relief from double taxation
- Personal and corporation income tax -
  Tax credit
  Tax exemption from taxation for employees in foreign assembly or construction projects
  Determination of the German tax at a flat rate
  International commercial shipping
  Deduction of the foreign tax from income
- The distinction between taxes on persons and on objects
- Unlimited and limited tax liability in the case of taxes on persons
- Piercing the corporate veil for tax purposes
- Income tax
- The corporation income tax
- Capital tax
- Trade tax
- Supplementary levy (effective from 1968)
- Capital tax -
  Tax credit
  Determination of the German tax at a flat rate
- Inheritance tax -
  Tax credit
  Lump sum determination of the German tax

This study is taken from the English text of the loose-leaf service, "Handbook on the United States - German Tax Convention", where it provides a detailed background to the main part of the work, which is a comprehensive bi-lingual commentary, examining from an entirely new approach, the provisions of the Convention, and interpretation measures and decisions of the tax administration and the courts.

**Price: Dfl. 27.— / DM 30.— / US$ 7.50 with postage (airmail US$ -,40 extra).**

*For residents of The Netherlands: prices exclusive BTW (TVA)*

## INTERNATIONAL BUREAU OF FISCAL DOCUMENTATION

**Sarphatistraat 124 - Amsterdam-C. - Holland**

# Erläuterungen zum deutsch-niederländischen Doppelbesteuerungsabkommen

bearbeitet von: A. Schulze-Brachmann und W. Dirksen

**Ein Nachschlagewerk . . .**

- das den Text des Abkommens – in den zwei Sprachen – sowie den Wortlaut der diesbezüglichen Durchführungsbestimmungen gibt;
- das nicht nur einen ausführlichen Kommentar zu den Bestimmungen des deutsch-niederländischen Doppelbesteuerungsabkommens enthält, sondern eingehend den Einfluss jeder einzelnen Bestimmung auf das nationale Steuerrecht der beiden Staaten behandelt;
- das ausserdem die für die Auslegung des Abkommens wichtigste Rechtsprechung enthält, auch wenn diese sich auf andere Abkommen bezieht, insbesondere auf das (fast gleichlautende) DBA mit Luxemburg.

**Ein auf die Praxis abzielender Kommentar**

- weil er erst zu einem Zeitpunkt erscheint, in dem das Abkommen schon 8 Jahre in Kraft ist, sodass eine Reihe von Zweifelsfragen inzwischen gelöst werden konnte;
- weil die Verfasser täglich die immer wechselnden Probleme des internationalen Wirtschaftsverkehrs vor Augen haben und mit deren Lösung beschäftigt sind;
- weil der Kommentar auch der im Wachsen begriffenen europäischen wirtschaftlichen Integration Rechnung trägt und somit dem steuerpflichtigen Unternehmen und seinem Berater einen Blick in die Zukunft einräumt.

---

- *Internationale Verträge verbinden nationale Rechtssysteme. Die Regelungen in internationalen Vereinbarungen schaffen neues Recht, das jedoch nur im Rahmen nationalen Rechts in Kraft treten kann. Das gilt auch und vor allem für die Rechtsetzung in Verträgen zur Vermeidung der Doppelbesteuerung.*

---

- Unter Beachtung dieser Rechtslage legt das Internationale Steuerdokumentationsbüro ein Erläuterungsbuch zum deutsch-niederländischen Doppelbesteuerungsabkommen vor, das gemeinsam von je einem Fachspezialisten der beiden beteiligten Nationen erarbeitet wurde. Beide Verfasser sind nicht nur bei den Verhandlungen über den Abschluss des genannten DBA beteiligt gewesen; sie verfügen beide darüber hinaus als langjährige Mitglieder des Steuerausschusses der OECD und der Arbeitsgruppe „Internationale Steuerfragen" innerhalb der EWG über besondere Erfahrungen auf dem schwierigen Gebiet der Doppelbesteuerung.
- Steuern haben die Neigung sich dauernd zu ändern. Wenn es nicht die Steuergesetze selbst sind, so sind es die Verwaltungen oder die Gerichte die, wegen veränderter Auffassungen oder im Hinblick auf das Bedürfnis nach Verfeinerungen, das Steuerrecht in Bewegung halten.
- Um den Entwicklungen Rechnung tragen zu können gibt es in der Steuerliteratur viele Loseblattausgaben, von vielen als die beste Lösung begrüsst, von vielen andern aber abgelehnt, weil sie das gebundene Buch vorziehen.

**Den Wünschen beider Gruppen wird Rechnung getragen.**

**Kurze Inhaltsübersicht**

VORWORT – von Dr. h. c. Wolfgang Mersmann, Präsident des Bundesfinanzhofs, München.

EINLEITUNG – I. Notwendigkeit eines deutsch-niederländischen Doppelbesteuerungsabkommens. II. Entstehung und Formalien des DBA. III. Kurzfassung des Inhalts des DBA. IV. Bearbeitungsplan.

**Teil A** Übersicht des deutschen Steuerrechts
(Einkommen-, Lohn- und Körperschaftsteuer; Ergänzungsabgabe; Gewerbe- und Vermögensteuer; Lastenausgleich; Grundsteuer; Rechtsmittel; Vergleichs- und Konkursverfahren).

**Teil B** Übersicht des niederländischen Steuerrechts
(Einkommen-, Lohn-, Körperschaft-, Dividenden-, Aufsichtsrat-, Vermögen- und Grundsteuer, sowie Gemeindesteuern; Einseitige Regelung zur Vermeidung der Doppelbesteuerung; Rechtsmittel; Konkursverfahren).

**Teil C** Der Einfluss des Abkommens auf das Steuerrecht der Bundesrepublik

**Teil D** Der Einfluss des Abkommens auf das niederländische Steuerrecht
Diese beiden Teile sind wie folgt gegliedert:

I. Sachlicher Geltungsbereich. II. Persönlicher Geltungsbereich. III. Räumlicher Geltungsbereich. IV. Zeitlicher Geltungsbereich.
V. Begriffsbestimmungen (u.a. Betriebstätte; Vertreter; Unternehmen und Betrieb; Ort der Leitung).
VI. Wohnsitz (natürliche und juristische Personen; Diplomaten; Schiffsleute; Personengesellschaften).
VII. Zuteilung des Besteuerungsrechts (Einkünfte; Vermögen).
VIII. Unbewegliches Vermögen.
IX. Gewerbliche Unternehmen (u.a. Gewinnermittlung nach der direkten und indirekten Methode; Übertragung von Wirtschaftsgütern in das Betriebstättenvermögen; Gewinnberichtigung).
X. Unternehmen der Schiffahrt und Luftfahrt. XI. Veräusserung von Beteiligungen.
XII. Selbständige Arbeit; Aufsichtsratsmitglieder. XIII. Nichtselbständige Arbeit.
XIV. Dividenden. Zinsen. Lizenzgebühren. XV. Hochschullehrer und Studenten.
XVI. Vermeidung der Doppelbesteuerung (Anrechnung; Freilassung; Progressionsvorbehalt; Verluste).
XVII. Diplomaten und Konsuln. XVIII. Die Doppelbesteuerungs-Beschwerde.
XIX. Verständigungsverfahren. XX. Amtshilfe. XXI. Verbot der Diskriminierung.

**Teil E**
Würdigung des deutsch-niederländischen DBA, insbesondere in internationaler Sicht

I. Das Abkommen als Teil des weltumspannenden Netzes von Doppelbesteuerungsabkommen.
II. Das DBA im Lichte der Mitgliedschaft beider Vertragstaaten zur OECD und zur EWG.
III. Fehlende Erbschaftsteuer-Vereinbarungen.
IV. Unilaterale Massnahmen zur Vermeidung der Doppelbesteuerung.
V. Weiterentwicklung des DBA.

Abkürzungsverzeichnis – Schrifttum – Verzeichnis der berücksichtigten Urteile – Sachregister.

**Inhalt des 2. Bandes (Texte)**

I. Text des DBA vom 16.6.1959 (zweisprachig). II. Schlussprotokoll (zweisprachig). III. Zusatzprotokoll (zweisprachig).
IV. Deutsches Ratifizierungsgesetz nebst Begründung. V. Deutsche Denkschrift zum DBA. VI. Deutsche Denkschrift zum Zusatzprotokoll.
VII. Deutsche Durchführungsbestimmungen. VIII. Deutsche unilaterale Bestimmungen.
IX. Brief des niederländischen Aussenministers mit Denkschrift. X. Niederländische Durchführungsbestimmungen (zweisprachig).
XI. Niederländische einseitige Regelungen zur Vermeidung der Doppelbesteuerung. XII. Musterabkommen der OECD: Kommentar zu Art. 5 über die Betriebstätte.

**Preis: Leinen gebundene Ausgabe DM 150,—; Loseblatt-Ausgabe (mit Supplementen) DM 165,—**
**Dfl 137,50 Dfl 150,—**
**Für Bezieher in den Niederlanden, zuzüglich Mehrwertsteuer (BTW)**

# Internationales Steuerdokumentationsbüro, Sarphatistraat 124, Amsterdam-Holland

# *International Bureau of Fiscal Documentation*

## THE E.E.C. PROPOSED DIRECTIVES ON MERGERS AND TAKE-OVERS AND PARENT-SUBSIDIARY RELATIONSHIPS

**(COM (69)( 5 & 6 final)**

*Unofficial English translation, re-printed from Section D (July, 1969) of the Bureau's loose-leaf service: "Supplementary Service to European Taxation"*

International corporate mergers represent a topic of crucial current importance. As a service to its subscribers and to the international tax community in general, the International Bureau of Fiscal Documentation is pleased to announce the publication of its own complete English translation not only of the proposed E.E.C. Directives concerning a common system of taxation applicable to merger-type transactions, but also those concerning parent-subsidiary relationships between corporations of different Member States. When enacted, these far-reaching Directives will bind each of the Member States of the E.E.C. to implement the provisions by January 1, 1971.

With the communication from the E.E.C. Commission to the Council of these two draft Directives, the movement toward truly European corporations gathered impetus. Together with the projected drafting of a convention on the corporate law aspects of intra-Community mergers, these Directives will, hopefully, remove many of the variations in the Members' national tax and corporate laws which represent artificial barriers to economically dictated reorganizations of European corporations.

**Dfl. 18.—/US$ 5.00 with postage (airmail US$ -.40 extra).**

## THE TURNOVER TAX ON VALUE ADDED IN EUROPE

November/December, 1968: 74 pages (large format)

Special double-issue of the monthly journal, "European Taxation", presenting a comparative survey of the practical implications of the revolutionary new tax system being introduced——or already introduced—in Belgium, Denmark, France, West Germany, Italy, The Netherlands, and Sweden. Each chapter analyses the scope of the TVA, the exemptions from the TVA, the tax mechanism, and the transitional measures, in each of the seven countries covered. A special section deals with the emergency measures taken by France, and the temporary measures taken by Germany, to assist France during the present monetary crisis. Up-to-date as of December 1, 1968 and therefore incorporating the Belgian TVA Bill and the relevant portions of the Italian Tax Reform Bill.

**Dfl. 22.50 / US$ 6.25 with postage (airmail US$ -.40 extra).**

**The EEC Reports on Tax Harmonization—The Reports of The Fiscal and Financial Committee and The Reports of The Sub-Groups A, B and C.** Unofficial English translation by Dr. Hugh Thurston of the so called "Neumark Report". 1963 (re-printed-1969).

**Dfl. 30.— / US$ 8.50 with postage (airmail US$ 2.00 extra).**

*For residents of The Netherlands: prices exclusive BTW (TVA)*

**INTERNATIONAL BUREAU OF FISCAL DOCUMENTATION**

**Sarphatistraat 124 - Amsterdam-C. - Holland**

# CUMULATIVE INDEX 1970

## No. 1

# CONTENTS

of the March 1970 issue

HERNANDO DE LAVALLE VARGAS:

# TAXATION AND TAX INCENTIVES IN PERU

*An article on Peruvian Taxation by the same author was published in the Bulletin of July/August 1968. The reading of that article is recommended as a background to this up-to-date survey.*

## INTRODUCTION

The Peruvian taxation system under Law 1704 was principally cedular. Supreme Decree 287-68-HC of August 13, 1968 has introduced the change from a cedular to a global income tax system. Consequently the new tax regulations levy an assessment on the aggregate income of a single individual, whether a natural or juridical person; income source may be from property, business pursuits, remunerations and the like.

In full force and effect remain such promotional laws exempting, totally or partially, from income tax mining and industrial activities that enhance Perú's development, allowing in some cases through the pertinent contracts, the development of such activities with the advantage of total exemption from income tax, in others substantial reduction of said taxes and in all cases allowing the reinvestment of profits at various percentages—which vary regarding the geographical location of the industry, this with the special purpose of encouraging at the same time a decentralized development of the economical activities of the Country.

The Peruvian Government has entered recently into a multinational agreement to create a Sub-Regional Common Market with other Andean Countries. This agreement will have a definite influence in the countries' industrial development.

This work outlines the most important statutes and agreements prevailing today, in connection with the subjects referred to above. For a better guidance, this summary is divided in four Chapters as follows:

CHAPTER I: Income Taxes
CHAPTER II: Other Taxes
CHAPTER III: Laws to promote the economical and industrial development of the Country
CHAPTER IV: Sub-Regional Integration of the Andean Group.

## CHAPTER I

### INCOME TAX

By Supreme Decree 287-68-HC of August 13, 1968, new regulations for Income Tax have been established.

I. *Purpose of the Tax*

This tax is levied upon the gain derived from capital, from labor, the joint application of both factors, and also on the earnings statutorily considered as taxable income.

Income from the following sources is considered as taxable:

a) leasing of real property;
b) leasing of personal property, interest,

dividends or any kind of income arising out of capital investment;

c) commercial, industrial agricultural or mining exploitation and the transfer of royalties; and

d) salaries, fees, and any other type of remuneration obtained from the exercise of a profession, trade or any other profitable activity.

II. *Taxpayers*

All income obtained by a person who is resident in Perú, or from Peruvian sources even though the taxpayer may be a non-resident, is regarded as taxable income.

According to the provisions of the law the following income is considered to be from Peruvian sources:

a) income from real estate located on national territory;

b) income from capital, assets, concessions or rights economically located in Perú;

c) income from personal services performed in Perú; and

d) interest paid by natural or juridical persons domiciled in Perú to lenders abroad, under any modality of loan whatsoever with the exception of promotional loans.

Natural persons, undivided estates, and the following juridical persons are subject to income tax: corporations, co-operatives, corporations constituted outside the country with branches in Perú, branches of enterprises with only one owner or any type of corporations.

III. *Gross Income and its Classifications*

Gross income is the aggregate of all income obtained in a fiscal year.

Taxable income is classified into the following categories:

a) FIRST: Income from real property

b) SECOND: Other capital income (dividends, interest, royalties, etc.)

c) THIRD: Income from commerce, industry and similar income.

d) FOURTH: Income from independent labor (fees, remuneration of corporations' board members).

e) FIFTH: Income from labor and of employees (wages, salaries).

IV. *Net Icome*

In order to establish the net income, all expenses necessary to produce the income and to support its source may be deducted from gross income. The deductions have to be allowed by statute. The Law presumes that expenses incurred abroad have been produced by income from abroad.

Special reductions are provided for:

a) Royalties

Recipients of royalties may deduct 10% of such income during the necessary period to recuperate expenses incurred in Perú for the acquisition, production, etc., of goods transferred if they suffer waste.

Recipients of royalties from abroad may deduct 5% of such income on account of the expenses they may incur investigating and experimenting with goods capable of producing such royalties.

b) Technical Services

With respect to income from technical services performed abroad by an individual or professional association, 10% of the net income may be deducted.

V. *Net Taxable Income and Personal Deductions*

Natural persons' net taxable income is determined by subtracting from their income the following deductions (in the cases where they apply):

a) Personal ..... S/. 48,000.00 annually

b) Additional (only for income

from labor) ..... S/. 50,000.00 annually
c) Family support:
Spouse ..... S/. 30,000.00 annually
Child..... S/. 18,000.00 annually

The taxable income of juridical persons domiciled in Peru is equivalent to its net income.

VI. *Income Tax Rates*

1) Taxes on natural persons domiciled in Perú are the following:

a) Interest on bonds and other type of bearer securities—40%
b) Global taxable income, according to the following scale

| *Taxable income* | | | | *Rate* |
|---|---|---|---|---|
| Up to | | S/. 30,000.00 | | 3% |
| From | S/. 30,001.00 | to | S/. 35,000.00 | 4% |
| From | S/. 35,001.00 | to | S/. 40,000.00 | 5% |
| From | S/. 40,001.00 | to | S/. 45,000.00 | 7% |
| From | S/. 45,001.00 | to | S/. 50,000.00 | 9% |
| From | S/. 50,001.00 | to | S/. 60,000.00 | 12% |
| From | S/. 60,001.00 | to | S/. 70,000.00 | 15% |
| From | S/. 70,001.00 | to | S/. 80,000.00 | 18% |
| From | S/. 80,001.00 | to | S/. 100,000.00 | 21% |
| From | S/. 100,001.00 | to | S/. 150,000.00 | 25% |
| From | S/. 150,001.00 | to | S/. 200,000.00 | 30% |
| From | S/. 200,001.00 | to | S/. 500,000.00 | 32% |
| From | S/. 500,001.00 | to | S/. 700,000.00 | 35% |
| From | S/. 700,001.00 | to | S/. 1,000,000.00 | 38% |
| From | S/. 1,000,001.00 | to | S/. 5,000,000.00 | 40% |
| | more than | S/. 5,000,000.00 | | 42% |

2) Natural persons not residing in Perú shall pay tax at the following rates:

a) Dividends on shares: 30%.
b) Income from branches or agencies established in Perú available to its principal abroad: 30%.

The law considers as "available income" the taxable income of the branch reduced by the amount of the tax paid according to the scale set out under point 3), hereunder.

c) Remuneration for personal services performed in Perú: The tax is calculated according to the scale applied for natural persons residing in Perú, set out in point 1-b above.
d) Remuneration for services performed abroad and any other income: 40%.

3) The tax applied to juridical persons with residence in Perú is as follows:

| *Taxable income* | | | | *Rates* |
|---|---|---|---|---|
| | | S/. 100,000.00 | | 20% |
| From | S/. 100,001 | to | S/. 500,000.00 | 30% |
| From | S/. 500,001 | to | S/. 50,000,000.00 | 35% |
| From | S/. 50,000,001 | to | S/. 100,000,000.00 | 40% |
| From | S/. 100,000,001 | to | S/. 500,000,000.00 | 45% |
| From | S/. 500,000,001 | to | S/. 1,000,000,000.00 | 50% |
| From | S/. 1,000,000,000 | or more | | 55% |

4) The tax on the juridical persons not residing in the country is levied at the following rates:

a) Stock dividends: 40%. (This percentage may be reduced to 30% in certain cases).
b) Income produced by branches or agencies in Perú, available for remittance to its principal abroad: 30%.

The law considers as "available income" the taxable income of the branch less the tax paid according to the scale set out under point 3) above.

c) Other income: 40%.

VII. *Income Tax Payment*

1) *Natural persons with residence in Peru*

Natural persons domiciled in Perú must make monthly payments, on account of income tax, according to any of the following systems:

a) 1/12 of tax paid in previous fiscal year; or
b) applying 1/12 of the tax to the taxable monthly income, considering as taxable monthly income all permanent salary or income received monthly.

2) *Juridical persons with residence in Peru*

Juridical persons with residence in Perú must make monthly payments on account of income tax, according to any of the following systems:

a) 1/12 of tax paid in previous fiscal year;
b) applying the tax rate to the taxable income of the monthly balance; or
c) paying 1.5% of the gross income obtained in the same month.

3) *Natural persons or non-resident corporations*

The tax on income for natural persons or non-resident corporations must be retained by the payor and delivered to the Fiscal Office.

The taxpayer must retain 40% of the credited income according to the following rules:

a) Income of First Category

Is the income established according to the deductions permitted by law for the First Category.

The real property income tax can be deducted from the 40% applied to the net income of the First Category.

b) Income of Second Category

Tax is applied to the total income credited, except on royalties, to which tax is applied after deducting 5% of such income.

c) Income of Third Category

The tax is applied to the total income credited, with certain exceptions.

d) Income of Fourth Category

Tax is applied to 90% of the income credited to persons abroad.

e) Income of Fifth Category

Tax is applied to the total income credited to persons abroad.

Royalties

By Decree Law 17580 of April 15th, 1969 the taxation system established by Supreme Decree 287-68-HC has been modified with respect to remittances abroad to pay royalties and similar considerations.

The actual applicable rate is the following:

| | | |
|---|---|---|
| Up to | S/. 100,000.00 | 20% |
| From S/. 100,001.00 to | S/. 500,000.00 | 30% |
| From S/. 500,001.00 | Over | 35% |

Likewise, 30% of the disposal income shall be paid by the beneficiary abroad.

For the purposes of the application of the income tax, 10% may be deducted from the earnings until the recovery of the costs incurred in Perú, for acquisition, production, registry and similar, on account of wear and tear. Likewise, the beneficiaries abroad may deduct 5% on account of expenses, regarding investigation, experimentation, incurred to obtain assets that may produce such royalties. The amount of the tax is withheld and paid to the Government within the first fortnight of the month following the payment.

IX. *Other Provisions*

1) The capitalization of the profits of each fiscal year, completely or partially, by juridical persons, performed within six months following the yearly closing date, are liable to pay as tax, instead of the income tax rate stated above, 15% of such amount.

2) By Decree Law 17376 of January 15th, 1969, sub-section 8 of Article 18 of Supreme Decree 287-68-HC has been modified, in order to establish the exemption from the income tax of the interest earned by credits for promotion granted by international institutions, as well as by industrial or financial private entities, destined for the construction, acquisition, installation and establishment of fixed assets that may be new or necessary for the establishment or development of the enterprise, as well as for the refinancing of such credits provided the conditions specified by the regulation are fulfilled.

The interest arising from a loan for development, other than those comprehended in the previous paragraph, provided they fulfil the requisites specified in the regulations, are subject to 10% tax.

Likewise, the interest paid abroad by banking enterprises established in Perú as a result of the utilization in the country of its lines of credit from abroad are subject to 10% tax.

3) Taxpayers with domicile in Perú may compensate any net loss of Peruvian source which they may suffer in a fiscal year, with the net profits of any source obtained during the following four fiscal years.

4) Taxpayers classified under the Third Category can revaluate their real estate properties and their depreciable fixed assets according to a percentage that will be established annually by the Government.

The amount revalued is taxed at a rate of 5%.

5) The right to collect the taxes referred to in this law expires in four years; the prescription period for omissions in compliance with tax obligations is fifteen years.

6) Tax on income payable in foreign currency and subject to income tax under these laws must be paid in that foreign currency.

7) Account books must be legalized and registered by the Tax Authorities if the volume of business is greater than $ 500,000 or the working capital is over $ 100,000.00. Any claim must be submitted to the Tax Authority, which will settle it in due course. Appeal from the decision may be taken to the Superior Council on Taxes, which exhausts administrative action, but further recourse may be had to the courts.

8) The Industrial Promotion Law (N° 13270) granted the industries, subject to the same, the right to revalue their industrial assets in case of a devaluation of the Peruvian currency in excess of 5% per year. Similar provision was included in Law 16900 in favor of other industrial and commercial concerns not protected by Law 13270. Also the new article 56 of the Mining Code contemplates the right of revaluation by mining enterprises even in cases in which devaluation does not reach the minimum of 5% per year. In all of the above cases revaluation is voluntary and may take place within the limits established by the law against payment of the corresponding tax.

## CHAPTER II

### STAMP TAXES

The stamp tax is essentially applicable to documents, the amount normally depending on the class of document. In general, all documents indicating payment of a sum of money or an obligation to pay such a sum, or

which are used to record cash entries in account books, are subject to this tax. Provisional documents as well as duplicates of documents are also subject to the tax.

The stamp tax rate for receipts for sales or services is 5%; for receipts for salaries and professional fees 2%; on receipts for rent, 1.1% for housing with a rental of less than $ 3,000 a month and 2% in all other cases; certificates of stocks and bonds, 1%; bookkeeping receipts and all kinds of receipts or documents having no other specified rate, 1%.

The stamp tax is normally affixed to the documents themselves, but in the case of the sale of a commercial or industrial enterprise, a special register is maintained by the taxpayer on which must be affixed the voucher evincing the payment of the tax.

Bills of exchange and promissory notes drawn in Perú to be paid in the same country are subject to a quarterly tax of 0.9%. All fractions of a quarter will be considered as a full quarter for the purpose of the payment of the tax. Extension of maturity date by annotation on the same documents is subject to a 0.45% tax. If made on a different document the tax will be 0.676%. These documents are also subject to an additional tax of $ 2.00 if the amount does not exceed $ 50,000, and of $ 10.00 if it exceeds that amount.

Bills of exchange drawn abroad to be paid in the country or drawn in the country to be paid abroad, and bills of exchange drawn abroad negotiated in the country to be paid abroad, are subject to a 1% tax.

Letters ordering payment or credit issued or to be paid within the country are also subject to a 1% tax. Traveller's cheques, transfer of funds, cheques drawn abroad to be paid in Perú and cheques drawn for payment abroad are subject to a $ 0.36 tax and cheques drawn against current accounts in the Banks of the Republic are subject to a $ 0.08 tax. Finally bank overdrafts are subject to a quarterly tax of 0.9% on the average of the overdraft during each particular quarterly period. Transfer of shares and bonds is subject to a 1% tax. Shipping documents are subject to a 1% tax. Documents relating to the payment of an insurance premium except life insurance are subject to a 5% tax; documents evincing payment of life insurance premiums are subject to a 1% tax; documents relating to the settlement of insurances against damages are subject to a 3% tax. Insurance premiums contracted directly or through agents by the insured party with insurance companies not established in the country are subject to a 35% tax.

## SOCIAL WELFARE TAXES

Contribution to the Social Welfare Fund amounts to 3.5% of the payroll of the company.

Social Security in the case of employees: a contribution of 3.5% is paid by the employer and 3% by the employee on any salary up to a maximum of $ 12,000.

In the case of the Pension Fund the contribution of the employer amounts to 2% and that of the insured employee to 1% computed on remuneration up to a maximum of $ 12,000 per month.

Special Pension Fund for Employees: 2% on the total employee's payroll paid by enterprises whose working capital exceeds S/. 2,000,000.

In the case of labourers a contribution of 6% by the employer and 3% by the labourer is computed on the average wage in accordance with the different categories established by law. The contribution of the National Service of Apprenticeship and Industrial Work (SENATI) amounts to 1% paid by the employer on salaries paid by the same. For this purpose the contribution is computed on a

maximum salary of $ 6,000 and only labour centers with a yearly average of more than 15 daily labourers are subject to this contribution.
Labourers Pension: Employer must contribute 2% of the payroll, labourers in turn contribute 2%.

UNIMPROVED PROPERTY TAX

Unimproved plots of land are subject to a vacancy tax charged on the basis of a percentage on the value of the same. Properties have been classified in four groups, the fourth being exempted from this tax. The other groups are subject to the tax at rates ranging from 0.25% to 3% per annum.

BUSINESS LICENSES

The rates charged in Lima and Callao are based on the amount of capital of the business with a minimum of $ 20 for those with a capital not in excess of $ 500, increasing to a maximum of $ 20,000 a year for a business with a capital of $ 5,000,000 or more.
Professional licenses vary according to the category of the profession, with a minimum of $ 80 and a maximum of $ 800. In the provinces the rates are 50% lower than those in Lima and Callao.

REGISTRATION TAX

This tax amounts to 2% of the amount involved and is levied on all contracts made by public instrument with the exception of sales of real property.
The organization of companies, increase of capital, mutual loans, recognition of indebtedness are examples of contracts subject to this tax.

IMPORTS AND EXPORTS

Import duties are levied on almost all goods produced in a foreign country, the tariff being based on either the weight of an item or on its value fixed by law according to prices on the international market. They are also subject to certain customs surcharges, all of which are ad valorem.
Perú is a party to the General Agreement on Tariffs and Trade (GATT) and to various bilateral agreements providing for most-favored-nation treatment on a reciprocal basis.
The Government is empowered to grant exemptions from duty under special circumstances and also to suspend temporarily the assessment of duties on given products.
The duties or taxes on exports are applicable to certain agricultural and mineral products, the tariff varying according to prices on the international market.
A recuperable payment on account of the tax on commercial and industrial activities amounting to 10% of the FOB value of the exported goods is now in force. It seems however, that this obligation will soon be replaced by a compulsory purchase of National Bonds for an equal amount.

REAL PROPERTY TRANSFER TAX

Transfer of real property is subject to a 12% tax payable in equal parts by deliverer and receiver. The expression "transfer" includes all legal ways of transmitting property, except inheritance. The contribution of real property in exchange for stock and the receipt of property in payment of stock, in the case of reduction of capital or dissolution of a company, are also considered "transfers" for the purpose of this tax.
Sales or transfers by the state, municipalities, universities, authorized co-operative societies and certain other institutions and transfers of title through inheritance or where inherited property is divided and partitioned, are exempted from this tax.

ANNUAL CAPITAL TAX ON REAL ESTATE

This tax is assessed annually on the value of real estate as declared by the taxpayer in respect of properties existing at October 31, 1968, or at January 1 of the year following the construction of new buildings.

Tax is assessed according to a progressive rate which varies from 0.25% to 1%.

## CHAPTER III

LAWS TO PROMOTE THE ECONOMIC AND INDUSTRIAL DEVELOPMENT OF THE COUNTRY

*Industrial Promotion Law*

The benefits granted by Law 13270 to established industries or those that may be established which manufacture basic articles or which are going to manufacture such articles, regardless of whether or not they are produced in the country at present, are substantially the following:

a) Exemption from import duties and additional duties according to the exemption expressed in the law on the importation of machinery, equipment, raw materials or semi-finished products essential in the industrial process, provided they are not produced within the country, and in the case of machinery only if the imported machinery is new.
b) The exemptions are 100 percent of the duties in the case of industries producing basic products, and may be fixed at from 50 to 100 percent on imports of machinery and raw materials for industries whose products are not basic.
c) The right of direct purchase or lease of public lands that are necessary for production purposes and for workers' housing.
d) Recourse to the benefits of the Expropriation Law with respect to an area strictly necessary for industrial purposes.

Basic industries which are established before April 26, 1973 for the purpose of manufacturing articles which are not yet produced in the country may obtain the benefit of exemption from all general, special, and local taxes, with the exception of stamp taxes, during the first three years in the provinces of Lima and Callao, five years, in the remainder of the Coast, ten years, in the Sierra, and fifteen years if established in the Selva (eastern forest region). These periods are calculated from the time the respective plant begins to operate.

Upon expiration of the periods indicated above, the enterprises concerned are entitled to the following tax benefits:

a) Exemption for fifteen years from all general, special, or local taxes which are directly applicable to production of or trade in their basic articles with the exception of the income tax, licenses, stamp taxes, consumption taxes, and municipal excise taxes.
b) The right to invest a part of their net profits for each fiscal period, free from any general, special, or local tax, in: the expansion oi diversification of their productive capacity; the purchase of bonds or shares of the Industrial Bank of Perú; the construction of housing for workers; or the installation and maintenance of schools for training and developing the manpower necessary for their industry, as well as donations for educational or social welfare purposes.

The tax-free portion of the profits may not exceed 30 percent for 20 years in the provinces of Lima and Callao; 50 percent for twenty years in the remainder of the Coast; 80 percent for 45 years in the Sierra, and 100 percent for 55 years in the Selva.

c) The right to write off machinery, parts and installations, governed by Supreme Decree 314-68-HC, Article 7, with respect to readjustment of values in relation to the dollar if the exchange rate varies by more than 5 percent.
d) The right to apply an annual rate for depreciation or amortization reserve for machinery and equipment in the case of prolonged working hours, or replacement or guarantee of replacement or where is in the national interest.
e) Reduction in rates of the profits tax for enterprises in the Sierra and the Selva as follows: in the Sierra, 40 percent during the first ten years, 30 percent during the next ten years, and 20 percent during the last ten years; in the Selva, 50 percent during the first ten years, 40 percent during the next ten years, and 30 percent during the last twenty years.

Non-basic industries may be granted free entry from 50 to 100 percent on machinery and equipment, raw materials, etc. An appendix to the Regulations lists these percentages in detail for specific industries and articles. In addition they will be entitled to the following tax benefits:

a) Exemption for fifteen years, from April 26, 1970, from all general, special or local taxes on production or trade in their articles, with the same exceptions as those applicable to basic industries;
b) The right to invest a part of their profits tax free for the same purposes as indicated for basic industries, amounting to 40 percent for 15 years in the provinces of Lima and Callao, 60 percent for 20 years in the remainder of the Coast, 80 percent for 35 years in the Sierra, and 100 percent for 45 years in the Selva.
c) The right to write off machinery, etc. as in the case of basic industries;
d) The same right to increase the rate of depreciation or amortization, for the same periods as indicated for basic industries;
e) For the Sierra and Selva, the same rights, for similar periods, to a reduction in the rates of the profits tax.

For the purposes of the law, manufacturing industries in general terms are those included as such in the "Uniform International Industrial Classification of All Economic Activities of the United Nations" (Regulations, Article 4).

An industrial establishment is considered to be one duly recorded in the Industrial Register (Padrón Industrial) operating on an industrial scale that meets the technical standards established by Instituto Nacional de Normas Técnicas e Industriales (INANTIC), in which there is some manufacturing process on an industrial scale in which the degree of transformation (elaboración) is equal to or greater than 5 percent of the manufacturing cost.

In computing the "degree of transformation" (grado de elaboración), the "cost of manufacture" is taken to be the sum of the following values:

a) raw materials, semi-processed articles and accessories used in manufacture, after deducting import duties if any;
b) remuneration of permanent technical personnel and workers necessary for production, including social benefits but excepting salaries of management, administrative, sales and distribution personnel;
c) power, water supply and fuel, after deducting import duties if any;
d) normal depreciation of machinery and equipment; and
e) 10 percent of the value of real property used for production purposes based on assessed valuation.

The degree of transformation is the ratio between the values computed for b) plus c) plus d) plus e), and the cost of manufacture, expressed as a percentage. The five percent required by definition may be altered in special cases, provided always there is an actual transformation process (Regulations, Articles 5-7).

The law also provides that the Industrial Bank of Perú shall not accept any application for credit from an enterprise that is not registered in the Padrón Industrial. Enterprises which do not comply with this obligation may be fined up to 10,000 soles.

Revaluation against payment of the Revaluation Tax because of currency depreciation can be effected in the same proportion as such depreciation. To show the difference in exchange rates resulting from operation in foreign exchange in the balance sheet, the following rules are to be applied:

a) the exchange difference resulting from operations comprising investments of capital will be charged to the cost of the respective goods;
b) the annual readjustment at the close of a fiscal period for unpaid balances (debits and credits) in foreign currency shall be made at the rate of exchange corresponding to the average of buying and selling quotations for drafts on the date of closing the fiscal period, as supplied by the Superintendent of Banks;
c) adjustments for exchange differences shall be effected after making the revaluation for depreciation of the foreign currency; and
d) if at the close of the fiscal period there are stocks of finished products, semi-processed articles or raw materials purchased with foreign exchange but not yet paid for, the resulting exchange difference will be charged to their respective costs.

Enterprises to which the Industrial Promotion Law is applicable are required to keep their accounts in domestic currency, and they must show by separate books the results relating to the industry and those derived from activities to which that law does not apply.

Applications for free entry of machinery and equipment must be submitted separately from those requesting free entry of raw materials. In the case of raw materials or semi-processed articles, the free entry will be granted for a volume that does not obviously exceed the needs of normal consumption of the applicant for a yearly period.

Foreign articles that compete with those manufactured by domestic industry, with the exception of medicinal products, may not be granted exemption from import duties, regardless of who is the importer or the special law or contract supporting the reduction or use for which they are intended.

*Industrial Zones*

Industrial Zones have been created in the following geographical areas: Arequipa, Cuzco, Huancayo, Puno, Sullana, Tacna and Trujillo.

Basically, industrial enterprises established in these zones, enjoy the following additional benefits, granted by the Industrial Promotion Law (N° 13270):

a) customs duties exemption;
b) exemption from export duties for manufactured products;
c) exemption from the following taxes—
1) excise tax
2) inheritance tax and tax on the transfer of assets by title acquired gratuitously
3) patent tax
4) registry tax to the establishment of corporations, stock issue, increase of capital, and transfer of shares
5) stamp tax on bills or any credit instruments or banking overdrafts

6) stamp tax on the sale of manufactured products
7) tax on the bills with regard to movable capital;

d) faculty to reinvest profits, tax free, in the extension and diversification of its productive capacity, in the purchase of shares and/or bonds of the Industrial Bank of Perú, in the construction of houses for its employees, in the installation and maintenance of schools and apprenticeship centers for the development and perfectioning of the workmanship necessary for its industry; and
e) exemption from tax on capitalization on reinvested profits. The benefits are granted by means of a contract entered into with the Government.

*Benefits for the Reinvestment of Profits*

All companies, corporations or partnerships, Peruvian or foreign, whatever their object, are able to invest, tax free, part of their profits in any industrial activity or in cooperative works or others, such as ports, industrial districts, general warehouses, power plants, silos etc. destined to provide essential services for the establishment of new manufacturing plants, that may give rise to a reduction in the cost of production or of commercialization of industrial enterprises. The part of the profit to be invested, tax free, is the following: if it relates to a basic industry established in the Province of Lima and/or Callao – 30%; in the rest of the Coast – 50%; in the Sierra – 80%; and in the Selva – 100%. If it relates to a non-basic industry established in the province of Lima and/or Callao – 40%; in the rest of the Coast – 60%; in the Sierra – 80%; and in the Selva – 100%.

In the case where the reinvestment takes place in industrial enterprises which are producers of petroleum by-products through the transformation of hydrocarbons, or in the carbochemical industry, the part of the profits to be invested tax free will be 60% if the enterprise is established in the coast and 100% for the Sierra and the Selva.

These benefits are granted through a contract entered into with the Government.

*Assembly Industries*

Besides the benefits granted by the Industrial Promotion Law (N° 13270) the assembly of motor vehicles may enjoy the following advantages:

a) Importation free of duties of those parts necessary for the assembling of vehicles, as well as the equipment, machinery and tools required for the process of assembly provided that they are new and do not compete with similar items produced locally.
b) Exemption from stamp tax on the sale of vehicles assembled in the country.

These benefits are granted by means of a contract entered into with the Government and have a renewable period of five more years which is subject to the use of not less than 30% of local resources.

Assembly industries engaged in the assembly of all kinds of machinery and equipment for industrial or commercial installations, etc. or for any use by consumers enjoy, besides those benefits from the Industrial Promotion Law, an exemption from import duties in the following percentages: 100% during the first three years of operation; 85% during the following two years; 70% during the following three years and 50% during the ninth and tenth year. In order to enjoy this benefit a minimum of 25 persons must be used excluding the administrative personnel, and a minimum of national resources must be used in the following proportion: 10% during the first three years of operation; 20% during the following two years; 40% during

the following three years and a percentage between 50% and 70% which shall be fixed in each case during the two following years. This benefit is also granted by means of a contract with the Government.

*Exportation of Non-traditional Products*

By Supreme Decree 227-68-HC of July 5th, 1968, it has been established that non-traditional products manufactured in the country (i.e. those other than sugar, cotton, fishmeal, minerals, etc. which constitute the traditional exports of the country) are of primary national importance. The following benefits have been granted for a period of 15 years, from the issuance of the Supreme Decree—

a) total exemption or refund in whole, accordingly, of the specific rights and import duties, including consular fees and those of Laws 14729, 14920 and Supreme Decree 202-68-HC and others that may be relevant, as well as of the customs duty referred to in Article 112 of Law 14816, which is levied on semi-processed raw material and other imported components which form part of the industrial process of these manufactures, provided such products may not be replaced by those produced locally according to the export requirements.
b) Total exemption from duties, taxes and specific rates including stamp and unemployment taxes, that may affect its exports.
c) Refund of the stamp tax levied on the purchase of raw materials, semi-processed and other components produced in the country acquired for the processing of exported manufactures.
d) Exemption from the payment of the surcharge established in Article 18 of Supreme Decree 202-68-HC on the importation of machinery, equipment and raw material which does not compete with similar local products.
e) The industrial enterprises established within the term of three (3) years to produce articles not yet manufactured in the country to be adapted as necessary for the local economy may invest up to 100% of its profits, tax free, in the amortization of the investment necessary for the installation of its plants.

*Tourism Industry and Related Activities*

Entities engaged in the construction and enlargement of hotels, inns, lodging and boarding houses in general, including initial equipment, as well as the installation entailed directly or indirectly, for the hotel activities designed to satisfy tourism, enjoy the following exemptions:

a) Total exemption from the import duties and additional duties, including those established by article 21 of Law 14729, article 1 of Law no. 14920, article 2 of Law 12785 and article 11 of Law 12972, excepting the rates for services and taxes established by Laws 7540, 10090, 11495, 11537 and article 12 of Law 14816. This exemption applies, subject to the disposition in article 49 of Law 13270, as regards the importation of machinery, materials, supplies, implements, equipment, tools and other necessary elements for the construction, enlargement and initial furnishing of hotels, inns, lodges and boarding houses.
b) An allowance for the reinvestment, annually, of up to 100% of its net profits free of general, special or local taxation in the construction, enlargement or improvement of hotels and related premises.
c) Exemption from registration and stamp tax in the incorporation of companies, capital increases, issuance of shares and bonds and the transference of such securities.

d) Exemption from the excise tax and adtional taxes that may affect purchase contracts of real estate and movables necessary to establish, enlarge or equip hotels, lodges and inns.
e) Exemption from income tax on urban property.
f) An exemption of up to 50% of the tax on the value of the real estate.
g) Exemption from the stamp tax on the credit instruments, drafts and promissory notes, as well as the registration tax on the financing contracts and operations destined for the promotion referred to in article 2 of the Decree.
h) An exemption of up to 50% from the tax on the dividends paid on shares established by Supreme Decree 203-68-HC of June 24, 1968.
i) Exemption from the municipal or local excise tax.
j) Exemption from income tax on the interest from credits and bonuses entered into locally or abroad provided they are fully justified, according to the procedure specified in articles 3 and 5, granted and issued by financing institutions of which the Central Reserve Bank of Perú has been previously informed.
k) Tax free capitalization of reinvested profits.
l) They will also enjoy the exemptions established by laws 8707 and 13270 for Industrial Promotion.

The time period for claiming these benefits is three years from the date of issuance of Supreme Decree 217-68-HC of June 28th, 1968, and the duration of the benefits shall last for a term of ten (10) years from the same date.

*Canning Industry*

By Supreme Decree 068-68-FO of July 19th, 1968 a series of tax benefits have been granted in favour of fishing and the processing of fish products or the industrial production of canned fish products; the canning industry and the preparation of cattle products; fruit and vegetable canning industry, including juices, concentrates, dehydrated and other compounds; the production of flavorings, the industrial production of culinary compounds, as well as the manufacturing of flavorings. These benefits, to be in force for 15 years, starting from the date of issuance of the Supreme Decree in reference, are the following:

a) Products whose essential raw materials are of fish origin, will enjoy the tax benefits of Law 15742 and its regulations.
b) Products whose essential raw materials are of agricultural or cattle origin, will enjoy the benefits of Law 17726 and its regulations.
c) An allowance for the reinvestment of up to 100% of its profits, tax free, in the production of cattle products, destined to the canning industry; in the enlargement of its productive capacity; in the acquisition of goods destined to the vertical integration of its industry; fishing vessels, nets and supplies destined exclusively for the catching of fish for human consumption; in the construction of lodging for its labourers; in the acquisition of shares and bonds of the Banco Industrial del Perú or in the subscription of shares in other enterprises dedicated exclusively to the activities falling within the scope of this Decree.
d) Exemption from the stamp tax affecting the sale of the production of the enterprises falling within the scope of this Decree as well as the credit operations and documents, receipts, pay statements, cheque vouchers and other similar documents, and the tax established by Article 8 of Law 14729 which is levied

on that part of the payroll in charge of the employer according to Law 16338.

e) Exemption from the stamp tax, excise tax and additional levies to the excise tax established by Law 16900, which may affect the purchase made by enterprises referred to in this Decree of raw material, containers, machinery and other assets, such as real estate, buildings, installations and fishing vessels as well as their nets and supplies.

f) Exemption from stamp tax and registration tax, excise tax and additional charges established by Law 16900, which may affect the incorporation deeds or capital increase and contribution of chattels or real estate or loans or financing executed by the enterprises falling within the scope of this Decree.

g) Exemption from income tax on the interest from loan or financing operations carried out as debtors by the enterprises falling within the scope of this Decree; as well as the tax on overdrafts established by Law 13303.

h) Exemption from the surcharge established by Article 18 of Supreme Decree 202-HC affecting imports.

Those enterprises dedicated to the production of containers in order to supply the activities mentioned above, shall likewise enjoy for the said term the same import franchises, including the exemption from the surcharge established by Article 18 of Supreme Decree No. 202-68-HC affecting the import of raw material, semi-processed goods and compounds for the manufacture of these containers, provided these industries transferred the difference of the amount of the exemptions over which they enjoy benefits on account of other promotion regimes to the lower price of sale of the local container.

All the industries falling within the scope of the present Supreme Decree shall likewise enjoy the benefits in favour of imports granted by Supreme Decree 227-68-HC.

*Manufacture of Machinery*

By Supreme Decree 090-68-FO of August 13, 1968, the installation, enlargement and development of the industry and manufacture of machinery, machines, equipments, tools, as well as parts, spare parts and assembled parts of the same, has been declared to be of preferred national interest. For this purpose, and for a term of ten years from the date of issuance of said Decree the established industries or those established within five years shall enjoy the following promotional incentives, in addition to those granted by the industrial promotion Law No. 13270:

a) Total freedom from the import duties on machinery and equipment essential to the industrial process as well as for stores including raw material, semi-processed goods and compounds used in the production of the manufacture. This franchise includes specific duties, additional taxes, those established by Law 15774, Art. 112 of Law 14816 and other additional levies. The rates corresponding to services rendered and taxes established by Laws 11495, 11537, and 13836 will not be subject to this exemption. This franchise shall be applied to those assets that cannot be substituted by those of local production, according to the ruling of Article 49 of Law 13270.

b) Authority to reinvest annually up to 100% of the net profits free of all general, special or local taxes in the enlargement and the diversification of its productive capacity, If the amount of the profit tax free would not be sufficient to cover the investment, the profits of subsequent activities up to five years from the date

when the investment is made, may be applied. For the enjoyment of this benefit the requisites and procedure established in Supreme Decree 137-H of June 5th, 1967 must be followed.

c) Exemption from the stamp tax on the sale of the manufactured products by the industry in the local or foreign markets. This exemption will only apply to the first sale, that is the one made by the industrial enterprise.

d) Exemption from stamp tax, or reinbursement of those assessed, on the purchase made by the enterprises referred to in this Decree of raw material, semi-processed goods and compounds of local production. Such reinbursement shall operate by means of transferable certificates to be issued by the Tax Department (Dirección General de Contribuciones) and which may be used in the payment of the stamp tax. Such certificates will have a maximum duration of one year from their date of issue. The way in which this refund will operate shall be regulated by a prior report from the Dirección General de Industrias and the Tax Department (Dirección General de Contribuciones).

e) Exemption from income tax on the capitalization of reinvested profits, according to this Decree, and its distribution among the shareholders.

f) Other benefits that correspond to those granted to the industry under Law 13270, Article 20 of Law 14729 and other legal dispositions in force or to be issued in the future.

*Mutual Funds for Industrial Investment*

By Supreme Decree 093-68-FO of August 14th, 1968 it has been declared that the establishing of enterprises which have the exclusive purpose of undertaking and developing mutual funds for industrial investment—canalizing the national savings of medium and small investors to the industrialization of the country—is in the national interest. Such enterprises shall enjoy the following tax benefits for the term of fifteen years from the date of issuance of the Decree in question:

a) Exemption from the stamp and registration taxes upon incorporating the Company and its future capital increases, as well as on the issuance of shares, bonds, participations and other obligations to be carried out or granted.

b) Exemption from the stamp tax on: the purchase of shares or bonds made by the enterprise; the sale of these securities carried out by the enterprise; and on the credit documents where the enterprise takes part as drawer, accepter, endorsee with respect to the assets or securities referred to in this subsection.
These exemptions apply with respect to the enterprise and likewise to all the operations regarding the mutual fund for industrial investment. The vouchers which the enterprise may grant to the savers for the contribution and payment which the latter make to the enterprise or to the fund and those granted by the refund or withdrawals shall also be exempt from this tax.

c) Tax exemption in favour of the enterprise and of the investors in the mutual funds for industrial investment administered by these enterprises on account of dividends or interets obtained from third parties, by revaluations or adjustments in the value derived from the variation of the rate of exchange between the local currency and the American dollar, but not including the earnings derived from the sale of the property of its assets. These exemptions apply to advances or payments on account of

income tax.

d) Exemption from all tax, including income tax and other assessments, that may affect the dividends, earnings, revenue, etc. which the shareholders or participants may receive from the fund to their benefit up to 10% per annum of the value of the shares or participations in the mutual fund for industrial investment, after any revaluation or readjustment in the value of the same has been carried out.

e) Authority for each saver to invest in the fund, free of income tax, an amount per annum not greater than S/. 200,000.00, with the condition that this investment is maintained for not less than three years subject to the fulfilment of this obligation. The effective delivery must take place before the termination of the corresponding annual activity in which the deduction is performed according to this subsection.

f) Exemption from all estate tax with regard to the participation acquired in these funds.

g) The assets of these enterprises, and those corresponding to the mutual funds for industrial investment, may be revaluated tax free, including income tax, for the benefit of the enterprise, its shareholders and the participants in the fund accordingly, in all the cases of fluctuation in the value of the local currency, with regard to the United States Dollar, in the proportion established in subsection "C" of Article 3 of Law 13270.

*Multinational Enterprises*

By Supreme Decree 284-68-HC of August 9th, 1968, rules have been established to regulate multinational enterprises and whose principal purpose or activity is that of serving as a center for the promotion and advise of multinational and extra-territorial operations under the following conditions:

a) That they perform financing or administrative operations or activities, technical services or others of special character.

b) That such extra-territorial operations or activities be carried out in no less than three Latin American countries.

c) That the extra-territorial operations or activities be subject to the taxation jurisdiction of the countries where they are effectively carried out.

d) That the capital of these enterprises is not less than one million soles and that it shall be totally established through resources received from abroad, in cash, entered through the Central Reserve Bank of Perú.

e) That these entities shall exclusively operate with the resources derived from their own capital and of credits and other financing operations carried out abroad, without the guarantee of persons of Peruvian nationality or domiciled in the country, nor by means of income generated, or, of property, located in Perú, they being absolutely prohibited to enter into any agreement, or, in any form obtain, directly or indirectly, resources existing in the country, for utilization abroad.

Such enterprises shall be exempt from the payment of excise, stamp and registration taxes affecting the private or public instruments to be granted in Perú for documents, contracts and operations with persons or enterprises whose activities are developed abroad, provided their objective be assets, services or financing, established, or to be established, abroad and that the guarantee is not in Perú.

The earnings obtained by such enterprises and by any branch or affiliated company for operations or transactions in Perú will be

subject to the general income tax system on the earnings which are effectively received from its activities in the country.

*Tax Incentives for Agricultural and Cattle Breeding Activities*

The local production of foods, forage and raw material of agricultural origin, as well as its internal trading and its primary processing, enjoy during 10 years, national, regional or local tax exemptions and also exemption from the following:

a) 1. stamp tax, in general;
   2. stamp tax on the transfer of cotton, sheep and alpaca wool, referred to in article 4 of Law 14729, as modified by article 2 of Law 15223;
   3. stamp tax on credit transactions and documents, receipts, pay documents, cash vouchers and other similar documents;
   4. the tax established by article 8 of Law 14729, assessed on payroll, for the part to be paid by the employer, according to the stipulations of Law 16338; and
   5. the tax on overdrafts created by Law 13033, when deemed necessary for agricultural and cattle breeding activities.

Exceptions to the exemptions:

1. income taxes;
2. the taxes and claims that constitute municipal resources and of the Departmental Corporations for promotion and development.
3. taxes levied in favour of the Banco de Fomento Agropecuario del Perú;
4. taxes and charges destined to the Centers of Superior Agricultural Instruction;
5. those levied in favour of the Cotton Chamber of Perú;
6. charges whose product serves for the maintenance and purposes of the Agricultural and Cattlemen Association, Chamber of Commerce and Agriculture of the Irrigation Committee; and,
7. the duties or taxes assessed on the export of forage and raw material of agricultural (farming) origin; excepting those cases taken into consideration in other articles of the law.

b) Customs release for farming machinery, tools and other agricultural equipment and pumps, for farming use, provided they are not produced or do not compete with those manufactured in the country on equal technical standards.

c) During ten years, exemption from profits tax (50% for the coast and 100% for the Sierra and Selva) for enterprises investing with the following purposes:
   1. in works for improvement of irrigation or its distribution or drainage;
   2. in works of infrastructure on agricultural and grazing developments;
   3. in the improvement of farming soil and of meadows, as well as its defence;
   4. in works of enlargement of the cultivated area;
   5. in the construction or improvement of transportation routes (roads) for agricultural products;
   6. in works destined to the conservation or industrial transformation of farming products;
   7. in works of reforestation;
   8. in works of rural electrification; and
   9. in the construction of rural lodgings for labourers.

d) During 10 years, exemption from taxes of the interest on movable capital, and from stamp tax the finance, granted by private enterprises, for the investment specified in paragraph c).

e) During 10 years, natural persons (individuals) and/or corporations dedicated

to the production or primary processing of food products, shall deduct from its profits, further than its expenses, depreciation, etc. authorized by law, 10% of its cost of production. Only for the excess of profits that may exist remaining subject to the payment of said tax and of the surtax. In case an agricultural product is used not as food but for another purpose, a proportion will be established regarding the unit of measure to be applied to its sale in order to fix the part considered as agricultural food product.

f) During two years, exemption from registration and stamp taxes for agricultural enterprises that increase their capital stock.

g) Exemption from the excise and registration taxes on the buying and selling and mortgaging of loans for land partitions approved by the Institute of Agrarian Promotion and Reform provided it does not exceed three times the area of the familiar unit.

h) The donations and economic contributions made by natural persons (individuals) or corporations to Experimental Stations or similar entities, destined to finance programs for investigation or technical normalization or products in the agricultural sector, are free of tax and will be deductible from profits in an amount double that of the amount contributed.

*Mining Industry*

Article 56 of the Mining Code as modified by Law 16892 authorizes the Executive Power within 10 years of the issuance of its ruling, or up to May 10th, 1978, to execute contracts with those concessionaires who apply, in order to obtain the following benefits:

A) Reduction of the profit tax in cases of Peruvian enterprises and of the surtax in case of branches of foreign enterprises, to a sum which added to the amount of the profit tax is not less than 40% of the taxable profit. In the case of foreign enterprises, the sum of the profit tax and surtax should in no case be less than global rate of the tax to be paid in the country where the investment originates, if the same represents the payment of the tax in such country.

B) Ability to extend the annual rate of deductions or reserves for amortizations.

C) Ability to apply the deductions on the readjusted value of the assets, when a fluctuation is produced in the rate of exchange in the local currency which is greater than 5% with relation to the currency of the country where the investment originated.

D) Guarantee to the foreign enterprises on availability of foreign exchange for the payment of invested capital, interest, and of justified services in the country and abroad.

E) Guarantee that there would be no discrimination in exchange policy for the mining investor.

F) Guarantee on the free disposition of the sale of its products and by-products.

G) Privilege to deduct from profits the losses suffered during the previous five years.

H) Ability to invest upon expiration of the contract term for a period no greater than five years, 50% of the profits of each activity, tax free.

The term for exemptions will be ten years to be counted from the date the mining activities start operating to which the pertinent agreement refers, and it can only be extended for 10 more years in the case that due to the difficulties encountered by the concessionaires (difficult access to the mines, lack of workers, shortage of natural resources, decline of market prices, etc.,) they

are unable, in the view of the Executive Power, to recover the investment within the original term.

*Benefits for the Production of Petroleum By-Products*

I) The production of petroleum by-products through the transformation of hydrocarbides, or by-products of the same, as principal raw material which traditionally is not considered petroleum refining, as well as the activities of the carbochemical industry which transforms petroleum into raw material of a different form, or its by-products, as their principal activity, enjoy the following benefits, without affecting those granted by the Industrial Promotion Law (No. 13270):

a) Freedom from import duties on machinery, equipment, materials, tools and essential accessories the industry may require for its installation and production process.
b) Ability to reinvest up to 100% of the annual profits, tax free, in the enlargement, diversification and maintenance of its productive capacity.
c) Exemption from the revenue stamp tax on the sale of manufactured products.
d) Exemption from the registration and revenue stamp taxes on the incorporation of the company and increases of capital, and issuance of shares and industrial bonds, and on the credit documents where it appears as acceptor, drawer or endorsee.
e) Exemption from the obligation to advance payments on income tax.

These benefits are granted through contracts entered into with the Government and will be in effect up to March 19th, 1978.

II) Those industries which are devoted mainly to the production of fertilizers equal or similar to those processed or commercialized by the Corporación Nacional de Fertilizantes may enjoy additionally, through contracts with the Government for a term recorded previously, the following benefits:

a) Exemption from the commercial and industrial profit tax, up to the annual limit of 8.5% of the paid-in capital.
b) Total exemption from the import duties for machinery, equipment, tools and essential spare parts, which the industry may require for its installation, enlargement, diversification or maintenance.
c) Exemption from the revenue stamp tax on documents, receipts and vouchers issued by the enterprise for operations of production, financing or commercialization of its products or its financial or administrative activities in general. This exemption includes invoices, purchase documents of containers for its products and of raw materials and materials required by the industry for its production.
d) Exemption from all income tax on interest or commissions received for credits granted for the purchase of fertilizers or the price payment facilities granted to the buyers provided the product is destined for consumption by local agriculture, and which interest does not exceed 10% annually.

# CHAPTER IV

## AGREEMENT ON THE SUB-REGIONAL INTEGRATION OF THE ANDEAN GROUP

(The countries included are: Bolivia, Colombia, Chile, Ecuador, Perú, Venezuela. Inspired in the Declaration of Bogota and that of the Presidents of America and based on

the Montevideo Treaty).

*Objectives:*

a) acceleration of economic development;
b) facilitation of the participation of the Group in the process foreseen on the Montevideo Treaty;
c) to convert ALALC in the Common Market;
d) to increase the standard of living of the population. The process shall be directed to an equitable distribution of the benefits.

*Instruments*

a) joint programming of the global and sectorial process of industrialization and entering into agreements of complementation of activity;
b) harmonization of the economic and social policies and the legislation;
c) liberation of interchange in a more accelerated form than the one existing in ALALC;
d) establishing of a common external tariff that assures subregional margin of preference;
e) physical integration;
f) canalization of financial resources outside and within the sub-region for necessary investments in the integration program; and
g) programs destined to the development of agriculture and stock rearing.

*Executive Committee of the Agreement*

There are two classes of committees:

a) principals; and
b) auxiliaries.

Principal Executive Committees:

a) the Mixed Commission (the highest council); and
b) the Board.

*Composition of the Commission:*

One representative for each country member.

Functions of the Commission:

a) to formulate the general policy;
b) to designate the members of the Board and to carry out its instructions, and approve the budget;
c) approve the rules and carry on the negotiations;
d) to watch the fulfilment of the agreement, dictate its regulations and approve those of the Board; and
e) to propose the modification deemed convenient for the agreement and solve all matters of common interest.

The commission shall have a President elected from the members of the Board by alphabetical order of the countries, which appointment shall have the duration of one year. The meetings shall take place three times per year, but may be called extraordinarily when called by the President upon the request of the countries or of the Boards. The decisions shall be adopted by the affirmative vote of two thirds of the member countries, with the exception of the following matters:

a) addendum of the agreement, in which case it will take place by the two thirds without negative vote;
b) those relative to the special regime for Ecuador and Bolivia (addendum II), in which case it shall take place with two thirds of the affirmative votes, provided one of them be Bolivia or Ecuador; and
c) the unanimous designation of the members of the Board.

*Composition of the Board:*

The Board is the Technical Committee of the Agreement, composed of three members, that may be of any Latin American country, with absolute independence in the exercise of their functions.

*Functions of the Board:*

a) To accomplish and enforce the fulfilment of the Agreement and the decisions of the Commission.
b) Make studies, evaluate the results of the Agreement, and propose to the Commission the measures deemed convenient for a better fulfilment of the Agreement.
c) To perform the functions as permanent secretary of the Agreement; to prepare its regulations, budget, annual labor program, activities and organic structure of functioning, and to report, submitting it to the approval of the commission.
d) To hire and dismiss the personnel, promote technical meetings.

The Board shall unanimously address itself in all its acts to the Commission. Its functioning shall be permanent.

*Auxiliary Bodies* (Committees)

There will be two committees:

a) The Consultative Committee composed of representatives of the Member Countries, that will maintain a close relation between the Board and the countries, advising the Board and analysing its propositions. Its opinions shall be submitted to the Commission and the Board for their consideration.
b) The Social and Economic Committee composed of employers and employees of the member countries, in a form which the Commission will establish.

*Agreement Instruments*

a) Harmonization of Economic Policies and Coordination of the Development Plans

The Agreement establishes that the countries bind themselves to create a strategy in order to obtain an accelerated development process of their economies, an improvement of their balance of payments and a reduction of the difference existing between their development and that of other countries.

For this purpose they shall coordinate their agricultural development and promotion plans, establishing adequate infrastructure, coordinating economic policies, determine a Common Commercial Policy towards other countries and specify methods and techniques for harmonized planning. Within the term of three years, and based on the direction of the Commission, the countries shall harmonize their legislation and industrial promotion and the treatment of foreign capital.

Likewise, the Commission shall propose the regime to which the multinational enterprises shall be subject.

b) Industrial Program

The countries bind themselves to undertake a joint participation process of industrial development with the purpose of obtaining a major expansion, specialization and diversification of the industrial production, as well as a maximum utilization of the resources, the improvement of productivity, the efficient utilization of the productive factors and the utilization of the economics of scale. For this purpose, the Commission shall approve Sectoral Programs of Industrial Development which shall be executed jointly by the member countries. These programs shall contain everything referring to sector delimitation, new investments, localization of plants, harmonizing of policies, liberation programs and common external tariff, etc.

1.-*Existing Industries*- in this respect sectoral programs shall be prepared in order to rationalize the production and distribution of merchandise.

2.-*Multinational Enterprises*- The Commissions, upon the proposal of the Board may recommend the establishment of multinational enterprises, for the installation, enlargement or complementation of selected industries, with the purpose of an efficient utilization of the enlarged market.

c) Liberation Program:
It has the purpose of eliminating the claims and restrictions of every kind regarding the importation of products originating in the territory of the member countries. It shall include all the products, and will be automatic and irreversible, in order to attain its total liberation in eleven (11) years upon the enforcement of the Agreement. The products shall be classified by groups applying different systems for each group.

d) Common External Tariff:
The countries bind themselves to adopt and apply a Common External Tariff within the eleven years following the enforcement of the agreement. The formulation and application of this tariff shall be progressive in order to accomplish a common level of charges.

*Regime for Agriculture and Stock Breeding*
With the purpose of improving the standard of living of the rural population, increasing productivity in agriculture and stock breeding, import substitution, and increasing the exports, the member countries shall harmonize their national policies and will coordinate the relevant development plans in order to reach a common program in all the aspects connected with this sector.

*Commercial Competition:*
The Commission shall adopt all kinds of measures to correct or prevent practices that may distort competition within the sub-region.

*Saveguard Clause:*
In this respect the general rules foresee that Chapter VI of the Montevideo Treaty shall be followed.

*Origin:*
The Commission, with the proposal of the Board shall adopt the special rules that may be necessary for the qualification of the origin of the merchandise. These rules shall constitute a dynamic instrument for the development of the sub-region.

*Physical Integration:*
The member countries shall undertake joint action in order to solve the infrastructure problems that may stand in the way of the process of sub-regional integration.
This action shall be carried out by means of integral programs jointly applied.

*Financing Matters:*
The countries shall coordinate their national policies regarding financing and payment matters in order to ease the fulfilment of the purposes of the agreement. This coordination shall be carried out by means of canalizing savings, commercial financing, capital circulation, sub-regional payment clearing-house and rules designed to solve the problems of double taxation.

THOMAS J. KENNEDY★:

# THE CANADIAN WHITE PAPER: INTERNATIONAL TAX PLANNING

## (Part II - Canadian-Source Income of Non-residents)[1]

### I. INTRODUCTION

Waiting for the Canadian tax reform has—since the 1962 appointment of the Carter Commission and its Report in 1967—begun to seem like waiting for Godot. The measured pace is, however, to be praised rather than condemned—especially when set beside the whiz-bang United States Tax Reform Act of 1969, whose scope is so all-encompassing, yet whose consideration was so rushed. Taxpayers affected by the Canadian White Paper's reform proposals have been given time to reflect, as Beckett's tramps did, as to whether they are being led to the fields or the shambles. International companies and investors have been promised a transitory period lasting until January 1, 1974, by which date the Canadian Government hopes to have fully implemented the international provisions (Chapter 6, *inter alia)* of the White Paper.

In Part I of this article, the proposals concerning foreign-source income of Canadians were discussed. Part II will deal with the proposals on Canadian treatment of non-residents' Canadian-source income.[2] Each subject will be dealt with in the following order: present taxation; White Paper proposals; and the problems raised by each proposal in the context of international tax planning. Note that not all reform proposals are within the scope of this article, but only those *directly affecting* non-residents—either individual or corporate—with Canadian-source income. Many measures, though domestic, affect non-residents rather severely due to the high degree of foreign ownership in, e.g., the mining and petroleum industries.[3] Time and space prevent a discussion of these latter reforms here.

Basically, two systems of non-resident taxation are proposed in the White Paper: a favorable one applicable to treaty countries and an unfavorable one in cases where the non-resident is from a non-treaty country or jurisdiction. As stated above, the reforms of non-resident taxation are not intended to come into effect fully until 1974 or later, to allow Canada to re-negotiate existing tax treaties and expand its network as well. Nevertheless, the Government has stated that it intends to increase dividend withholding tax to 25% (from 15%) as of January 1, 1971 (see section II *infra*) for non-treaty countries and the capital gains provisions will apply as of a "valuation day", which will quite probably be announced on a weekend in late 1970. Although the Canadians may need the full period until 1974 to re-negotiate and expand their treaties, corporations and individual investors are already re-assessing their policies in order not to be left in

---

★ The author is currently editor of EUROPEAN TAXATION with the International Bureau of Fiscal Documentation in Amsterdam.

1. Part I—Foreign Source Income of Canadians—appeared in the February issue of the BULLETIN.

2. These proposals are contained in the White Paper (hereinafter cited as "WP") paras. 6.34-6.51 and references to White Paper proposals on non-resident taxation are to these paragraphs, unless specifically noted.

3. WP, paras. 5.23-5.45.

difficulties as early as December 31, 1970. Nowhere is this truer than in the case of foreign, especially United States, parent corporations with Canadian subsidiaries. Since the interests here are so substantial, extensive Parliamentary hearings and consultations are under way and assumedly the U.S.-Canadian taxation of corporate and investment profits will be at the center of debate.

## II. WITHHOLDING TAX

### A. *Dividends*

#### i) Present Taxation

The present Canadian non-resident withholding tax on cash or stock dividends[4] paid or credited (or deemed to be paid or credited) by a Canadian resident to a non-resident person (including corporations) is generally imposed at a 15% rate on the gross amount.[5] Dividends declared, but not paid out, are not taxable. Canada's tax treaties stipulate this 15% rate as a maximum, with minor exceptions, and it is applied in non-treaty circumstances as well.

A 10% rate applies to dividends paid by a corporation having a "degree of Canadian ownership" (25%).[6] In addition, such corporations are granted accelerated capital cost allowances on fixed assets acquired in the same year.

Since this withholding tax is imposed on gross income, no deductions are allowed[7] and the 20% dividend tax credit extended to Canadian resident shareholders is, of course, not applicable to non-residents.

The major exemptions from withholding tax on dividends received by non-residents include:

a) dividends paid by non-resident-owned (hereinafter "NRO") investment corporations, under certain conditions[8] (see section III *infra*);
b) dividends paid by personal corporations to the extent that they are not taxed under ITA, sec. 167;[9]
c) dividends paid by certain "foreign business corporations" and foreign business (holding) corporations operating public utilities or mining enterprises in foreign countries.[10]

The NRO investment corporation dividend exemption is the only one of these which has real importance.

Dividends from wholly-owned subsidiaries of foreign corporations are subject to reduced rates under certain treaties (e.g. Sweden)[11] but those with U.S. parents must pay the normal 15% rate (with exceptions for a) and b) above) under Article XI (2) of the Canada-U.S. Income Tax Treaty.[12]

---

4. "Dividends" include cash or stock dividends, interest on income bonds, certain loans to stockholders, payments in lieu of dividends at stockholders' direction, payments to stockholders otherwise than pursuant to a *bona fide* business transaction, etc. See Income Tax Act 1952 (hereinafter cited as "ITA"), secs. 81(6), 106(1a), 8, 16, 108(5), *inter alia*.
5. ITA, sec. 106(1a). *Cf.* sec. 139(A).
6. ITA, sec. 106(1a) (b). The definition of and qualifications for "degree of Canadian ownership" status are complicated and differ for, e.g., non-resident controlled subsidiaries. See ITA, secs. 139(A) and Regs. 3100 and 3200.
7. ITA, sec. 108(1). *Cf. In Re National Trust*, 54 D.T.C. 331.
8. ITA, sec. 106(1b).
9. *Ibid.*
10. Foreign Business Corporations are special case companies which are exempted from income and withholding taxes on foreign source investment income under ITA, sec. 71. They are to be phased out by 1974. See XXIV BULLETIN FOR INTERNATIONAL FISCAL DOCUMENTATION, at 59 (February, 1970).
11. See *Supplementary Service to European Taxation*, section C (Sweden). *Cf.* Canada-Germany Income Tax Treaty, Art. XVI.
12. The 5% rate of withholding tax on dividends paid by Canadian subsidiaries of U.S. Parents was raised again to 15% in 1960.

ii) White Paper Proposals

The Government notes that Canada's withholding tax rate on investment income flowing to non-residents is distinctive in that —contrary to most countries—it sets a standard maximum rate of 15%, tax treaty or no. To combat tax avoidance—especially through offshore trusts located in tax havens —and to enhance Canada's bargaining stance in negotiation of tax treaties, the Government intends to raise the non-resident withholding tax in non-treaty circumstances to 25%, effective for dividends declared after January 1, 1974.[13] The generally effective *treaty* rate of 15% would be retained and adopted in new treaties.

After the White Paper was made public, Canadian Finance Department officials are reported to have indicated their intention to retain the reduced rate of 10% on dividends from companies with a "degree of Canadian ownership" paid to shareholders in treaty countries (i.e. normally applying the 15% rate); in non-treaty countries, this reduced rate would apply, but at a 20% rate (vs. 25% otherwise).[14]

iii) Comment

The White Paper proposals on non-resident dividend withholding tax are rather general and, of course, many questions of detail are thus raised. For example, will the exemptions for NRO and personal corporation dividends be retained? What of foreign parent-Canadian subsidiary dividends? Assumedly, such problems will out in the coming debate and negotiations. A few problems that will arise are related to the tax reform as a whole—especially adoption of a capital gains tax. If foreign corporate holders of substantial participations are to be taxed—on sale and at five year revaluation intervals[15] – at progressive or corporate rates, will there be pressure to declare substantial dividends (thus reducing tax on some distributed profits to 15%) beforehand and thus bring on all the complications of bail-outs and dividend strips? It would seem that non-resident shareholders, especially those resident in non-treaty countries, must draw up dividend and profit allocation programs early in 1970—or at least before a bill is introduced and "valuation day" is sprung (in late 1970?).

Offshore trusts, holding companies and other avoidance devices have been given fair notice that Canadian-source dividend, interest and royalty payments will be subject to the 25% rate in addition to the "passive income" tax net, discussed earlier.[16] One must note, however, that the United Kingdom's 41.25% dividend withholding rate (in non-treaty cases) has not seemed to reduce the number or complexity of the offshore schemes of tax avoidance there. The White Paper's major weakness, in my view, is its over-emphasis on loophole closing and "equity"—at the same time giving short (or no) shrift to the investment and practical business implications of its unfortunately vague proposals. In terms of dividends, the problem of U.S.-Canadian, parent-sub dividend and interest flows is not even mentioned. Note that these flows have often been the largest single variable in Canada's balance of payments and have been increasing of late.[17] What could be the effect, for

---

13. For other categories of investment income, January 1, 1971 would be the effective date, with exceptions (see section II C *infra*). The 25% rate is specifically intended to approximate those of the U.S. (30%) and U.K. (41.25%) in non-treaty cases.
14. Canadian Tax Foundation, Tax Memo: White Paper on Tax Reform, at 71 (November, 1969). *Cf.* ITA, secs. 106(1a) and 139(A).
15. WP, paras. 3.36, *et seq.*
16. See BULLETIN, note 1 *supra*, at 37.
17. See J.P. WILLIAMSON, TAXATION OF U.S. PRIVATE INVESTMENT IN CANADA, at 2 (1963).

example, of the 10% rate for corporations "with a degree of Canadian ownership" being extended to subs less than 25% owned by U.S. shareholders? Practically speaking, dividends paid to non-residents up to January 1, 1974 will not be affected directly by the changed rates (10–15–20 or 25%) but must take into account the effect of capital gains tax introduction—possibly as early as 1970. The possibility of pre-emptory dividend declarations in many cases (especially for presently exempt NROs, etc.) is great since the withholding rates will either stay put or rise and apparently none will fall.

B. *Interest*

i) Present Taxation

Interest paid or credited by a Canadian debtor to a non-resident is generally subject to the 15% withholding tax rate when such interest becomes payable.[18] Payments in lieu of interest and payments of capital and income combined to non-residents are similarly taxed at the 15% rate on the (deemed) interest portion.

Many interest payments are exempted from the 15% nonresident withholding tax, including, *inter alia:*

- interest payable by a NRO investment corporation;
- interest payable on bonds of the Canadian Government (or guaranteed by it);
- interest payable on certain Government, Provincial or municipal bonds, educational institutions and quasi-governmental corporations, issued after April 16, 1966;
- interest payable, under certain conditions, in a non-Canadian currency to a person dealt with at "arm's length" by the debtor; and
- interest payable to non-resident (exempt) pension trusts, charitable, and similar institutions under certificate of exemption under ITA, section 16 (1) (b) (iv).

ii) White Paper Proposals

The present 15% withholding tax on interest payments (and on all other categories of income subject to the tax)[19] to non-residents would be raised to 25% as of January 1, 1971 with several important exceptions, including retention of the 15% rate in existing treaties. In non-treaty cases, the increased rate would be postponed until January 1, 1974 (assumedly, for instalments payable after that date) for interest (rents and royalty payments) on "obligations arising out of *agreements in writing concluded before the date on which this White Paper is published*" *(i.e. November 7, 1969)*. For bonds or other obligations held by residents whose countries' treaties with Canada limit withholding tax to 15%, that rate will be retained on "arm's length" interest payments on obligations issued before January 1, 1974. Finally *presently exempt interest* will retain that status until January 1, 1974, after which interest paid on obligations held by treaty country recipients only will so qualify.

iii) Comment

For treaty country recipients of Canadian-source interest, the 15% withholding rate will be unchanged, the only note being the Government's utterance of the much-feared "arm's length" *caveat*. ITA, section 139 already applies an "arm's length" standard to all transactions and the 15% non-resident withholding tax is specifically imposed on the amount of benefit from a non-conforming transaction. How the Government can improve on this, apart from stiffer enforcement, is questionable—especially since an unrebuttable presumption exists that related companies and persons *cannot* deal at arm's length.

18. ITA, sec. 106(1)(b).
19. See section II C *infra*.

For non-treaty recipients of interest payments, the situation is a little puzzling. Apparently the Government intends to retain the 15% rate on debt obligations issued before November 7, 1969 but only for payments thereon up to January 1, 1974. The big question here is what effect this provision would have on Canadian companies' ability to raise loan capital abroad. Limited to raising debt capital in (and paying interest to) only treaty countries, Canadian companies might well find themselves partially cut off from the international capital market (e.g. Switzerland, Luxembourg). International financial companies are no strangers to Canadians but their use might become well-nigh obligatory if Canada moves even closer to the restrictive U.S. policy on interest.

In terms of interest exemptions, the Government lightly brushes over the continuation of present exemptions. The NRO interest exemption is discussed separately (section III *infra)* due to its importance, especially to U.S. parents. The other exemptions of interest payable to non-residents, listed in ii) above, will apparently be retained—not surprising when one notes that the Federal Government and its Provinces and municipalities are the main beneficiaries thereof. They reduce the cost of Government borrowing in, e.g., the U.S.

### C. *Royalties, Rents, Management Fees (and Other Payments) Subject to Non-resident Withholding Tax*

#### i) Present Taxation

The general rule is that each Canadian payor must withhold 15% tax on the gross amount of payments or credits (actual or deemed) to non-residents in the form of, *inter alia*, management fees, dividends, interest, rents, royalties (including timber royalties), estate and trust income, alimony, income from "doing business" in Canada, etc.[20] Generally, an arm's length standard applies to the fixing of the gross amount of such payments and no expenses may be deducted.

A previously doubtful area is the definition of "royalty payments" to non-residents upon which 15% withholding tax may be imposed. Payments to U.S. corporations for the use of dress designs, trademarks and "know-how" have been the subject of adverse court decisions in this regard. The Canada—U.K. Income Tax Treaty incorporated a new, broadened definition of "royalties" which now include payments for the use of "know-how" such as "information concerning industrial, commercial or scientific experience".[21] This new definition of rents, royalties and similar payments has been incorporated in ITA, sec. 106 (1) (d), as amended, and applies to all such payments to non-residents after October 22, 1968.

#### ii) White Paper Proposals

The same treatment applied to interest is put forward for rents, royalties and "all other categories of income subject to the non-resident withholding tax". In other words, the treaty country recipient will be liable to the 15% rate and the non-treaty country recipient to the 25% rate as of January 1, 1971 (with postponement of the 25% rate until 1974 on payments contracted before November 7, 1969).

#### iii) Comment

The non-resident withholding tax of 15% on

20. ITA, sec. 106 generally. Reduced rates apply to motion picture rents and royalties (10%). Special provisions apply to NRO investment corporations. See ITA, secs. 106(9) and 108.

21. Canada—United Kingdom Income Tax Treaty, Art. 11. *Cf.* ITA, sec. 106 (1) (d), as amended by 1968-69, c. 44, s. 29 (1). See J. Crystal, "The Curious Nature of Know-How", XXIII BULLETIN FOR INTERNATIONAL FISCAL DOCUMENTATION, at 73 (Feb. 1969).

specified payments (ITA, sec. 106) is broadly drawn and its lack of distinction as to the country of residence of payees is now to be ended. From 1974 or so, companies and individuals resident in non-treaty countries will find themselves at a distinct disadvantage. They will be obliged to locate in treaty countries—most of which have treaties which impose prohibitive taxes on repatriated income—pay the 25% rate, or try to employ the rather limited exemptions. Two examples of entities which will find it hardest to adjust to the new system are patent holding companies and offshore trusts[22]—normally established in tax havens. The Government's aim seems to be to eliminate such anomalies and force Canadian-source income to be paid directly to non-residents and taxed at the 15% rate. That this commendable aim will cause hardship to non-treaty and offshore enterprises seems to be the small price to be paid for the fact that the great plurality of international transactions will be unaffected. The only flaw in this logic is that Canada presently has treaties with only 15 countries (almost all developed). Unless the treaty network is greatly expanded—which seems unlikely—the less-developed countries, especially in South America, will suffer for the sins of the tax haven users. The fate of special provisions for rents, royalties, etc. in, e.g., the Canada-Germany treaty is also at stake.

## III. NON-RESIDENT-OWNED INVESTMENT CORPORATIONS (NROs)

### i) Present Taxation

Non-resident-owned investment corporations[23] (hereinafter "NROs") are Canadian-incorporated entities, at least 95% beneficially owned (equity and debt) by non-residents, and whose income is derived from trading and dealing in investments. However, a NRO's *principal business* may not be lending or dealing in bonds, shares, debentures, mortgages and similar property. Nor may over 10% of its gross receipts be derived from rents or charter-party fees. If all these conditions are met, NROs are taxed, by election, at a special 15% rate and may distribute dividends (under certain conditions) and interest free of further tax (i.e. no 15% non-resident withholding tax). They may not deduct interest paid on their corporate debt,[24] nor are they entitled to foreign tax credit (although they may deduct foreign taxes in computing income).

NROs are flexible corporations whose main use has been as holding companies for investors in Canadian (and in certain instances American) securities. However, NROs have also been used as a tax-avoidance device by foreign companies operating in Canada. The typical setup is for a foreign company to incorporate a NRO and contribute to it a large sum in cash (say $ 5 million). The NRO proceeds to set up an operating subsidiary in Canada to which it contributes a nominal value of property (say $ 50) in return for its shares. It then loans the original parent company's $ 5 million to the operating subsidiary. The subsidiary pays the normal corporate income tax at 50% but considerably reduces its taxable income by deducting the interest payments on the NRO loan. This interest deduction is the

22. Pre-1949 Canadian resident trusts with non-resident beneficiaries are a special case and no incentive to set up Canadian trusts seems to exist for most non-residents.

23. ITA, secs. 70, 106 (1) (b), 139 (1) (aa), 108 (2a) and Regs. 500, 501, 502, 2000 and 2002.

24. In *Peninsular Investments Ltd.*, 63 D.T.C. 1149, a NRO's interest payments on a bank loan used to purchase investments were *held* not deductible since the loan was deemed to come within the meaning of "other indebtedness" in ITA, sec. 70 (1).

key to the tax-saving scheme. The NRO, meanwhile, pays only the special 15% income tax and repatriates profits to its foreign parent, withholding tax-free. Had the NRO not been placed as an intermediary, the operating subsidiary could not artificially reduce profits (by deducting interest payments to the NRO) and also would face double taxation on income distributed to its foreign parent (50% corporate and 15% non-resident withholding tax).

ii) White Paper Proposals

The Government is, of course, quite aware of such abuses of NROs and proposes two corrective measures:

a) increase of the special 15% income tax on NROs to 25% to "match the rate of the non-resident withholding tax"; and
b) restrict the deductibility of non-arm's-length interest in cases where the shareholder debt/equity ratio exceeds 3 to 1 (on this "thin-capitalization" rule see section IV *infra*).

iii) Comment

One of the reasons NROs have been used to reduce Canadian tax is that the normal overall burden on repatriated profits of Canadian subsidiaries amounts to 57.25% (50% corporate and 15% withholding tax)—higher than, e.g. U.S. domestic rates. The problems that result are normally in the area of U.S. (or U.K., etc.) foreign tax credit, with small percentages of Canadian tax not capable of being set-off against the parent's domestic tax liability. It is not stated in the White Paper that the 25% rate will apply to NROs owned (95%) by persons or corporations in non-treaty countries only, but this would seem to follow if the reforms are to be consistent. A question remains, however, especially re: the U.S., where NRO parent corporations would only be effected by the thin capitalization block if the 15% income tax rate is retained in the case of NROs with treaty country shareholders. Again, no date is set for this increase but January 1, 1974 has been indicated for related proposals.

While these evasion questions are epistemologically interesting, a more pointed one concerns the future of NROs as investment holding companies (i.e. conduits). One could cite several non-treaty country (e.g. Switzerland) parents who must be worrying about their Canadian NRO children. The effect of the proposals on the flow of investment into the Canadian and U.S. stock markets through NROs is bound to be substantial, especially since the Government continues to (conversely) favor direct portfolio investment in its non-resident capital gains proposals.[25] Canada must balance the value of stemming tax evasion through NROs against the loss of foreign investment capital the 25% rate would imply. Alternatively, investment trusts (offshore variety) could become alternatives for portfolio investment but the Government has avoided discussing plans for these very complicated devices.

## IV. THIN CAPITALIZATION

i) Present Taxation

Canadian tax law imposes minimum restraints upon debt/equity ratios in terms of both incorporation and operation. The White Paper cites examples of companies being set up with nominal share capital ("$ 3") and excessive debt capital. Unlike the U.S., which imposes a 3 to 1 debt/equity ratio[26] as a general rule, Canada allows foreign corporations to substantially reduce the

25. See section V *infra*.
26. See WILLIAMSON, note 17 *supra*, at 35, *et seq*.

50% corporate tax rate by investing mainly in the form of loans to subsidiaries in Canada. The sub may then deduct interest remitted from business profits and pay only 15% withholding tax on interest paid to, e.g., a non-resident parent or a NRO. The abuse of this tax-saving device by NROs (see above) led the Government to propose restrictions on such interest and debt/equity devices.

ii) White Paper Proposals

The Government proposes the adoption of a "thin-capitalization" rule, i.e. a 3 to 1 debt/equity ratio. It indicates some flexibility will be required but the statement is left at that.

iii) Comment

Dr. Huiskamp has noted, in his February BULLETIN editorial, that the "thin-capitalization" problem has defied solution in the international tax area. The Canadian solution is rather rough and ready and the American experience shows that exceptions will be necessary. The obvious examples are investment companies and banks which often operate on higher debt/equity ratios in order to compete. Ironically enough it is exactly these types of financial or investment companies' abuse of the debt/equity ratio that brought on the 3 to 1 rule proposal. The result should be interesting.

Interest payments from subsidiaries to parents are often made in excessive amounts to stimulate cash flows or at excessive rates in order to take advantage of interest deductions (vs. dividends, normally not deductible). A recent Dutch case held that a sub had to add 5% to its income when it granted an interest-free loan to its parent corporation.[27] Such drastic measures are often deemed necessary in order to enforce the arm's length transaction rule, whose application to related companies is so often necessary. In this regard it should be noted again that Canada already has a provision which raises an irrebuttable presumption that related persons and corporations *cannot* deal at arm's length with one another. Why this *caveat* has not been used more frequently to deal with the thin-capitalization problem in Canada is puzzling. The forcing of foreign companies to invest in Canada in the form of equity, rather than debt, capital will be a difficult step. If the US. corporate tax rate is lowered, as has been proposed, and the use of interest deductions to reduce Canadian tax is curtailed, non-resident companies will have to either resort to new devices or hope the re-negotiated treaties deal with the problem of un-creditable Canadian taxes.

## V. CAPITAL GAINS

i) Present Taxation

Capital gains are not presently taxable in Canada where the gain was "made on the realization of an investment rather than in the carrying on of a business or an adventure in the nature of a trade".[28] A common misconception is that gains from the sale, exchange or liquidation of capital assets (stock, real property, etc.) are completely exempt from Canadian income tax. On the contrary, a long history of case law and Income Tax Department practice has brought such gains within the ITA's definition of "income" (and thus taxable at progressive or corporate tax rates) where speculative[29] or profit-making intent is proven.

The most frequent cases have involved the sale of land. Next in frequency have been

27. See 10 EUROPEAN TAXATION 11/1 (February, 1970).

28. *Californian Copper Syndicate v. Harris*, (1904) T.C. 159.

29. See *Constant*, 58 D.T.C. 1100; *157.159 St. Paul Street*, 58 D.T.C. 661.

cases where capital gains were deemed income in the hands of dealers, brokers or "insiders" whose course of conduct (even in isolated transactions) was such that a speculative intent or carrying on a business in the particular assets was proven. Rather than ruck through the cases one by one, a list of the tests distinguishing capital gains from income in Canada follows:

a) intent—investment or resale at a profit, as shown by the whole course of conduct;
b) a corporation's objects, as set out in its charter of incorporation or letters patent;
c) dealing in assets closely connected with the taxpayer's business;
d) number and frequency of transactions (including isolated transactions where other factors prove speculative intent);
e) nature of the asset (e.g. stock-in-trade) or transaction (e.g. no income produced before resale).

A distinction is made in the courts between conversion of fixed capital (i.e. held for the production of income and often converted into stock-in-trade) and circulating capital (i.e. held for sale in the normal course of business) with only sales or exchanges of the latter taxed as income.

Depreciable assets are subject to special statutory rules for recapture of excess depreciation and a limit on depreciable capital cost equal to the original capital cost of the transferor.

In terms of securities, the Income Tax Department has been less strict in imposing tax, while continuing to apply the test of investment vs. speculative intent. The Department has taxed only capital gains from securities in the hands of taxpayers connected with the securities business in some way. Thus, stockbrokers, dealers, underwriting firms, lawyers and others with, e.g., "insider" knowledge have been taxed on capital gains deemed "income" in a series of cases.[30]

In regard to non-residents, these same general rules apply but may be varied by tax treaty. For example, Article VIII of the Canada—U.S. Income Tax Treaty[31] states that "gains derived from the sale or exchange of capital assets within one country by a resident, corporation or other entity of the other, are exempt from tax by the other provided no permanent establishment is maintained there". Compare the Canada—U.K. treaty, Article 12, which grants the same exemption but whose wording is broader—taxing gains from "movable property" which forms part of the business property of a permanent establishment or which pertains to a "fixed base" for "professional services". Capital gains other than those specified in Article 12 are taxable only in the country where the alienating person is resident.

Capital losses are, of course, not deductible in Canada in computing either taxable business income or income from other sources. For corporations, however, net capital losses are included in computing undistributed income on hand for purposes of determining liability of shareholders to dividend tax, e.g. on payment of stock dividends, reductions of capital or liquidations, or conversion of common shares to preferred shares or debt obligations.

### ii) White Paper Proposals

The capital gains tax proposals relating to non-residents differ significantly from those applicable to Canadians.[32] Non-residents would be taxed—the rates are not stated—

---

30. *Greer*, 67 D.T.C. 227.
31. See also U.S. Rev. Reg. 519.110. *Cf. William E. Adams*, 46 T.C. 249 (U.S. nonresident alien not entitled to treaty exemption on capital gains earned in the U.S., though he had concurrent Canadian residence).
32. See WP, Chapter 3 generally.

on gains from the sale of closely-held Canadian corporations, real property, partnership interests and branch assets in Canada. In terms of widely-held Canadian corporation shares, only sales from a substantial interest (25% or more) by a non-resident would be taxed. For sales by non-residents of closely-held shares, responsibility would be placed on the purchaser to ensure payment of capital gains tax by requiring "certificates of compliance" for such transactions.

The Government aims to favor portfolio investment over capital participations in widely-held Canadian corporations, but the reason given is that to tax small lot (under 25%!) sales would be impracticable. It is not indicated whether the taxation of ½ of gains and deduction of ½ of losses on widely-held company shares (as is proposed for Canadian resident shareholders) would apply to foreign investors. Assumedly, progressive rates on individuals and a 50% rate for corporations would apply to foreigners but the rate for Canadian corporations is specifically proposed to be 33⅓%. The 5 year revaluation rule (i.e. taxation of a deemed capital gain (or deduction of loss) on the increase (or decrease) in value at 5 year intervals) would apparently apply to non-resident-held shares of widely-held Canadian corporations, where the foreign shareholder owns 25% or more of the capital. This is not specifically stated, nor are the rates of tax, but it *is* stated earlier[33] that shares of foreign corporations would not be subject to the 5 year rule—obviously because of impracticality.

The capital gains tax proposals will, of course, require re-negotiation of tax treaties (especially the U.S. and U.K. treaties) in order to authorize taxation of non-residents' Canadian-source capital gains. In addition, the vagueness of the present proposals is expected to be cleared up by a follow-up White Paper on capital gains.

iii) Comment

The vagueness of the Canadian proposals is especially evident in the capital gains area. Little can be said in terms of tax planning until the capital gains White Paper is published. The first order of business will be re-negotiation of tax treaties, especially those which currently forbid taxation of foreigners' Canadian-source capital gains in the absence of a permanent establishment (see U.S. treaty, Art. VIII and U.K. treaty, Art. 12). The effect on investment in the Canadian stock market—especially if the 5 year revaluation-taxation rule is imposed on non-residents—could be staggering, although the Government brushes this aside rather casually. As with past Canadian tax reforms, the thin line between favoring Canadian domestic investment vs. discouraging foreign capital (especially participations vs. portfolio investment) is often blurred if not bluntly crossed. A number of delicate questions will arise for foreign corporate and individual share and security holders of Canadian corporations. Among these are:

- Will the capital gains tax (especially that on 5 year revaluations) be creditable against foreign tax?
- Will corporate re-organizations involving, eg., U.S. subsidiaries in Canada qualify for rollover relief, where there is a share for share exchange?
- Will the "certificate of compliance" procedure cause undue delays (for audits, etc.) in closing security transactions?
- What capital gains tax rates will apply to each type of transaction?
- How will foreign trusts, NROs, investment entities and other devices for investment in Canadian securities be taxed on capital gains?
- What will be the precise requirements for

33. WP, paras. 3.32 *et seq.*

qualification for the favored "widely-held" corporation status, and what effect will foreign ownership have on this determination?

Some practical planning must be done by foreign shareholders in 1970—i.e. before the threatened "valuation day" arrives (and from which unknown date the securities' value for capital gains tax purposes will be set). The most vital point is that only increases or decreases in market value *after* valuation day will be taken into account in calculating capital gains or losses. Thus excessive or artificial loss in market value between now and valuation day would be especially damaging. With the U.S. and Canadian stock markets still in the doldrums at the time of this writing, a good possibility of artificially low cost bases come valuation day arises under the present proposal. For example, a share bought in 1968 for $ 100 which drops to $ 80 market value in mid-1970 (e.g. at valuation day) and later rises to $ 120 at time of sale would result in a capital gains tax on $ 40 gain, while the actual gain would only be $ 20. Obviously, a rights issue would be, at this point, a particularly dangerous undertaking (excuse the pun). Assumedly, some transitional rules are in order and many questions are left unanswered in the capital gains area of the White Paper. A good deal of re-assessment of portfolios and participations is already under way but the vagueness of the proposals prevents further specific comment.

## VI. BRANCH PROFITS TAX

### i) Present Taxation

Foreign corporations doing business in Canada through branches are taxable at a special 15% rate on net after-tax profits available for withdrawal from Canada.[34] This is generally in line with the 15% non-resident withholding tax on dividends, etc. flowing from Canadian subsidiaries to non-resident shareholders.

### ii) White Paper Proposals

The Government proposes to increase the 15% rate to 25% in non-treaty circumstances, in line with the increase in non-resident withholding tax on dividends, etc. Assumedly, the 15% rate would continue to apply in treaty circumstances.

The calculation of profits available for withdrawal presently contains a deduction for profits invested in depreciable assets and land. This deduction would be altered to take into account the full depreciation of such assets and a working capital deduction would be added.

### iii) Comment

The 25% rate would obviously discriminate against non-treaty corporations with Canadian branches (these are, admittedly few). This would require either conversion of operations to subsidiary form or similar adjustments since it cannot be expected that Canada will sign new treaties with all the less developed countries, tax havens, Switzerland, etc. The alteration of the depreciation deduction would allow for, assumedly, land depreciation to be taken into account in the calculation of profits to be withdrawn since it is the major exception currently. Again assumedly, the working capital (appropriated for investment in branches' depreciable assets) deduction would be integrated with the deduction for the assets' depreciation itself.

---

34. ITA, sec. 110.

# BIBLIOGRAPHY

## BOOKS

### DEVELOPING COUNTRIES

OBSTACLES AND INCENTIVES TO PRIVATE FOREIGN INVESTMENT, 1967-1968.
Vol. I: Obstacles, 147 pp.
Vol. II Incentives, Assurances and Guarantees, 88 pp. Published by National Industrial Conference Board, Inc., New York, 1969.
Report which contains experience of the Investors of the 12 leading Capital exporting Nations. Vol. I covers the Obstacles that have kept Foreign Investors from Investing or have Inhibited the growth of their established Investments in 76 Countries. Vol. II covers the Incentives, Assurances, and Guarantees offered to encourage foreign Investment. It includes official summaries of the Investment Incentive Programs of 60 countries.

Library International Bureau of
Fiscal Documentation nos. B4507 + B4506

### FRANCE

FOREIGN LAW ABBREVIATIONS: FRENCH, by A. Sprudzs. Published by Oceana Publications, Inc., New York, 1967, 103 pp.
Compilation of symbols and abbreviations in French legal writing used in French periodicals and other sources.

Library International Bureau of
Fiscal Documentation no. B4512

### GERMANY

FUNDHEFT FÜR STEUERRECHT. Leitsätze der Entscheidungen-Literaturübersichtnachweis der Verwaltungsvorschriften, by H. Ziemer, H. Kalbhenn, and G. Felix. Band XVI: 1968. 541 pp. Published by C.H. Beck'sche Verlagsbuchhandlung, München, 1969.
Comprehensive bibliography for the year 1968 of tax publications, Caselaw, Administrative Regulations, etc., organized on the basis of an article per article reference to the respective tax law.

Library International Bureau of
Fiscal Documentation no. B4501

GROSSHANDEL UND MEHRWERTSTEUER. Sonderfragen der Nettoumsatzsteuer im Grosshandel, by K. Gründler. Published by C.H. Beck'sche Verlagsbuchhandlung, München, second edition 1968, 184 pp.
Second extended edition explaining some aspects of the tax on value added, particularly in connection to the Wholesale transactions.

Library International Bureau of
Fiscal Documentation no. B4478

GLI EFFETTI DELLA NUOVA IMPOSTA SUL VALORE AGGIUNTO: L'ESPERIENZA TEDESCA
(See Italy).

WIE GRÜNDET MAN EINE KOMMANDITGESELLSCHAFT? by H. Drescher and M. Henze. Published by Muth'sche Verlagsbuchhandlung, Stuttgart, 1969. 112 pp.
Booklet explaining the establishment, economic importance and tax treatment of a "Kommanditgesellschaft" (Partnership) as in effect on July 31, 1969.

Library International Bureau of
Fiscal Documentation no. B4490

DIE MEHRWERTSTEUER IN DER BAUINDUSTRIE. Auswirkungen der Mehrwertsteuer auf die bauindustrielle Buchführung und Kalkulation, by E. van der Berg. Published by Verlag Neue Wirtschafts-Briefe GmbH., Herne-Berlin, third edition 1969, 216 pp.
Third revised edition explaining the Tax on Value Added for the construction industry including price calculation and bookkeeping principles. Relevant text of law and rulings thereto are appended.

Library International Bureau of
Fiscal Documentation no. B 4513

DIE STEUERFOLGEN DER EHESCHEIDUNG, by H.U. Loepelmann and E. Eisenberg. Published by C.H. Beck'sche Verlagsbuchhandlung, München 1967. 105 pp.
This work aims to explain the tax consequences which arise from a divorce, elucidated by

examples and reference to case law.

Library International Bureau of
Fiscal Documentation no. B4479

## GREECE

LES SOLUTIONS GRECQUES AU PROBLEME DES DOUBLE IMPOSITIONS LEGALES INTERNATIONALES EN MATIERE D'IMPOTS DIRECTS. Published by Université de Paris, Faculté de Droit et des Sciences Economiques, Paris, 1969. 237 pp.
Thesis on Greek Solutions to avoid International double Taxation on Income and inheritance tax as provided for by the Greek Unilateral measures as well as treaty provisions.

Library International Bureau of
Fiscal Documentation no. B4483

## INDONESIA

DIRECT TAXES IN INDONESIA. A translation of the direct tax laws of the Republic of Indonesia, by S.C. Rolt and Santoso Harsokusumo. Published by Arthur Young & Company, New York, 1969. 160 pp.
Annotated text of the Indonesian direct tax laws in English i.e. the Corporation Tax, Dividend Tax, Income Tax, Net Wealth Tax, Employers' Guide and the self-assessment (MPS) and Withholding of Tax (MPO) collection system related thereto.

Library International Bureau of
Fiscal Documentation nos. B4451, 4452

## INTERNATIONAL

MUTUAL FUNDS WHY NOT? A survey of international Investment Funds, by L-M. Servien. Published by Editions Léman, Montreux, ca. 1969. 177 pp.
Study on the evolution of mutual funds in various countries such as U.K., U.S.A., Switzerland, France, Germany, Japan, Belgium, Netherlands, Australia, The Philippines, Israel, South Africa etc. and their influence on saving.

Library International Bureau of
Fiscal Documentation no. B4519

## ITALY

GLI EFFETTI DELLA NUOVA IMPOSTA SUL VALORE AGGIUNTO: L'ESPERIENZA TEDESCA, by F. Reviglio. Published by Istituto per l'Economia Europea, Roma 1969. 90 pp.
Study on the effect of the introduction of the Tax on Value Added in Germany which replaced the cumulative Turnover Tax.

Library International Bureau of
Fiscal Documentation no. B4505

## NETHERLANDS

INVOERINGSWETBOEK I. PERSONEN- EN FAMILIERECHT, by C.J. van Zeben. Published by N.V. Uitgeversmaatschappij AE. E. Kluwer, Deventer, 1969. 1800 pp.
Compilation of the new first part (Book I) of the Civil Code regarding the law on personal and family relations, their historic developments, parliamentary discussions viewed with annotations. The amended texts of Laws related thereto are appended.

Library International Bureau of
Fiscal Documentation no. B4516

## SOUTH AFRICA

INCOME TAX IN SOUTH AFRICA, by D. Meyerowitz and E. Spiro. Published by The Taxpayer (PTY.) Ltd., Cape Town, 2nd edition 1969.
Second edition of a loose-leaf publication containing a full commentary on the Income Tax legislation as stated at September 30, 1969 (to be amended by later supplements). The text of the Income Tax Act, the Provincial Income Tax legislations and Double Taxation agreements including sea and air transport are appended.

Library International Bureau of
Fiscal Documentation no. B4542

## SWITZERLAND

ANNUARIO STATISTICO DEL CANTONE TICINO 1919. Published by Ufficio cantonale di statistica, Bellinzone, 1969. 510 pp.
Annual statistical report of the canton of Ticino for 1969.

Library International Bureau of
Fiscal Documentation no. B4515

FINANZEN UND STEUERN VON BUND, KANTONEN UND GEMEINDEN 1967. Published by Eidgenössisches Statistisches Amt, Bern 1969. 97 pp.
Statistical data of federal and cantonal revenue and expenditure during 1967.

Library International Bureau of
Fiscal Documentation no. B3998

## UNITED KINGDOM

DOUBLE TAXATION AGREEMENTS OF THE UNITED KINGDOM. Published by Board of Inland Revenue, Her Majesty's Stationery Office, London, 1969. 2 vols. Vol. I 519 pp. Vol. II 456 pp.
Two volumes containing the text of tax agreements concluded by the United Kingdom with other countries, for the avoidance of double taxation on Income, Death duties, and consular convention Orders. This collection is up to date as of January 1, 1969.

Library International Bureau of
Fiscal Documentation nos. B4521, B4522

MERGERS IN MODERN BUSINESS by N.A.H. Stacey. Published by Hutchinson, London, 1966. 138 pp.
This book explains the significance of the current Merger wave, the arguments for further concentration of British Industry and the implications which arise for the Businessman.

Library International Bureau of
Fiscal Documentation no. B4495

PRACTICAL TAX SAVING, by J.A. Nelson-Jones and B. Smith. Published by Butterworths, London 1969. 254 pp.
This book considers certain common situations and transactions which confront businesses, their proprietors and employees with the object of identifying opportunities for tax savings and for avoidance of tax pitfalls. The law is stated as at September 1, 1969.

Library International Bureau of
Fiscal Documentation no. B4523

## U.S.A.

MUNICIPAL BOND FINANCE AND ADMINISTRATION. A PRACTICAL GUIDE TO THE ANALYSIS OF TAX-EXEMPT SECURITIES, by A. Rabinowitz. Published by John Wiley & Sons, New York, 1969. 256 pp.
This book elucidates and explores controversial policy questions concerning long-term local public securities. The work consists of the following parts: How the municipal bond market works; critical issues in tax-exempt finance; problems for the bond analyst and the next decade.

Library International Bureau of
Fiscal Documentation no. B4518

PRENTICE-HALL FEDERAL TAX HANDBOOK 1970. Published by Prentice-Hall Inc. Englewood Cliffs, N.J., 1969. 577 pp.
This handbook is an abridged edition of the "Federal Taxes" Series, containing information needed in computing company and individual tax returns for 1969, and tax plans for 1970 to insure the absolute minimum of tax moves.

Library International Bureau of
Fiscal Documentation no. B4503

CORPORATION. PARTNERSHIP-FIDUCIARY. FILLED-IN TAX RETURN FORMS 1970 EDITION Published by Commerce Clearing House Inc., Chicago, 1969. 88 pp.
This booklet contains the basic 1969 corporation, partnership and fiduciary Federal income tax returns to be filed in 1970.

Library International Bureau of
Fiscal Documentation no. B4562

## U.S.A./U.S.S.R.

THE LEGAL AND PRACTICAL ASPECTS OF TRADE WITH THE SOVIET UNION by J.H. Giffen. Published by Praeger Publishers, New York, 1969. 373 pp.
The author focuses upon potential trade transactions between the US and the Soviet Union in the light of laws and regulations of both countries relating to trade.

Library International Bureau of
Fiscal Documentation no. B4538

# LOOSE-LEAF SERVICES

Releases from January 1—January 31, 1970

## AUSTRALIA

LAW BOOK COMPANY'S TAXATION SERVICE, Court decisions releases 3, 4.
The Law Book Co. of Australia PTy. Ltd., Sydney.

## BELGIUM

DOORLOPENDE DOCUMENTATIE INZAKE B.T.W./LE DOSSIER PERMANENT DE LA T.V.A., release 9.
Editions Service, Brussels.

Fiscale Documentatie Vandewinckele, BOEK DER BAREMA'S, Tome III, release 12.
E.K. Vandewinckele, Brugge/C.E.D. Samsom N.V., Brussels.

TARIEF DER OVERDRACHTSTAKSEN BIJ INVOER, release 7.
Ministerie van Financiën, Algemene Werkplaats van het Zegel, Brussels.

## BENELUX

BENELUX PUBLICATIEBLAD, releases 10, 11.
Staatsuitgeverij, Den Haag.

## CANADA

CANADA ESTATE TAX SERVICE, release 46.
Richard de Boo, Toronto.

CANADA TAX SERVICE-LETTER, releases 145, 146.
Richard de Boo, Toronto.

MC. DONALD'S CURRENT TAXATION, release 52.
Butterworth & Co., Toronto.

## COLOMBIA

REGIMEN DEL IMPUESTO A LA RENTA (A. Silva), release 62.
Legislacion Economica LTDA, Bogota.

## DENMARK

SKATTEBESTEMMELSER
– SKATTEBESTEMMELSER, release 46.
– SKATTENYTT, releases 41, 42.
A.S. Skattekartoteket Informationskontor, Copenhagen.

## E.E.C.

HANDBOEK VOOR DE EUROPESE GEMEENSCHAPPEN B., VERDRAGSTEKSTEN EN AANVERWANTE STUKKEN, release 67.
N.V. Uitgeversmij. AE.E. Kluwer, Deventer.

HANDBOEK VOOR DE EUROPESE GEMEENSCHAPPEN, EUROPEES MEDEDINGINGS- EN KARTELRECHT, release 25.
N.V. Uitgeversmij. AE.E. Kluwer, Deventer.

## FRANCE

CODE ANNOTE DES TAXES SUR LE CHIFFRE D'AFFAIRES, release 40.
Editions Seteca, Paris.

DICTIONNAIRE FISCAL PERMANENT, releases 28, 29.
Editions Législatives et Administratives, Paris.

DROITS DES AFFAIRES, releases 22A, 23.
Editions Législatives et Administratives, Paris.

MEMENTO LAMY – Fiscal: mise à jour exceptionnelle.
Services Lamy, Paris.

## GERMANY

DEUTSCHE GESETZE, Schönfelder, release November.
Verlag C.H. Beck, München.

HANDBUCH DER EINFUHRNEBENABGABEN, release 8.
V.d. Linnepe Verlagsgesellschaft KG, 58 Hagen.

RECHTS- UND WIRTSCHAFTS PRAXIS STEUERRECHT, releases 97, 98.
Forkel Verlag, Stuttgart-Degerloch.

SCHNELLKARTEI DES DEUTSCHEN RECHTS, releases 149-151.
Verlag Dr. Otto Schmidt, Köln-Marienburg.

STEUERGESETZ, release October.
C.H. Becksche Verlagsbuchhandlung, München.

STEUERN UND ZÖLLE IM GEMEINSAMEN MARKT, release 17.
Nomos Verlagsgesellschaft m.b.H. & Co., Baden-Baden.

## NETHERLANDS

BELASTINGBERICHTEN, releases December, January.
- BELASTING TOEGEVOEGDE WAARDE, releases 38, 39.
- INKOMSTENBELASTING, release 160.
- LOONBELASTING, release 79.
- VENNOOTSCHAPSBELASTING, release January.

N. Samsom N.V., Alphen a.d. Rijn.

BELASTINGWETTEN, release 24.
D. Brouwer en Zn., Arnhem.

FED'S FISCAAL REGISTER, release 29.
N.V. Uitgeverij FED, Amsterdam.

FED'S LOSBLADIG FISCAAL WEEKBLAD, releases 1235-1237.
N.V. Uitgeverij FED, Amsterdam.

FISCALE WETTEN, release 32.
N.V. Uitgeverij FED, Amsterdam.

KLUWER'S TARIEVENBOEK, release 79.
N.V. Uitgeversmij., AE.E. Kluwer, Deventer.

NEDERLANDSE BELASTINGWETTEN, W.E.G. de Groot, releases 58-60.
N. Samsom N.V., Alphen a/d Rijn.

DE VAKSTUDIE: FISCALE ENCYCLOPEDIE – XIX WET OP DE OMZETBELASTING, release 16.
N.V. Uitgeversmij. AE.E. Kluwer, Deventer.

## NEW ZEALAND

NEW ZEALAND TAXATION BOARD OF DECISIONS REVIEW, releases 27-31.
Butterworth & Co., Wellington.

## SWITZERLAND

LEGISLATION GENEVOISE, release January.
Administration Cantonale des Contributions Publiques, Genève.

## U.S.A.

FEDERAL TAX GUIDE REPORTS, Vol. 53: releases 14-16.
Commerce Clearing House, Inc., Chicago.

FEDERAL TAXES REPORT BULLETIN, releases 51, 52; Vol. LI: releases 1, 2.
Prentice Hall, Inc., Englewood Cliffs.

FEDERAL TAXES REPORT BULLETIN-TREATIES, release 18.
Prentice Hall, Inc., Englewood Cliffs.

STATE TAX GUIDE, releases 445, 446.
Commerce Clearing House, Inc., Chicago.

TAX IDEAS-REPORT BULLETIN, releases 34, 35.
Prentice Hall Inc., Englewood Cliffs.

TAX TREATIES, release 215.
Commerce Clearing House, Inc., Chicago.

# Books of the series "Afrika-Studien" Economics

edited by the Ifo-Institute of Economic Research, Munich

---

Heinz-Günter Geis

**DIE GELD- UND BANKSYSTEME DER STAATEN WESTAFRIKAS**

(The Monetary and Banking Systems of the Countries of West Africa)

Afrika-Studien Nr. 20

428 Seiten, 50 Tabellen, 2 Schaubilder und 1 Übersichtskarte. Steifband, DM 54,—, US $ 13,50.

A study of the present state of the West African monetary and banking systems — including the operational channels, agricultural and co-operative credits and all other institutions with banking functions — their development since World War II and their various problems. A comparative, critical analysis. The author is an assistant lecturer at the Institute for Banking and Credit Economy of the Free University of Berlin.

---

Ernst-Josef Pauw

**DAS BANKWESEN IN OSTAFRIKA**

(Money and Banking in East Africa) Afrika-Studien Nr. 35

2784 Seiten, 37 Tabellen im Text, 8 Tabellen im Anhang. Steifband, DM 44,—, US $ 11,—,.

Presentation and analysis of the development, structure and functions of the East African banking system (Kenya, Tanzania, Uganda); critical discussion of recent banking policy. The author is a specialist in banking and financial affairs.

---

---

# CUMULATIVE INDEX 1970
Nos. 1 and 2

# CONTENTS

of the April 1970 issue

* * * * ARTICLES * * * *

PAULO DE PITTA E CUNHA*:

# TAXATION OF ROYALTIES IN PORTUGAL

## INTRODUCTION

The present paper, prepared in the summer of 1969, describes the system of taxation of royalties then in force in Portugal and analyses the possible solutions to the problems involved with a view to establishing a more appropriate tax regime in this field.

On 30th December 1969, a tax law was promulgated, in which, as is observed in the final note, one of these solutions has been adopted.

1. In Art. 12 of the international agreement signed between Portugal and the United Kingdom for the avoidance of double taxation with respect to taxes on income—the first of a series of bilateral agreements recently negotiated in this field—the definition contained in the similar provision of the O.E.C.D. Model Convention has been closely followed, and a distinction is made between two fundamental types of royalties: those concerned with copyrights connected with intellectual property (literary and artistic), and those related to industrial property—embracing the wide sector of so-called "invention ideas" (which involves patents, trade marks, designs, models, plans, secret formulae and processes and information concerning acquired experience, which make up part of the much discussed concept of "know-how", identified by some with "special knowledge", by others with "technical knowledge and experience" and by still others with "secret processes and formulae"), and also touching on the field of the operation of industrial, commercial or scientific equipment, in which income arises more from the hiring out of material than from the simple granting of a licence to exploit industrial inventions.

2. Royalties therefore comprise two large groups: those related to copyrights of literary or artistic work, which we shall call intellectual royalties; and those related to inventions and other aspects of the field of industrial property, which we shall designate industrial royalties—in some cases, taking the form of "technical assistance payments".

For tax purposes, royalties are considered not to include variable or fixed payments for the exploitation or the concession of the exploitation of mineral deposits and other subsoil resources (mineral royalties): this is the typical case of the so-called "concession rights" paid by oil prospection companies operating in Portugal, which are the subject of special legislation.

3. Portuguese law has several important lacunas as regards the taxation of royalties. Royalties related to copyrights and to rights concerning the concession or temporary transfer of patents of invention, exploitation licences, industrial designs and models, trade marks, names and insignia of establishments, processes for the manufacture or conservation of products, and akin, are subject to the *professional tax* when they are received by individual residents (this obligation being extended to cover non-residents, but only in the case of income concerning property registration or equivalent formalities carried out in Portugal). The remunerations in

*The author is Lecturer in Economics, Faculty of Law, University of Lisbon.

question have been considered labour income in order, on the one hand, not to let them escape taxation and, on the other, to grant them, as stated in the preamble of the Professional Tax Code, the "double advantage of a high exemption and a low rate in the first brackets". By the normal mechanism of the Portuguese tax system, the tax-payers—individuals benefiting from copyrights and the rights concerning temporary concession of patents, etc.—are also subjected to *complementary tax*.[1]

4. However, the royalties which, due to the sums involved, take on real economico-financial importance are those received by companies.. Since no tax on company income exists in Portugal, the tax regime to which these royalties are subjected arises from the rules of the *industrial tax*, which is levied on all individuals or legal persons who carry on any commercial or industrial activity in Portugal.
It happens that within the scope of this tax, it is only in Group A, which comprises the largest firms, that the real amount of income received is of importance in determining the tax base (in Groups B and C, the tax is levied on presumed or normal earnings, in accordance with certain criteria). Since taxable profits consist of the difference between all earnings or gains received during the financial year in question and the costs or losses that are imputed to the same year, royalties received, integrated into the income of industrial and other similar property, are included in the computation of earnings or gains—just as royalties paid to third parties are included among the expenses that must be borne to obtain the earnings or gains subject to tax.

5. The rules in force in Portugal as to the territorial scope of the industrial tax imply the following treatment of royalties: royalties of whatever source are taxed should the companies have their domicile, main office or effective management in Portugal; tax is also levied on royalties imputed to the permanent representation or commercial or industrial installations existent in Portugal and belonging to companies with domicile, main office or effective management abroad.
With regard to those individuals and legal persons who are not corporations but are tax-payers of Group A, only royalties produced in Portugal are taxable when they have their domicile or main office in Portugal; when they have their domicile or main office abroad, but permanent representation in Portugal, the above mentioned system for corporations is applied to them.
Depending on whether they are individuals or legal persons (regardless of whether they are corporations), those subject to *complementary tax* are included in Group A or Group B of the same tax.

6. From the examination of tax legislation in force in Portugal as regards royalties, it can be inferred that there is no taxation on royalties imputed to activities carried on in Portugal and paid to entities who have their domicile, main office or effective management abroad and without permanent representation or commercial or industrial installations in Portugal (or, to use the language of international agreements dealing with double taxation, without a "permanent establishment" in Portugal).

1. The Portuguese income tax system is made up of several partial taxes—among which are the professional tax, the industrial tax and the capital tax, levied on income from labour, commerce and industry and capital investments, respectively—corrected by a personal surtax (complementary tax). See "The Portuguese Tax System" in this Bulletin, No. 7/8, July/August 1966, p. 265 et seq.

This situation would not be particularly serious if Portugal, thanks to its intermediate degree of economic development, were not to figure among the countries that are net capital importers. Firms set up in Portugal, sometimes based on Portuguese capital, other times through resort, on a larger or smaller scale, to foreign capital ("maximum" through the formation of subsidiaries), are heavily dependent on foreign countries as regards patents of inventions, trade marks, designs, models, etc. The technological gap that still exists leads one to conclude that the flow of royalties paid by firms active in Portugal to entities domiciled abroad must be far greater than the flow of corresponding payments originating abroad.

On the other hand, the puffing up of royalties paid by a Portuguese subsidiary to the parent company domiciled abroad—and comfortably free from any territorial connections that might directly subject it to the Portuguese tax-collector—is an easy way to increase expenses and, consequently, reduce or eliminate taxable profits for industrial tax purposes.

7. An examination of the solutions adopted in this field in the legislation of a large number of European countries shows that in most cases royalties paid to foreign companies (this term is taken to mean companies that have not even a permanent establishment in the country in question) are also subject to tax in the country of source of income, although in accordance with a different system than that in force when the beneficiary of the royalties is a national company (we are only referring to royalties for the exploitation of patents, the only kind for which relatively recent data are available).

In many cases, however, the provisions of internal tax legislation in this field have been surpassed by international rules contained in bilateral agreements aimed at preventing double taxation.

8. The Model Convention adopted by the O.E.C.D., which those agreements have basically followed, provides that royalties should be taxed by the country of residence. From the point of view of countries such as Portugal, Spain and Greece, this rule seems to be disadvantageous, and thus the special derogation granted in the project of the O.E.C.D. Tax Committee to these countries, which "are not considered to be in a position to be able to renounce all taxation at source as regards royalties originating in their territory and paid to persons resident in another State". That Model Convention, in any case, suffers from the drawbacks of every scheme conceived to be put into practice between countries with substantially similar levels of development: transposed to the plane of relations between a highly industrialised country and a less developed one, i.e., between a capital exporting country and a capital importing one, it can lead to situations in which the right to tax falls systematically on the former and the renunciation of taxation hangs permanently above the latter.

It would appear that the compromise that was reached (Portugal, Spain and Greece accepting to limit the tax rate at source to a maximum of 5% on gross royalties, in exchange for recognition, on the part of the other countries, of this right of limited taxation), benefiting in a very modest way the nucleus of less developed countries, does not completely eliminate the inequality inherent in the scheme of the standard agreement.

The above mentioned rule of the O.E.C.D. Model Convention is not applicable in cases of royalties imputed to a permanent establishment belonging to a company operated by a beneficiary resident abroad—cases in which

there is no renunciation of taxation on the part of the source country.

9. The intention to introduce taxation on royalties imputed to activities carried on in Portugal and paid to entities without domicile, main office, effective management or even stable establishment in Portugal should, however, be tempered by the desire to avoid creating a serious motive for discouraging the importation of foreign capital and, in particular, the introduction into this country of advanced technology from more industrialised nations.

It is true that taxation is just one of many factors in the decision of the investors of industrialised countries: the creation and maintenance of a complex politico-economic climate propitious to external investments takes on a fundamental importance. It is no less true that even in the field of taxation itself it is possible to create incentives capable of partially off-setting the disadvantages that might be introduced. But the need for maintaining conditions that are attractive for the entry of foreign technology must always be considered.

10. Abstracting from agreements to avoid double taxation, the fact is that from the point of view of investors resident in industrialised countries, the tax burden will always be heavier in relation to income from abroad than as regards income from similar activities carried on domestically unless the source country should renounce taxing that income (the present case of Portugal with regard to foreign entities without any permanent establishment here), or the country of residence should unilaterally create preferential treatment for income of foreign origin.

Such treatment may take on different forms, the extreme kinds being the exemption of income from abroad and the simple acceptance of the tax paid abroad as a deduction from taxable income, and the intermediary points being the application of special reduced rates to income from abroad and the deduction of the tax to be paid from the amount of tax borne in the country of source (tax credit method).

11. In the field of royalties, the exemption system, which is equivalent to full recognition of the taxation levied in the country of origin of the income, has been adopted by just a few countries, and only for cases in which the royalties have been received through a permanent establishment acting in the country of source (this is what is provided in French and Italian tax legislation). The methods most often adopted are the simple deduction, as an expense, of the tax paid abroad in the calculation of the tax base (Belgian, Dutch, French—as regards royalties obtained otherwise than through a permanent establishment in the country of source—Norwegian, Swedish and Swiss solution), and the tax credit system (German, Danish, Spanish—only for the case of royalties obtained otherwise than through a permanent establishment—and Greek solution).

The pure and simple taxation of royalties received from abroad—corresponding to the total absence of preferential treatment—is practised, for example, by Austria, Italy (except if the Italian company in question has obtained the royalties through a permanent establishment in the country of source) and Portugal.

12. The present regulations governing this matter in Portugal imply that the royalties received from abroad by Portuguese firms should be taxed as if they were royalties produced domestically. On the other hand,

there is no taxation of royalties paid by Portuguese firms to the holders of industrial inventions resident abroad.

Taking into account Portugal's position as a net importer of capital and advanced technology, it must be concluded that from the financial point of view this situation is disadvantageous.

13. Once the convenience is accepted of taxing royalties produced in Portugal and paid to non-resident entities without permanent representation or commercial and industrial installations in this country, the method of withholding at source is the one that is naturally indicated.

There are three taxes in the Portuguese system into which the taxation of royalties might fit (putting aside the hypothesis, also feasible but of merely subsidiary interest, of taxation as a derivative of the sales tax): the professional tax, the industrial tax and the capital tax.

In favour of inclusion in the first of these taxes, it might be said that in accordance with Portuguese legislation, it already includes taxation of the income of intellectual and industrial property. It is obvious, however, that the *professional tax* can only be levied on individuals, while the case that offers really substantial interest is precisely that of royalties received by companies, which have no place in the Professional Tax Code. The inclusion of the regulation of royalties in the Industrial Tax Code is also unadvisable. The scheme of this tax, which involves (in Group A) the determination of profits as shown by the profit and loss account, could only be made to contain, as a complement, a form of taxation based on withholding at source, at the cost of a serious distortion of its internal harmony. On the other hand, the *industrial tax* is not a suitable place for intellectual royalties.

14. The insertion of the new regulations in the Capital Tax Code (Section B) would appear to be more feasible, although not without causing certain distortions to the principle that this tax should be levied on the income of simple capital investment. The fact is, however, that the professional tax is also levied at present on incomes that do not result from any profession.

Acting in favour of inclusion in the *capital tax* (Section B)[2] is the circumstance that in this form of taxation the tax due is withheld at source. Moreover, this tax deals with income (interest and dividends), whose tax treatment should be brought into harmony with those concerning royalties.

The pragmatic inspiration of the capital tax would perhaps justify yet this distortion should it not be thought opportune to introduce an independent tax.

15. However, the best solution from the technical point of view would be the publication of special legislation which, after defining the concept of royalties, would provide for the system of withholding at source as the form of taxation of this type of income.

The rate adopted should take into account, on the one hand, the above mentioned wish not to discourage the importation of technology; and on the other hand, the fact that by taxing the value of royalties paid abroad one is reaching a "gross base"—while the industrial tax concerns a "net base". Attention should also be given to the fact that governments seldom adopt the tax exemption system as regards the fiscal treatment of income received from abroad.

These considerations, along with the criticism

2. Section B of capital tax includes distributed profits, interest on bonds and deposits and other incomes derived from capital investments.

formulated above of the solution contained in the O.E.C.D. Model Convention, lead us to conclude, in a first analysis, that the rate should be higher than the 5 per cent at present contained in such Convention, and already included in the agreement on double taxation with Great Britain, but substantially lower than the incidence resulting from the industrial tax (18 per cent).

Besides, it might be convenient to establish differentiated rates within each of the important groups of royalties, both as a function of the beneficiary's position (depending on whether or not the granter is the author or inventor), and in agreement with the objectives and priorities of economic development policy.

FINAL NOTE (JANUARY, 1970)

The solution adopted by the Portuguese government at the end of 1969 did not consist of the creation of a tax on royalties (solution foreseen in No. 15 above), but of the definite subjection to the capital tax (Section B) of "income resulting from the temporary granting or transfer of patents of invention, exploitation licences, useful models, designs, industrial models, trade marks, names and insignia of establishments, processes for the manufacture or conservation of products and analogous rights, as well as that received for the furnishing of information concerning experience acquired in the industrial, commercial or scientific sector" (which corresponds to the solution foreseen in No. 14). The rate adopted was 10 per cent. Copyrights concerning intellectual work continue to be subject to professional tax, which is moderately progressive, the rates ranging from 1 per cent in the lowest income bracket to 15 per cent in the highest.

NIZAR JETHA*:

# CENTRAL GOVERNMENT TAXES IN KENYA

## INDIVIDUAL INCOME TAX

Income tax (and surtax) is charged on the income accruing in or derived from East Africa (i.e. Kenya, Uganda and Tanzania), but income from sources outside East Africa is not charged. There is no capital gains tax.

*Personal Allowances.* The following allowances are deductible in arriving at chargeable income—

i) A single allowance of K£216.[1] The allowance for a single person who is also entitled to a child allowance is K£432. The single allowance for a man aged 65 years or over, or a woman aged 60 years or over is K£432.
ii) A married allowance of K£480.
iii) A child allowance of K£120 for each child not exceeding 4 in number. The child must be under the age of 19 years, or if over that age, receiving full-time education, be apprenticed or be wholly incapacitated.

*Tax Rates.* The rates of tax on chargeable income are as follows—

| | | | |
|---|---|---|---|
| Income Tax | | | Shs. 2/50 in the £ |
| Surtax | First | £ 1,000 | Nil |
| | Next | £ 1,000 | Shs. 3/— in the £ |
| | Next | £ 1,000 | Shs. 5/— |
| | Next | £ 1,000 | Shs. 7/— |
| | Next | £ 1,000 | Shs. 8/— |
| | Next | £ 1,000 | Shs. 9/— |
| | Next | £ 1,000 | Shs. 10/— |
| | Next | £ 3,000 | Shs. 11/ |
| | Next | £ 5,000 | Shs. 12/— |
| | Excess over | £15,000 | Shs. 13/— |

*Taxation of Dividends.* Individuals are subject to surtax but not income tax on dividends.

*Provisions concerning approved provident funds, pension funds and annuity contracts, life assurance relief and owner-occupied housing*

a) Approved Provident Funds. The main object of the fund must be the payment of a lump sum to the employee on his leaving the service of the employer after a specified period of service or to the dependants on his death. Major conditions that must be satisfied for approval are—

i) The employer's annual contribution in respect of any employee must not exceed the lesser of 10 per cent of the employee's gross remuneration or K£120.
ii) The total contributions by an employer

*Nizar Jetha is an economist in the Kenyan Ministry of Economic Planning and Development.

1. 20 Kenya Shillings = 1 Kenya Pound (K£) = US $2.80.

in respect of an employee must not exceed K£2,500.

The consequences of approval are—

i) The employer's (but not the employee's) contributions are deductible for tax purposes.
ii) The income of the fund is exempt from tax.
iii) The lump sum received by the employee is exempt from tax.

b) Approved Pension Funds. The main object of the fund must be the payment of a pension to the employee on his retirement from the service of an employer on or after attaining a specified age, or to the employee's dependants on his death.

Major conditions that must be satisfied for approval are—

i) The pension must be payable on the retirement of the employee on or after he has attained the age of 50 years.
ii) The pension, where the employee has been in service for 30 years or more, must not exceed the lesser of K£2,000 or two-thirds of the highest average remuneration over any three consecutive years of the employee's service. The maximum amount is reduced proportionately where the employee has been in service for less than 30 years.
iii) The employer's and employee's aggregate annual contributions, where benefits are payable to the employee or the surviving spouse or a dependant on his death, must not exceed the lesser of 24 per cent of the employee's gross remuneration or K£1,000. The maximum contributions are slightly lower where benefits are payable only in respect of the employee.

The consequences of approval are—

i) The employer's and employee's contributions are deductible for tax purposes.
ii) The income of the fund is exempt from tax:
iii) The pension, excluding the commuted portion (up to one-quarter of the pension, with a maximum of K£6,000) is taxable.

c) Approved annuity contracts. The main object of the annuity contract must be the provision for the individual of a life annuity in the old age, or to the surviving spouse on the individual's death.

Major conditions that must be satisfied for approval are—

i) The annuity must commence between the ages of 55 and 65 years.
ii) The contract must not provide for the payment of an annuity in excess of K£2,000 per annum.
iii) The annual premium, where the benefits are payable to the individual or to the surviving spouse on the individual's death, must not exceed the lesser of K£1,000 or 24 per cent of the individual's net income. The maximum premium is slightly lower where benefits are payable only to the individual.

The consequences of approval are—

i) The contributions are deductible for tax purposes.
ii) The income from investment of the annuity fund of a life insurance company is exempt from tax (This provision applies in respect of all annuity contracts, unapproved as well as approved).
iii) The annuity, excluding the commuted portion (up to one-quarter of the annuity), is taxable.

d) Life Assurance Relief. An allowance is given for premiums paid by an individual for life insurance on his life or his wife's life.

The allowance is subject to, *inter alia*, the following conditions—

i) The policy must secure a capital sum on death (whether or not in conjunction with any other benefit).
ii) The amount of premium allowable in

respect of any one insurance must not exceed 7 per cent of the capital sum assured.

The life assurance relief is only available to those liable to surtax. The relief is given at the rate of Shs. 3/— in the £ on premiums for life assurance (not exceeding K£1,000) as a set-off against liability to surtax.[2] Proceeds from a life assurance policy are not subject to tax.

e) Owner-occupied Housing. The imputed income of owner-occupied housing is not taxable. The interest payments made on a mortgage or loan in respect of owner-occupied housing are not deductible for tax purposes.

## COMPANY TAXATION

In the computation of taxable income, all expenses wholly and exclusively incurred in the production of income are allowed.

Annual depletion deductions are allowed for industrial buildings and for machinery and plant. The deductions given for agricultural and mining enterprises differ significantly from those granted to other enterprises. Certain types of industrial buildings, machinery and plant qualify for an investment deduction (which is not deducted in calculating the written down value), in addition to the annual deductions. All deductions in respect of capital expenditure are based on original cost.

No balancing adjustments (i.e. balancing charges and allowances) are made when assets are disposed of, except in the case of machinery. The method of computing the written down value and the nature of balancing adjustments for machinery are described below.

The legislation does not specify the method to be used for the valuation of stock in hand. The normal practice is to value stocks at cost or net realisable value, whichever is the lower. However, stock at the beginning and end of an accounting period must be valued on the same basis.

*Annual Depletion Deductions.* The deductions, outside the agricultural and mining sectors, are as follows—

a) Industrial buildings. The definition of industrial buildings excludes retail shops, showrooms and offices. The deduction is given on a straight-line basis (fixed proportion of the original cost). For industrial buildings (other than hotels), the original cost can be written off over 25 years at 4 per cent per annum. "Approved" hotels can be written off at the rate of 6 per cent per annum.

b) Machinery and plant. The deduction is given on a reducing-balance method (fixed proportion of the written down value). The annual deductions depend on the nature of capital equipment. The three classes into which all machinery and plant must be divided, and the rates of wear and tear deductions applicable to them are as follows—

i) Heavy self-propelling vehicles such as tractors, combine harvestors, earth-mov-

2. Since the relief takes the form of a reduction in surtax liability, it cannot exceed the surtax payable (before account has been taken of the premiums). For example, a person whose income subject to surtax amounts to £100, will be liable for a surtax of 300/— (Recall that the first £1,000 subject to surtax attracts the rate of 3/— in the £). If he pays premiums of £150, he will get a relief not of 450/— (3/— in the £ on £150) but of only 300/— since the relief cannot exceed the surtax payable of 300/—. Note also that the maximum relief is 3,000/— (3/— in the £ on the premium of £1,000).

ing equipment—37½ per cent.

ii) Other self-propelling vehicles, including aircraft and cars—25 per cent.

iii) All other machinery, including ships—12½ per cent.

The written down value must be computed only for each class of machinery (as distinct from each item of machinery). The written down value (for each class of machinery) is defined as the cost of machinery purchased *minus* the amount realized on the sale of any machinery of that class *and* the annual deductions already made. However, where the amount realized on the sale of machinery exceeds the written down value (before taking account of the proceeds of the sale), the excess is treated as a trading receipt,[3] and cannot be deducted.

The procedure for the computation of written down values ensures that a balancing allowance will not be made on the sale of an individual item of machinery, and, in general, a balancing charge will also not arise on the sale of an individual item of machinery. However, on the occasion of the final closing down of a business, any loss on the sale of machinery representing the difference between the amount realized and the written-down value, is allowed to be carried back for a period of up to six years, in so far as the other income is not large enough to absorb the loss. On the other hand, any excess is charged to tax in that year.

*Agriculture.* Deductions are available in respect of capital expenditure on machinery and plant, farm works (farmhouses, labour quarters, fences, dips, drains, etc.), prevention of soil erosion, clearing of agricultural land and planting it with permanent or semi-permanent[4] crops.

Agricultural machinery and plant receive the same treatment as other machinery. Capital expenditure on farm works can be written off over 5 years at the rate of 20 per cent per annum. Only $^1/_3$ of the capital expenditure on a farmhouse is allowed for tax purposes. Capital expenditure on prevention of soil erosion, and clearing agricultural land and planting with permanent or semi-permanent crops is allowed in the year in which it is incurred.

*Mining.* The deductions from income take the form of an initial allowance of 40 per cent and an annual allowance of 10 per cent of the specified expenditure in each of the following 6 years. Where the mine is likely to cease working within 7 years, higher initial and annual deductions may be allowed. The expenditure taken into account includes expenditure on exploration; on acquisition of deposits or rights in them; on machinery and construction of buildings and works (which would have little or no value if the mine ceased to be worked on the termination of the year of income in respect of which a claim for a deduction has been made); and on development, general administration and management prior to the commencement of production or during any period of non-production.

*Scientific Research.* Capital expenditure on scientific research for the purposes of a trade

3. Thus, if machinery is sold for £5,000 and the written down value (before taking account of £5,000) for that class of machinery is £4,000, £1,000 (£5,000 minus £4,000) must be shown as a trading receipt (taxable profit). The written down value of the remaining machinery of the relevant class will then be nil.

4. The following crops are treated as permanent or semi-permanent crops: cashew nuts, citrus, cloves, coconuts, coffee, essential oils, New Zealand flax, passion fruit, pawpaws, pineapples, pyrethrum, sisal, wattle, sugarcane, tea, rubber, vanilla, apples, pears, peaches, plums and apricots.

is allowed as a deduction in the year in which it is incurred.

*Investment Deductions*[5]. The purposes for which, and the rates at which investment deductions are available are as follows—

| | |
|---|---|
| i) Ships | 40 per cent |
| ii) New industrial buildings and machinery used for the manufacture of goods or materials | 20 per cent |
| iii) New hotels and machinery installed in them | 20 per cent |

*The Treatment of Losses.* If the net income is a loss, it may be carried back and set off against the preceding year's income. Alternatively, it can be carried forward for as many years as required to absorb it against future profits.

*Tax Rates.* Companies are subject to a corporation tax. The corporation tax is levied on profits as calculated for income tax purposes, excluding dividends received from other resident companies to avoid double taxation. Shareholders receiving dividends cannot claim credit for corporation tax paid by companies against their income tax and surtax liability.

The corporation tax is levied at the following rates—

i) All companies excluding (ii) and (iii) Shs. 8/— in the £
ii) Profits of an insurance company from its life assurance business Shs. 7/50 in the £
iii) Profits of a company from the mining of certain "specified" minerals[6] Shs. 4/50 in the £

### GRADUATED PERSONAL TAX[7]

The Graduated Personal Tax is a Central Government tax in County Councils, but a Local Government tax in Municipalities. The tax rates are as follows —

| Annual Income (K£) Exceeding | But not Exceeding | Annual Tax Payable (Shs.) |
|---|---|---|
| — | 48 | Nil |
| 48 | 96 | 48 |
| 96 | 144 | 72 |
| 144 | 204 | 108 |
| 204 | 312 | 156 |
| 312 | 420 | 240 |
| 420 | 516 | 360 |
| 516 | 600 | 480 |
| 600 | — | 600 |

## EXPORT DUTIES

a) *Coffee.* An export duty at the rate of K£10 per ton is levied. Coffee exported to non-quota markets is exempt from the tax.

b) *Sisal.* The tax varies with the f.o.b. value. The rates of tax are as follows—

---

5. An investment deduction, in conjunction with the normal wear and tear deductions, permits more than 100 per cent of the capital cost to be set off against profits. Thus, an investment deduction of 20 per cent in respect of capital outlay, which can be written off over 4 years at the rate of 25 per cent per annum, will permit total deductions of 120 per cent of the capital cost, as follows: 45 per cent in the first year and 25 per cent in each of the following 3 years.

6. The following minerals have been declared to be "specified" minerals: asbestos, beryl, carbon dioxide gas (natural), copper, columbite, diatomite, gold, graphite, kyanite, magnesite, meerschaum, mica, silver and vermiculite.

7. See Nizar Jetha, "Low-Income Taxation in Kenya", *The British Tax Review*, July-August 1966 for further details.

| *Value per ton* | *Tax payable* |
|---|---|
| i) On all sisal of or exceeding the value of 1,500/— per ton, but not exceeding the value of 2,000/— per ton. | 5% *ad valorem* |
| ii) On all sisal exceeding the value of 2,000/— per ton, but not exceeding the value of 2,200/— per ton. | 100/— per ton plus 10/— for every 20/— by which the value thereof exceeds 2,000/— and *pro rata* for every additional shilling. |
| iii) On all sisal exceeding the value of 2,200/— per ton but not exceeding 2,500/— per ton. | 200/— per ton plus 20/— for every 20/— by which the value thereof exceeds 2,200/— and *pro rata* for every additional shilling. |
| iv) On all sisal exceeding the value of 2,500/— per ton | 20% *ad valorem* |

## IMPORT DUTIES

The rates of import duties on the major consumer goods are—

*Foodstuffs*
Meat and meat products 50%
Fish and fish products 50%
Fruit and vegetables 50%
Prepared cereals (e.g. corn flakes), macaroni, spaghetti, etc. 50%
Jams, marmalades, sauces, soups, broths 50%
Sugar Shs. 44/10 per 100 Kg.

*Beverages*
Beer Shs. 4/— per litre
Wine $66^{2}/_{3}$%
Spirits Shs. 44/— per proof litre

*Tobacco*
Cigarettes Shs. 145/50 per Kg.

*Textiles, Clothing and Footwear*
Fabrics and clothing 45%
Footwear $33\frac{1}{3}$%

*Toilet Preparations*
Soap 40%
Perfumes 100%
Other (including cosmetics) 75%

*Fuels*
Motor spirit Shs. 361/65 per cubic metre
Diesel oils Shs. 287/30 per cubic metre

*Durable Consumer Goods*
Passenger motor vehicles $33\frac{1}{3}$%-80% depending on engine capacity
Bicycles 30 %
Watches 30 %

| | |
|---|---|
| Jewellery | 37½% |
| Cameras | 30 % |
| Radio and television sets | 50% |
| Gramophones, tape-recorders, etc. | 37½% |
| Refrigerators | 30% |
| Washing machines | 30% |

Complete details concerning import duties will be found in the Customs Tariff Act (No. 36 of 1967), as amended by the Finance Act (No. 48 of 1968), the Petroleum Duties Amendment Act (No. 9 of 1969) and the Finance Act (No. 12 of 1969).

## EXCISE DUTIES

| Item | Goods | Unit | Rates of Duty Shs. | cts. |
|---|---|---|---|---|
| 1 | Beer— | | | |
| | a) Stout | Per litre | 2 | 25 |
| | b) Other | | | |
| | i) of an original gravity not exceeding 1060° | Per litre | 1 | 50 |
| | ii) of an original gravity exceeding 1060° | Per litre | 2 | 25 |
| 2 | Sugar— | Per 100 Kg. | 44 | 09 |
| 3 | Cigars, Cheroots and cigarillos | Per Kg. | 42 | 33 |
| 4 | Cigarettes, where retail selling price per thousand— | | | |
| | does not exceed Shs. 30 | Per thousand | 14 | 50 |
| | exceeds Shs. 30 but does not exceed Shs. 37/50 | Per thousand | 18 | 00 |
| | exceeds Shs. 37/50 but does not exceed Shs. 50 | Per thousand | 24 | 00 |
| | exceeds Shs. 50 does not exceed Shs. 65 | Per thousand | 29 | 50 |
| | exceeds Shs. 65 but does not exceed Shs. 80 | Per thousand | 37 | 50 |
| | exceeds Shs. 80 but does not exceed Shs. 100 | Per thousand | 45 | 00 |
| | exceeds Shs. 100 but does not exceed Shs. 125 | Per thousand | 50 | 00 |
| | exceeds Shs. 125 | Per thousand | 56 | 00 |

| Item | Goods | Unit | Rates of Duty Shs. | cts. |
|---|---|---|---|---|
| 5 | Manufactured tobacco, other than tobacco made up by the grower without the use of machinery, ready for smoking in tobacco pipes | Per Kg. and in addition where the retail selling price per Kg. exceeds Shs. 61/74 per Kg. | 29<br>7 | 98<br>16 |
| 6 | Snuff, other than snuff made up by the grower without the use of machinery | Per Kg. | 15 | 87 |
| 7 | Matches—<br>i) In packing of less than 50 matches per container<br>ii) Other | Per 100 containers<br>Per 5,000 matches | 3<br>3 | 47<br>47 |
| 8 | Spirits—<br>Provided that no allowance will be made for under-proof in excess of 12½ per cent | Per proof litre | 33 | 66 |
| 9 | Wine—<br>a) Still<br>b) Sparkling | Per litre<br>Per litre | 1<br>3 | 32<br>96 |
| 10 | Waters, mineral and similar beverages, aerated and non-aerated, bottled ready for consumption without further preparation or dilution | Per litre | 0 | 35 |
| 11 | Biscuits, other than biscuits made by bakeries for direct retail sale without being put up in closed packages | Per Kg. | 0 | 55 |
| 12 | Soap, soap powders, soap extracts and substitutes therefor | Per 100 Kg. | 55 | 10 |
| 13 | Fabrics, woven, of which the length or breadth exceeds 61 cm,. including fabrics made by further manufacturing process from imported woven fabrics | Per square metre | 0 | 29 |

| Item | Goods | Unit | Rates of Duty Shs. | cts. |
|---|---|---|---|---|
| 14 | Varnishes and lacquers, distemper, paints and enamels, but not including cosmetic preparations or vitreous enamel paints— | | | |
| | a) Distemper in powder form | Per 100 Kg. | 18 | 90 |
| | b) Cement-based paints in powder form | Per 100 Kg. | 64 | 90 |
| | c) Other | Per litre | 0 | 88 |

## MISCELLANEOUS INDIRECT TAXES

*Petrol and Diesel Tax.* A consumption tax is levied on petrol and diesel fuel, in addition to import duties. The rate of tax is Shs. 135/89 per cubic metre for petrol, and Shs. 76/77 per cubic metre for diesel.

*Motor Vehicle Licence Fees*

| | Twelve *Monthly* (Shs.) | Four *Monthly* (Shs.) |
|---|---|---|
| i) Not exceeding 2,500 lb. tare weight | 200 | 80 |
| ii) Over 2,500 lb., but not exceeding 3,000 lb. tare weight | 240 | 96 |
| iii) For every additional 1,000 lb. tare weight or part thereof | 80 | 32 |

*Second-hand Motor Vehicles Purchase Tax.* A tax is payable on the purchase of a second-hand vehicle. The rate is Shs. 200/— where the motor vehicle has four or more wheels and Shs. 30/— where the motor vehicle has less than four wheels.

*Pools' Tax.* On every bet made by way of pool betting, a tax equal to 20 per cent of the gross amount is payable.

*Betting Tax.* A tax is payable in respect of every bet made with a bookmaker, at a place other than an "authorized race meeting" (a race meeting in respect of which a permit authorizing bookmaking to take place has been issued). The rates of tax are as follows:

i) in the case of a losing bet, at the rate of 5 per cent of the value of the stake;
ii) in the case of a winning bet, at the rate of 5 per cent of the value of the winnings (excluding any returnable stake).

*Totalisator Tax.* A tax at the rate of 5 per cent of the commission received by the licensee operating a totalisator is levied. (The licensee is allowed 15 per cent of the total amount staked as a commission).

*Entertainment Tax.* "Entertainment" is defined as any exhibition, performance or amusement to which persons are admitted for payment, excluding any game, sport, ball or dance. The Entertainment Tax is levied at the following rates:

| Where the payment for admission, excluding the amount of the tax— | Shs | cts. |
|---|---|---|
| a) does not exceed Shs. 1/15 | Nil | |
| b) exceeds Shs. 1/15 but does not exceed Shs. 2/25 | 0 | 15 |

| | | | | | |
|---|---|---|---|---|---|
| c) exceeds Shs. 2/25 but does not exceed Shs. 4/50 | 0 | 30 | d) exceeds Shs. 4/50 | 0 | 75 |

## ESTATE DUTY

*Scope.* Estate duty is imposed on the estates of persons dying either domiciled in Kenya or possessing immovable property situated in Kenya.

The following properties, *inter alia,* are exempt—

i) immovable property situated outside Kenya.
ii) any disposition made by the deceased more than three years before his death.
iii) any policy of insurance in respect of which the deceased provided no premium during the three years immediately preceding his death and over which the deceased had at no time during those three years any interest or power of disposition.
iv) any disposition made in consideration of marriage.
v) a gift which does not, together with all other gifts to the same donee, exceed K£500.

*Valuation.* The value of an asset is defined as the price which it would fetch in a sale between a willing buyer and a willing seller. However, in the case of immovable property, account may be taken of the rent which may reasonably be expected from it. Any depreciation in the value of the property by reason of the death of the deceased is also taken into account.

The market value of shares may not adequately reflect their real value where one individual controls a company or has a preponderant interest in it. In such cases, the shares are valued by reference to the net value of the assets of the company, and this valuation is used for estate duty purposes if it exceeds the "willing buyer, willing seller" valuation.

*Relief for Quick Succession.* Where estate duty becomes payable in respect of any property twice within five years and one of the persons dying derived his interest in the property by succession directly from the other, the amount of estate duty in respect of that property payable on the second death is reduced by a sum equal to a proportion of the estate duty which was payable on the property on the first or second death, whichever is the lower. The rates of relief are as follows:

Where the second death occurs—

| | |
|---|---|
| i) within one month of the first death | 100% |
| ii) after one month but within one year of the first death | 50% |
| iii) after one year but within two years of the first death | 40% |
| iv) after two years but within three years of the first death | 30% |
| v) after three years but within four years of the first death | 20% |
| vi) after four years but within five years of the first death | 10% |

The relief only applies on any death in respect of the same property in respect of one previous death.

*Relief for Marginal Estates.* The estate duty rate structure takes the form of "totality progression", i.e. successively increasing rates are applied to the entire tax base and not to any part of it only. Under such a rate structure, it is possible for the beneficiary of a larger estate to receive a smaller net-of-tax

estate than the beneficiary of a smaller estate (i.e. the marginal rate of tax can exceed 100 per cent). This occurs when the value of an estate just exceeds the lower limit of a 'slab'. To take care of situations of this nature, the amount of duty payable is reduced so as not to exceed the highest amount of duty which would be payable at the rate of duty next lower than that applicable, with the addition of the amount by which the value of the estate exceeds the value on which the highest amount of duty is payable at the lower rate. This ensures that the marginal rate of tax cannot exceed 100 per cent.[8]

*Payment of Duty by Instalments.* The estate duty payable in respect of land, business which is not carried on by a company, shares in a company valued on the greater of the market price or net asset basis and any annuity commencing on the death of the deceased may be paid by five equal annual instalments with interest at the rate of 6 per cent per annum.

The estate duty rates are as follows:

a) Where the value of the estate does not exceed K£1,000, no estate duty is payable.

b)

| Where the value of the estate exceeds (K£) | but does not exceed (K£) | the rate of estate duty is |
|---|---|---|
| 1,000 | 1,500 | K£5 |
| 1,500 | 2,000 | K£10 |
| 2,000 | 2,500 | K£15 |
| 2,500 | 5,000 | 1% |
| 5,000 | 7,500 | 2% |
| 7,500 | 10,000 | 3% |
| 10,000 | 12,500 | 4% |
| 12,500 | 15,000 | 5% |
| 15,000 | 20,000 | 6% |
| 20,000 | 25,000 | 7% |
| 25,000 | 30,000 | 8% |
| 30,000 | 35,000 | 9% |
| 35,000 | 40,000 | 10% |
| 40,000 | 50,000 | 11% |
| 50,000 | 60,000 | 12% |
| 60,000 | 70,000 | 13% |
| 70,000 | 80,000 | 14% |
| 80,000 | 90,000 | 15% |
| 90,000 | 100,000 | 16% |
| 100,000 | 110,000 | 17% |
| 110,000 | 130,000 | 18% |
| 130,000 | 150,000 | 19% |
| 150,000 | 175,000 | 20% |
| 175,000 | 200,000 | 21% |
| 200,000 | 225,000 | 22% |
| 225,000 | 250,000 | 23% |
| 250,000 | 300,000 | 24% |
| 300,000 | 350,000 | 25% |
| 350,000 | 400,000 | 26% |
| 400,000 | 450,000 | 27% |
| 450,000 | 500,000 | 28% |
| 500,000 | 550,000 | 29% |
| 550,000 | 600,000 | 30% |
| 600,000 | 650,000 | 31% |
| 650,000 | 800,000 | 32% |
| 800,000 | 1,000,000 | 34% |
| 1,000,000 | 1,250,000 | 36% |
| 1,250,000 | 1,500,000 | 38% |
| 1,500,000 | 2,000,000 | 39% |

c) Where the value of the estate exceeds K£2,000,000, the rate of estate duty is 40 per cent.

---

8. Estates valued at over £35,000 but £40,000 or less are taxed at 10 per cent, and those valued at over £40,000 but £50,000 or less are taxed at 11 per cent. Assume that the value of an estate is £40,100—that is, just above the lower limit of the £40,000-£50,000 slab. If there were no marginal relief, the estate would pay a tax of £4,411 (11% of £40,100). But if the value of the estate were £40,000, the tax liability would amount to £4,000 (10% of £40,000). Thus, when the value of the estate increases by £100, the tax liability increases by £411, giving a marginal rate of tax in excess of 100 per cent. The estate of £40,100 will, therefore, qualify for the marginal relief and will pay a tax of £4,100 (10% of £40,000 *plus* the excess of £40,100 over £40,000).

J.R.C. BEIRENS*

# BELGIUM — TVA

## THE RENDERING OF SERVICES AS A SUBJECT OF TAXATION

### INTRODUCTION

In the Law of July 3, 1969[1] introducing the "Code on TVA" which will be effective as of January 1, 1971,[2] it is stated that the following are subject to the TVA[3]:

"The delivery of goods and the rendering of services within the country by taxable persons in the course of their business activities".

The rendering of services is taxed, in principle, just as the delivery of goods due to the fact that they occupy an increasingly important place in economic activity and play a greater role in the production and distribution of goods[4]. The present discussion will deal with the rendering of services and the activities assimilated thereto, especially the conditions of liability to or exemption from taxation on these services.[5]

The "credit mechanism" is not treated in this discussion.

### I. THE GENERAL CONDITIONS OF LIABILITY FOR TVA ON THE RENDERING OF SERVICES

*A. The Conditions for Liability for TVA on Rendering of Services are:*[6]

1. The service must be a service within the meaning of the basic TVA law;[7]
2. The service must take place in Belgium;
3. The service must be carried out by the taxpayer in the exercise of his business activities.

*B. Discussion of these Three Conditions:*

Sub 1

The basic TVA law does not contain a definition of services but enumerates exhaustively those services which are taxable. Note that the following services are specifically mentioned as being subject to the TVA:[7a]

1. Manual or intellectual work which is carried out independently.

Included in this category are *inter alia* the following:[8]

- all work performed on movable goods;
- all intellectual work, e.g. administration, organization, estimation and independent professional work such as

---

* Doctor iuris of the Free University of Brussels, 1969. Member of the Belgian Bar.

1. Moniteur Belge (Official Gazette) of July 17, 1969. *Hereinafter this Law is cited as "Basic TVA law".*

2. Law of December 19, 1969, published in the Moniteur Belge (Official Gazette) of December 20, 1969. This law provided that the basic TVA law, which was to have been effective as of January 1, 1970, would not be introduced until 1 January 1971.

3. Basic TVA law, art. 2.

4. Commentary on the Bill introducing TVA, published in the documents of the House of Representatives, October 15, 1968 (No 88). *Hereinafter cited as "Commentary on the TVA Bill".*

5. See "European Taxation" (Publication of the International Bureau of Fiscal Documentation) special issue Nov.-Dec., 1968: "The Turnover Tax on Value Added in Europe".

6. Basic TVA law, art. 2 (1).

7. The services are indicated by the legislator in art. 18 of the Basic TVA law.

7a. See footnote 7.

8. Commentary on the TVA Bill ad art. 18 (1).

that of architects, engineers or chemists;
- advertising;
- transport of persons and goods;
- services rendered by brokers in: merchandise, advertising and immovable goods;
- beauty services; and
- similar activities.

2. Personnel placement services.
If someone provides his workers or employees for someone else to carry out activities under the latter's authority, management or supervision, this is considered as providing a service.
3. Agents.
This covers only contractual and remunerated agents. An agent who carries out the work of company directors and members of the board of surveillance (under the articles of association) is excluded from the field of application of art. 18 of the Basic TVA Law.
This exemption is granted due to the fact that such people act, in relation to third parties, as representatives of the company, not as agents.
4. Leases and Assignation of Lease.
Here is meant, the lease and assignation of a lease of movable goods.
Those transactions concerning immovable goods are in principle not subject to TVA. Note, however, that the letting of immovables for industrial or commercial purposes is taxable within the conditions which have to be determined by Royal Decree.
A leasing transaction concerning both movable and immovable goods is only subject to TVA on the lease of the immovable goods included. Nevertheless, apartments leasing is exempted from the TVA[9] (see *infra* - sub 1, 10)
5. The assignation of good-will (clientele), the obligation not to exercise a professional activity.
The first act is closely connected with the sale or rental of a business. The "clientele" is indeed regarded as an essential element of the business concern.
What is meant here essentially, is the act relating exclusively to the assignation of clientele. The transfer can arise from a sale, lease or contribution to a corporation.
6. The exclusive right to sell or purchase, the assignation of granting of rights, exclusive or not, to the right of carrying out a professional activity.
This means, *inter alia*, the agreement whereby a manufacturer grants a dealer, in return for payment, the exclusive right to sell a product within a certain area. It also means the agreement whereby a person grants someone, in return for renumeration, the right to exercise a professional activity within a certain area.
7. The sale or assignation of a patent, trade mark, copyright, etc.
8. The providing of parking facilities.
Contracts between individuals do not come within the definition of this term and are not subject to TVA. To be taxable it is necessary that an individual or legal entity engage in the business of providing parking facilities.[10]
9. The providing of warehousing for the storage of goods.
This term includes, e.g. services rendered by proprietors of warehouses, commercial refrigeration facilities, silos, etc.
10. The providing of furnished lodgings and camping sites.
The proprietor of a hotel may provide several services to his clients, such as

9. Commentary on the TVA Bill ad art. 18 (4).
10. Commentary on the TVA Bill ad art. 18 (8).

providing rooms. This service is a lease of an immovable good—normally exempt from TVA (see *supra* - sub 1, 4). Thus hotel proprietors would be taxable only for the providing of food, drinks, etc. and not for the providing e.g. of rooms, causing substantial problems.[11] The rental of rooms and furnished apartments is not subject to TVA if the transaction is between individuals.

11. The supplying of food and drink to be consumed on the premises. This term includes services rendered in hotels, cafés, etc.,
12. The granting of the right to enter buildings for cultural, sport or entertainment purposes, and the granting of the right to use these establishments.[12]
13. The leasing of safes.
    It is irrelevant whether the safe leased is movable or immovable, e.g. where banks place safes permanently in the walls.
14. Banking transactions or financial services exclusive of the transfer of securities and money.
15. Radio and television broadcasting and telecommunication.
16. The leasing of immovable property for industrial or commercial purposes, by a company whose business is the leasing of immovable property.

By comparing the Belgian basic TVA law's provisions concerning services with the "Second TVA Directive of the EEC",[13] the following conclusions can be reached:

- In the second TVA Directive[14] all transactions which are not delivery of a tangible good are considered to be the rendering of a service within the meaning of the former term in the Directive.[15] The Belgian legislature felt it was necessary to give a clearer definition of the term "rendering of services" and therefore mentioned all services which are subject to tax under the basic TVA law.[16]
- One can conclude further that the Belgian legislature subjected to TVA all services which the EEC Directive (Annex B) indicated should be taxed.[17]

Sub 2:

The service must take place in Belgium.

It is important for the second condition to know when a service can be considered as taking place in Belgium. The basic TVA law states that a service will be considered to have been rendered within Belgium if it is used there.[18]

Thus, the place where the service is made use of is the criterion. The choice of this criterion is in accordance with the criterion of the second TVA Directive.[19]

Namely, the place of a rendering of services is deemed to be located in principle at the place where the service rendered or granted or object rented, is used or exploited.

To determine whether a service is being

---

11. Commentary on the TVA Bill ad art. 18 (10).
12. Commentary on the TVA Bill ad art. 18 (11).
See also Exemptions III, 3, c.
13. Second Directive with regard to the harmonization of the laws of the Member States relating to turnover taxes, concerning the structure and the methods of application of the common system of tax on value added *(hereinafter cited as Second TVA Directive)*. Journal Officiel des Communautés européennes of April 14, 1967. See for the unofficial English translation "Supplementary Service to European Taxation" Section D (-33) (Published by the International Bureau of Fiscal Documentation).
14. Second TVA Directive, art. 6 (1).
15. Second TVA Directive, art. 5.
16. Commentary on TVA Bill, ad art. 18.
17. Second TVA Directive art. 6 (2) referring to the list of Annex B.
18. Basic TVA law art. 21 (1).
19. Second TVA Directive, art. 6 (3).

made use of in Belgium the following conditions must be taken into account;[20]

a. Unless there is evidence to the contrary, a service is considered as being made use of in Belgium when one of the contracting parties is resident there.[21]
   Note that according to article 2 of the basic TVA law, rendering of services is only taxable when it takes place in Belgium (see above).
   To apply this rule to the rendering of services a legal presumption was necessary. The rebuttable presumption (that services are made use of in Belgium when one contracting party is resident there) was introduced to support the tax administration in producing juridical proof of the rendering of such services within the State.[22]
b. If the service is "transport", which took place on both Belgian and foreign territory, the service is considered as having taken place in Belgium as regards the part of the transportation which was carried out there.[23]
   The Belgian legislature felt it was necessary to state this rule specifically due to the incidence of international transport through Belgium.[24]
c. In respect to brokers or agents who work together in the delivering of goods abroad, this rendering of services is regarded as being made use of abroad, and thus it is subject to Belgian TVA.[25]

It should be noted further, that the Belgian legislature provided in the basic TVA law.[26] as regards the services concerned, that the definition of "making use of a service in Belgium" would be set out in detail by Royal Decree for some of the services. This was done by the Royal Decree of February 6, 1970.[27]

We now deal in detail with condition 2 determining liability for TVA on rendering of services. At this point we refer to articles 1 and 3 of the TVA Royal Decree no 5. Those services not explained by art. 1 of this Royal Decree are included under the rule of art. 3 of the same Royal Decree which subjects the *specific service to* TVA when rendered to a Belgian resident.

The Royal Decree further states[28] that services rendered to a person who has a permanent establishment in Belgium (branch, office, etc.) are considered as services rendered to a Belgian resident.

If a service is rendered to an individual who does not use it for professional activities, the individual is considered as being resident in Belgium if he has a residence at his disposal[28a]

When are the services taxable in Belgium? (Note that the same order and numbers are used as *supra* I.B. sub 1 (1-15).

1. When the activities are carried out in Belgium.[29]
2. Royal Decree, art. 3 is applied.
3. Royal Decree, art. 3 is applied.
4. If the immovable good is situated in Belgium.[30]
5. Royal Decree, art. 3 is applied.
6. Royal Decree, art. 3 is applied.
7. Royal Decree, art. 3 is applied.

---

20. Basic TVA law, art. 21.
21. Basic TVA law, art. 21 (1).
22. Commentary on TVA Bill, ad art. 21.
23. Basic TVA law, art. 21 (2).
24. Commentary on TVA Bill, ad art. 21.
25. Basic TVA law, art. 21 (3).
26. Basic TVA law, art. 21 (1).
27. Royal Decree n° 5, relating to the place where the services are made use of for purposes of TVA—"Moniteur Belge (Official Gazette) of February 14, 1970. *Hereinafter cited as "TVA Royal Decree, n° 5".*
28. TVA Royal Decree, n° 5, art. 4.
28a. TVA, Royal Decree, n° 5, art. 4.
29. TVA Royal Decree, n° 5 art. 2, 8°.
30. TVA Royal Decree, n° 5, art. 1, 1° and 2°.

8. The site must be in Belgium.[31]
9. If the movable goods are situated in Belgium.[32]
10. If the lodgings and camping sites are situated in Belgium.[33]
11. If the premises are situated in Belgium.[34]
12. If the installations are situated in Belgium.[35]
13. If the safes are situated in Belgium.[36]
14. Royal Decree, art. 3 is applied.
15. If operated in Belgium.[37]
16. If the immovable good is situated in Belgium.[38]

Sub 3

The service must be carried out by the taxpayers in the exercise of their business activities. The taxpayer is thus the person (natural or legal) who basically fulfils the following essential conditions:

a. exercises a certain activity, i.e. the rendering of services within the meaning of the law;
b. the activity must be exercised in a regular way, i.e. the activity must consist of the regular rendering of services (or deliveries).[39] The capacity of "taxpayer" is lost when a definite end occurs in the regular rendering of services.
c. the activity must be carried out independently. There may be no subordination in the exercise of the service in the sense that this term has under labour and employment contracts. This means that a worker or employee can never be liable to be taxed for acts which he performs as a wage or salary earner.

The following conditions must also be observed:

a. the activity can be carried out either principally or complementarily, a principal activity is thus not required and the activity may thus be complementary. For example: a book-keeper working for private clients outside normal office hours is subject to TVA.
b. the activity may be carried out with or without the objective of profit, and thus many persons who are not traders are liable to pay tax.

This third and last condition is completely in accord with the 2nd TVA Directive.[40]

## II. ACTS DEEMED TO CONSTITUTE THE RENDERING OF SERVICES

1. The carrying out of services, within the meaning of art. 18, which are performed for a payment, in accordance with a claim or on behalf of the government. TVA is thus due on account of such an action, provided that the claim is chargeable to a taxpayer and the act which has become a service is made use of in Belgium.[41]
2. The carrying out of work in connection with immovable property for oneself. If

31. TVA Royal Decree, n° 5, art. 1, 5°.
32. TVA Royal Decree, n° 5, art. 1, 6°.
33. TVA Royal Decree, n° 5, art. 1, 11°.
34. TVA Royal Decree, n° 5, art. 1, 11°.
35. TVA Royal Decree, n° 5, art. 1, 12°.
36. TVA Royal Decree, n° 5, art. 1, 3°.
37. TVA Royal Decree, n° 5, art. 1, 10°.
38. TVA Royal Decree, n° 5, art. 1, 2°.
39. This is only a matter of fact. In our opinion it must be understood that the first act provides the capacity for being liable to tax if there is an intention to repeat this act or if this intention is presumed; thus not understood in the sense of: a person must carry out several acts to be liable to tax.
40. Art. 4 "Taxable person" is to be understood as meaning any person who independently and regularly engages in transactions within the scope of the activities of a manufacturer, trader or a person who renders services, whether or not for profit.
41. Basic TVA law, art. 19 (1).

a taxpayer acting for himself carries out or has carried out by his workers work in connection with immovable property, which is not work of maintenance or repair, the carrying out of that work is equated with a service and TVA is due.[42] For example, a builder who constructs his own house is subject to TVA on the service rendered to himself.

## III. EXEMPTIONS FROM TVA

The basic TVA Law provides for the exemption of certain services from the tax. These exemptions have several bases:

- the status of the person rendering the service (e.g. lawyers, notaries, etc.)
- the quality of the service itself (e.g. teaching).

Exemptions Provided by the Basic TVA Law

1. Services rendered by the State, provinces, municipalities or public institutions[45] unless they are engaged in trade for a profit.
2. Services performed by the following persons in the exercise of their regular activities are exempt from TVA:[46]
   - lawyers, notaries, bailiffs
   - doctors, dentists, midwives, nurses, masseurs and veterinary services.

   Note that these exemptions are valid only where such services are rendered in the course of professional activities. All services rendered outside of this area are subject to TVA.
3. The following are also exempt from the TVA:[47]

a. services performed in the exercise of their regular activities by hospitals, psychiatric institutions, clinics, services by family or household help, ambulance services;
b. services carried out by old people's homes, childrens' homes;
c. services carried out by persons running sport institutions, and institutions for physical training, if the receipts are used only to cover the general costs;
d. teaching;
e. services concerning guidance on study and family matters;
f. renting of books, publications, grammophone records and tapes and services to readers given by libraries and reading-rooms;
g. services given by persons running museums, zoological gardens, etc.;
h. services given by people holding conferences; and
i. the organisation of plays, ballet, film shows and concerts, if the receipts are used only to cover the general costs.

4. The King may by Royal Decree[43] subject to TVA "other services carried out for oneself" in order to avoid seriously anti-competitive situations.[44]
   The carrying out of an act by a non-taxpayer for professional purposes would be considered as a service if it is originated in a contract in which a consideration is given.

Other exemptions:[48]

j. contracts concluded by authors or composers for the publication or performance of their works;
k. the deposit or receipt of money and credit transactions; and
l. services by brokers or agents in operations

---

42. Basic TVA law, art. 19 (2).
43. Basic TVA law, art. 2.
44. Basic TVA law, art. 2.
45. Basic TVA law, art. 6.
46. By virtue of art. 5 basic TVA law, referring to art. 44 of the same law.
47. Basic TVA law, art. 44 (2).
48. Basic TVA law art. 44 (3).

covered by par. 2, and in insurance and exchange transactions.

4. Also exempt from TVA are:

a. those services (other than those mentioned in subsection c below) connected with the exportation of goods;[49]

b. – 1. transport of passengers by sea and air;
– 2. transport of goods where connected with export or transit of goods, or when transported with the object of entering Belgium from abroad;[50]

c. the following services carried out in connection with b (1) and (2) above:[51]
– towing, piloting and docking of seagoing and inland boats;
– the use of harbour and airport facilities;
– loading, unloading and similar services;
– storage and custody of merchandise;
– the rental of means of transport, packing and protection of merchandise;

d. services rendered by brokers and agents connected with services mentioned in (b) and (c) above;[52]

e. services related to:
– the delivery and importation of ships and boats, other than yachts and pleasure craft not used for public transport;
– the delivery and importation of airplanes, seaplanes, helicopters etc. or gliders, used by the State or authorized proprietors of airlines.[53]

f. – services rendered to embassies, consulates and diplomatic or consular staff;[54]
– services rendered to international institutions and their staffs, if such exemption is provided for by a treaty to which Belgium is a party;[55]

g. services rendered for the official use of foreign armed forces members of NATO;[56]

h. services rendered to the United States Educational Foundation in Belgium;[57]

i. services connected with the delivery of natural precious stones and real pearls[58].

---

49. Basic TVA law art. 39.
50. Basic TVA law, art. 41 (1).
51. Basic TVA law, art. 41 (2).
52. Basic TVA law art. 41 (3).
53. Basic TVA law, art. 42 (1).
54. Basic TVA law, art. 42 (2).
55. Basic TVA law, art. 42 (2).
56. Basic TVA law, art. 42 (2). Note that the Minister of Finances may impose further conditions.
57. Basic TVA law, art. 42 (2).
58. Basic TVA law, art. 42 (3).

France:

## INVESTMENT CLUBS

*A ruling has been published by the French Tax Administration on the tax treatment of members of investment clubs. The individual members are generally treated as if they owned directly the securities held by the club. The text of the ruling of 23rd December 1969 is published below.**

La question a été posée de savoir quel est le régime fiscal applicable aux «clubs d'investissement» ou «clubs d'actionnaires» constitués en France et inspirés de ceux qui existent aux Etats-Unis.

Ces clubs, qui ont été ou seront créés sous la forme juridique d'indivisions ou de sociétés civiles de personnes (à capital variable ou non), ont pour objet la création puis la gestion en commun, par un petit nombre de personnes, d'un portefeuille de valeurs mobilières constitué grâce à des versements échelonnés et relativement modiques.

Compte tenu du rôle éducatif que doivent jouer ces clubs en familiarisant le public avec les valeurs mobilières et en favorisant la diffusion de celles-ci, il a paru possible d'admettre que les membres de ces clubs se trouvent placés dans une situation fiscale comparable à celle qui serait la leur s'ils géraient directement leur portefeuille de titres.

### CONDITIONS

Ce régime de faveur est subordonné aux conditions suivantes:

– le «club» devra être créé sous la forme d'une indivision ou d'une société civile de personnes régie par les articles 1832 et suivants du Code civil, et dans laquelle, notamment, les associés – qui ne peuvent être que des personnes physiques – seront indéfiniment responsables des dettes sociales à l'égard des tiers;

l'objet de ce club devra être limité à la constitution et à la gestion d'un portefeuille de placement;

les status devront prévoir que le nombre des membres du «club» sera de quinze au maximum et que les versements mensuels par participant ne pourront pas dépasser 200 F (cette limite étant toutefois portée à 600 F pour le versement initial);

enfin, les fonds en attente de placement et les valeurs acquises devront être déposés auprès des personnes habilitées à recevoir des fonds et à détenir des valeurs mobilières pour le compte du public (agents de change, banques, établissements financiers agréés à cet effet).

### PORTÉE DU RÉGIME DE FAVEUR

*Imposition des dividendes et intérets.*

Strictement, l'impôt sur le revenu des personnes physiques devrait être établi au nom de chaque membre pour la part des bénéfices sociaux correspondant à ses droits dans l'indivision ou la société.

Pratiquement, il sera fait abstraction de

*) Bulletin Officiel des Contributions Directes et du Cadastre, 1969, II 4694.

l'existence de l'indivision ou de la société pour l'établissement de l'impôt frappant les dividendes, intérêts et autres produits proprement dits du portefeuille.

Chaque intéressé mentionnera sur sa propre déclaration sa quote-part de dividendes et autres produits mobiliers et utilisera l'avoir fiscal correspondant.

L'établissement chargé de la tenue matérielle des comptes de l'indivision ou de la société devra donc délivrer en fin d'année à chaque indivisaire ou associé un relevé de coupons et un certificat d'avoir fiscal correspondant à ses droits dans l'actif de l'indivision ou de la société.

Par ailleurs, les produits des placements effectués par le club pourront être admis au bénéfice de l'exonération d'impôt sur le revenu des personnes physiques prévue à l'article 157-16° du Code général des impôts en faveur des engagements d'épargne à long terme. A cet effet, chacun des indivisaires ou associés désirant bénéficier de ladite exonération devra souscrire personnellement, auprès de l'établissement chargé de la tenue des comptes, un engagement répondant aux conditions requises par l'article 163 *bis* A du même Code.

*Plus-values.*

En principe, les plus-values résultant d'opérations de placement réalisées dans le cadre de la gestion du portefeuille échapperont à l'impôt sur le revenu des personnes physiques dans les mêmes conditions que si elles avaient été réalisées par les membres du club, à titre individuel.

En revanche, si l'indivision ou la société venait à effectuer, contrairement à son objet, d'autres opérations, les gains ainsi réalisés seraient imposés, au titre des bénéfices non commerciaux, dans la mesure où ils pourraient être regardés, conformément à la jurisprudence du Conseil d'Etat, comme des produits d'opérations de bourse effectuées à titre habituel, au sens de l'article 92-2 du Code général des impôts.

Pour l'appréciation du caractère imposable de ces plus-values, on se référera purement et simplement à la doctrine et à la jurisprudence applicables aux particuliers.

Il est rappelé, à cet égard, que l'Administration considère, pour sa part, que les gains résultant d'opérations de bourse doivent être imposés lorsque les opérations sont effectuées dans des conditions telles qu'elles caractérisent l'exercice d'une véritable activité professionnelle.

Confirmant cette doctrine, le Conseil d'Etat estime que les opérations de bourse doivent être regardées comme ayant un caractère habituel au sens de l'article 92 susvisé, lorsque, en raison de leur nombre, de leur échelonnement, de la diversité des titres négociés et de la durée moyenne de leur conservation, elles ont dépassé le cadre de la simple gestion d'un patrimoine.

Dans cette hypothèse – qui demeurera vraisemblablement exceptionnelle – les plus-values spéculatives ainsi réalisées devront être déclarées par l'indivision – regardée comme une société de fait – ou par la société civile, et chacun des membres du «club» sera imposé, dans la catégorie des bénéfices non commerciaux, sur la quotepart de ces plus-values qui correspond à ses droits dans l'indivision ou dans la société.

France :

# REFUND OF TVA ON PURCHASES BY NON-RESIDENTS

*The refund of the turnover tax on value added on purchases effected in France by non-residents has been changed as of January 1, 1970. The text of the announcement by the Ministers of Economic Affairs and Finance of December 29, 1969, is published below.*

1. – Le Gouvernement avait décidé dans le courant de l'été dernier de porter à compter du 1er août 1969, au niveau prévu par une directive de la Communauté économique européenne en date du 28 mai 1969, *la franchise des droits et taxes accordée à l'entrée en France* aux voyageurs pour les objets qu'ils transportent dans leurs bagages personnels.
Cette mesure, qui était destinée à rendre tangible – dès la saison touristique 1969 – pour les voyageurs circulant dans la Communauté européenne, la réalité du marché commun anticipait, en fait, sur la mise en vigueur des dispositions de la directive qui n'étaient obligatoires pour les Etats Membres qu'à compter du 1er janvier 1970.
En contrepartie de cette augmentation de la franchise à l'importation, la directive communautaire du 28 mai 1969 prévoit que toutes mesures utiles seront prises par les Etats Membres, au plus tard le 1er janvier 1970, pour faire en sorte qu'aucune marchandise susceptible de bénéficier de la franchise n'ait pu être acquise en exonération des taxes normalement exigibles sur leur marché intérieur.

2. – En application de cette disposition, *le régime actuellement en vigueur, pour la détaxation de la T.V.A. sur les achats* faits par des personnes résidant à l'étranger, devra être modifié à compter du 1er janvier 1970.
Dès cette date, les «bordereaux de vente de marchandises» valables pour l'exonération de la T.V.A., délivrés à des voyageurs résidant dans le Marché commun, pour les marchandises qu'ils emmènent dans leurs bagages personnels, ne pourront plus reprendre aucune *marchandise d'une valeur unitaire inférieure à 420 francs,* taxes comprises, puisque ces marchandises sont susceptibles de bénéficier de la franchise à l'entrée dans le pays de destination.
Ces nouvelles dispositions seront applicables quelle que soit la nationalité des voyageurs, dès lors qu'ils *résident* dans un pays du Marché commun.
Des dispositions du même ordre seront prises en ce qui concerne les livraisons à bord des navires et des avions qui, si elles sont faites à des personnes résidant dans le marché commun devront, pour bénéficier de la détaxe, porter sur des objets qui tous aient une valeur unitaire supérieure à 420 francs, taxes comprises.

3. – En ce qui concerne *les voyageurs résidant hors du Marché commun* quelle que soit leur nationalité, il n'est rien changé, au 1er janvier 1970, à la manière de faire actuellement suivie; en conséquence, les bordereaux pourront continuer à comporter des marchandises des différentes valeurs et dès que le montant total de l'achat dépassera 125 francs, il pourra donner lieu à détaxe de la T.V.A. dans les mêmes conditions que précédemment.

4. – Il n'est rien changé non plus, en ce qui concerne *les envois que les détaillants expédient à l'adresse de leurs clients,* à l'étranger, soit par la voie postale, soit par colis postaux, qui continueront, après le 1er janvier 1970, à être détaxés de la T.V.A., comme par le passé, moyennant l'accomplissement des mêmes formalités réglementaires que celles exigées actuellement pour ces envois, et quelle que soit la résidence du destinataire.

5. – Enfin, en ce qui concerne *les comptoirs de vente «sous douane»* installés dans les ports et sur les aéroports et les ventes faites à bord des avions et des navires, il ne sera, le 1er janvier 1970, rien changé non plus à la pratique actuelle; mais les adaptations nécessaires seront vraisemblablement décidées dans le courant du mois de janvier après nouvel échange de vues entre les représentants des Six pays de la Communauté économique européenne.

# UNTERRICHTUNG ÜBER DEN STAND VON NEUEN DEUTSCHEN DOPPELBESTEUERUNGSABKOMMEN*

—BdF-Schreiben an die Länder – Fin. Min. (Fin. Sen.) vom 12.2.1970 – IV C/1 – S 1300 – 12/70.—

## I. Stand der Doppelbesteuerungsabkommen und der Doppelbesteuerungsverhandlungen

AUSTRALIEN:
Die im Jahre 1968 begonnenen Verhandlungen über den Abschluß eines DBA wurden im Jahr 1969 fortgesetzt, sind aber noch nicht abgeschlossen.

BELGIEN:
Das DBA vom 11. 4. 1967 ist am 30. 7. 1969 mit Wirkung vom 1. 1. 1966 in Kraft getreten (BGBl. 1969 II S. 1465, BStBl. 1969 I S. 468).

BRASILIEN:
Die im Jahre 1966 aufgenommenen Verhandlungen über den Abschluß eines DBA wurden im Jahre 1969 fortgesetzt, sind aber noch nicht abgeschlossen.

CHILE
Im Jahre 1969 sind Verhandlungen über den Abschluß eines DBA aufgenommen worden.

FRANKREICH:
Am. 9. 6. 1969 wurde ein Revisionsprotokoll zum DBA vom 21. 7. 1959 unterzeichnet; dieses bringt mit Wirkung vom 1. Januar 1968 an wesentliche Vergünstigungen für die deutschen Aktionäre französischer Gesellschaften. Das Vertragsgesetz wird in Kürze vorgelegt werden.

GROSSBRITANNIEN:
Der am 11. 10. 1968 paraphierte Text eines Revisionsprotokolls zum DBA vom 26. 11. 1964 steht vor der Unterzeichnung. Mit diesem Protokoll soll das angeführte DBA ab 1969 an das gegenwärtige System der Besteuerung der englischen Gesellschaften und deren Aktionäre angepaßt werden.

INDIEN:
Verhandlungen über die Revision des DBA vom 18. 3. 1959 wurden eingeleitet. Eine erste Gesprächsrunde fand vom 19. bis 21. 1. 1970 in Bonn statt.

IRAN:
Das DBA vom 20. 12. 1968 ist am 30.11. 1969 in Kraft getreten; es ist ab 1. 1. 1970 anzuwenden.

ISLAND:
Der am 3. 11. 1967 paraphierte Text eines DBA konnte bisher noch nicht unterzeichnet werden; das DBA soll ab 1968 anzuwenden sein.

ISRAEL:
Die im Jahre 1968 aufgenommenen Verhandlungen über ein Erbschaftsteuer-DBA wur-

*Abkürzungen:*
DBA = Doppelbesteuerungsabkommen
BGBl. = Bundesgesetzblatt
BStBl. = Bundessteuerblatt

*Eine vorhergehende Übersicht erschien in Bulletin for International Fiscal Documentation, 1967, S. 139.

den im Jahre 1969 fortgesetzt, sind aber noch nicht abgeschlossen.

ITALIEN:
Das am 17. 9. 1968 unterzeichnete Abkommen zur Vermeidung der Doppelbesteuerung auf dem Gebiete der direkten Steuern bei den Unternehmungen der Luftfahrt, das die im DBA vom 31. 10. 1925 enthaltene Regelung für die Schiffahrtunternehmen auf die Luftfahrt ausdehnt, wird in Kürze den gesetzgebenden Körperschaften vorgelegt werden. Es wird ab 1957 anzuwenden sein.— Die im Jahre 1963 aufgenommenen Verhandlungen zur Revision des DBA von 1925 konnten im Jahre 1969 nicht fortgesetzt werden.

KANADA:
Die im Jahre 1961 aufgenommenen Verhandlungen zur Revision des DBA vom 4. 6. 1956 sollen demnächst weitergeführt werden.

KOLUMBIEN
Das DBA betreffend Schiffahrt- und Luftfahrtunternehmen vom 9. 9. 1965 (BGBl. 1967 II S. 763, BStBl. 1967 I S. 25) ist noch nicht in Kraft getreten, da der Austausch der Ratifikationsurkunden noch nicht stattgefunden hat. Das DBA wird ab 1962 anzuwenden sein.

LIBERIA:
Im Jahre 1969 sind Verhandlungen über den Abschluß eines DBA aufgenommen worden.

MALAYSIA:
Die Verhandlungen über den Abschluß eines DBA wurden im Jahre 1969 fortgeführt, sind aber noch nicht abgeschlossen.

NEUSEELAND:
Die im Jahre 1968 aufgenommenen Verhandlungen über den Abschluß eines DBA sollen demnächst fortgeführt werden.

PAKISTAN:
Der am 24. 9. 1968 paraphierte Text eines Zusatzprotokolls zum DBA vom 7. 8. 1958 ist bisher noch nicht unterzeichnet worden. Dieses Zusatzprotokoll soll nach seiner Unterzeichnung mit dem bereits am 27. 8. 1963 unterzeichneten, jedoch den gesetzgebenden Körperschaften bisher noch nicht vorgelegten Zusatzprotokoll ratifiziert werden. Das neue Zusatzprotokoll bezieht sich in der Hauptsache auf die Besteuerung der Einkünfte aus internationaler Schiffahrt und soll insoweit ab 1967 angewendet werden; ferner bezieht es sich auf die Besteuerung von Zinsen, was jedoch – wie auch für das Protokoll von 1963 – keine Rückwirkung vorgesehen ist.

PHILIPPINEN:
Im Jahre 1969 wurden Verhandlungen über den Abschluß eines DBA aufgenommen.

PORTUGAL:
Die von portugiesischer Seite gewünschten Revisionsverhandlungen über den am 4. 11. 1966 paraphierten Abkommenstext konnten im Jahre 1969 nicht aufgenommen werden.

SCHWEIZ:
Die im Jahre 1965 aufgenommenen Verhandlungen zur Revision des DBA vom 15. 7. 1931/20. 3. 1959 sollen in Kürze fortgesetzt werden.

SINGAPUR:
Die im Jahre 1967 aufgenommenen Verhandlungen über den Abschluß eines DBA sollen bald fortgesetzt werden.

TÜRKEI:
Der am 19. 10. 1968 paraphierte Text eines

DBA wird demnächst unterzeichnet werden. Das Abkommen wird nicht rückwirkend anzuwenden sein.

## II. Vorläufige Veranlagungen auf Grund zu erwartender DBA

Wie aus vorstehender Übersicht zu entnehmen ist, werden verschiedene der angeführten DBA nach ihrem völkerrechtlichen Inkrafttreten rückwirkend anzuwenden sein. Ich bitte die FinMin., die Finanzämter anzuweisen, auf Antrag der Steuerpflichtigen, bei denen diese DBA voraussichtlich anzuwenden sein werden, die Veranlagung vorläufig durchzuführen oder bis zum völkerrechtlichen Inkrafttreten des betreffenden Abkommens zurückzustellen. Ob bei vorläufiger Veranlagung der Abkommensinhalt bereits beachtet werden soll, bleibt nach den Gegebenheiten des Einzelfalles zu entscheiden. Bei Veranlagungen unbeschränkt Stpfl. zur Vermögensteuer kann dies auf Fälle beschränkt bleiben, bei denen der Stpfl. in dem ausländischen Vertragstaat Vermögen in Form von Grundbesitz, Betriebsvermögen oder – falls der Stpfl. eine Kapitalgesellschaft ist – eine wesentliche Beteiligung an einer Kapitalgesellschaft des betreffenden Staates hat.

Nach dem in Abschnitt I angegebenen Stand werden folgende Abkommen rückwirkend anzuwenden sein:

| Abkommen mit | Anzuwenden im allgemeinen ab | Bei Unternehmen der Schiffahrt u. Luftfahrt ab |
|---|---|---|
| Frankreich | 1. 1. 1968[1]) | – |
| Großbritannien | 1. 1. 1969[1]) | – |
| Island | 1. 1. 1968 | 1. 1. 1968[2]) |
| Italien | – | 1. 1. 1957[3]) |
| Kolumbien | – | 1. 1. 1962 |
| Portugal | – | 1. 1. 1963 |
| Pakistan | – | 1. 1. 1967[4]) |
| Südafrika | 1. 1. 1965[5]) | 1. 1. 1965[6] |

1. Nur bei unbeschränkt Steuerpflichtigen, die Dividenden aus dem ausländischen Vertragstaat beziehen.
2. Bis zum Inkrafttreten ist die mit Rundschreiben vom 14. 2. 1964, BStBl. I S. 43, mitgeteilte Gegenseitigkeitsregelung anzuwenden.
3. Nur für Luftfahrtunternehmen.
4. Nur für Schiffahrtunternehmen.
5. Das Abkommen wird außer bei Unternehmen der Schiffahrt und der Luftfahrt nicht auf die Vermögensbesteuerung beschränkt Steuerpflichtiger anzuwenden sein, die in Südafrika ansässig sind.
6. Bis zum Inkrafttreten ist für die Besteuerung der Einkünfte das Abkommen vom 9. 5. / 26. 8. 1965, BGBl. 1958 II S. 159, BStBl. 1958 I S. 401, anzuwenden.

## III. Arbeiten der OECD-Steuerausschusses

Die deutsche Übersetzung des vom OECD-Steuerausschuß im Jahre 1966 verabschiedeten Musters eines Doppelbesteuerungsabkommens für Erbschaftsteuer ist zur Zeit im Druck.

# * * * * BIBLIOGRAPHY * * * *

## BOOKS

### CANADA

CANADIAN INCOME TAX ACT, published by Commerce Clearing House Canadian Ltd., Don Mills, Ont., 38th edition 1969.
Annotated text of the Income Tax Act as amended by 1969 amendments, with Income Tax Regulations as amended to July 4, 1969.

Library International Bureau of
Fiscal Documentation, B4530

THE NATIONAL FINANCES 1969–70, published by Canadian Tax Foundation, Toronto, 1969. 268 pp.
An analysis of the revenues and expenditures of the Government of Canada.

Library International Bureau of
Fiscal Documentation B4540

CANADIAN INCOME TAX REGULATIONS consolidated to October 1, 1969, published by C.C. H. Canadian Ltd., Don Mills, Ont. 1969.
Annotated text of the Income Tax Regulations as updated to October 1, 1969.

Library International Bureau of
Fiscal Documentation B4532.

CANADIAN MASTER TAX GUIDE, a guidebook to Canadian Income Tax with rates and fees under the Excise Tax Act, the Canada Corporations Act and a brief outline of the Estate Tax act. Published by C.C.H. Canadian Ltd., Don Mills, 24th ed., 1969. 582 pp.
Explanation of the income tax with a brief survey of the estate tax, excise tax, sales tax and of the fees due on the creation of corporate bodies. The material is stated as of January 1, 1969.

Library International Bureau of
Fiscal Documentation B4529

### GERMANY

DIE AUSLEGUNG DER STEUERGESETZE IN WISSENSCHAFT UND PRAXIS. Eine Sammlung von Beiträgen sowie Auszüge aus der Rechtsprechung zum Andenken an Armin Spitaler. By G. Thoma and U. Niemann.
Published by Dr. Otto Schmidt KG, Köln-Marienburg, 1965. 353 pp. Compilation of articles and extracts from case law entitled The interpretation of tax laws in science and practice.

Library International Bureau of
Fiscal Documentation B4510

DEUTSCHE STIFTUNGEN FÜR WISSENSCHAFT, BILDUNG UND KULTUR. Published by Nomos Verlagsgesellschaft, Baden-Baden, 1969. 428 pp. This directory of "German Foundations for Science, Education and Culture" has been compiled as a contribution towards a better understanding of the current situation of foundations in the Federal Republic of Germany.

Library International Bureau of
Fiscal Documentation no. B4496

MÖGLICHKEITEN DER OBJEKTIVIERUNG DES JAHRESERFOLGES, published by Verlagsbuchhandlung des Instituts der Wirtschaftsprüfer GmbH, Düsseldorf, 1970. 214 pp.
Study for a generally acceptable manner to compute annual business profits.

Library International Bureau of
Fiscal Documentation no. B4546

DIE SICHERUNGSÜBERTRAGUNG VON GMBH-ANTEILEN, published by Verlag Dr. Otto Schmidt KG, Köln-Marienburg, 1969. 139 pp. Study of GmbH-company law, respecting letter of lien secured by GmbH shares. Examples of contract-models are appended.

Library International Bureau of
Fiscal Documentation no. B4517

STEUER KONGRESS REPORT 1969, published by C.H. Beck'sche Verlagsbuchhandlung, München, 1969. 521 pp.
Compilation of the lectures held at the 1969 Tax Congress convened by two associations of German tax advisers; inter alia: Franz Josef Strauss: Finanz- und Steuerpolitik des modernen Staates. (Public Finance and Tax policy in developed States). Hans Birkholz: Aktuelle Fragen aus dem Bilanzsteuerrecht (Fiscal Balance sheet).

Library International Bureau of
Fiscal Documentation no. B4547

UMWANDLUNGSRECHT, Kommentar zur Umwandlung von Unternehmungen nach neuestem Handels- und Steuerrecht, by S. Widmann, and R. Mayer. Published by Wilhelm Stollfuss Verlag, Postfach 287, Bonn.
Loose-leaf publication explaining the new regime for mergers and business transformations

under the Transformation Law and the Law containing tax measures with respect to such legal transformations. The text of the relevant laws are appended.

Library International Bureau of
Fiscal Documentation no. B 5039

VERMÖGENSTEUERGESETZ, ERBSCHAFTSTEUERGESETZ, BEWERTUNGSGESETZ MIT DURCHFÜHRUNGSVERORDNUNGEN, published by Verlag C.H. Beck, München, 22nd edition, 1969. 239 pp.
Compilation of the text of the net worth tax law, the inheritance tax law and the valuation tax law. Relevant decrees pertaining to the laws are appended. The laws are stated as at October 1, 1969.

Library International Bureau of
Fiscal Documentation no. B4577A

## INTERNATIONAL

FISCAL SYSTEMS, by R.A. Musgrave. Published by Yale University Press, New Haven and London, 1969. 397 pp.
The author examines the Economies of Public Finance against the background of different institutional, developmental and national settings.

Library International Bureau of
Fiscal Documentation, no. B4567

FISCAL POLICY FOR A BALANCED ECONOMY, Published by OECD, Paris, 1968. 186 pp.
Study of the experience of the use of fiscal policy in Belgium, France, Germany, Italy, Sweden, the United Kingdom and the United States as an instrument for maintaining economic balance, and recommendations for increasing the scope for fiscal policy as a means of promoting steady growth and maintaining the balance of the economy in an industrialized economy.

Library International Bureau of
Fiscal Documentation, no. B4566

THE ECONOMICS AND POLITICS OF EAST-WEST TRADE, a study of trade between developed market economies and centrally planned economies in a changing world, by J.Wilczynski. Published by MacMillan & Co. Ltd., London, 1969. 416 pp.
The author examines the problems which arise from commercial relations between two basically different economic and political systems. The whole study is based on detailed research, extensively documented from both Socialist and Western sources and backed up by a wealth of statistics. A bibliography list is appended.

Library International Bureau of
Fiscal Documentation, no. B4541

QUANTITATIVE ANALYSES IN PUBLIC FINANCE, by A.T. Peacock. Published by Praeger Publishers, 111 Fourth Av., New York, N.Y. 10003, 1969. 266 pp.
Compilation of studies originally presented at a conference for specialists in public finance held at Turin in September 1968.

Library International Bureau of
Fiscal Documentation, no. B 4554.

INTERNATIONALE ABKOMMEN ZUR VERMEIDUNG DER DOPPELBESTEUERUNG, published by Carl Heymans Verlag KG, Köln-Berlin, 1969. 2 Vol.
Loose-leaf publication entitled: International Conventions for the avoidance of double taxation, containing the text of the tax conventions concluded with other countries, with respect to taxes on Income, Capital and Inheritances, as well as profits derived from shipping and aircraft enterprises. Relevant implementary decrees to the conventions and agreements are appended.

Library International Bureau of
Fiscal Documentation, nos. B4589, B4588

## NETHERLANDS

BELASTINGDRUK IN NEDERLAND 1968, published by Staatsuitgeverij, Den Haag, 1969. 69 pp.
Statistical data relating to the tax burden in 1968 with regard to national taxes as well as provincial and municipal taxes.

Library International Bureau of
Fiscal Documentation no. B4553

FISCAAL FUNDAMENT. Korte samenvattingen van de belangrijkste belastingarresten van de Hoge Raad, by J.J. Verseput. Published by Æ.E. Kluwer, Deventer, ca. 1966.
Loose-leaf publication which compiles extracts of tax decisions made by the Dutch Supreme Court, relating to individual income tax, wage tax, dividend tax, corporate tax, and net wealth tax.

Library International Bureau of
Fiscal Documentation no. B5029

DE FISCALE POSITIE VAN DE WERKENDE GEHUWDE VROUW, by F.H.M. Grapperhaus. Published by Staatsdrukkerij en uitgeverij, Den Haag, 1970. 52 pp.
Short review with respect to the present taxation of employment income of married women and possible tax reforms.

Library International Bureau of
Fiscal Documentation no. B4600

INBRENG, by P.L. Dijk. Published by AE.E. Kluwer, Deventer, 1969. 33 pp.
Text of a lecture on the legal aspects of the contribution of an enterprise owned by one person into a closely held corporation.

Library International Bureau of
Fiscal Documentation no. B4586

DE RECHTSWAARDE VAN NIET OP DE WET STEUNENDE BESTUURSHANDELINGEN VAN DE BELASTINGADMINISTRATIE, by Ch.P.A. Geppaart. (In: Nederlandse Vereniging voor Rechtsvergelijking No. 3) Published by AE.E. Kluwer, Deventer 1969, 46 pp.
Considerations on the binding aspect of promises and rulings by the tax administration which are not based on the statute law.

Library International Bureau of
Fiscal Documentation no. B4539

LES FUSIONS D'ENTREPRISES, by N.R.A. Krekel, T.G. van der Woerd, J.J. Woutersе. Published by Entreprise Moderne d'Edition, Paris, 1969. 213 pp.
This is a translation in French of a Dutch book entitled: "Ontwikkeling, Samenwerking, Fusie", which deals with the economic and organizational problems of mergers and take-overs.

Library International Bureau of
Fiscal Documentation no. B4579

## NORWAY

MERVERDIAVGIFT, published by Direktøren for skattevesenet, P.O. Box 8102, Oslo, 1969, 127 pp.
Official publication of the tax administration explaining the introduction of the tax on value added and related taxes such as the special tax on business assets, and pending modifications. The text of the relevant laws and implementary provisions thereto are appended.

Library International Bureau of
Fiscal Documentation nos. B4585, B4584, B4583

## SPAIN

SUMA DE LEYES TRIBUTARIAS, published by Editorial de Derecho Financiero, Madrid, 1969. 1765 pp.
Compilation of the General Tax Code and the consolidated text of the various tax laws in Spain, including the customs Ordinance accompanied by annotations, the material of which is updated as of May 31, 1968. A foreword by N. Amoros and a treatise by J.M.M. Oviedo concerning the valuation of consolidated texts are appended.

Library International Bureau of
Fiscal Documentation, no. B4582

LOS IMPUESTOS EN ESPANA, published by Servicio de Publicaciones, Madrid, third edition 1969. 839 pp.
Third revised edition on the tax system in Spain including all the modifications as published in the Official Gazette up to September 1969. The views expressed in this work are not those of the tax administration, but reflect only the views of the group of authors employed at the Ministry of Finance.

Library International Bureau of
Fiscal Documentation, no. B 4570

ANUARIO ESTADISTICO DE LAS CORPORACIONES LOCALES, published by Instituto de Estudios de administración local, Madrid, 1969. 352 pp.
Statistical data of the expenses and receipts of local governments of 1964-1968.

Library International Bureau of
Fiscal Documentation, no. B 4535

CODIGO DE LAS LEYES DE HACIENDA, published by Ministerio de Hacienda, Secretaría General Téchnica, Servicio de publicaciones, 1969. 2 volumes 3816 pp.
Compilation of the Spanish Public Finance Code which includes the text of tax laws, decrees, circulars, ordinances etc. Appended is a supplement regarding Law 60/1969 of June 30, 1969 which introduced a number of tax amendments. See TNS I-38 (1969).

Library International Bureau of
Fiscal Documentation, nos. B5006, B5005

## SWITZERLAND

LE IMPOSTE VIGENTI IN SVIZZERA, by S. Bianchi. Published by Dott. A. Giuffrè editore, Via Statuto 2, Milano. 360 pp.

Survey in the Italian language of Swiss taxation with emphasis on the cantonal taxes in Zurich and Ticino and the Taxation of foreigners and non-residents.

Library International Bureau of
Fiscal Documentation, no. B4543

## UNITED KINGDOM

CLOSE COMPANIES, by N.E. Mustoe. Third (Cumulative) Supplement to Second Edition Covering the Finance Acts 1967, 1968 and 1969. Published by Butterworths, London 1970. 131 pp.
This cumulative supplement incorporates the amendments and additions made by the Finance Act relating specifically to close companies, corporation tax and capital gains tax. The text of the statutory provisions specifically relating to close companies in the Finance Act 1969 have been added. The law is stated as at November 1, 1969 and supplements the main volume.

Library International Bureau of
Fiscal Documentation, no. B4571

## U.S.A.

THE FISCAL REVOLUTION IN AMERICA, by H. Stein. Published by The University of Chicago Press, Chicago/London 1969. 526 pp.
This book discusses the change in national policy that occurred between the times of Herbert Hoover and Lyndon Johnson during which period the principle of balancing the budget gave way as standard doctrine to the principle of managing government expenditures and taxes to achieve prosperity.

Library International Bureau of
Fiscal Documentation, no. B 4594

# LOOSE-LEAF SERVICES

## Releases from February 1 - February 28, 1970

## BELGIUM

BELASTING OVER DE TOEGEVOEGDE WAARDE, releases 16-18.
C.E.D. Samsom N.V., Brussels.

Fiscale Documentatie Vandewinckele.
BOEK DER BAREMA'S
Tome VI, release 15.
Tome VII, release 9.
Tome X, release 15.
E.K. Vandewinckele, Brugge/C.E.D. Samsom, Brussels.

HANDLEIDING DER INKOMSTENBELASTING, releases 28, 29.
C.E.D. Samsom N.V., Brussels.

IMPOTS ET TAXES, release 190.
C.E.D. Samsom N.V., Brussels.

TRAITES DES IMPOTS SUR LES REVENUS, release 34.
C.E.D. Samsom N.V., Brussels.

## CANADA

CANADIAN INCOME TAX, J.G. McDonald, release 41.
Butterworth & Co., Toronto.

BUTTERWORTHS CURRENT TAXATION, releases 1-4.
Butterworth & Co., Toronto.

PROVINCIAL TAXATION SERVICE, release 247.
Richard de Boo, Toronto.

## COLOMBIA

REGIMEN DEL IMPUESTO A LA RENTA (A. Silva), release 63.
Legislación Economica LTDA, Bogota.

## DENMARK

SKATTEBESTEMMELSER.
– SKATTENYTT, release 43.
A.S. Skattekartoteket Informationskontor, Copenhagen.

## E.E.C.

DROITS DES AFFAIRES DANS LES PAYS DU MARCHE COMMUN, Tome V, release 4.
E.D. Jupiter, Paris.

HANDBOEKEN VOOR DE EUROPESE GEMEENSCHAPPEN.
– VERDRAGSTEKSTEN EN AANVERWANTE STUKKEN, releases 68, 69.

– TARIEFLIJSTEN, release 94.
N.V. Uitgeversmij. AE.E. Kluwer, Deventer.

## FRANCE

DICTIONNAIRE FISCAL PERMANENT, releases 1-5.
Editions Législatives et Administratives, Paris.

FISCALITE EUROPEENNE, Pierre Fontaneau, release 4.
Les Cahiers Fiscaux Européens, Paris,

DROITS DES AFFAIRES, releases 1-3.
Ed. Législatives et Administratives, Paris.

JURIS CLASSEUR FISCAL: CHIFFRE D'AFFAIRES.
Code Fiscal, release 5157.
Commentaire, release 6070.
Editions Techniques, Paris.

JURIS CLASSEUR FISCAL: IMPOTS DIRECTS.
Code Fiscal, release 158.
Editions Techniques, Paris.

## GERMANY

RWP. RECHTS- UND WIRTSCHAFTS PRAXIS STEUERRECHT, releases 99, 100.
Forkel Verlag, Stuttgart-Degerloch.

REICHSABGABENORDNUNG, release 12.
Verlag Dr. Otto Schmidt, Köln-Marienburg.

## INTERNATIONAL

INTERNATIONAL TAX AGREEMENTS, release 21.
U.N., Palais de Nations, Geneva, Switzerland.

## NETHERLANDS

BELASTINGBERICHTEN.
– BELASTING TOEGEVOEGDE WAARDE, releases 40, 41.
N.V. N. Samsom, Alphen a.d. Rijn.

FED'S LOSBLADIG FISCAAL WEEKBLAD, releases 1238-1242.
N.V. Uitgeverij FED., Amsterdam.

DE GEMEENTELIJKE BELASTINGEN, releases 87-89.
Vuga Boekenrij, Rijnstraat 72, Arnhem.

HANDBOEK VOOR IN- EN UITVOER.
– BELASTINGHEFFING BIJ INVOER, release 106.
N.V. Uitgeversmij. AE.E. Kluwer, Deventer.

KLUWER'S FISCAAL ZAKBOEK, release 33.
N.V. Uitgeversmij. AE.E. Kluwer, Deventer.

KLUWER'S TARIEVENBOEK, releases 80, 81.
N.V. Uitgeversmij. AE.E. Kluwer, Deventer.

LEIDRAAD BIJ DE BELASTINGSTUDIE, release 12.
S. Gouda Quint/D. Brouwer & Zn., Arnhem.

MODELLEN VOOR DE RECHTSPRAKTIJK, release 29.
N.V. Uitgeversmij. AE.E. Kluwer, Deventer.

NEDERLANDSE REGELINGEN VAN INTERNATIONAAL BELASTINGRECHT, release 15.
N.V. Uitgeversmij. AE.E. Kluwer, Deventer.

NEDERLANDSE WETBOEKEN B, release 105.
N.V. Uitgeversmij. AE.E. Kluwer, Deventer.

DE SOCIALE VERZEKERINGSWETTEN, release 37.
N.V. Uitgeversmij. AE.E. Kluwer, Deventer.

VADEMECUM VOOR IN- EN UITVOER, releases 415-417.
N.V. Uitgeversmij. AE.E. Kluwer, Deventer/N. Samsom N.V., Alphen a.d. Rijn.

DE VAKSTUDIE: FISCALE ENCYCLOPEDIE.
Xa. INKOMSTENBELASTINGEN, releases 63-65.
Xd. LOONBELASTINGEN, release 40.
N.V. Uitgeversmij. AE.E. Kluwer, Deventer.

## NORWAY

SKATTE NYTT A., release 1.
Norsk Skattebetalerforening Huitfeldts, Oslo.

## SWITZERLAND

LEGISLATION GENEVOISE, release February.
Administration Cantonale des Contributions Publiques, Genève.

## U.S.A.

FEDERAL TAX GUIDE REPORTS, releases 17-21.
Commerce Clearing House, Inc., Chicago.

FEDERAL TAXES REPORT BULLETIN, releases 3-6.
Prentice Hall, Inc., Englewood Cliffs.

STATE TAX GUIDE, releases 447, 448.
Commerce Clearing House, Inc., Chicago.

TAX IDEAS – REPORT BULLETIN, releases 36, 37.
Prentice Hall Inc., Englewood Cliffs.

TAX TREATIES, release 216.
Commerce Clearing House, Inc., Chicago.

# PUBLIC FINANCE/FINANCES PUBLIQUES

INTERNATIONAL QUARTERLY JOURNAL
founded by J.A. Monod de Froideville

REVUE TRIMESTRIELLE INTERNATIONALE
fondée par J.A. Monod de Froideville

PUBLISHER/EDITEUR
Foundation Journal Public Finance/Fondation Revue Finances Publiques
(Stichting Tijdschrift voor Openbare Financiën)

BOARD OF DIRECTORS/COMITE DE DIRECTION
B. Schendstok, M. Frank, A.T. Peacock, P. Senf

Vol. XXV 1970 No. 1





In the respective No. 2 of every volume PUBLIC FINANCE/FINANCES PUBLIQUES publishes the papers and proceedings of the Congress of the International Institute of Public Finance held respectively the preceding year. The articles published in No. 1, 3 and 4 in English, German or French are followed by summaries in the respective two other languages. Please address all correspondence to Professor Dr. Paul Senf, Universität des Saarlandes, Saarbrücken 11, Federal Republic of Germany. Annual subscription rate (4 numbers): Dfl. 45.— (US$ 12.50, £5/4/—). Orders may be sent to your local bookseller or directly to the Administration of the Journal PUBLIC FINANCE/FINANCES PUBLIQUES, Postbus 2853, The Hague, Netherlands.

*Dr. Helmut Debatin*

# ANALYSIS OF THE GERMAN TAX SYSTEM

## 1969. 160 pp.

**General Principles — Taxation of Income and Capital**
**Unilateral Measures for the Avoidance of Double Taxation**

*Sections A 2.1, A 3.1, A 4.1 and A 4.2 of "Handbook on the United States - German Tax Convention" (Volume 1 of 'Tax Treaty Guides'), by Dr. Helmut Debatin and Dr. Otto L. Walter, in collaboration with Ernst Weber and Henry Conston.*

Written from the point of view of the English-speaking tax practitioner, by Dr. Helmut Debatin, Head of the Department of International Tax Affairs of the German Ministry of Finance, this penetrating study (consisting of about 160 pages) discusses the principles of the German tax system with particular emphasis on the taxation of income and capital, and unilateral measures for the avoidance of double taxation in German tax law. The principal headings are as follows:

- The constitutional basis
- Structure of the tax system - tax burden, types of taxes and tax yield
- Detailed information about important taxes not included in the taxation of income covered by the convention
- Tax law sources
- Rules of tax administration
- Method of applying the laws
- Tax administration offices
- Tax procedure
- Legal remedies
- Forms of international double taxation
- Unilateral tax relief from double taxation
- Personal and corporation income tax -
  Tax credit
  Tax exemption from taxation for employees in foreign assembly or construction projects
  Determination of the German tax at a flat rate
  International commercial shipping
  Deduction of the foreign tax from income
- The distinction between taxes on persons and on objects
- Unlimited and limited tax liability in the case of taxes on persons
- Piercing the corporate veil for tax purposes
- Income tax
- The corporation income tax
- Capital tax
- Trade tax
- Supplementary levy (effective from 1968)
- Capital tax -
  Tax credit
  Determination of the German tax at a flat rate
- Inheritance tax -
  Tax credit
  Lump sum determination of the German tax

This study is taken from the English text of the loose-leaf service, "Handbook on the United States - German Tax Convention", where it provides a detailed background to the main part of the work, which is a comprehensive bi-lingual commentary, examining from an entirely new approach, the provisions of the Convention, and interpretation measures and decisions of the tax administration and the courts.

**Price: Dfl. 27.— / DM 30.— / US$ 7.50 with postage (airmail US$ -,40 extra).**

*For residents of The Netherlands: prices exclusive BTW (TVA)*

## INTERNATIONAL BUREAU OF FISCAL DOCUMENTATION

**Sarphatistraat 124 - Amsterdam-C. - Holland**

# CUMULATIVE INDEX 1970

Nos. 1, 2 and 3

# CONTENTS

of the May 1970 issue

## ARTICLES



## BIBLIOGRAPHY

*With the close cooperation of a network of expert correspondents in each of the Latin American countries, coordinated by Bomchil, Pinheiro, Claro, Lavalle & Bado, the International Bureau of Fiscal Documentation has filled a significant gap in international tax literature by producing —*

# CORPORATE TAXATION IN LATIN AMERICA

**edited by**
**Dr. N. Chedufau**
– Partner of M. & M. Bomchil,
Buenos Aires – Paris

**and**
**Lic. S. García Granados**
**assisted by Robert C. Hammond, B.A.**
– Research Associates at the International Bureau of Fiscal Documentation, Amsterdam

● **loose-leaf** ● **quarterly up-dating supplements** ● **approx. 500 large-format pages**

**CONTENTS**

**Section A – Introduction, Introductory Notes, and Glossary**
**Section B – Summaries of Corporate Taxation in Latin American Countries**
**Section C – Surveys of Corporate Taxation in Latin American Countries**
**Section D – Effective tax treaties on income and/or capital signed by Latin American Countries**
**Section E – Current annotated bibliography of the publications acquired by the I.B.F.D.**

*Section B provides a country-by-country comparative summary of the basic provisions of the Latin American tax law.*

*Section C amplifies the summaries in Section B, following the same per country outline.*

Part 1 – TAXATION OF INCOME
A. General Income Taxation
B. Taxation of Particular Types of Income
Part 2 – TAXATION OF DIVIDENDS, INTEREST, ROYALTIES AND BRANCH PROFITS
A. Dividends, Interest and Royalties Paid to Residents
B. Dividends, Interest and Royalties Paid to Non-Residents
C. Taxation of Branch Profits
Part 3 – TAXATION OF CAPITAL
A. General Net Worth Taxes
B. Taxes on Particular Types of Capital or Property
Part 4 – TAXES ON GOODS, SERVICES AND TRANSACTIONS
A. Turnover or Sales Taxes
B. Taxes on Production and Consumption
C. Transaction Taxes
Part 5 – OTHER FISCAL CHARGES PAYABLE BY CORPORATIONS
Part 6 – MISCELLANEOUS TAX PROVISIONS

**Price: US$ 75.00 – £31.2s. – *Dfl. 270.00 – DM 275.00**
(including supplements for 1970)

**PRE-PUBLICATION OFFER –**

**10 % discount**

*Subscribers to the Bulletin are being offered a special 10 % discount on orders placed direct, before September 30, 1970. A special rate applies to subscribers in Latin America – please write for details.*

* For residents of The Netherlands: the prices quoted are exclusive of TVA (BTW)

**INTERNATIONAL BUREAU OF FISCAL DOCUMENTATION**
Muiderpoort – Sarphatistraat 124 – Amsterdam-C. – The Netherlands

# ★ ★ ★ ★ ARTICLES ★ ★ ★ ★

EDWIN C. HARRIS★:

## TAX REFORM IN CANADA—STAGE II

### THE BATTLE RENEWED

Tax reform is once again an explosive issue in Canada. The sound and fury that followed in the wake of the Report of the Royal Commission on Taxation ("Carter Report") after its release in early 1967[1] had barely subsided, when very much the same issues became once again the center of heated public controversy. The reason was the much-delayed commencement of Stage II of Canada's agonizing and protracted process of federal tax reform, the release in November 1969 of Finance Minister E.J. Benson's White Paper entitled "Proposals for Tax Reform".

It had been apparent for some time that the federal government had rejected some of the major Carter recommendations, particularly those that would have treated gratuitous transfers as income in the hands of the transferee. This question was settled, at least for the present, by a revision to the estate and gift tax rules initiated by Mr. Benson's budget speech of October 1968, which drastically changed those rules by increasing rates and by borrowing from the Carter Report the principle of exempt transfers between spouses; nevertheless estate and gift taxes were retained as capital transfer taxes rather than income taxes. At that time the government also adopted a modified version of the Carter recommendations for taxing life insurance companies and the proceeds of realization of life insurance policies (other than on the death of the life insured, which remains a non-taxable event). These changes themselves proved to be highly controversial, and the original proposals were substantially modified in the course of prolonged public and parliamentary debate. When the implementing legislation was finally passed in the late spring of 1969 it was made largely retroactive to October 1968. The intervening period of uncertainty and frustration was one that most Canadians would not wish to see repeated, and it became clear that any further major tax reform could not be effectively implemented until after proposals had been presented by the government, had been subjected to full public and parliamentary discussion, had been modified in the light of that discussion, and then had been converted into implementing legislation, which itself should be open to debate before coming into effect. In any event, the government treated the reform of estate and gift taxes and of the taxation of life insurance and life insurance companies as having been completed for now and did not deal with these matters in its White Paper.

Like the Carter Report before it, the White Paper was quite favorably received during the period immediately after its release. It was much briefer and less philosophical than the Carter Report and for the most part did not attempt to go into detail on questions of implementation. Nevertheless it appeared to take a more practical view of problems of tax reform than did the Carter Report and to have avoided several of the pitfalls of the earlier report. Both documents, however,

---

★ Professor of Law, Dalhousie University, and of the firm of Daley, Black, Moreira & Piercey, Halifax, Canada.

1. See Harris, *What Should Canada do with the Carter Report?*, XXI Bulletin 531 (1967).

did not wear well: apart from the obvious and expected resistance of tax-favored groups such as the natural resources industries, whose tax exemptions would be reduced under the new proposals (though not as drastically as under the Carter Report), the White Paper has come increasingly under fire from the business and professional communities. While the White Paper makes fewer pious statements that equity should be the foundation of the tax system, when the implications of the proposals become apparent it is easy to conclude that equity and the convenience of the tax collector have overridden all other criteria. This conclusion has certainly been reinforced by the further explanations and defenses of the White Paper that have been offered by Mr. Benson and his advisers.

The familiar arguments have again been raised, and with increasing vehemence: that the White Paper would impose a crushing burden of additional taxation on the middle and upper income groups, that it would deter non-resident capital from coming to Canada and would drive Canadian capital and indeed productive Canadian residents out of Canada, that it would eliminate incentives to work and to save, that it would severely hamper small business, that it would alarmingly increase federal government control over the economy through the collection of an ever-growing share of the gross national product in the form of federal income taxes, that it would render the revenue position of the provinces even more critical than now, etc. If the White Paper proposals remain unmodified most of these criticisms would have at least a measure of validity. It should be possible, however, to meet most of these criticisms, to the extent that they are valid, through modifications of the original proposals, particularly if the government is prepared to reconsider its heavy estate and gift taxes in the light of the new proposed taxes on capital gains and to admit that inflationary increases in effective tax rates must be taken into account. It does not follow, as the well organized opposition to the White Paper seems to imply, that the White Paper must be "scrapped" and that therefore the present tax system is the best of all possible tax systems.[2]

The inability to adhere to any timetable for implementation remains a source of frustration. The White Paper proposals were introduced in the hope that they could be speedily debated in the country and in Parliament; that opposition would be confined to minor matters and a few obviously untenable proposals,[3] which the government could then gracefully withdraw as evidence of its flexibility; that implementing legislation could be ready by the fall of 1970; and that the new tax system, subject to certain transitional rules that would apply during the initial years, would be in effect by the beginning of 1971. Unfortunately the government greatly underestimated the strength of the opposition to the equity bias of many of its proposals, the time it would take even tax experts to ascertain the implications of the proposals, and the time that any tax reform discussion must consume. This process would include the preparation and presentation of briefs by thousands of citizens and organizations, the sifting of vast amounts of material by two parliamentary committees and the formulation of their reports and recommendations, further consideration by

2. Economists, on the other hand, while regretting the loss of the theoretical symmetry of the Carter scheme, appear to support the new proposals on equity grounds.

3. Such as the complete disallowance of deductibility for entertainment expenses and for the cost of attending business and professional conventions.

government of its position, the drafting of detailed legislation,[4] further public and parliamentary debate (particularly if the original proposals have been substantially changed), and the education of administrators and taxpayers alike in the operation of the new system.

The process has not been speeded by the failure of the government to do some necessary homework before releasing the White Paper: many of the proposals are not practical; some appear to be contradictory; some, such as the proposals for taxing trusts, indicate in a paragraph or two a general approach to a matter of great complexity, where a proper evaluation of the proposals requires a knowledge of the details; and there are vast areas requiring reform, such as federal sales tax, depreciation rules, the timing of recognition of income, and income tax administration and adjudication, where little or no change is proposed at this time. Most commentators do not expect that even this partial tax reform can be implemented before 1972, which would be almost a full decade after the initial appointment of the Royal Commission on Taxation. Meanwhile the uncertainties that frustrate longer-term business planning become increasingly acute.

At the time of writing, separate committees of the Canadian House of Commons and Senate are considering the White Paper proposals and are receiving briefs from large numbers of interested parties. Mr. Benson and his advisers have appeared before these committees to supplement and amplify the proposals, though the amount of useful additional information that has been released so far is quite minimal and is open to varying interpretation.[5] It should be noted that the White Paper is framed in terms of proposals only: Mr. Benson has emphasized that the government is open to and welcomes suggestions for improvement, and he has publicly acknowledged that there are some particular problem areas[6] on which suggestions would be welcomed. Yet in his many public appearances to explain the White Paper he is cast in the role of defending rather than merely explaining it. This may account in part for the stand taken by many organized opponents of the White Paper, and indeed, the leader of the official opposition in Parliament has been attacking the White Paper as if it were a firm declaration of government policy, which it does not yet purport to be.

## OBJECTIVES OF TAX REFORM

The apparent objectives of the White Paper proposals are—

1. Taxation in accordance with ability to

---

4. If recent experience with the drafting of Canadian income tax amendments is any indication, the initial drafting may not be a model of brevity or completeness.

5. One example is Mr. Benson's delphic utterances concerning the original proposals to bring into income on an accrual basis not merely the accounts receivable but also the work in progress of professional practitioners. Another is a release showing the incredible complexity involved in accounting for "creditable tax" under the proposed integration system. A release dealing with international income is expected in April 1970.

6. Examples are the increased tax burden on small incorporated businesses, disincentives for non-resident owners of wholly owned Canadian subsidiaries to make shares of the subsidiaries available for Canadian investors, and the position of holders of a controlling block of a widely held Canadian corporation who must sell some of their stock to pay the tax resulting from the proposed deemed realization every five years. The White Paper itself has invited representations on such matters as depreciation rates—though perhaps after implementation of the other proposals (para. 5.14)—and the tax rate to be applied to the accumulated income of trusts (para. 5.58).

pay, by shifting the effective burden of tax from lower income groups to
(a) middle income groups (through higher rates); and
(b) upper income groups (through taxing capital agains).
2. Equity, through broadening the tax base by including capital gains, in whole or in part, in income; through closing existing loopholes; and by looking through corporations to their ultimate shareholders, to the extent that this would be in accord with economic reality.
3. Encouraging econonic growth, particularly by providing incentives for Canadians to invest in Canadian equities; limiting the maximum rate of tax to about 50%; and making the tax concessions that are available to resource industries operate more efficiently.
4. Maintaining or increasing the flow of tax revenue to the federal and provincial treasuries.[7]

The foregoing objectives, at least in general outline, appear to follow quite closely the Carter recommendations.

## TAXATION OF INDIVIDUALS AND FAMILIES

The White Paper rejects, at least for now, the Carter proposal for a family tax unit. It was expected that the government would not agree to include dependent children in the tax unit, but many observers were surprised that the White Paper proposed to continue the tax separateness of husband and wife, particularly where spouses had just recently been recognized as a single tax unit under the estate and gift tax reform.[8] The government is reluctant to recognize a husband-wife tax unit because this might create a disincentive for wives to work, since even modest amounts of income earned by them would be taxed at the family's top marginal rate.[9] On the other hand, the present system is inequitable since the total tax paid by two spouses depends very much on the proportions in which the family income is earned by each of them. The solution may be to provide for an elective family rate schedule.

The present personal "exemptions" of $1,000 for the taxpayer and a further $1,000 for his spouse (reduced to the extent that the spouse's income exceeds $250) have become glaringly inadequate since these amounts were instituted in 1949. In effect the present system taxes many individuals and families who do not earn anywhere near subsistence level of income in today's highly inflationary conditions. By increasing the "exemptions" of single taxpayers to $1,400 and of married taxpayers to $2,800 (subject to reduction to the extent that the spouse's income exceeds $100) the White Paper would completely exempt about 750,000 present taxpayers; but taxation would still begin well below the "poverty line", and there is no suggestion that the "exemption" levels would be periodically adjusted to allow for their future erosion by inflation. Children's "exemptions" (now $300 up to age 16 and $550 between 16 and 21) have been changed from time to time since 1949, but no further change in these levels is proposed until after a thorough review of the social security

---

7. See paras. 1.5–1.19.
8. Unless some steps are taken to give at least partial recognition to husband-wife unity under the income tax law, many anomalies result or will result where husband-wife transfers that are exempt from capital transfer tax still incur income-tax liability—*e.g.*, deemed realization of capital gains on inter-vivos transfers or on jointly held life insurance upon the death of the first spouse.
9. See para. 2.5.

system.[10] The present standard deduction of $100 in lieu of itemized deductions such as charitable and medical payments would be retained.

In order to encourage mothers to join or remain in the working force, new deductions are proposed for child care expenses, within certain limits, up to a maximum of $500 per child under 14 and $2,000 per family.[11] The present non-deductibility of the expenses of earning employment income would be offset in an arbitrary and hardly satisfactory way: it is proposed to allow a standard deduction against employment income of 3% thereof or $150, whichever is less. There would be no option to itemize deductions. Consequently employees who did not have such expenses would gain a windfall, while employees whose expenses were higher than these arbitrary amounts would receive inadequate relief. While fears of additional administrative burdens are at the root of both the present and the proposed treatment of employment expenses, equity would appear to demand the right to itemize deductions[12] and to claim them if they exceed a minimum standard deduction. It is proposed that unemployment insurance contributions be deductible, but unemployment insurance benefits would correspondingly become taxable. Household moving expenses would be deductible if there was a change of both job and job location.

Capital gains realized or deemed to be realized would be subject to taxation in the manner explained later. In addition to unemployment insurance receipts, the tax base would be expanded to include scholarships and fellowships (against which tuition fees would be deductible), the income of visiting professors and teachers (subject to the amendment of existing tax treaties), and certain minimum deemed benefits where an employee had some personal use of the employer's automobile or aircraft. Employees would also be taxable on their employer's contributions on their behalf to medical care plans.

A drastic revision of individual income tax rates is proposed. While the Carter concept of limiting the maximum rate to 50% is adopted, the rate scale rises much more steeply, and the total tax revenue would be much larger, than the Carter Report contemplated. The rate schedule would be much simpler than now, where several minor adjustments, surtaxes, etc., must be applied to the basic prescribed rates. Under the White Paper there would be a single rate table for federal tax and another for provincial tax. Over a five-year transitional period the top combined marginal rate would decline from 81.92% (on taxable incomes over $400,000) to 51.2% (on all taxable income over $24,000). This "phasing in" of the new top rate would raise very little revenue and yet might be punitive to some taxpayers who were caught under the widened tax base during this period and might lead to artificial postponement of business transactions. It seems clearly preferable, therefore, to institute new rates without a transition. The proposed rates would commence at the surprisingly high level of 21.76% on the first $500 of taxable income. They would result in substantially heavier taxation for middle income families and much heavier taxation in most ranges than would be borne on the same amount of income in the United States. In addition, the provinces, which are more hard pressed than

---

10. See para. 2.6.
11. See paras. 2.7–2.9. It is not indicated which spouse is entitled to the deduction; but see para. 2.28 and Table 10, page 33.
12. Other than some that would be expressly excluded, like costs of transportation to work.

ever to raise the revenue they require to meet their rapidly growing expenditure programs, would not likely rest content with the share of the income tax proposed for them, and many of them might increase their income tax rate above that level. Since the White Paper (again following the Carter approach) seeks to keep the top combined federal and provincial personal tax rate in line with the corporate rate,[13] a material increase in provincial income tax levels could upset the balance of the whole system and further increase the total government share of gross national product. This share has been galloping in the direction of 40% and would probably reach that level, even without provincial action, if the White Paper rates remained in effect for five years.[14] One of the criticisms that has been hardest for Mr. Benson to answer is that the White Paper would substantially increase overall tax levels in the guise of instituting tax reform.

The Royal Commission recommended that maximum deductible contributions to retirement income plans be based on a paid-up pension of $12,000 per year rather than, as now, an annual deduction plus the right, in certain cases, to make past-service contributions to pension plans. This recommendation ran into severe criticism and was shown to create an administrative nightmare. Yet the White Paper pays lip-service to these proposals, at the same time saying that "revenue considerations prohibit a switch" to a benefit-based system at this time.[15] The present system, therefore, would be continued, except that lump-sum contributions would be allowed in certain special cases, and recent restrictions on the investments of such plans would be retained. An equitable and administratively simpler solution than either the Carter proposal or the present system would seem to be to allow the carry-forward of unused deductions to such plans. In addition, the present rule that no more than 10% of the income of such plans may come from outside Canada would be changed to require that no more than 10% of their assets could be invested outside Canada.[16] Severe new compliance requirements would be imposed on plan trustees to ensure that the beneficiaries did not evade tax on distributions from the plan —*e.g.*, by leaving Canada. The plan trustees themselves would remain tax-exempt but would not be permitted to claim credit for corporate tax paid on dividends received by the trust or to reduce the taxable gain on the sale of shares of widely held corporations by one-half, as non-exempt taxpayers would be permitted to do. Withholding tax would be imposed on all benefits from such plans paid to non-residents.

---

13. This would eliminate the temptation to accumulate corporate earnings to avoid paying personal tax on distributions, with the resulting attempts to "strip surplus". See para. 2.40.

14. See White Paper Tables 15-17 at pages 95-96. The government of Ontario has concluded that the White Paper has greatly underestimated the additional revenues that it would generate for the federal treasury; assuming continued inflation and economic growth over the next five years, the amount of the underestimate could be staggering.

15. Paras 2.48-2.50. It may be predicted that "revenue considerations" would never permit such a switch if at some unforseeable future date the government decided that it could afford to reduce taxes it would find an overall deduction of rates or an increase in personal exemptions or some more generally applicable concession to be more attractive politically than allowing a quite limited number of taxpayers to make large lump-sum deductible payments into pension and retirement plans. This conclusion is reinforced by recent distasteful disputes over large past-service contributions to executive pension plans.

16. It is not clear how investments through a chain of intervening corporations or trusts would be treated for this purpose.

The White Paper does not accept the broad "block averaging" method recommended by the Carter Report or the accompanying suggestion to allow deposits to be made to "income adjustment accounts" to defer the recognition of income. At the same time the White Paper recognizes the need for general averaging provisions in lieu of the varied and incomplete averaging rules that now apply in some special cases. The White Paper would not grant averaging relief where income declined; the proposed averaging provision would apply only where a taxpayer's income for a given year was more than one-third higher than his average income for the past four years (subject to transitional rights to average a shorter period of years). Averaging would be available only to resident individuals who were regular members of the working force. The excess income of the year in question over the "threshold" amount would be taxed at five times what the additional tax would be in the year in question if one-fifth of that excess were added to the threshold amount of income. Because of the construction of the rate schedule, the averaging provisions would be of minimal benefit in the vast majority of cases. It is proposed that this averaging, where available, would be automatically determined by the computer in the Taxation Data Centre. The current special averaging provisions would be phased out, though it appears that the carry-over of corporate business losses would be retained, and farmers would continue to use "block averaging". If the computer was to do the job in any event, there seems to be no justification in setting a threshold any higher than 100% of the average income for the number of past years that is being used as a base, and the right should be available when income declines as well as when it increases.

## CAPITAL GAINS

To the surprise of no one, the White Paper adopted the general principle that capital gains on the sale or deemed sale of assets would be treated as income and that capital losses would be deductible. This approach seems simpler, administratively preferable, and more equitable than an attempt to tax capital gains at preferential rates. The general principle, however, would be subject to the following exceptions:—

1. Generally, only half the gain on a sale of shares of widely held Canadian corporations would be taxable. This would balance the system, explained later, under which there would only be partial integration of the income and corporate taxes of these corporations with those of their shareholders. In effect, however, two-thirds of the gain would be included in income where the seller is another widely held Canadian corporation.[17] Gains and losses on shares of closely held corporations, on the other hand, would enter fully into the computation of income.
2. In the case of the taxpayer's principal residence, a gain on realization would be taxable only to the extent that it exceeded an annual growth equal to the sum of $1,000 plus itemized costs of improvements or a standard improvement allowance of $150. With the exception of farm houses forming part of a farm that was sold, losses on sales of such residences would not be deductible. The expressed aim is to eliminate most sales of a taxpayer's own home from tax; in practice, with rapidly accelerating real estate values in most Canadian cities, the proposal would not accomplish that result. The solution may not lie, as Mr. Benson has suggested, in raising the dollar amount of the

17. See para. 4.59.

exemption or in finding some "safe haven" alternative to actual valuation as of valuation day but rather in exempting all such sales.

3. On sales of other personal property the first $500 of proceeds would be exempt from tax, and similarly the first $500 of any loss would be non-deductible.[18] In any event no losses would be deductible on the disposal of items of personal use and enjoyment that deteriorate through use. All other losses on personal property, such as on sales of art collections, would be deductible only against corresponding gains during the year in question, the immediately preceding year, and the immediately following year. For anyone dealing in such property, of course, the gains would be fully taxable and losses fully deductible. In this whole area the government would be creating severe administrative headaches for itself and strong resentment among taxpayers: a general exemption from tax of sales of property held for personal use would seem to be required.

4. Since they are not specifically referred to in the White Paper, it is generally assumed that windfalls, gambling gains and losses, compensation for loss of earning capacity, and life insurance mortality gains and losses are not intended to enter into the computation of income for income tax purposes.

5. Non-residents would be subject to Canadian tax only on certain types of gains from the sale of Canadian assets, as explained later.

Generally the basis of property for purposes of computing taxable gain would be its original cost. Since, however, there is in general no intention of taxing capital gains accrued up to the time of implementation of the White Paper proposals, it would be necessary to declare a "valuation day" near the time of implementation, and most assets on hand at that time would be deemed to have a basis equal to their value on valuation day, regardless of their original cost.[19] In the case of bonds, mortgages, and agreements for sale it is proposed to permit taxpayers to take as the basis their original cost (or their amortized cost, if originally acquired at a discount) on valuation day if this was greater than their market value on that day.

Among the least satisfactory aspects of the White Paper are the transitional proposals for goodwill and certain mineral rights owned by a taxpayer on valuation day: in effect, such assets would be deemed to have no basis, regardless of their original cost, if any, or of their value on valuation day, and an increasing proportion of the gross

---

18. It is indicated in para. 3.23 that several sales (in the same year?) of items constituting a set would be treated as a single sale. The administrative problems raised by such a proposal would be formidable *e.g.*, if a taxpayer sold several books for $1,000 would he be selling a single asset (let us call it "library") for over $500, or would he be selling numerous individual books, each of which was sold for less than $500? If the former, how would the tax basis of the sold asset be determined, other than by keeping a record of the cost of every single book? Taxpayers would not be likely to accept willingly the burden of this kind of recordkeeping.

19. Unlike the Carter Report, the White Paper does not discuss the methods of valuation to be used or suggest alternatives to actual valuation. On the other hand, while the Carter Report assumed that all such valuations would need to be settled within a short period after the commencement of the new system, thus placing a tremendous initial burden on the tax administration and on professional valuers, the White Paper appears to contemplate that such valuations need not be settled until the indefinite future date when a potentially taxable event —*e.g.*, realization or deemed realization—occurred. Whether the resulting long-term uncertainty would be acceptable to taxpayers may be debated.

proceeds of subsequent sales would be included in income, depending on how long after valuation day the sale took place. For goodwill the proportion would commence at a rate of 40% on sales in the first year and grow by 5 percentage points a year until the proceeds of such sales would be fully taxable, without any deduction, from the 13th year. In effect there would be retroactive taxation of capital gains on the growth of these assets[20] that occurred before valuation day. The reasons given for this incredible treatment are that goodwill would be depreciable under the new system, and so a purchaser would be willing to pay more for it, giving a windfall to the owner,[21] and that, in the case of mineral rights the proceeds of which would not be taxable under the present law, the cost of such rights would become deductible to the new owner, inducing him to pay more for them.[22]

Finally, it would be necessary to ensure that the potential tax on recaptured depreciation, inventory disposal, etc., relating to assets owned on valuation day would be taxable along with gains made through subsequent increases in value. There is a harsh and apparently needless proposal to deny to the shareholders of a closely held corporation that was taxed in its own right a credit for a portion of the corporate taxes paid by the corporation after the commencement of the system until all this potential tax on its assets had been paid, regardless of whether in fact the gains on these assets had been realized.[23] Even though the potential tax had arisen under the present tax system, there would appear to be no serious policy objections to allowing shareholders credit under the new system for the tax when it materialized: under the present system, the corporate tax might have been considerably lower. Consequently the proposal should be abandoned.

Since the White Paper does not refer to the uneven and inequitable impact of inflation on a tax system of fixed rates and exemptions that taxes dollar gains regardless of the holding period, it is apparent that the government is content to continue to profit from persistent inflation. It seems that no effort is being made to develop index numbers to deflate holding gains (where the inflationary impact can be particularly severe) or to upgrade the personal exemptions and rate brackets on a systematic basis. Mr. Benson has said that no one has been able to develop such index numbers, but it seems incredible that this cannot be done with a little concentrated effort or that the government is content to ignore the efforts that have been made by several other countries to meet this problem.

Property received by inter-vivos gift would be deemed to have been acquired at a basis equal to its value at the time of the gift. Property acquired by bequest (unlike under the Carter system, where there would have been a deemed realization, just as in the case of inter-vivos gift) would be deemed to be

---

20. In many cases of sale of goodwill this would be coupled with the non-deductibility of the cost of acquiring such assets.

21. See paras. 5.7-5.8. One may assume, though the White Paper does not say so, that the amortized cost of goodwill purchased after valuation day would be deductible from the proceeds in computing the taxable gain on its ultimate sale. The desired symmetry between the taxation of incorporated and unincorporated business would be destroyed, since it would be difficult to exclude goodwill elements from the basis of corporate shares determined as of valuation day, though it is apparently intended to attempt this in the case of closely held corporations.

22. See para. 5.28. The initial proportion of proceeds included in income would be 60% in the first year, rising to 100% by the ninth year.

23. See para. 4.79.

acquired at the basis of the deceased at the time of death plus the death tax applicable to the unrealized gain—a so-called "rollover". There are some strange proposals for rollovers on liquidating distributions by closely held corporations, under which each shareholder would be treated as having acquired corporate assets distributed to him on liquidation at a basis equal to the basis of his shares, and the corporation would be deemed to have sold its assets to the shareholder at that price and to have distributed the proceeds.[24] This would mean that each shareholder's tax would depend in part on what a fellow shareholder paid for his shares; it would seem more logical to deem a sale to take place at the *corporation*'s basis rather than the shareholder's, though the government probably objects to allowing the shareholder an immediate deduction if the price he paid for his shares exceeded the book value of his portion of the corporate assets. The proposals for rollovers on corporate reorganizations, which are quite limited and generally restricted to widely held corporations,[25] are vague and unsatisfactory. The obviously needed rollovers that are proposed on the incorporation of a business or of an investment portfolio are too restricted in terms of the shareholdings of the new corporation to be useful in the case of the usual estate plan or in many business situations.[26] On commencement of Canadian residence an individual would be deemed to have acquired all his assets at their then values.

Generally tax would be imposed on a gain on property only when the gain was realized. On the other hand, realization at the then value of the property would be deemed to have occurred on the cessation of Canadian residence[27] and on inter-vivos gifts—apparently even between husband and wife. One of the most controversial proposals in the White Paper would deem the shares of a widely held Canadian corporation owned by an individual or a closely held corporation to be realized every five years, taking one-half of the resulting gain or loss into income and adjusting the basis of the shares accordingly. This proposal will be discussed further in connection with other questions of corporate taxation.

On the other hand, in cases where a rollover was permitted, even actual realization would not be a taxable event. The most obvious situation would be where there had been a forced realization, by expropriation[28] or the destruction of property, to the extent that the proceeds of disposal were used within a limited period to acquire similar property. Where a taxpayer sold one personal residence and bought another in the course of moving to a new job within Canada, a rollover would also be permitted. As mentioned earlier, certain transfers of property to corporations owned by the transferor and certain reorganizations of widely held corporations would also qualify for rollovers, though the limitations would likely be stringent.

## CORPORATIONS AND SHAREHOLDERS

The proposals for corporate taxation depend upon a division of Canadian corporations into two basic classes, closely held and widely held. This type of classification in

24. See para. 3.49. The actual working out of this proposal is startling: see para. 6.45. How the share basis is to be allocated between the various non-monetary assets received is not explained.
25. See paras. 3.50–3.52.
26. See paras. 3.45–3.48.
27. Some rollover rights for temporary residence and temporary non-residence would probably be required.
28. See para. 3.44. Would a sale in the face of threatened expropriation suffice?

recent years has gained growing acceptance in corporate law. Many economists and business commentators recognize the difference between a closely held company (often a family-held or one-man company—a kind of incorporated proprietorship or partnership), generally of modest size and more likely to be in competition with unincorporated businesses and similar closely held corporations, on the one hand, and a widely held company, where there is a substantial separation of ownership and management, where the enterprise tends to be large, and where the major competitors tend to be other similar companies. The justification for taxing closely held corporations as separate entities is weak, whereas in the case of widely held corporations, where the corporate tax is much more likely to be shifted from the shareholders, the case for separate corporate taxation is substantially stronger. Indeed, it was the failure of the Carter Report to recognize the dominant role of the widely held corporation that seemed to invalidate its general proposal for full integration of corporate and personal taxation. The difficulty with the dual classification, however, as corporate law reformers have found, is to determine the precise dividing line between the two classes of corporations. Coupled with this is the fact that many of Canada's largest corporations are closely held—in one notable case because a large family-owned company has never "gone public", and in many other cases because they are wholly owned subsidiaries of foreign (usually U.S.) parent companies. Most difficult of all is the problem, where the two types of corporations are taxed differently, of providing adequate rules for a corporation that changes its status, either directly or by transferring its assets to another corporation. These difficulties have led many critics to conclude that the proposed distinction between the two classes of corporation is unworkable.[29]

The White Paper provides a partial definition of "widely held Canadian corporations";[30] presumably all other corporations would be treated as closely held, though it is apparently intended that a third category, the foreign corporation, would emerge, with at least some characteristics that differ from closely held Canadian corporations.[31] The definition is open-ended but would include Canadian corporations any of whose shares were listed on a Canadian stock exchange, those that met certain minimum requirements for number of shareholders and dispersion of shares and elected to be so classified, and those that met certain criteria for number of shareholders and dispersion of shares as well as public trading of shares (*i.e.*, with shares traded "over the counter") and that were designated as widely held by the Minister of National Revenue. Only corporations incorporated in Canada would be eligible for such classification. Depending on circumstances, classification of a company as widely held might be advantageous

---

29. One alternative proposal would be to tax all corporations—other than closely held corporations that would elect or would be required to adopt partnership treatment—at 50% and to continue the present flat-rate credit against corporate dividends received by individuals, increasing it from 20% to, say, 25% and granting a similar credit on gains on the sale of shares. See Harris, note 1 *supra*, at pages 546-47.

30. See para. 4.43.

31. For terminology reasons, if for no other, it would be hard to accept the designation "closely held" to describe large publicly held United States corporations simply because they do not qualify as widely held Canadian corporations. After a five-year transition period, it is proposed that Canadian shareholders of corporations incorporated outside Canada would lose the privilege of gross-up and credit of Canadian tax—see paras. 4.46, 4.66-4.67.

or disadvantageous under the proposed system of partial integration for such corporations; hence the proposals for both elective qualification and compulsory qualification in certain cases. In partial recognition of the potential tax loopholes that might result from a change of status, it is proposed that a corporation once classified as widely held could not subsequently qualify as closely held. This could impose serious obstacles on the takeover of a widely held corporation, which could not then be readily consolidated for tax purposes with its new parent.

A system of full integration is proposed for closely held Canadian corporations. The aim is to ensure that the incorporation of a business would give neither a tax advantage nor a tax disadvantage and similarly that the tax effect would be the same whether a gain was taken in the form of dividends or by sale of the shares. This result would be accomplished in either of two ways. Certain such corporations would be entitled to take the "partnership option'—*i.e.*, to be taxed on the same basis as unincorporated businesses, so that there would be no separate corporate tax, and each shareholder would take directly into his income his share of corporate income or loss.[32] Presumably the basis of a shareholder's shares would be adjusted each year by the amount of corporate income or loss attributed to him, as well as by any dividends actually paid to him. This "partnership option" would be very convenient where available, particularly for shareholders in a marginal tax bracket below 50%, since the corporation would not have to pay taxes at 50% and then make distributions to its shareholders to permit them to recover, through gross-up and credit, the corporate tax paid in excess of their personal tax on the same income. Use of this option would presumably be the only way that a shareholder could personally deduct a current corporate loss, and indeed the "partnership option" is offered as a sufficient substitute, in a parent-subsidiary situation, for permitting consolidated returns.[33] For all other corporations, presumably, corporate losses could be carried over to the immediately preceding year and the five immediately succeeding years, as now. The following restrictions proposed for the "partnership option" would, however, limit its usefulness:—

1. All shareholders must elect[34] to be taxed in this way.
2. Generally the corporation could have only one class of shares,[35] though different classes of shares might be permitted where the rights of all classes of shareholders would remain the same in all circumstances, including a winding up.
3. All beneficial shareholders must be Canadian resident individuals or Canadian corporations.
4. Any corporate shareholders must have the same fiscal year end as the closely held corporation.

Canadian shareholders of all other closely held Canadian corporations would be taxed under the gross-up and credit system.

---

32. It is not clear whether the artificial "personal corporation" attribution rules applicable now to personal holding companies would be retained in this situation.

33. See paras. 5.20–5.22. Unfortunately the rigid limitations on the right to take the "partnership option" make this an incomplete solution to the problem.

34. It seems that a new election would be required each year. Basis computations might become quite complex where in some years such an election was made and in other years it was not.

35. This, along with the absence of rollover on incorporation, would severely restrict the typical estate-plan holding company.

A closely held corporation could become widely held, by "going public". If steps were taken just before the change of status to distribute all accumulated corporate surplus for purposes of gross-up and credit, the shareholders could obtain full credit for the corporate tax payments up to that time. Then, immediately after the change of status, they could sell their shares as part of the public issue and pay tax on only half of the goodwill gain.[36] Clearly a change back to closely held status after that time would open the door to abuse, and hence the proposed rule that "once widely held, always widely held". In situations where the Minister would have power to declare a hitherto closely held corporation to be widely held, it is apparently intended that some warning would be given, so that the company would have an opportunity to distribute accumulated corporate surplus before its change in status occurred.

Apart from closely held corporations using the "partnership option", all corporations would pay an initial corporate tax of 50% on their income. This would be in accord with the Carter recommendations and would represent a substantial change in the present system, where (subject to the aggregation of the incomes of "associated corporations" for this purpose) the first $35,000 of corporate taxable income is taxed at 21%-23% and the remainder at 50%-52%, depending on the province. The lower rate of corporate tax was ostensibly designed to soften the tax impact on "small business", though in fact it is open to all corporations, small and large. Generally, dividends paid to individual shareholders are now subject to further individual tax in their hands, offset by a "Canadian dividend credit" equal to 20% of the dividend received (not grossed-up). Several alternative methods of "surplus stripping" now attract special taxes ranging in effective rate from 13% to 20%. The result of this system has been the institution of ministerial discretion in the areas of associated corporations and surplus stripping—a source of great uncertainty and a solution that is highly unsatisfactory from the point of view of both taxpayer and tax collector. At the same time, there remain many areas of inequity, where shareholders, who may be in high personal tax brackets, can arrange their affairs substantially to reduce their effective tax rate on income earned through the vehicle of incorporated business. It seems, therefore, that the dual corporate rate ought to be abolished.

The proposal for a single corporate rate, however, has raised a storm of protest over the position of "small business". The tax impact upon smaller corporations and, even after the gross-up and credit, upon their shareholders, would be substantially heavier than under the present system. While it may be argued that, in many cases, the tax level is now unfairly low, there is still a genuine concern about the cash resources available to such businesses, which have difficulty in raising from external sources the funds necessary to finance growth. Mr. Benson has shown at least some appreciation of this difficulty and has hinted that he would be prepared to consider some relief, such as the rapidly accelerated depreciation proposed by the Carter Report for new and small businesses. Unfortunately this kind of relief would be very limited in amount and would only be available to businesses with a substantial investment in depreciable property. The problem, which the Carter Report appeared to recognize, is not to give small businesses a lower rate of tax but rather to permit the postponement of at least some of the tax, so that funds would be available to finance

36. See paras. 4.44-4.45.

the growth of the business. When the funds are no longer employed for that purpose, the postponed tax should become payable. This would suggest the need for a system of loans from the government to small businesses (perhaps up to a maximum annual and total amount per shareholder) equal to, say, half the basic corporate tax, which loans would become taxable upon their withdrawal from the corporation or upon their investment in non-business assets.

As mentioned earlier, the proposed single corporate rate of 50% would be coordinated with the proposed top personal rate, so as to avoid the temptation to accumulate income in corporations and later to "strip" the surplus. This coordination could be upset by the imposition of increased corporate tax rates by the provinces. In order to "cushion" the impact of the change to a single rate for small businesses, the dual rate would be phased out over the first five years of the new system in accordance with a complex formula.[37] Presumably the "associated corporation" rules would remain in effect during this transitional period.

In order to qualify for the gross-up and credit, the earnings of every corporation other than a closely held corporation that was using the "partnership option" would need to be distributed to its shareholders within 2½ years of the end of the year in which the income was earned. This is designed to avoid the excessive accumulation of corporate surplus and the temptation to dispose of it in some tax-free way, though the 2½-year limitation might be extended by using a chain of intervening corporations. Distribution could take the form of a cash dividend or, if the corporation wished to retain some or all of the earnings, a stock dividend. The third alternative proposed by the Carter Report, a formal allocation without the need for a dividend, has been abandoned, apparently because of administrative difficulties. The resulting annual stock dividend for most corporations, however, could lead to an increasingly unwieldy capital structure. Presumably the amount deemed to be distributed by way of stock dividend would become the basis of the shares so received. In the case of closely held corporations, provided that the corporate surplus had borne full corporate tax, no additional personal tax would be payable by any Canadian shareholder on a distribution of cash or stock dividends, and any Canadian individual shareholder in a less-than-top marginal bracket would obtain a refund of some of the corporate tax; hence full distributions would likely be made within the allowed time period. In the case of widely held corporations or corporations with substantial non-resident ownership, however, the partial integration and the withholding tax problem, particularly on stock dividends, might discourage such distributions.

Numerous complex technical problems in this area are ignored or barely dealt with in the White Paper. Examples are the instalment payment of corporate tax, the computation of creditable tax during a period when a reassessment of the corporation was still possible or when the corporate tax was under dispute, the problem of loss carry-overs, several aspects of intercorporate dividends, and accounting for non-creditable tax. Some of these matters have been dealt with in a subsequent release, which raises many more questions than it answers. Most serious of all is the apparent intention to treat distributions out of non-taxable surplus (*e.g.*, from depletion reserves or from earnings that represented accounting income but not taxable income) as fully taxable to the

37. See paras. 4.29-4.31.

shareholders without the benefit of creditable corporate tax. This in effect would nullify depreciation or depreciation incentives and is clearly intolerable. The proper treatment would seem to be to take such distributions not as income but as reductions from the basis of the recipient's shares or, if received in the form of stock dividends, as being assets received with no cost.

Under the system of partial integration proposed for widely held Canadian corporations, distributions in the form of cash or stock dividends would be grossed-up to the extent of half the corporate tax, and a credit could be claimed against the shareholder's tax of the same amount, *i.e.*, half the corporate tax.[38] This in effect would mean that any Canadian individual shareholder in a marginal tax bracket higher than 33⅓% (which would occur at a surprisingly low level—a taxable income in excess of $7,000) would have additional personal tax to pay on any such distribution.

Non-resident shareholders of Canadian corporations would not qualify for the credit for Canadian corporate taxes: while the government, through the tax credit system, wishes to encourage Canadian investment in Canadian corporations, it does not wish to provide tax incentives to foreign investment in Canadian corporations. This would not, however, make such foreign investment less attractive than it is now (apart from investment in resource industries and apart from the impact of higher corporate taxes on residents and non-residents alike). Cash and stock dividends to non-residents would be subject to withholding tax,[39] presumably based on the net, rather than the grossed-up dividend. There would be a flow-through of up to 15% credit for foreign withholding tax on foreign-source dividends received by a Canadian corporation, as explained later.

Distributions received by any Canadian individual or corporate shareholder of a closely held corporation would be subject to full gross-up and credit; correspondingly, gains or losses on the sale of shares of such corporations would be fully included in computing the seller's income. There would be half integration of the earnings of widely held Canadian corporations and their shareholders who were resident Canadian individuals or closely held Canadian corporations; correspondingly, half the gains or losses on the sale of shares of such a widely held corporation would be included in computing the income of such a shareholder. As indicated earlier, there would be a deemed realization of such shares every five years at their then market value. In order to exempt distributions from one widely held corporation to another, such distributions would be taxed at a special rate of 33⅓% and would qualify for full tax credit: similarly, gains or losses made by one widely held Canadian corporation on the sale of shares of another

---

38. It is proposed not to grant credit for tax paid by electric, gas, or steam utilities, since by previous arrangement with the provinces the federal government has been paying to the provinces 95% of the tax collected from such utilities (to remove the tax incentive to their nationalization) and is now prepared to remit 100% of the tax. Since the federal government would retain none of this tax it would not be prepared to grant credit to the shareholders for any part of the tax. The problem of relief, if any, would be left for the provinces. Realistically the provinces cannot be expected to grant such relief, particularly to shareholders who are residents of a province other than that in which the utility is located. The resulting discrimination against utility shareholders would not likely be acceptable, and the federal government will have to find some other solution beside simply passing the problem to the provinces.

39. The problem of paying withholding tax on a stock dividend might seriously impair the ability of a Canadian corporation to use that device wherever it had nonresident shareholders.

such corporation would be taxed at a 33⅓% rate. Mutual funds would in general be taxed on dividends in the same way as widely held corporations; on distributions by mutual funds of gains made on the sale of shares of widely held corporations there would be a special tax treatment, under which only half the distribution would be included in the shareholder's income but credit would be claimed for the entire corporate tax paid by the mutual fund on the gain.[40] As mentioned earlier, the tax-exempt recipients of corporate distributions, such as pension plans, would obtain no credit for the creditable tax applicable to such distributions.

The proposal for quinquennial revaluation of the shares of widely held corporations[41] has proved highly controversial and undoubtedly cannot be adopted, at least in its present form. The proposal assumes that the shares are readily marketable and therefore that any holder who must sell some of the shares to pay the tax at half rates on the accrued gain would be able to do so. This revaluation procedure would avoid the usual "lock-in" effect of a gains tax dependent on realization; would permit a rollover on death, so as to avoid the double simultaneous impact of income and estate taxes;[42] and would permit greater freedom for tax-free reorganizations of widely held corporations. The fallacy here is the assumption that all the shares of all widely held corporations would be readily marketable; whereas the definition of widely held corporations makes clear that this would not be so in the majority of Canadian corporations qualifying for that status. A closely held class of shares of a corporation, another class of shares of which is widely held, or a controlling block of shares, even of a widely held class, could not or should not be sold to pay taxes. The liquidity problems faced by many other investors make the proposal politically unsalable,[43] particularly since it might lead to more foreign takeovers of Canadian companies to the extent that, by treaty, revaluation did not apply to the foreign investor. The only reasonable conclusion seems to be to return to a realization criterion (including deemed realization on death) and either to abandon or drastically to reduce estate and gift taxes, since the revenue involved is small and since much of the original justification for such taxes was the freedom of capital gains from income taxation, or at least to grant full credit against estate taxes for income taxes payable at death.[44]

---

40. Why should this treatment be confined to mutual funds? Many other anomalies arise in this area.

41. See paras. 3.36–3.38.

42. Unfortunately for the validity of this proposal, when the estate was not liquid—*i.e.*, when the rollover would be most needed—the shares might need to be sold to pay the estate tax, and hence the simultaneous incidence of the two taxes would be precipitated.

43. Neither revaluation nor gains tax on realization would apply to nonresident portfolio investments in widely held Canadian corporations. This might make Canadian corporations particularly attractive for that kind of investment. The parent corporations of Canadian subsidiaries that, at the government's urging, made some of their shares available to Canadian investment and therefore, in effect, became widely held, would be prejudiced by the five-year revaluation (unless exempted by treaty), whereas the foreign parent corporations that did not admit Canadian investment in their Canadian subsidiaries would enjoy more favorable treatment as shareholders of closely held corporations.

44. See the excellent analysis in Huggett, *Down with Estate Tax!*, 96 Can. Chartered Accountant 121 (1970). See also Harris, note 1 *supra*, at pp. 539–40. Mr. Benson has recently provided the parliamentary committees with some possible alternatives to the five-year revaluation. One such alternative would, of course, be deemed realization on death, though it is not clear

The government can hardly be expected to have satisfied the vociferous anti-cooperative block with its mild proposals for taxation of cooperatives. The obviously inequitable exemption of new cooperatives during their first three years would be withdrawn. Patronage dividends are now deductible to the extent that they do not reduce the cooperative's profits before interest on long-term debt to below 3% on capital employed. While it is proposed that patronage dividends continue to be deductible within limits, the minimum rate of return would be set from year to year depending on the yield on government bonds, which is now over 9%. Certain changes would also be made in the method of computing deductible interest. Caisses populaires and credit unions, which are now exempt, would be taxed in the same way as other cooperatives.

An important transitional proposal would apply to the accumulated surplus of Canadian corporations at valuation day—surplus that would bear some form of tax if it were distributed to individual shareholders under the present tax law. Such surplus would be subject to a flat 15% tax on its distribution, presumably by either cash or stock dividend, to the shareholders. Tax would not be creditable, and the distribution would simply reduce the shareholders' basis of their shares.

## BUSINESS AND PROPERTY INCOME

The general principles that now apply to the computation of business and property income for income tax purposes appear to the government to be satisfactory, and no major change is proposed. No mention is made of the Carter recommendation that the computation of business and property income be brought more into line with generally accepted accounting principles. It is proposed, however, to eliminate the so-called "nothings"—business expenditures that are now neither deductible nor depreciable. These expenditures would qualify as a separate class of depreciable property, depreciable at a diminishing-balance rate of 10%. Since goodwill would be included, as explained earlier, it is proposed not to assign to goodwill on hand at valuation day any basis and to tax an increasing portion of the gross proceeds of sale of goodwill after that date. Obviously the cure could be worse than the disease, and a preferable treatment would seem to be to deny depreciation of goodwill and to treat goodwill like land that is a fixed asset—*i.e.*, to value it as of valuation day, to adjust the basis for the cost of any further acquisitions from third parties, and to deduct the resulting basis from the proceeds of any ultimate disposition, for the purposes of determining the taxable gain or loss, when it is sold otherwise than in a rollover situation. Since the costs of developing "self-generated" goodwill would generally be deductible as incurred, the gross proceeds of the sale of such goodwill, to the extent accrued after valuation day, would be fully taxable.

In lieu of the former "nothings", which would be eliminated as such, new "nothings" would appear. In what seems to be a capitulation to the convenience of the administration, the White Paper proposes even harsher treatment for entertainment and convention expenses than the rigid,

---

whether an intervening closely held holding company would avoid such deemed realization of its portfolio on the death of its major shareholder. In addition, there might need to be some restrictions on the deductibility of capital losses on such shares and on the proposed scope for tax-free reorganization of widely held Canadian corporations. So far there is no suggestion by Mr. Benson that a reduction or elimination of estate taxes is within the terms of reference of the current debate.

arbitrary limits in the Carter Report, which were themselves severely and justifiably criticized. It is now proposed to disallow completely the deduction of entertainment and convention expenses and club dues for all taxpayers and businesses. This absurd and inequitable proposal comes in the face of the conclusions reached by a government-sponsored inquiry showing that the abuses of so-called "expense account living" were minor and could easily be controlled by more effective enforcement of the existing income tax law. The most charitable thing that can be said about the proposal is that it was deliberately made extreme, so that the government would appear to be making a concession in drawing back to a limited extent. Mr. Benson in some of his post-White-Paper delphic pronouncements seems to be saying that he never intended to deny the deduction of all such expenses — though that is precisely what the White Paper says — and would like guidance from the public on what criteria would be reasonable. If for no other reason, the complication that such disallowance of corporate expenses would create in the tracing of creditable and non-creditable tax[45] would make the proposal impracticable. In addition, it might become very difficult to distinguish between presumably deductible business travel costs and expenses of staff training and non-deductible entertainment and convention expenses.

The government favors the continuation of the method of diminishing-balance depreciation now in force but has hinted that it believes present rates to be too generous and says it would like to hear further representations on rates, perhaps after the White Paper proposals have been implemented.[46] In addition to instituting a new class of depreciable property to include the present "nothings", it is proposed to impose severe limits on the extent to which high-bracket taxpayers could use losses created by claiming accelerated depreciation on rental property to postpone taxes on their income from other sources: such losses could not be offset against other income; each building costing more than $50,000 would be deemed to be a separate class of depreciable property, so that on its sale for more than written-down value the recaptured depreciation would be immediately taken into income instead of merely reducing the depreciation base of other like property; and the present step-up in basis to fair market value when depreciable property is inherited would be eliminated so that the basis of the deceased would be carried forward by his heirs. Where the cost of the assets in a depreciation class that were actually on hand was less than the written-down value of the class as a whole, the taxpayer would be permitted to claim further depreciation equal to the excess; in the case of a corporation this write-down would be mandatory in a year in which control of the corporation changed hands.

It is not clear whether interest on money borrowed by one corporation to acquire the shares of another corporation, which is now non-deductible, would become deductible under the new system, but in principle this would appear likely. It is apparently proposed, however, that the law would not permit interest and carrying charges on any class of investment to create a currently deductible loss; an example would be high interest rates paid on a loan to acquire shares that yielded little or no dividends.

It is proposed that professional practitioners, most of whom now compute their income on the cash basis, be placed on the accrual basis, taking into account their work in progress and acccounts receivable and

45. See para. 5.10.
46. See para. 5.14.

presumably deducting accounts payable. A strange transitional provision is proposed, under which the net tax-postponed amount on hand at valuation day would be brought into the income of the practitioner or firm to the extent that the corresponding net amount on hand at the end of any subsequent year had declined; in other words, in subsequent years the greater of cash-basis or accrual-basis income would be recognized until the entire tax-postponed amount was absorbed. Practical problems of implementation—even within a firm of unchanging membership, let alone in the situation where an existing member left or a new member was admitted—make this proposal, at least in its present form, unrealistic. Valuation of the work in progress "inventory" of a professional firm is at best a difficult task and, unless it is proposed to anticipate the recognition of professional income to a greater extent than that of any other taxpayer, the valuation would have to take into account employee time and overhead and to ignore principals' time, which would have no "cost". The cash problems of professionals might make quite painful the application of the accrual basis, even to accounts receivable. Farmers, on the other hand, would be permitted to continue to use the cash method and to average their income in five-year blocks.

An attempt would be made to tax the investment income of certain non-profit organizations, such as social, recreational, and service clubs, but not charitable institutions or, apparently, labor or professional associations. How, if at all, the tax paid by these organizations would be allocated to the members is not considered.

Trusts that issue transferable or redeemable units would be taxed in the same manner as corporations. Because of the tax avoidance that has been possible through the accumulation of trust income, which is now taxed to the trust at individual tax rates, it is proposed that such accumulated income be taxed at about 50% subject to special relief where a trust was established on the death of a person who was in a less-than-50% tax bracket. The administrative details of this general rule—particularly whether and how credit could later be claimed by the beneficiaries for the tax paid by the trust—and of the proposed exception had obviously not been worked out at the time of the release of the White Paper; nor is anything said about the difficult problems raised by foreign trusts. To the extent that trust income is not accumulated, the trust would presumably continue to be treated as a conduit pipe for the beneficiaries and would not itself be taxable.

The White Paper has attempted to be somewhat more gentle on the natural resources industries than was the Carter Report, but this might be difficult to believe, considering the storm of protest that the White Paper proposals have raised from the industries involved. Operators' depletion allowances would be computed as now on a percentage of mineral profits; after a transitional period, however, the maximum deduction would be limited to one-third of eligible expenditures on new Canadian mines. Eligible expenditures would include exploration and development expenditures and costs of acquiring mining equipment and buildings for new Canadian mines. As depletion was "earned" by eligible expenditures it could be used currently up to the maximum now allowable, and any excess could be carried forward indefinitely. The present non-operators' percentage depletion on royalties would be repealed, but instead the cost of acquiring mineral rights would be eligible for amortization. The present arbitrary depletion allowances granted to shareholders of wasting-asset companies would be with-

drawn. After 1973[47] the three-year tax-exempt period for new mines would be withdrawn. Exploration and development costs of mining and oil companies in Canada (including costs of acquiring mineral rights) would be deductible as incurred or could be carried forward as necessary; for other taxpayers these costs could be written off against mineral profits or else amortized on a 20% diminishing-balance basis, whichever was more favorable for the taxpayer. Sales of all mineral rights would be fully taxable, subject to the transitional rules mentioned earlier, because their costs would have been deductible. Buildings and equipment acquired for a new mine would be eligible for diminishing-balance depreciation at 30% or, if more favorable to the taxpayer, to be written off against income from the new mine.

The entire scheme for natural resource industries is designed to ensure that a taxpayer would not be taxed on a mine venture until the entire capital investment had been recovered. The "earned" depletion allowances, it is hoped, would provide a strong incentive for new exploration, through many companies apparently feel that it would be impossible for them to "earn" full depletion on this basis. In keeping with the widening of the tax base, the existing exemption of sales of mining property by prospectors and grubstakers would be withdrawn. Whether this package, or some variation of it, can be "sold" to the powerful natural resources interests, and to the western provinces whose economies rely heavily upon natural resource activity, remains to be seen.

## INTERNATIONAL INCOME[48]

The White Paper attempts to be a little more practical in the treatment of international income flows than was the Carter Report, which could justifiably be accused of taking a narrow, insular view. The same accusations, however, have been made against the White Paper. Inevitably if it is proposed to provide some incentive for Canadians to invest in Canadian corporations the government could not provide the same incentives to non-residents. This in itself hardly justifies the charge of discrimination. As long as other countries do not have a system of full or partial integration of corporation and individual taxes, it is impossible to have an entirely smooth coordination of the Canadian tax system, as proposed, and the tax systems of other countries. Compromises and approximations to equity must be accepted. At the same time the Canadian government is firmly convinced that it must take steps to eliminate the use of tax havens to avoid Canadian taxes. The general principle is stated that there should be no tax disincentive for Canadians to invest abroad but that there should be incentives for them to invest in Canada. In fact, this principle is imperfectly applied in the detailed proposals that follow.

A "controlled foreign corporation" would be defined as one in which a Canadian corporation owned 25% or more of the equity shares. Dividends from such corporations situated in a country with which Canada had a treaty ("treaty country") would be completely exempt from Canadian tax when received, just as now, except if the source of the dividends was "passive income"[49] of the foreign corporation. In that event there would be a current accrual of

47. See para. 5.35.
48. See also Kennedy, *The Canadian White Paper: International Tax Planning*, XXIV Bulletin 54 and 113 (1970).
49. Defined to include dividends, interest, royalties, and transhipment profits—para. 6.20.

the foreign corporation's earnings and a gross-up and credit of these earnings and of the foreign tax thereon, in the hands of the Canadian corporation—along the exceedingly complicated lines of Subpart F of the United States Internal Revenue Code. Dividends from a controlled foreign corporation in a non-treaty country would be subject to gross-up and credit of both the withholding tax and the underlying foreign corporate tax, except that if the dividends were paid out of "passive income" the gross-up would again apply to earnings as accrued rather than as distributed. Dividends received by a Canadian corporation from a foreign corporation, whether or not a controlled foreign corporation, would be deemed to carry with them a credit for foreign withholding tax up to a maximum of 15%; this credit would pass through the payee corporation and any one or more intervening Canadian corporations and would be available to the ultimate individual shareholder, to be claimed against his personal Canadian tax if he was a Canadian resident and to reduce or eliminate his Canadian withholding tax if he was a non-resident. The principle sought to be applied seems sound, but the application seems likely to create enormous problems of record-keeping.[50] The present exemption of dividends from all controlled foreign corporations, whether or not in a treaty country and whether or not from passive income, would remain at least until the end of 1973. Gains made by a Canadian corporation on sales of the shares of a controlled foreign corporation or of any other foreign corporation would be fully taxable and losses fully deductible, except that an otherwise deductible loss would be reduced by any dividends received by the Canadian corporation that did not bear full Canadian corporate tax. Apparently there would be no quinquennial revaluation of the shares of any foreign corporation.

In the case of dividends received from foreign corporations other than controlled foreign corporations, there would be a tax credit for withholding tax only. Commencing with 1974, the maximum credit for withholding tax on investment income of any kind from foreign sources would be 15%. This would be in line with the proposed level of withholding tax to be imposed by Canada on Canadian-source investment income flowing to treaty countries.

An equivalent of the proposed flow-through of foreign withholding tax would apply to an appropriate portion of foreign branch profits received by a Canadian corporation. This would apparently apply even though there was no foreign withholding tax as such but would be designed to equate the foreign branch with a foreign subsidiary.[51] A foreign branch that had suffered losses, which would have been currently deductible against Canadian profits, would not be permitted to incorporate its business in such a way as to avoid Canadian tax on subsequent foreign profits. A carryover of the foreign tax credit would be permitted, to allow for differences between Canada and other countries in the timing of recognition of income. Taxes imposed by political subdivisions of other countries would be recognized as eligible for credit on a reciprocal basis. Apart from the special situations already noted, the present foreign tax credit on foreign taxes imposed on income received by Canadians

---

50. It is not clear whether the government intends that the foreign withholding tax credit must be distributed within 2½ years. Apparently the creditable dividend would be deemed distributed first in any distribution of corporate surplus. The full credit, up to 15%, would be claimed, even if it passed through a widely held Canadian corporation. See paras. 6.27-6.30.

51. See para. 6.30.

from foreign sources would be continued.
Certain corporations incorporated in Canada all of whose business is outside Canada and that qualified as "foreign business corporations" before the door was closed in 1959 are exempt from Canadian tax. The exemption of these corporations is now considered to be inconsistent with the proposed treatment of passive income. Consequently the exemption would be withdrawn immediately for passive income and after five years would be replaced by a foreign-tax-credit system for business profits.
With respect to the income of non-residents from Canadian sources, the present general pattern would continue, except that the standard Canadian withholding tax would be raised, effective in 1974, to 25% in order to reduce the advantage of passing Canadian-source income through tax havens. Nevertheless, withholding tax on income flowing to treaty countries would be limited to 15%. The delay in implementation would permit time for the revision and expansion of Canada's tax treaties; it is suggested that the O.E.C.D. draft treaty would be used as a guide but would not be followed exactly. Subject to existing treaties, the general withholding rate would rise at once to 25% on non-dividend income, including pensions, except with respect to income on obligations arising before November 7, 1969, in which case the new rate would apply from 1974; furthermore, the new rate would not apply at all on arm's-length obligations issued before 1974 where an applicable treaty provided for a 15% rate. From 1974, interest on government obligations would continue to be exempt from withholding tax only if flowing to treaty countries. Although the White Paper does not say so, apparently the existing 5% preference in withholding rates (now 10% versus 15%) would be continued for dividends paid by Canadian corporations having a "degree of Canadian ownership".[52] Non-resident-owned investment corporations are corporations owned by foreign investors that are incorporated in Canada for the purpose of investing in Canadian securities and that meet certain other requirements. These corporations now pay Canadian tax at a rate of 15% on their investment income, in lieu of the normal Canadian withholding tax on such income if it flows directly to non-residents. It is proposed to increase this rate of tax to match the new withholding rate; apparently the new rate would be set at 25%, regardless of whether or not the non-resident owners resided in a treaty country. Capital gains made by the corporation, which are now exempt, would also be taxed at the new rate, which would also apply to all Canadian dividends, without the benefit of gross-up and credit, in the same manner as Canadian withholding tax would apply to such dividends flowing directly to non-residents. Apparently if the non-resident-owned investment corporation held 25% or more of the equity shares of a widely held Canadian corporation the five-year revaluation rule would apply. This would make these investment corporations unattractive to non-resident portfolio investors.
It is proposed to apply the concept of "thin capitalization" to Canadian subsidiaries of foreign enterprises, to avoid the loss of Canadian corporate tax revenues that results where the bulk of a parent's investment is in the form of interest-bearing debt, interest on which is deductible in computing the subsidiary's income and on which Canada collects only a modest withholding tax, in

52. See Harris, *Canadian Taxation of Branches and Subsidiaries of Foreign Enterprises*, XIX Bulletin 441 (1965).

lieu of equity, on the return from which Canada collects both corporate tax and withholding tax. For this purpose it is proposed that interest paid by a Canadian corporation to a non-resident with whom the payor does not deal at arm's length would be non-deductible to the extent that the payor's ratio of shareholder debt to equity exceeded 3:1.[53] For this purpose it is apparently the intention to treat the Canadian subsidiary's surplus on hand at valuation day as constituting part of shareholder equity. No transitional provisions are suggested, but a phasing in of these new rules seems to be required.

The taxability of non-residents for capital gains on sales of property in Canada would, of course, be limited to the extent that Canada's existing treaties in many cases now exempt these gains. Canada would attempt to revise these treaties to permit such taxation. It is proposed that non-residents would become taxable on gains made on the disposal of Canadian real property, partnership interests, and branch assets and on the disposal of any shares of closely held Canadian corporations. For this purpose a system of certificates of compliance might need to be instituted, which would impose some responsibility on Canadian purchasers of those shares to ensure that the Canadian tax had been paid. It is admitted that this system could prove burdensome:[54] just how burdensome will not be clear until the government clarifies the extent to which the Canadian purchaser would be required to know that he was dealing with a non-resident and whether he would be required in all cases to withhold a fixed percentage of tax, since he would not be likely to know what the non-resident's share basis was. Subject to present treaties, non-residents would also be taxable on gains made on the sale of shares of a widely held Canadian corporation of which they held 25% or more of the shares; they apparently would also be subject to the five-year revaluation rule with respect to those shares. It is not clear whether certificates of compliance would be required here too, but apparently not.

Non-resident portfolio investors in widely held Canadian corporations, on the other hand, would be free from Canadian tax on share gains and of course would not be subject to the five-year revaluation rule. This might make some Canadian growth corporations more attractive to non-resident investors than to Canadian investors, notwithstanding the express aim of the White Paper to the contrary. Whenever capital gains are taxable, capital losses would be deductible, but a non-resident might have difficulty in finding other Canadian-source income against which to deduct losses. No indication is given whether non-residents would be taxed at a flat rate on such gains or whether they could, if individuals, file Canadian tax returns and pay Canadian tax at graduated individual rates. Also, it is not clear whether there would be any effective way to prevent the ultimate non-resident owners of controlled Canadian corporations from selling the shares of a foreign corporation or mutual fund that controlled the Canadian corporation and thereby avoiding Canadian tax on the gain.

Canada now imposes a special tax of 15% on most non-reinvested profits of Canadian branches of foreign enterprises, so as to provide the approximate equivalent of the withholding tax on distributions of the profits of Canadian subsidiaries of foreign enter-

53. It is admitted that the administration of such a rule might prove difficult and that the rule might require revision on the basis of experience—see para. 6.42. See also Editorial, XXIV Bulletin 46 (1970).
54. See para. 6.46.

prises.[55] It is now proposed to bring this branch tax rate into line with the new withholding rate. As well, the definition of reinvested profits would be extended to include an allowance for normal working capital.

## CONCLUSION

At the time of writing, Canada seems to have a long and contentious road to follow before the commencement of Stage III of tax reform—the presentation of implementing legislation. An impartial observer from outside may be able to detect a measure of progress; but for Canadians who have had to live through this past decade of "tax reform" the current contentions are somewhat disheartening. If our experience is indicative, tax reform is neither simple nor obvious in its application and in result is never likely to be widely popular in a democratic country. Proposals that at first sight seem to be clear and logical are often seen on deeper examination to be oversimplified and impracticable. As long as there is a tax system, at least some part of the population will resent the tax burden it bears, and in an industrialized economy of the 1970's that burden is bound to be substantial. We can hope, however, that the end result will be a tax system that is more certain and even in its application, with at least some improvement in equity.

---

55. See Harris, note 52, *supra*.

J.S. MACLEOD:

# ESTATE DUTY IN GREAT BRITAIN

*This paper is in two parts. Part I is a detailed analysis of the Estate Duty changes introduced by the Finance Act 1969. Although these changes are very far reaching they do not affect the structure of the tax in its entirety, and for this reason a summary of the general principles of Estate Duty is contained in Part II. Readers who have no knowledge of the subject are advised to read Part II before Part I.*
*It should be noted that the term "Great Britain" excludes Northern Ireland, and although the Estate Duty, in principle, extends to England and Scotland uniformly, the differences in law between the two countries do give rise to a number of differences.*

## PART I

### THE ESTATE DUTY PROVISIONS OF THE FINANCE ACT 1969

1. *Introduction*

The Estate Duty changes introduced by the Finance Act 1969 are undoubtedly the most important provisions relating to Estate Duty for many years. The amendments radically affect the circumstances in which duty is payable and the method by which it is computed. These provisions are so fundamental, and so complex, that it will be some time before they are properly understood and their effects fully appreciated. This article sets out to fit the new provisions into the existing framework of the law, and to try to assess some of the consequential implications.

The Chancellor's statement contained three references to Estate Duty. The first proposal concerned a change in the method of taxing property, from a single rate applicable to the entire estate to a 'slice' principle, similar in operation to U.K. surtax rates. These provisions are contained in section 35 and schedule 17. The second proposal concerned the avoidance of duty through the purchase of objects of national, scientific, historic or artistic interest, the existing law on this being amended by section 39. The remaining provisions are mainly concerned with discretionary trusts and removed many of the previous advantages of these trust. However, the Act also alters the circumstances in which settled property passes on a death and at the same time introduces a number of provisions which bring the pre-1969 law into line with the new provisions.

2. *The Relationship between the Charging Sections*

Section 26 commenced by substituting in F.A. 1894 S2(1) the phrase "means for the purposes of estate duty" for the words "shall be deemed to include". This ends a long controversy over the precise relationship between SS1 and 2(1), F.A. 1894, a subject of regular judicial comment over the years. Until 1969 the official view was that the charging sections in the principal act of 1894 were mutually exclusive. This view was based on the dicta of Lord McNaughton in

Earl Cowley *v.* I.R.C.[1] where a "passing" of property under S.1 was held to be quite distinct from a "deemed" passing under S.2(1). This principle was rejected by the House of Lords in Public Trustee *v.* I.R.C.[2] where the view was expressed that, while property could both pass under S.1 and be deemed to pass under S.2(1), the latter Section merely specified some, but not all, of the circumstances in which property became dutiable. It would appear that the result of Section 36(1) is that Section 1 of the 1894 Act is from now on the general charging Section, while the amended S.2(1) is an exhaustive account of property within the charge to duty.[3]

Having established the relationship between the charging Sections, Section 36 then replaces para. (b) of F.A. 1894 S.2(1) with a more comprehensive paragraph, which entirely alters the basis of the charge on trust property. In order to appreciate the significance of this amendment, it is necessary to look first at the original paragraph. This deemed property passing on a death to include property in which the deceased or any other person had an interest which ceased on the death to the extent that a benefit accrued to someone else. The method of charging duty under this paragraph was set out in F.A. 1894, S.7(7), and the combined effect of these provisions was that, as it stood, the scope of the section was restricted to annuities charged on capital. Following the decision in Ralli Bros. *v* I.R.C.[4], S.2(1)(b) was extended by F.A. 1966 S.40 to include property held under two titles, one of which was a title for life.

The reconstituted S.2(1)(b) is a head or charge into which falls settled property. "Settlement" is defined in terms of the Settled Land Act 1925 (England and Wales) and includes any property held in trust for any purpose under Scots Law. Specifically included are accumulation trusts even where the trustees have a discretionary power to distribute part (or all) of the income of the trust, leases for life, and annuities charged on property by an entail in Scotland. The charge to duty is dealt with under four heads, the general scheme being that where a person has an interest in income from trust property, the property itself, or part therefore, will be liable to duty on his death.

Paragraph b(1) of S.2(1) charges property comprised in a settlement where the deceased, at any time in the seven years prior to his death, had a beneficial interest in possession in the settled property, either as the original beneficiary or as an assignee. Thus it is of no consequence that the deceased's interest was for the duration of the life of some other person (interest *sur autre vie*), or that the interest was for a fixed term or life, whichever was longer (a loophole left open by F.A. 1966 S.40). Where the interest is determined or disposed of outwith the seven year period, there is no charge to duty and where the determination occurs outwith four years, but within seven years, of death, the "tapering" relief for gifts applies (Sch. 17 para. 3).[5] An interest is treated as having been determined when it ceases to exist as a separate interest (S.36 (5)(c)). The existing law on the determination of interests contained in F.A. 1940 S.43 and F.A. 1968 S.39 is rendered obsolete by the above provisions, and these Sections are therefore repealed.

Specifically excluded from the charge under S.2(1)(d) is property comprised in a trust which has come to an end prior to the

---

1. (1899) Appeal Cases 198.
2. (1960) Appeal Cases 398.
3. There are only two circumstances, in which property 'passes on a death', not contained in F.A. 1894 S.2(1).
4. (1966) A.C. 483.
5. See page 209.

deceased's death because the deceased has become absolutely entitled to the property comprised therein—Sch. 17(II) para. 2(1). In such a case, however, the property will pass under S.2(1)(a) (property of which the deceased was competent to dispose) if it is still in his possession.

Para. b(11) of S.2(1) deals with the determination or disposal of an interest outwith the seven-year period prior to death, but where the deceased was not entirely excluded from possession and enjoyment of the property, or from any benefit reserved to him by contract or otherwise. In such a case the property will pass irrespective of the period between the determination or disposal and the death of the deceased. Where the deceased retains an interest and later surrenders it, the property reverts to S.2(1)(b)(1) and will pass if death occurs within seven years of the surrender (Sch. 17 Part II para. 5(b), amending F(1909-10)A.1910 S.59). Since the phraseology in para. b(11) is the same as that applied to S.2(1)(c) in relation to gifts, the case law relating to gifts will have important applications. Thus if farm land is held in trust for A and B, and after the determination of the trust in A's favour, B joins A in partnership to farm the land, it is though that the entire property will pass on B's death, even if he survives the determination of the trust by more than seven years (Munro *v.* Commissioners of Stamp Duty),[6] only benefits reserved to the deceased which are legally enforceable are within the ambit of the section A.G. *v.* Seccombe).[7] However, collateral benefits must be avoided (A.G. *v.* Worrall)[8] and so must wide powers of management over the property reserved to the deceased (Oakes *v.* Commissioners of Stamp Duty).[9] Paragraph 4 of Sch. 17 Part II strikes at benefits reserved through associated operations. "Associated operations" is defined by F.A. 1940 S.59 in such wide terms that it is thought that few, if any, benefits can escape the Act. The legislature, however, has obviously attempted to close all potential loopholes, for the paragraph goes further and attacks benefits received through companies (as defined in F.A. 1965 Sch. 18).

3. *Discretionary Trusts*

Para. (b)(iii) of S.2(1) imposes duty upon the death of a beneficiary under a discretionary trust. A Discretionary Trust is a trust where the right to income of any beneficiary is subject to the discretion of the Trustees, and so no beneficiary has an absolute right to any income from the fund. On the death of an individual beneficiary there was no charge to Estate Duty under the pre-1969 law, since there was no way of assessing the value of the trust fund which passed on his death. Thus Discretionary Trusts formed a valuable estate duty avoidance device, and there can be little doubt that the extent to which they were utilised to this end was a matter of concern to the Inland Revenue. The general line taken by S.2(1)(b)(iii) is to relate the benefits derived by the beneficiary to the capital of the trust, a proportion of which then passes on his death. Duty will therefore be payable on any of the following sets of circumstances:

(aa) where the deceased was entitled to income benefits, and did in fact benefit in the seven years ending with his death, or

(bb) where, either the deceased's income entitlement ceased within the seven years prior to his death, or property was transferred out of the trust within the seven years prior to his death; or,

(cc) where either the deceased's income entitlement ceased outwith the seven-year

6. (1934) Appeal Cases 61.
7. (1911) 2 Kings Bench Division 688.
8. (1895) 1 Queens Bench Division 99.
9. (1954) Appel Cases 57.

period, or the property ceased to be held in trust outwith the period of seven years prior to death, but the deceased, at all times in the seven years before his death, was not entirely excluded from benefit from the trust property.

*What Property Passes?*

The first three sub-paragraphs of S.2(1)(b) are modified by S.37 where the deceased did not receive (or was not entitled to receive) the whole of the net income of the trust.

Section 36(1) deals with property passing under S.2(1)(b)(i) and (ii). In the normal case, where the deceased had a right to part only of the net income (i.e. after the trustees' expenses), the propertion of capital passing will be related to his income entitlement at the date of death, or if the interest was determined prior to death, on the date of the determination. (S.37 (1)(a)).

In the case of a part liferent in possession[10] which might vary by virtue of some obligation or power on the part of the trustees, the proportion of capital passing will correspond to the proportion of income which the deceased enjoyed in the seven years prior to death, or if the interest was determined, prior to death, in the seven years prior to the determination. Section 37(3) deals with the computation of the amount of property held within a discretionary trust which passes on the death of one of several beneficiaries. In this case a proportion of the property comprised in the trust will pass, that proportion being equal to the proportion of income of the trust arising after 15th April, 1963 which has been paid to or applied for the benefit of the beneficiary. Payments out of capital are treated as income up to the amounts of the available income in the trust. Where property has ceased to be held in trust before the death of the deceased, but for a "material period"[11] ending within seven years before the deceased died either:—

(a) he was not entirely excluded from possession and enjoyment of the property

*or* (b) he was entitled to any benefit from the property,

then the average income or benefit for the "material period" must be computed and where it exceeds the deceased's average annual share of the income of the property while it was held in trust, the deceased's overall share in the income from the trust is increased by an annual amount equal to the excess, up to the date when the property ceased to be held in the trust. These provisions will not apply where the deceased himself was absolutely entitled to the property (Schedule 17 Part II Para. 2). "Income" means free income i.e. after management expenses, and excluded from these provisions are discretionary payments made to minor beneficiaries under a power of maintenance contained in the deed.

4. *Accumulation Trusts*

Prior to the 1969 Act property held on accumulation trusts passed on a death where:

(a) on the death the accumulations ceased and the property passed absolutely to the beneficiaries (Westminster Bank *v* A.G.)[12] (F.A. 1894 S.1), or,

(b) property was accumulated for the benefit of some person(s)
contingently, and on death the power to accumulate ceased, and as a result the beneficiaries' interest became absolute (F.A. 1894 S.2.(1)(d)) (Adamson *v* A.G.)[13].

---

10. I.e. where the deceased was absolutely entitled to part of the Trust Income.
11. "Material Period" means a period of seven years.
12. (1939) Chancery Reports 610.
13. (1933) Appeal Cases 257.

The periods during which income may be validly accumulated in a Scottish trust[14] are set out in S.5(2) of the Trust (Scotland) Act 1961 as follows:—

(a) the lifetime of the settlor,
(b) twenty-one years after his death,
(c) the duration of the minority (or respective minorities) of any person (or persons) alive or *in utero* at the date of the settlor's death,
(d) the duration of the minority (or respective minorities) of any person (or persons) who, under the terms of the settlement, would for the time being, if of full age, be entitled to the income so accumulated.

Two additional periods were added by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1966:—

(e) 21 years from the granting of the deed,
(f) the minority (or respective minorities) of any person or persons alive or *in utero* at the date of the granting of the deed.

These periods are distinct and cannot be aggregated.

The Inland Revenue view is that the new S.2(1)(b)(iv) simply replaces the charge under the above provisions, but it is thought that this is not the case, for no account is taken, under Para. (b)(IV) of the interests of the beneficiaries, so that duty will, it seems, be payable where, on a death, accumulation ceases, but the application of the fund is at the discretion of the trustees. Such a situation did not normally give rise to a charge under the pre-1969 law.

Schedule 17, Part II applies a number of existing reliefs to the new provisions. Where a settlement is determined in favour of a charity, the seven year period is reduced to one year (Para. 8). Certain government securities comprised in the trust will be exempt if the deceased was neither domiciled nor ordinarily resident in the n.h. immediately prior to his death (Para. 7). Paragraphs 5 and 6 apply, respectively, surviving spouse relief and quick succession relief to property passing under S.2(1)(b).

*Other changes affecting settlement*

It comes as a surprise, in an Act devoted to closing loopholes to find that S.2(1)(d), F.A. 1894 has been repealed. This paragraph, which caught annuities and other interests purchased or provided by the deceased to arise on death, was one of the most penal of the principal Act, for, by S.28, F.A. 1934 (also repealed) the value of any interest held prior to death was ignored. Thus if "A" had an interest in property provided by "B", contingent on his surviving "B" then on B's death during A's lifetime, the entire property passed, and A's contingent interest was left out of account. S.2(1)(d) is complex, and an exhaustive analysis is outwith the scope of this paper. However, the repeal of the paragraph is likely to have the following effects:—

1. Where a person has an interest in a fund which changes on the death of some other person:—
(a) there will be no liability on the death of that other person (except possibly under S.2(1)(c)) and;
(b) on the death of the beneficiary there will be a charge to duty under S.2(1)(b).
2. Where the interest cannot be related to a capital sum (e.g. a joint annuity for the lives of A and B and survivor) the existing charge ceased and, so far as the writer can see, it is not replaced.

Section 36 of the Act then goes on to add three additional paragraphs to S.2(1)(b), F.A. 1894.

The first of these, para. (3), charges a de-

14. The Power to Accumulate under English law is also restricted.

ceased partner's share of partnership property, passing to someone other than his executor. This restates part of the pre-1969 charge under S.1. The existing exemption for property purchased in money or money's worth contained in F.A. 1894 S.3, is preserved.

Para. (f) renders dutiable property which passes on a death subject to an option to purchase exerciseable at death (or with reference to death) and granted to some person otherwise than by the deceased's will. Section 37(5) sets out the method of computing duty in such a case. If the option is unexercised at death, the entire property passes under S.2(1)(f), valued without regard of the option. If the option has been exercised, there will be no passing under S.2(1)(f) if full consideration has been given. If full consideration has not been given, then the person on whose behalf the option was exercised is liable for the duty on the difference between the principal value of the property and the consideration given.

Para. (g) deals with those categories of property devolving under Scots Law, which, but for this paragraph, would not pass on a death. These are:—

(i) Property devolving on a death by virtue of a "special destination" clause in a deed, where the deceased was not, at the date of death, competent to dispose of the property.
(ii) Property of which the deceased was at the time of his death a "proper liferenter", i.e. he has an absolute interest in the liferent of property which is not comprised in any settlement.
(iii) An interest of lessee in a lease terminable on a death, where the deceased was not, at the date of his death, competent to dispose of the property.

5. *Interests in Expectancy*

Section 38 deals with the purchase of an interest in expectancy by the deceased within seven years of his death. The "enlargement" of a life interest had been struck at by F.A. 1958 S.28, which was designed to catch the following kind of scheme:—

Suppose X has the liferent of a fund, with capital to Y.

The value of the fund is £100,000 and X's free estate is £125,000 so that on X's death his estate will amount to £225,000. If X purchases Y's interest in expectancy, valued actuarially, for, say £75,000, there is an immediate reduction in X's estate to £150,000 with a consequent saving in duty. S.28, F.A., 1968, provided, however, that the purchase price (in this case £75,000) would also pass on X's death unless Y survived the transaction by seven years (with tapering relief after four years). Section 38 re-casts S.28 F.A. 1958, which is repealed, and fits the existing provisions into the new Estate Duty scheme. It provides that the purchase price of any interest in expectancy in any settlement within F.A. 1894 S.2(1)(b), purchased by the deceased or by any other person out of funds which would otherwise pass on his death, shall pass if death occurs within seven years of the transaction. There is tapering relief where the deceased survived the transaction by four years. As an alternative to the purchase price passing on the death, the persons accountable for duty may elect to treat the principal value of the interest as passing on the death.

These provisions do not alter the existing law to any significant degree, except as is required by the new S.2(1)(b).

6. *Rates of Duty*

Prior to the 1969 Act, duty payable was calculated by applying a single rate, determined by the principal value of the entire estate, to the property passing. This resulted in a steeply progressive tax which had been

the subject of considerable criticism. The new rate structure contained in S.35 and Schedule 17 is based on a "slice" principle as follows:—

| ESTATE | RATE |
|---|---|
| First £ 10,000 | NIL |
| Next £ 7,500 | 25% |
| Next £ 12,500 | 30% |
| Next £ 10,000 | 45% |
| Next £ 40,000 | 60% |
| Next £ 70,000 | 65% |
| Next £150,000 | 70% |
| Next £200,000 | 75% |
| Next £250,000 | 80% |
| EXCESS OF ESTATE OVER £750,000 | 80% but overall duty not to exceed 80% of aggregate principal value of the estate. |

Although there is an exemption for estates under £10,000—the old exemption limit was £5,000—the tax remains steeply progressive. In fact, with the exception of estates under about £14,750 the effective rate of duty under the new scheme is on average about 1% higher than under the old.
For example:—

| Estate | Old Rate | New Effective Rate |
|---|---|---|
| £ 20,000 | 12% | 13.25% |
| 40,000 | 24% | 25.3% |
| 50,000 | 31% | 32.20% |
| 75,000 | 40% | 41.6% |
| 100,000 | 45% | 47.1% |
| 200,000 | 55% | 54.4% |

As a result of these changes, the marginal relief for an estate slightly in excess of the figure at which it became liable to a higher rate of duty under the old law is rendered obsolete and is therefore repealed.

7. *Objects of national, scientific, historical or artistic interest*

Exemption for these objects was given by F.A. 1930 S.40 provided that the objects were retained in the United Kingdom, were not sold, and access to them was made available (F.A. 1950 S.48(L)). Section 39 of the Act introduces penalty provisions where the conditions under which relief is given are broken.
The provisions are in two parts:—

(a) Where the conditions (or one of them) are broken within three years of death then the asset will be valued as at the date of death, no allowance will be made for any capital gains tax payable on the disposal, and the asset will be aggregated with the rest of the estate to determine the rate of duty applicable.
(b) Where the three year period is exceeded, then, if one of the conditions is broken, the rate of duty will be on the sale proceeds, or the value when the condition is broken otherwise than by sale, an allowance will be given for any Capital Gains Tax payable, and the rate of duty payable should be determined by aggregating with the rest of the estate the sale proceeds or value on disposal of the asset. Specal rules apply to sets of assets.

*Some Other Amendments*

(a) *Property in which the deceased never had an interest*

The Revenue view is apparently that the repeal of the charge to duty on the death of the "other person" where property is held "sur autre vie" removes the last of the situations in which the deceased never had an interest will pass on his death. The exemptions from aggregation afforded to this property, contained in the previse to S.4 F.A. 1894 is therefore withdrawn. However, the non-aggregation of certain Life Assurance

policies, held prior to 20th March, 1968, introduced by F.A. 1968 S.38, is preserved.

(b) "*Surviving Spouse*" *and* "*Quick Succession*" *Reliefs*
These are extended to cover property passing under S.2(1)(b).

## PART II

### AN OUTLINE OF ESTATE DUTY IN GREAT BRITAIN

1. *Introduction*
Death duties have formed part of the United Kingdom fiscal system since 1694. The earliest of these was Probate Duty, a stamp duty, payable at a fixed rate of five shillings, when letters of administration on a deceased person's estate were taken out. Over the ensuing two hundred years various kinds of death duty were introduced, culminating in 1894, in the introduction of Estate Duty. For a time after 1894 certain earlier death duties continued in operation, but since 1949 Estate Duty has been the only capital tax payable as a result of death.

2. *General Structure of Estate Duty*
Although the law of Estate Duty is governed by the Finance Act 1894, the original legislation has been amended by over forty subsequent finance acts of which the most significant is the Finance Act 1969. In addition, there is a large and growing body of case law on the subject, much of it complex and obscure. One further difficulty is that the solution of many estate duty problems lies in the application, not of estate duty law, but of other branches of the law, e.g. the law of trusts, and so a general knowledge of U.K. law is frequently required in dealing with specific problems in estate duty planning.
Despite these difficulties, the general structure of the tax is relatively simple, and can be stated thus:-

(a) property must "pass" on the death of an individual
(b) the property must fall within the jurisdiction of the statutes
(c) the property must then be valued
(d) any deductions or reliefs must be given
(e) the rates of duty must then be ascertained and applied
(f) the persons immediately accountable for the duty must pay it
and
(g) the persons upon whom the incidence of the duty finally falls must be ascertained in order to determine who ultimately bears the tax.

3. *Property Passing on a Death*
Section 1, Finance Act 1894 provides for Estate Duty to become payable where property passes on the death of an individual. There are eight sets of circumstances in which this can occur:—
F.A. 1894 S.2(1)(a) — Where the deceased was "competent to dispose" of property.
F.A. 1894 S.2(1)(b)–Where the deceased had a beneficial interest in property held in trust with the seven years ending with his death.
F.A. 1894 S.2(1)(c) – Where the deceased had gifted property within the seven years ending with his death, or within one year where the gift was for charitable or public purposes. In addition property gifted more than seven years prior to death will be dutiable if the deceased retained the right to benefit directly or indirectly, from the gifted property.
F.A. 1894 S.2(1)(e) – Where the deceased had

an interest in a partnership, in certain circumstances.
F.A. 1894 S.2(1)(f) – Where property was subject to an option to purchase.
F.A. 1894 S.2(1)(g) – Where certain property passed under Scots Law.
F.A. 1940 S.46 – Where the deceased had an interest in a closely controlled company, in certain circumstances.
F.A. 1969 S.38 – Where in certain specific circumstances, a trust in which the deceased had an interest is entirely, or partially, brought to an end within seven years prior to the deceased's death.
(F.A. 1894 S.2(1)(d) was repealed by the Finance Act 1969.)
A detailed analysis of the occasions on which property passes on a death is outwith the scope of this paper, and in fact the last five circumstances are of such a specialised nature that it is not proposed to discuss them further. However, the overall effect of the legislation is that the following property will pass on an individual's death:–
(a) Property which the deceased owned absolutely, including his share of property owned jointly, property held in partnership, and property coming into existence after his death, e.g. death benefits from a pension fund.
(b) Property gifted by the deceased within seven years prior to death, or one year in the case of gifts to charity etc., and property gifted outwith the seven year period, where the deceased was not entirely excluded from all benefits from the gifted property at all times in the seven years prior to his death. The benefits here referred to are benefits which are legally enforceable by the donor. Other benefits are ignored.
(c) Property held in trust where the deceased was entitled to a share of the trust income at any time in the seven years ending with death. Here a corresponding share of trust capital is subject to Estate Duty. If the deceased's income rights varied at the discretion of the trustees, the proportion of trust capital which is dutiable is that fraction corresponding to the share of income actually received by him in the seven years prior to death. A feature of U.K. trusteeship is the power of trustees to accumulate trust income, in certain circumstances and subject to specified time limits. Such a trust (or part thereof) will be subject to estate duty if the death of an individual brings the trust to an end, or prevents the trustees from accumulating income in the future.

4. *Jurisdiction*

Subject to double taxation relief, property situated in Great Britain is liable to estate duty on the death of an individual irrespective of the residence or domicile of the individual at the time of his death. The single exception to this rule exempts from duty certain United Kingdom government securities which at the time of death are in the beneficial ownership of a person neither domiciled nor ordinarily resident in the United Kingdom.
Property situated abroad is exempt from Estate Duty if the law governing the devolution of the property is neither Scots nor English law and either:–
(a) The deceased did not die domiciled in England or Scotland,
*or*
(b) the property passes by virtue of a disposition made by a person not domiciled in England or Scotland.
A gift of foreign property which would otherwise be chargeable to duty because the donor died within seven years of making the gift, will be exempt if the deceased was domiciled abroad either when he made the gift or when he died.

5. *Valuation*

Estate Duty is levied upon the "principal value" of property, by which is meant "The price which the property would fetch if sold on the open market at the time of the death of the deceased". This concept assumes a sale between a willing buyer and a willing seller, in such circumstances that the best possible price is obtained for the property. However, special rules apply to certain "controlled" companies. A "controlled company" is a company controlled by five or fewer persons, treating relatives, partners and nominees of an individual as one person. Excluded are companies which are subsidiaries of non-controlled companies, and quoted public companies where at least 25% of the voting power is held by the public. Foreign companies are *not* excluded.

Where an individual, at any time in the seven years prior to his death, had either voting control of the company (or had power to obtain voting control) or enjoyed a beneficial interest in half or more of the nominal amount of the issued shares or debentures, or for a continuous period of two years in those seven years had power equivalent to control, or the right to receive half the dividends or interest paid. In such a case, the shares are valued on the basis of the assets, including goodwill, which they represent. In other cases, shares are valued on the basis of the stock exchange quotation, or in a case where there is no quotation, on the basis of the expected dividend yield from the company.

6. *Deductions and Reliefs*

Once the property has been ascertained and valued, it is aggregated to form one estate, and after the various deductions and reliefs have been subtracted, the duty payable can be determined.

*Exemptions*

A number of categories of property are exempt from duty. These include:—

(1) Gifts of less than £500 in value to any one donee.

(2) Gifts out of the income of the deceased which form part of his normal expenditure.

(3) Property gifted to certain public bodies in the United Kingdom.

(4) Gifts in consideration of marriage are exempt from duty within certain limits. It is a condition of the exemption that the beneficiaries are either the parties to the marriage, or the future issue of the marriage. The limits on the exemptions are:—

(i) where the donor was a party to the marriage or a parent or grandparent etc. of a party to the marriage, the first £5,000 is exempt.

(ii) in all other cases, only the first £1,000 is exempt.

(5) The estate of a member of the Armed Forces of the United Kingdom who dies as a result of active service is exempt from duty.

(6) A valuable exemption from duty is available on the death of a surviving spouse. The conditions for the exemption to apply are that Estate Duty on the property was paid on the first death, and the surviving spouse was at no time competent to dispose of the property. This is normally achieved by giving the surviving spouse a life interest only in the property.

(7) "Tapering" relief is available where:—

(a) a gift has been made by an individual within seven years prior to his death (but not if the deceased retained benefits from the gifted property).

(b) property has been transferred out of a trust within seven years of the death of a beneficiary.

(c) a person has ceased to be a beneficiary of a trust within seven years prior to his death.

If the deceased survived the "event" in (a), (b) or (c) above by four years, the value of the property passing is reduced by 15%, if he survives five years the reduction is 30% and if he survives six years, the reduction is 60%.

(8) Where agricultural or industrial property is subject to Estate Duty, the duty payable thereon is reduced by 45%.

(9) Where duty is payable on property on the death of a person, and the same property becomes dutiable again by virtue of a second death within five years, then, provided the second person did not purchase the property, the duty thereon is reduced as follows:—

| Second death within | |
|---|---|
| 3 months of first—reduction— | 75% |
| 1 year | 50% |
| 2 years | 40% |
| 3 years | 30% |
| 4 years | 20% |
| 5 years | 10% |

7. *Aggregation*

All property which passes on the death of an individual is aggregated to form one estate and the rates of duty are applied to the total. Certain categories of property, however, are not subject to aggregation, these categories forming estates by themselves. Exemption from aggregation is available to:—

1. Works-of-art, and other objects of national, scientific or historic interest. This has been discussed at page 209 ante.
2. Growing timber. This is exempt from Estate Duty so long as the timber remains unsold. Where, however, the timber is sold after the death of the owner, the rate of duty payable on the proceeds is the average rate applicable to the rest of the estate, excluding the timber.
3. "Unsettled" property not exceeding £10,000 is not aggregable with settled property. Thus if a person has an interest in a trust, (other than a trust created by him) and in certain free estates of £8,000 the free estate would form a separate estate (and would not be subject to duty at all since duty is not payable on estates of under £10,000).

8. *Rates*

The rates of duty, which were altered by the Finance Act 1969 are given on page 209.

9. *Accountability and Incidence*

The deceased's executor is solely accountable for duty on the deceased's own personal property situated in Great Britain. The executor is also accountable for duty on real property situated in Great Britain and all foreign property of which the deceased was competent to dispose, but concurrently accountable with him are all persons who become beneficially entitled to the property. In other cases, e.g. where trust property passes, the persons who become beneficially entitled thereto are accountable.

The question of incidence is quite different from that of accountability. It determines who ultimately bears the liability for the duty paid. The general principles are:—

(a) Estate duty on personal (movable) property passing to the executor is a charge on the deceased's estate.

(b) Estate duty on other property is a first charge on that property.

LIC. S. GARCÍA-GRANADOS AND LIC. R.A. SOTO-JIMÉNEZ*:

# A BIBLIOGRAPHY ON THE CENTRAL AMERICAN COMMON MARKET

*In the light of the growing interest which the various regional economic integration programs are finding among persons concerned with fiscal matters throughout the world, the Bulletin for International Fiscal Documentation is including this bibliography among the articles of this issue. Other recent publications in the Bulletin concerning regional economic integration have been: Treaty for East-African Co-operation (extracts) (Supplement to Bulletin No. 2, Vol. XXII, Feb. 1968); Traité instituant l'Union Douanière et Economique de l'Afrique Centrale (Supplement to Bulletin No. 3, Vol. XXIII, March 1969); and the article "The Fiscal Aspects of International Co-operation in Africa—the Experience of the UDEAC and the EAC" by M.J. van den Abeelen and R.C. Hammond (Bulletin No. 3, Vol. XXIII, March 1969).*

Their work on different research programs concerning or related to the Central American Common Market[1], has made the authors aware that one of the main problems encountered in the study of this subject is the lack of a systematically organized bibliography of references. Consequently, an interested person must carry out a tedious and time-consuming search for the relevant books and articles before the research itself can be commenced.

The present bibliography is a selection of titles of books and articles available in specialized libraries and documentation centers in San José, New York, Paris and Amsterdam, as well as material which, for various reasons, the authors consider to be important.

For the convenience of the reader the bibliography is arranged in alphabetical order under four headings: (a) Background and general studies; (b) Economic development, economic and financial aspects; (c) Institutional framework; and (d) Central American common law. A list of important periodicals has been appended for the use of libraries and persons interested in the further development of the Central American Common Market.

*(a)—Background and general studies*[2]

Abelardo Delgado, Pedro. ORIGINE, STRUCTURE ET FONCTIONNEMENT DU M.C.C.A. Tiers Monde. (July-Sept. 1965).

* Sergio T. García Granados and Rolando A. Soto-Jiménez are Central American lawyers, graduates from the Universities of San Carlos (Guatemala) and Costa Rica, respectively. Licenciado García Granados, D.E.S. for the Doctorat de l'Université de Paris (Public International Law), is presently a research associate at the International Bureau of Fiscal Documentation. Licenciado Soto-Jiménez, also M.C.J. from New York University, is presently attending advanced courses on Economic Integration at the University of Amsterdam.

1. Composed of Guatemala, El Salvador, Honduras, Nicaragua and Costa Rica.

2. Under this heading are also included some surveys on specific problems which, in the authors' opinion, may be of special interest for the reader.

Browning, D. THE CENTRAL AMERICAN COMMON MARKET.
Board of Trade Journal. London. (July 1966).

Cochrane, C.J. COSTA RICA, PANAMA AND THE CENTRAL AMERICAN ECONOMIC INTEGRATION.
Journal of Inter American Studies. (July 1965).

Cuadra Pasos, Carlos. FILOSOFIA DEL INTERNACIONALISMO CENTROAMERICANO.
Revista Conservadora del Pensamiento Centroamericano. no. 47. Managua (Aug. 1964).

CEPAL. SOBRE LA POSIBLE INCORPORACION DE PANAMA AL MERCADO COMUN CENTROAMERICANO.
CEPAL. México D.F. (1962). (Limited distribution).

Dell, Sidney. A LATIN AMERICAN COMMON MARKET?
London: Oxford University Press (1966).

Federal Reserve Bank of New York (staff). THE EMERGING COMMON MARKET IN LATIN AMERICA.
F.R.B. Monthly Review. New York (Sept. 1960).

Fenwick, C.G. THE ORGANIZATION OF CENTRAL AMERICAN STATES.
American Journal of Int. Law. Washington (July, 1952).

Fernández-Shaw, Félix. LA INTEGRACION DE CENTROAMERICA.
Ediciones Cultura Hispánica. Madrid (Gráficas Uguina). (1965).

Fernández-Shaw, Félix. ESTADO ACTUAL DE LA INTEGRACION ECONOMICA CENTRO-AMERICANA.
Revista Política Internacional. Madrid (Nov.-Dec. 1964).

Fernández-Shaw, Félix. PANAMA Y LA ODECA.
Revista de Estudios Políticos. Madrid (Nov.-Dec. 1963).

Fernández-Shaw, Félix. LA NUEVA CARTA DE SAN SALVADOR.
Revista de Política Internacional. no. 67. Madrid (May-June, 1963).

Gutiérrez, Carlos José. LA ENSENANZA DEL DERECHO COMUNITARIO EN CENTROAMERICA.
Revista de Derecho Económico, Facultad de Ciencias Jurídicas y Sociales. Universidad de Chile. Santiago (July-Dec. 1966).

Harvard Graduate School of Business Administration (Report). MANAGEMENT PROBLEMS AND OPPORTUNITIES FOR MANAGEMENT TRAINING IN CENTRAL AMERICA (1963). (Not published).

Herrarte, Alberto. LA UNION DE CENTROAMERICA. TRAGEDIA Y ESPERANZA.
Editorial del Ministerio de Educación Pública. Guatemala (1955) (2nd Ed. 1964).

Hildebrand, J.R. THE CENTRAL AMERICAN COMMON MARKET.
Journal of Inter-American Studies (July 1967).

Instituto Interamericano de Estudios Jurídicos Internacionales. DERECHO COMUNITARIO CENTROAMERICANO, ENSAYO DE SISTEMATIZACION.
Imprenta Trejos hnos. San José, Costa Rica C.A. (1968).

INTAL. LA INTEGRACION LATINOMERICANA. SITUACION Y PERSPECTIVAS.
Buenos Aires, Intal (B.I.D.) (1965).

Karnes, Thomas L. THE FAILURE OF A UNION (Central America 1824-1960).
Chapel Hill, The University of North Carolina Press (1961).

Lagos, Gustavo. EL ROL POLITICO DE LAS ORGANIZACIONES ECONOMICAS REGIONALES EN AMERICA LATINA.
Revista de la Integración. BID–INTAL (Nov. 1967).

Lockley, L.C. A GUIDE TO MARKET DATA IN CENTRAL AMERICA.
Central American Bank for Economic Integration. Tegucigalpa, Honduras (1964).

Maza. NOTAS SOBRE EL M.C.C.A. (PROBLEMAS JURIDICOS).
Revista de Estudios Políticos (Madrid). (May-Aug. 1965 and Sept.-Oct. 1966).

Méndez Munevar, Jorge. LA ALALC Y EL MERCADO COMUN CENTROAMERICANO: UNA EVOLUCION COMPARATIVA EN LA INTEGRACION LATINOAMERICANA.
INTAL (BID). Buenos Aires (1965).

Monteforte Toledo, Mario. LA INTEGRACION ECONOMICA Y EL PANORAMA POLITICO DE CENTROAMERICA.
Revista de la Universidad de El Salvador. San Salvador (Sept. 1968).

Núñez, Pbro. Benjamín. SOCIOLOGIA DE LA INTEGRACION.
(Course at: Estudios post-graduados sobre problemática de la Integración C. Americana, San José. summer 1967). Instituto Centroamericano de Derecho Comparado. Tegucigalpa (1967). (Mimeographed).

Pincus, Joseph. THE CENTRAL AMERICAN COMMON MARKET.
Agency for International Development (U.S.A.). Washington D.C. (1962).

Plaza, Carlos. LOS RECURSOS NATURALES EN LA INTEGRACION LATINOAMERICANA.
Revista de la Integración. INTAL – BID no. 2. (May 1968).

Ortez, Enrique. LA ODECA, SU PROBLEMATICA JURIDICA Y POLITICA. (Course, 1965).
Instituto Centroamericano de Derecho Comparado. Tegucigalpa (1966) (Limited edition).

Ramírez M., Sergio. VEINTE ANOS DE INTEGRACION UNIVERSITARIA CENTROAMERICANA.
Revista de la Universidad de El Salvador. San Salvador (Sept. 1968).

Rostand. LE FEDERALISME EN AMERIQUE CENTRALE.
Notes et Documents, (March 1965).

Saxe-Fernández. EL CONSEJO CENTROAMERICANO DE DEFENSA Y LA PAX AMERICANA.
Cuadernos Americanos (May-June 1967).

Sidjanski, Dusan. DIMENSIONES INSTITUCIONALES DE LA INTEGRACION LATINOAMERICANA.
Instituto para la Integración de América Latina (INTAL). Buenos Aires (1967).

SIECA. CENTRO AMERICA Y SU MERCADO COMUN. Vol. III.
Guatemala (1965).

Villagrán – Kramer, Francisco. ASPECTOS SOCIALES Y POLITICOS DE LA INTEGRACION CENTROAMERICANA.
Revista de la Universidad de San Carlos. Guatemala (No. LXVI – 1965).

Villagrán – Kramer, Francisco. ADECUACION DE LA LEGISLACION LABORAL SALVADORENA A LOS REQUERIMIENTOS DEL MERCADO COMUN CENTROAMERICANO.
Revista de la Universidad de El Salvador. San Salvador (Sept. 1968).

Villatoro. NOTAS SOBRA EL MCCA.
Revista Económica. México (Oct. 1965).

(*b*) – *Economic development, economic and financial aspects*

Abelardo Delgado, Pedro. LA PLANIFICACION Y LA INTEGRACION ECONOMICA CENTRO-AMERICANA.
Boletín de la Integración – INTAL (Sept. 1966).

Alcantara, Edwin. THE CENTRAL AMERICAN COMMON MARKET (INTEGRATION AS AN INSTRUMENT OF ECONOMIC AND SOCIAL DEVELOPMENT).
Ph. D. Dissertation, Harvard University (1969).
(Not published).

Bennaton, Abraham. DER ZENTRALAMERIKANISCHE GEMEINSAME MARKT in Integration in Lateinamerika.
Lateinamerika Institut an der Hochschule St. Gallen für Wirtschafts- und Sozialwissenschaften. Orell-Füssli-Verlag. Zurich (1965).

Bennaton Ramos, Abraham. EL MERCADO COMUN CENTROAMERICANO. SU EVOLUCION Y PERSPECTIVAS (Thesis).
Universidad N.A. de Honduras. Facultad de Ciencias Económicas. Tegucigalpa (1964).

Berstein, Edward M. and collaborators. EL DESARROLLO DE UN MERCADO DE CAPITALES EN CENTROAMERICA.
In: Un Mercado de Capitales Centroamericano edited by BCIE – Publi. Centro de Estudios Monetarios Latino-Americanos (CEMLA) (1967).

Blair, Calvin P. ENTREPRENEURIAL BEHAVIOR IN CENTRAL AMERICA: SOURCES OF INITIATIVE IN CENTRAL AMERICAN INTEGRATION. Research EDC (1967).
Dep. of Business Admin. University of Texas.

Camara de Compensación Centro-Americana. TRES ANOS DE COMPENSACION MULTILATERAL CENTROAMERICANA.
Publicación C. de C. Centroamericana, Tegucigalpa (196?).

Carlos M. Castillo. GROWTH AND INTEGRATION IN CENTRAL AMERICA.
Praeger Special Studies in International Economy and Development. Praeger. N.Y.-Washington – London (1965).

Cameroun, Banque Centrale (Afrique Ecuatoriale). LES ORGANISMES FINANCIERS ET MONETAIRES DU MARCHE COMMUN DE L'AMERIQUE CENTRALE (April 1967).

CEPAL – ONU. EVALUACION DE LA INTEGRACION ECONOMICA EN CENTROAMERICA.
O.N.U. New York (1966).

Chou, Y.M. ECONOMIC INTEGRATION IN LESS DEVELOPED COUNTRIES.
Journal of Development Studies. (July 1967).

Cochrane, C.J. COSTA RICA, PANAMA AND THE CENTRAL AMERICAN ECONOMIC INTEGRATION.
(See Section (a) *supra*)

Castrillo Zeledón, Mario. LA ZONA DE LIBRE COMERCIO EN CENTROAMERICA.
Revista de la Universidad de El Salvador, San Salvador (Sept. 1968).

Dalponte, Mario. LA MECANICA DE LA INTEGRACION ECONOMICA COMO MEDIO COMPLEMENTARIO DE DESARROLLO.
Observaciones críticas en torno al progreso centroamericano. Revista de la Universidad de El Salvador, San Salvador. (Sept. 1968).

Delgado, Enrique. EL BANCO CENTROAMERICANO Y LA INTEGRACION ECONOMICA CENTROAMERICANA.
(Course at: Estudios post-graduados sobre problemática de la Integración Centroamericana. Sn. José, summer 1967). Instituto Centroamericano de Derecho Comparado, Tegucigalpa (1967). (Mimeographed).

Eckenstein, Christoph. DER ZENTRALAMERIKANISCHE GEMEINSAME MARKT: EIN BEISPIEL ERFOLGREICHER ZUSAMMENARBEIT UNTER ENTWICKLUNGSLÄNDERN in Integration in Lateinamerika. Lateinamerika Institut an der Hochschule St. Gallen für Wirtschafts- und Sozialwissenschaften, Orell-Füssli-Verlag, Zürich (1965).

Federal Reserve Bank of New York (staff). THE EMERGING COMMON MARKET IN LATIN AMERICA. (See Section (a) *supra*).

Fernández-Shaw, Félix. LA INTEGRACION DE CENTROAMERICA. (See Section I *supra*).

Fernández-Shaw, Félix. PANAMA Y LA ODECA.
(See Section I *supra*).

Fligler, Carlos. MULTINATIONAL PUBLIC ENTERPRISES.
Washington, International Bank of Reconstruction and Development (1967).

Hansen, Roger D. CENTRAL AMERICA: REGIONAL INTEGRATION AND ECONOMIC DEVELOPMENT.
Studies in Development Progress, National Planning Association. Washington D.C. (1967).

Hildebrand, J.R. THE CENTRAL AMERICAN COMMON MARKET.
(See Section (a) *supra*).

INTAL. LA INTEGRACION LATINOAMERICANA.
(See Section (a) *supra*).

Instituto Interamericano de Estudios Jurídicos Internacionales. DERECHO COMUNITARIO CENTROAMERICANO.
(See Section (a) *supra*).

Kahnert, F., P. Richards, E. Stoutjesdijk, P. Thomopoulos. ECONOMIC INTEGRATION AMONG DEVELOPING COUNTRIES.
Development Centre of the OECD – Paris (1969).

Lagos, Gustavo. EMPRESAS MULTINACIONALES: ASPECTOS SOCIO – ECONOMICOS, POLITICOS E INSTITUTIONALES.
Revista de la Integración. INTAL – BID no. 2 (May 1968).

Millán, J.A. LA INTEGRACION ECONOMICA CENTROAMERICANA Y SU INFLUENCIA EN LA EXPANSION INDUSTRIAL DE MEXICO.
(Publisher unknown). México (1963).

Oficina de Estudios para la Colaboración Económica Internacional. MERCADO COMUN CENTROAMERICANO.
Buenos Aires (1968).

Perroux, F. INDUSTRIALIZATION ET GROUPEMENTS DES NATIONS.
In: L'Economie des jeunes nations. Presses Universit. de France (1962).

Schooler, Robert D. AN INQUIRY INTO PRODUCT BIAS AND PREDILECTION WITHIN THE C.A.C.M.
Ph. D. dissertation: Dept. of Business administration, University of Texas (1965) (Limited edition).

SIECA. INVENTARIO DE ESTUDIOS BASICOS SOBRE RECURSOS NATURALES DE CENTROAMERICA.
Guatemala (196. .).

SIECA. 5 ANOS DE LABORES EN LA INTEGRACION ECONOMICA CENTROAMERICANA.
Guatemala (Oct. 1966).

SIECA. PROBLEMAS DEL MERCADO COMUN (Nota de la Secretaría).
Consejo Económico Centroamericano (7th meeting). Guatemala (July-Aug. 1967). (Limited edition).

Urquidi, Victor. LATEINAMERIKA HEUTE. (DER ZENTRALAMERIKANISCHE PROBLEM).
Verlag August Lutzeyer, Baden-Baden. Bonn (1962).

Villagrán-Kramer, Francisco. INTEGRACION ECONOMICA CENTROAMERICANA.
Editorial Universitaria. Guatemala (1967).

Weekly, James K. TOWARDS A CENTRAL AMERICAN CAPITAL MARKET.
Journal of Common Market Studies.
(Edited by Uwe Kitzinger and Miguel S. Wionczek).
Basil, Blackwell, Oxford. (Vol. VII, no. 2) (1968).

Wionczec, Miguel S. THE CENTRAL AMERICAN INTEGRATION, EARLY SUCCESS AND GROWING LIMITATIONS.
Bolsa Review London (March 1967).

Wionczec, Miguel S. INTEGRACION ECONOMICA Y DISTRIBUICION REGIONAL DE LAS ACTIVIDADES INDUSTRIALES.
Trimestre Económico (Jul.-Sept. 1966).

Wionczec, Miguel S. INTEGRACION DE AMERICA LATINA – EXPERIENCIAS Y PERSPECTIVAS.
México. Fondo de Cultura Económica (1964). In English in: Praeger Series on International Economics & Development.

(*c*) – *Institutional framework*

Abelardo-Delgado, Pedro. ORIGINE, STRUCTURE ET FONCTIONNEMENT DU MCCA.
(See Section (a) *supra*).

Adam. H.T. BANQUE DE L'AMERIQUE CENTRAL, ACCORD 1960 (TEXTE).
In: Les Organismes internationaux spécialisés.
Vol. 3 – Paris (1967).

Browning, D. THE CENTRAL AMERICAN COMMON MARKET.
Board of Trade Journal. (See Section (a) *supra*).

Bennaton, Abraham. DER ZENTRALAMERIKANISCHE GEMEINSAME MARKT.
(See Section (b) *supra*).

Cámara de Compensación Centro-Americana. TRES ANOS DE COMPENSACION MULTILATERAL CENTROAMERICANA.
(See Section (b) *supra*).

Cameroun, Banque Centrale (Afrique Ecuatoriale). LES ORGANISMES FINANCIERS ET MONETAIRES DU MARCHE COMMUN DE L'AMERIQUE CENTRALE (April 1967).

CEPAL – ONU. EVALUACION DE LA INTEGRACION ECONOMICA EN CENTROAMERICA.
(See Section (b) *supra*).

Commerce Clearing House, Inc. CENTRAL AMERICAN COMMON MARKET (C.A.C.M.).
in: Common Market Reports, Vol. I. (1965).

Dell, Sidney. A LATIN AMERICAN COMMON MARKET?
(See Section (a) *supra*).

Delgado, Enrique. EL BANCO CENTROAMERICANO Y LA INTEGRACION ECONOMICA CENTROAMERICANA.
(See Section (b) *supra*).

ESAPAC. LOS INSTRUMENTOS DEL MERCADO COMUN CENTROAMERICANO.
Costa Rica (1965).

Fajardo Maldonado, Arturo. SOBERANIA Y DERECHO INTERNACIONAL EN EL PROCESO DE INTEGRACION ECONOMICA CENTROAMERICANA.
In: Revista de la Facultad de Ciencias Jurídicas y Sociales.
Universidad de San Carlos, Guatemala (nos. 3, 4, 5 and 6 of 1967-1968) and Revista de la Universidad de El Salvador (Sept. 1968).

Fernández-Shaw, Félix. LA INTEGRACION DE CENTROAMERICA.
(See Section (a) *supra*).

Fernández-Shaw, Félix. ESTADO ACTUAL DE LA INTEGRACION ECONOMICA CENTRO – AMERICANA.
(See Section (a) *supra*).

García-Amador, F.V. INTRODUCCION A LA PROBLEMATICA JURIDICA E INSTITUCIONAL DE LA INTEGRACION (Course).
Instituto Centroamericano de Derecho Comparado, Tegucigalpa (1965) (Mimeographed).

García-Amador, F.V. INSTITUTIONAL DEVELOPMENTS IN CENTRAL AMERICAN INTEGRATION.
American Society of International Law. Annual meeting, 1961. Washington (1967).

INTAL. LA INTEGRACION LATINOAMERICANA.
Situación y Perspectivas. Buenos Aires, INTAL – BID (1965).

Instituto Interamericano de Estudios Jurídicos Internacionales. DERECHO COMUNITARIO CENTROAMERICANO, ENSAYO DE SISTEMATIZACION.
(See Section (a) *supra*).

Maza. NOTAS SOBRE EL M.C.C.A. (PROBLEMAS JURIDICOS).
(See Section (a) *supra*).

Méndez M., Jorge. LE ALALC Y EL MERCAD OCOMUN CENTROAMERICANO: UNA EVOLUCION COMPARATIVA EN LA INTEGRACION LATINOAMERICANA.
(See Section (a) *supra*).

Oficina de Estudios para la Colaboración Económica Internacional. MERCADO COMUN CENTROAMERICANO.
Buenos Aires (1968).

Ramírez, Roberto. LA INTEGRACION JURIDICA CENTROAMERICANA (Course 1965).
Instituto Centroamericano de Derecho Comparado. Tegucigalpa (1966) (Mimeographed).

Saxe-Fernández. EL CONSEJO CENTROAMERICANO DE DEFENSA Y LA PAX AMERICANA.
(See Section (a) *supra*).

Sidjanski, Dusan. DIMENSIONES INSTITUCIONALES DE LA INTEGRACION LATINO-AMERICANA.
(See Section (a) *supra*).

SIECA. CENTRO AMERICA Y SU MERCADO COMUN. Vol. III.
(See Section (a) *supra*).

SIECA. 5 ANOS DE LABORES EN LA INTEGRACION ECONOMICA CENTROAMERICANA.
(See Section (b) *supra*).

SIECA. PROBLEMAS DEL MERCADO COMUN (Nota de la Secretaría).
(See Section (b) *supra*).

Simmonds, K.R. THE CENTRAL AMERICAN COMMON MARKET: AN EXPERIMENT IN REGIONAL INTEGRATION.
The International and Comparative Law. Quarterly (The British Institute of International and Comparative Law). London (Vol. 16, 1967).

Sol Castellanos, Jorge. LA EVOLUCION INSTITUCIONAL DEL MERCADO COMUN CENTROAMERICANO (Course, 1965).
Instituto Centroamericano de Derecho Comparado. Tegucigalpa (1966) (Mimeographed).

Villagrán-Kramer, Francisco. INTEGRACION ECONOMICA CENTROAMERICANA.
See Section (b) *supra*).

Villagrán-Kramer, Francisco. LOS INSTRUMENTOS LEGALES DE LA INTEGRACION ECONOMICA CENTROAMERICANA.
Revista Derecho de la Integración. INTAL (BID) no. 3 (Oct. 1968).

Villagrán-Kramer, Francisco; Mario Quiñones Amézquita and others. ASPECTOS JURIDICOS E INSTITUCIONALES DE LA INTEGRACION ECONOMICA CENTROAMERICANA.
Colegio de Abogados. Guatemala (1967).

Wionczec, Miguel S. (Editor). ECONOMIC COOPERATION IN LATIN AMERICA, AFRICA AND ASIA. A Handbook of Documents.
M.I.T. Press. Cambrige (Mass.)-London (1969).

*(d) Central American common law*[3]

Baca Muñoz, M. ESTUDIO INTRODUCTORIO AL PROBLEMA DE LA ARMONIZACION TRIBUTARIA EN EL MERCADO COMUN CENTROAMERICANO.
Revista de Finanzas y Hacienda Pública. no. 78, Madrid (Nov.-Dec. 1968).

Bertrand Galindo, Francisco. BREVE ANALISIS DEL REGLAMENTO SOBRE PROCEDIMIENTOS PARA RESOLVER CONFLICTOS.
In: Resolución de Conflictos en el Mercado Común Centroamericano, Universidad de El Salvador-San Salvador. (no. 5, 1968).

3. It must be noted that the term "common law" is used instead of the term "community law" normally used in Europe. In fact, the use of the adjective "community" (communautaire) is correct for a certain type of European law, which is being developed by the "European Communities"-ECSC, EEC and Euratom. This is not the case in Central America where the integration (legal and economic) process is developing to a great extent through practice or by private and public initiative, independently from the institutional framework set up by the integration treaties, mainly by the General Treaty of Integration of 13 December 1960 signed in Managua.

Bertrand Galindo, Francisco. BASES CONSTITUCIONALES PARA LA CREACION DE ORGANISMOS SUPRANACIONALES. DETERMINACION DEL CONCEPTO SUPRANACIONAL.
Buenos Aires, Facultad de Jurisprudencia y Ciencias Sociales de la Universidad de El Salvador (1968).

Bureau International des Tarifs Douaniers. MARCHE COMMUN CENTRE-AMERICAIN.
Bulletin International des Douanes, Fiscicule 126, Bruxelles, Rue de l'Association, 38 (1969).

Fernández-Shaw, Félix. LA INTEGRACION DE CENTROAMERICA.
(See Section (a) *supra*).

Fonseca, Gautama. LAS FUENTES DEL DERECHO COMUN CENTROAMERICANO.
Revista Derecho de la Integración. INTAL (BID). Buenos Aires, (Oct. 1967).

García Granados, Sergio T. CENTRAL AMERICAN TAX LAW. INTERNATIONAL TAXATION OF INCOME IN CENTRAL AMERICA.
Bulletin for International Fiscal Documentation. Amsterdam (June, 1969).

Guier, Enrique. LA JUSTICIA EN EL MERCADO COMUN CENTROAMERICANO.
Revista de Ciencias Jurídicas. Universidad de Costa Rica (no. 6, 196. .).

Gutiérrez, Carlos, José. LA ENSENANZA DE DERECHO COMUNITARIO EN CENTROAMERICA.
(See Section (a) *supra*).

Instituto Interamericano de Estudios Jurídicos Internacionales: DERECHO COMUNITARIO CENTROAMERICANO, ENSAYO DE SISTEMATIZACION.
(See Section (a) *supra*).

International Commission of Jurists. THE CENTRAL AMERICAN DRAFT CONVENTION (ON HUMAN RIGHTS) COMPARED (WITH THE INTER-AMERICAN DRAFT CONVENTION ON HUMAN RIGHTS AND THE EUROPEAN CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS).
Journal of the International Commission of Jurists, Summer 1965.

International Commission of Jurists. THE CENTRAL AMERICAN DRAFT CONVENTION ON HUMAN RIGHTS AND THE CENTRAL AMERICAN COURT. (Staff Study).
Journal of the International Commission of Jurists. Summer 1965.

Kozalchyk, Boris and Octavio Torrealba. PROYECTO REVISADO DE BASES Y COMENTARIOS SOBRE LA SOCIEDAD ANONIMA MULTINACIONAL EN CENTROAMERICA.
In: Revista de Ciencias Jurídicas. Escuela de Derecho. Universidad de Costa Rica. (no. 12. Dec. 1968).

León Aragón, Oscar de. COMPENDIO DE LEGISLACION CENTROAMERICANA SOBRE TITULOS VALORES Y SOCIEDADES ANONIMAS.
Banco Centroamericano de Integración Económica. Tegucigalpa (1966).

Marroquín, Alejandro Dagoberto. INTEGRACION Y DERECHO.
Revista de la Universidad de El Salvador, San Salvador (Sept. 1968).

Ramírez, Roberto. LA INTEGRACION JURIDICA CENTROAMERICANA (Course, 1965).
(See Section (c) *supra*).

SIECA. ARANCEL DE ADUANAS CENTROAMERICANO (Loose-leaf).
SIECA, Guatemala (started 1963. Irregular).

Simmonds, K.R. THE CENTRAL AMERICAN COMMON MARKET: AN EXPERIMENT IN REGIONAL INTEGRATION.
The International and Comparative Law. Quarterly.
(See Section (c) *supra*).

Simmonds, K.R. THE LAW OF CENTRAL AND SOUTH AMERICAN REGIONAL ORGANIZATIONS.
The International and Comparative Law. Quarterly. (The British Institute of International and Comparative Law). London (Vol. 16. 1967).

Soto-Jiménez, R.A. LA JUSTICIA EN LA INTEGRACION REGIONAL (Centroamericana).
In: Naturaleza Jurídica de los Actos Comunitarios. (Thesis). Facultad de Derecho. Universidad de Costa Rica. (1968). (Mimeographed).

Soto-Jiménez, R.A. THE FULL FAITH AND CREDIT TO BE GIVEN TO ADMINISTRATIVE ACTS IN THE CENTRAL AMERICAN COMMON MARKET AND IN THE UNITED STATES CONSTITUTION. (Thesis).
Inter American Law Institute, New York University (1969). (Mimeographed).

Tijerino Medrano, J.A. ANTECEDENTES DE UNIFICACION LABORAL DE CENTROAMERICA.
Revista Conservadora del pensamiento Centroamericano. No. 46. Managua (July 1964).

Universidad Autónoma de Guadalajara. INTEGRACION Y DERECHO DE LA INTEGRACION.
Guadalajara, México (1967).

Villagrán-Kramer, Francisco and José Roberto Nolasco. REGIMEN JURIDICO DEL TRANSPORTE TERRESTRE EN CENTROAMERICA.
Derecho de la Integración (Review) – INTAL – BID, Buenos Aires, no. 5 (Oct. 1969).

Villagrán-Kramer, Francisco and Mario Quiñones Amézquita, and others. ASPECTOS JURIDICOS INSTITUCIONALES DE LA INTEGRACION ECONOMICA CENTROAMERICANA.
(See section (c) *supra*).

Villagrán-Kramer, Francisco. ADECUACION DE LA LEGISLACION LABORAL SALVADORENA A LOS REQUERIMIENTOS DEL MERCADO COMUN CENTROAMERICANO.
(See Section (c) *supra*).

Valderrama Pergolesi, Ricardo. UN DERECHO PARA LA INTEGRACION.
Revista de Derecho Público. Universidad de Chile. Santiago (nos. 5-6 julio y diciembre 1966).

Watkin, Virginia G. TAXES AND TAX HARMONIZATION IN CENTRAL AMERICA.
Harvard Law School (International Tax Program). Cambridge, Mass. (1967).

Wionczec, Miguel. INTEGRACION ECONOMICA Y DISTRIBUICION REGIONAL DE LAS ACTIVIDADES INDUSTRIALES.
(See Section (b) *supra*).

Wionczec, Miguel: INTEGRACION DE AMERICA LATINA – EXPERIENCIAS Y PERSPECTIVAS.
(See Section (b) *supra*).

Zeledón, Marco Tulio. DIGESTO CONSTITUCIONAL CENTROAMERICANO.
ODECA, San Salvador (1962).

*List of periodicals regularly containing news and/or articles on C.A.C.M. Developments*

ALALC. SINTESIS MENSUAL.

Asociación Latinoamericana de Libre Comericio – Montevideo.

BANK OF LONDON & SOUTH AMERICA REVIEW (BOLSA).

Bank of London & South America – London.

BOLETIN DE LA INTEGRACION.

Instituto para la Integración de América Latina (INTAL – BID). Buenos Aires.

DERECHO DE LA INTEGRACION.

Instituto para la Integración de América Latina (INTAL – BID). Buenos Aires.

JOURNAL OF INTER-AMERICAN STUDIES.

Gainesville, Florida (USA).

LIST OF RECENTLY COMPLETED STUDIES (American Republics).

LIST OF STUDIES RECENTLY IN PROGRESS (American Republics).

Office of Intelligence Research – External Research Staff. Department of State – U.S.A. (Irregular – Limited distribution).

REVISTA CONSERVADORA DEL PENSAMIENTO CENTROAMERICANO.

Managua.

REVISTA DE CIENCIAS JURIDICAS

Escuela de Derecho. Universidad de Costa Rica – San José.

REVISTA DE LA FACULTAD DE CIENCIAS JURIDICAS Y SOCIALES.

Universidad de San Carlos. Guatemala.

REVISTA DE LA INTEGRACION.

Instituto para la Integración de América Latina (INTAL – BID). Buenos Aires.

REVISTA DE LA UNIVERSIDAD DE EL SALVADOR.

San Salvador.

SIECA. – CARTA INFORMATIVA.

Secretaría Permanente del Tratado de Integración Económica Centro Americana (SIECA). Guatemala.

# BIBLIOGRAPHY

## BOOKS

### BELGIUM

BELGISCH BURGERLIJK WETBOEK, published by Editions Gérard & Co, Verviers, 1969. 487 pp.
Complete official text in French and Dutch of the Belgian Civil Code as in effect on May 1, 1969.

Library International Bureau of
Fiscal Documentation no. B 4590.

### CANADA

ESTATE TAX, GIFT TAX AND SUCCESSION DUTIES GUIDE, published by Commerce Clearing House Canadian, Don Mills, Ont., 1969. 206 pp.
Discussion on the federal estate tax and gift tax, the Alberta and Saskatchewan estate tax rebate and the succession duties of British Columbia, Ontario and Quebec as amended to August 1, 1969.

Library International Bureau of
Fiscal Documentation no. B 4531.

### COLOMBIA

DISPOSICIONES ECONOMICAS DE 1967, published by Banco de la Republica, Bogota, 1968. 266 pp.
List of all the laws and rulings which have an economic character published in 1967. A short survey follows each item. Systematical and chronological indexes are included.

Library International Bureau of
Fiscal Documentation no. B 5042.

### CZECHOSLOVAKIA

THE FINANCE OF CZECHOSLOVAKIA IN THE NEW SYSTEM OF MANAGEMENT, published by Slovak Pedagogic Publishing House, Bratislava 1968. 287 pp.
Collection of articles by various authors on finance and economics connected with the change-over of the economic system of management in Czechoslovakia.

Library International Bureau of
Fiscal Documentation no. B 4595.

### FRANCE

PRECIS DE FINANCES PUBLIQUES, by P.M. Gaudemet. 2 volumes published by Editions Montchrestien, 11 rue Cujas, Paris, 1970. Vol. I 467 pp. Vol. II 530 pp.
Handbook in two volumes on public finance.

Library International Bureau of
Fiscal Documentation no. B 4576.

### GERMANY

AUSFUHRLAND-PRINZIP, EINFUHRLAND-PRINZIP UND GEMEINSAMER-MARKT-PRINZIP, by D. Biehl. Published by Carl Heymanns Verlag KG, Köln, 1969. 407 pp.
Publication of a thesis on the principle of origin and of destination for purposes of both income and turnover tax, and a common market principle in view of the tax harmonization theory. As the manuscript was finalized in the autumn of 1966 the tax harmonization developments thereafter concerning the introduction of a tax on value added in the common market countries are not covered in this treatise.

Library International Bureau of
Fiscal Documentation no. B 4573

DIE BESTEUERUNG PRIVATER INDUSTRIEBETRIEBE IN MITTELDEUTSCHLAND, Kritische Analyse der steuerlichen Regelungen und ihre betriebswirtschaftlichen Auswirkungen im Vergleich mit der Bundesrepublik Deutschland, by D. Ernst. Published by Carl Heymanns Verlag KG, Köln, Berlin, Bonn, München 1967. 452 pp.
Thesis analysing the taxation of private business enterprises in the German Democratic Republic as compared to the taxation provisions applied in the Federal German Republic and its effect on business. A bibliography is appended.

Library International Bureau of
Fiscal Documentation no. B 5030

BETRIEBLICHE ALTERSVERSORGUNG, by E. Heissmann. Published by Wilhelm Goldmann Verlag, München, 1969. 153 pp.

Considerations on the old age pension schemes with reference to tax treatment.

Library International Bureau of
Fiscal Documentation no. B 4548

DIE BELASTUNG DEUTSCHER UND FRANZÖSISCHER KAPITALGESELLSCHAFTEN MIT GEWINNABHÄNGIGEN STEUERN, by H. Egner. Published by Carl Heymanns Verlag Köln, Berlin, Bonn, München 1969. 498 pp.
Study analysing the burden of taxes levied on profits derived by a German and a French corporation. The author deals with the provisions under French and German tax law relating to computation of taxable income tax as an instrument for tax comparison rather than rates of income tax.

Library International Bureau of
Fiscal Documentation no. B 4572.

DAS EINKOMMENSTEUERRECHT, Kommentar zum Einkommensteuergesetz, by E. Littmann. Published by Fachverlag für Wirtschafts- und Steuerrecht Schäffer & Co. GmbH, Stuttgart, 1969. 2002 pp.
The ninth revised edition of a handbook which explains the individual income tax per section of the law with reference to case law and relevant literature. Appended are the text of laws which amends and supplements the individual income tax such as the Tax Amendment Law 1969.

Library International Bureau of
Fiscal Documentation no. B 5033.

HANDBUCH DER MEHRWERTSTEUER, Systematische Textsammlung zum Umsatzsteuerrecht, by P.G. Flockermann. Published by Richard Hermes Verlag, Classenweg 26, 2 Hamburg 64, 1969.
Loose-leaf handbook on the tax on value added consisting of a per section arrangement system of the text of the law and related provisions thereto.

Library International Bureau of
Fiscal Documentation no. B 4509.

KARTELLSTEUERRECHT, by W. Friedrich. Published by Carl Heymanns Verlag KG, Köln, 1969. 279 pp.
This second edition is a reprint of its previous edition and explains the taxation of cartels and syndicates under the 1941 Statute on corporation tax, net worth tax and trade tax to Cartels and Syndicates. Text of the Statute and reference to case law and literature is stated as of August 31, 1942. As no major changes have taken place since then an appended supplement updates the material as of June 30, 1969.

Library International Bureau of
Fiscal Documentation no. B 5031.

REICHSABGABENORDNUNG MIT FINANZGERICHTSORDNUNG, STEUERBERATUNGSGESETZ UND ALLEN NEBENGESETZEN EINSCHLIESSLICH LANDESRECHTLICHER BESTIMMUNGEN, published by Verlag C.H. Beck, München, 1969, 412 pp.
Revised 34th edition of the text of the Fiscal Code, the Fiscal Procedure Code, the Tax Consultants Law and other statutes in connection therewith, including annotations, the material of which has been updated as of November 1, 1969.

Library International Bureau of
Fiscal Documentation no. B 5035, B 4481.

STEUERBEGÜNSTIGT UMWANDELN, by L. Meyer-Arndt. Published by Verlagsgesellschaft Recht und Wirtschaft GmbH, Heidelberg, 1970 405 pp.
Consideration on the new tax legislation with respect to company transformations and company mergers. The relevant texts of the laws are appended.

Library International Bureau of
Fiscal Documentation no. B 5004.

## HONDURAS

EL IMPUESTO SOBRE VENTAS EN HONDURAS, published by Secretaria de Economia y Hacienda, Direccion General de la Tributacion Directa Tegucigalpa, D.C. Honduras, C.A., 1967.
Survey of the sales tax in Honduras.

Library International Bureau of
Fiscal Documentation no. B 5041.

## INDIA

FISCAL POLICY IN UNDERDEVELOPED COUNTRIES WITH SPECIAL REFERENCE TO INDIA, by R.J. Chelliah. Published by George Allen & Unwin Ltd., London, 2nd edition 1969. 216 pp.
This book deals mainly with the problems of tax policy and outlines the economic principles by which the structure of taxation in developing economies can be construed and evaluated. In this respect Indian experience is a notable example of an underdeveloped economy. This second

edition contains a postscript which reviews on the major fiscal developments in India during the last decade.

Library International Bureau of
Fiscal Documentation no. B 4591.

TAXES AND INCENTIVES, a guide for investors. Published by Indian Investment Centre, New Delhi, Dusseldorf, London, 1969. 127 pp.
Information on the tax payable by individuals and companies in India. The effect of the changes proposed under the Taxation laws (Amendment) Bill 1969 on the structure of taxes and incentives has also been discussed.

Library International Bureau of
Fiscal Documentation no. B 4574.

## INTERNATIONAL

DIRECT TAXES, An International Comparison. Published by Federation of Indian Chambers of Commerce & Industry, New Delhi, 1969. 127 pp.
Comparative study giving general information on national taxes levied i.e. income tax (Corporation and Individuals), net woth tax, gift tax and estate duty or inheritance tax in forty countries. The information is generally related to the year 1967-68 and has been tabulated in alphabetical order of countries.

Library International Bureau of
Fiscal Documentation no. B 4592.

ECONOMIC OUTLOOK No. 6, published by OECD, Paris, 1969. 100 pp. This brochure aims at providing a periodic assessment of economic trends and prospects in OECD countries. The French version is entitled Perspectives économiques de l'OCDE.

Library International Bureau of
Fiscal Documentation no. B 4606.

## ISRAEL

LAWS OF THE STATE OF ISRAEL (New Version) Vol. I. Published by Government Printer, Israel. 327 pp.
Compilation in English of thirteen pre-State Ordinances, which have been technically revised and brought up to date. Included is the New Version 1961 of the Income Tax Ordinance, embodying also the amendments made since the consolidation up to December 31, 1967. Also included are some Excise and Customs Ordinances.

Library International Bureau of
Fiscal Documentation no. B 4605.

## ITALY

ASPETTI QUANTITATIVI DELL'IMPOSTA SUL VALORE AGGIUNTO I CONTRIBUENTI MINIMI, by S. Pezzilli. Published by Istituto per l'economia europea, Roma, 1970. 88 pp.
Mathematical approach to the TVA.

Library International Bureau of
Fiscal Documentation no. B 5045.

L'IMPOSTA COMPLEMENTARE PROGRESSIVA SUL REDDITO, by O. POLI. Published by Dott. A. Giuffrè editore, Milan, 1969. 815 pp.
Study on the complementary tax.

Library International Bureau of
Fiscal Documentation no. B 4593.

## MALAYSIA

MALAYSIA, INVESTITIONS- UND GESCHÄFTSMÖGLICHKEITEN, by J. Traeger. Published by Ostasiatischer Verein E.V., 2000 Hamburg 1, Ballindamm 15, 1968. 149 pp.
Study which aims at providing information on economic conditions etc. including some on taxation for purposes of investors in West-Malaysia.

Library International Bureau of
Fiscal Documentation no. B 5043.

## NETHERLANDS

DE ACCIJNSWETGEVING, by D.A. Heeneman. Published by N.V. Uitgeversmij. Tjeenk Willink, Zwolle, 2nd edition 1970. 551 pp.
Text of excise tax laws and implementary provisions related thereto as in effect on October 1, 1969.

Library International Bureau of
Fiscal Documentation no. B 4599.

ALS VADER EN ZOON IN HET BEDRIJF SAMENWERKEN, Een juridische, fiscale en bedrijfseconomische beschouwing, door H.L. Drost. Published by N.V. Uitgeverij FED, Deventer, third edition 1969. 167 pp.
Considerations on the legal business and tax aspects with regard to cases in which father and son work together in the same enterprise.

Library International Bureau of
Fiscal Documentation no. B 4596.

DE BELASTING-ALMANAK 1970 VAN ELSEVIERS WEEKBLAD, by J. Viersen, E.N. Jonker and S. Stoffer. Published by Elseviers Weekblad, Amsterdam, 1970. 256 pp.

Annual explanatory guide for the filing of the 1969 individual income and net wealth taxes, including tax tables.

Library International Bureau of
Fiscal Documentation no. B 4607.

BELASTINGRECHT – PRIVAATRECHT. Een Verkenning in het Grensgebied, by M.V.M. van Leeuwe. Published by AE. E. Kluwer, Deventer. Discussion of the relation between tax law and civil law.

Library International Bureau of
Fiscal Documentation no. B 4536.

DE FISCALE BALANS, by Th. S. IJsselmuiden. Published by AE.E. Kluwer, Deventer, ca. 1963. 155 pp.
(Fiscale monografieën no. 21)
Study on the tax balance sheet in the Netherlands and in other E.E.C. countries (depreciation allowances, reserve allowances and valuation of stocks).

Library International Bureau of
Fiscal Documentation no. B 5001.

HEEFT DE COOPERATIEWINST EEN DUBBEL GEZICHT? Een tot een beschouwing uitdijende annotatie op het arrest van de Hoge Raad van 14 mei 1969, rolnummer 16113, by L.J.M. Nouwen. Published by FED, Deventer, 1969. 47 pp.
Consideration on the concept of profit of a co-operative organization with special reference to the decision of the Dutch High Court of May 14, 1969.

Library International Bureau of
Fiscal Documentation no. B 4603.

INVESTERINGSAFTREK/DESINVESTERINGSBIJTELLING, by H.J.F.M. Kas. Published by N.V. Uitgeverij FED, Amsterdam 1st edition 1969. 30 pp.
Brochure on the investment allowance.

Library International Bureau of
Fiscal Documentation no. B 4587.

WET OP DE VENNOOTSCHAPSBELASTING 1969, Wet van 8 oktober 1969 Stb. 469, by T. Blokland and H.B.A. Verhoeven.
Published by N.V. Uitgeversmaatschappij Tjeenk Willink, Zwolle, 1969. 64 pp.
Text of the Corporate income tax law of 1969.

Library International Bureau of
Fiscal Documentation no. B 4598.

## PHILIPPINES

SECOND SURVEY ON TAX CONSCIOUSNESS IN THE PHILIPPINES, published by Joint legislative-Executive tax commission, Manilla, 1969. 78 pp.
Second report which updates the previous 1961 survey with respect to the attitudes of taxpayers to the tax system. The present survey was conducted in 1967 and gives a comparison between the salient results of the 1967 and 1961 surveys.

Library International Bureau of
Fiscal Documentation no. B 4608.

## SPAIN

INFORMACION ESTADISTICA DEL MINISTERIO DE HACIENDA 1968, published by Secretaria General Técnica del Ministerio de Hacienda, 1969. 240 pp.
Statistical data for 1968 published by the Ministry of Finance.

Library International Bureau of
Fiscal Documentation no. B 5045.

## UNITED KINGDOM

ESTATE DUTY SAVING AND CAPITAL GAINS TAX, by J.B. Morcom. Published by Butterworths, London, 1969. 89 pp.
Supplement to the fourth edition containing the changes introduced by the Finance Act 1969 and updating the text of the main work.

Library International Bureau of
Fiscal Documentation no. B 4580.

FINANCE ACT 1969, published by Butterworth & Co. Ltd. London, 1969. 198 pp.
Complete text of the Finance Act 1969 relating to Income Tax, Capital Gains and Corporation Tax with annotations.

Library International Bureau of
Fiscal Documentation no. B 4550.

KEY TO CAPITAL GAINS TAXATION, by P.F. Hughes and K.R. Tingley. Published by Taxation Publishing Company, London, third edition 1969. 387 pp.
Explanation of the long term and short-term capital gains tax as modified by the Finance Act 1969.

Library International Bureau of
Fiscal Documentation no. B 4569, B 4568.

POTTER AND MONROE'S TAX PLANNING WITH PRECEDENTS, by D.A. Shirly and S.J.L. Oliver. Published by Sweet & Maxwell, London 1970. 485 pp.
Revised edition which updates the 1966 edition by covering the changes brought about since then up to and including the Finance Act 1969.

Library International Bureau of
Fiscal Documentation no. B 5036.

SUPPLEMENT TO TAXATION OF CAPITAL GAINS, by P.F. Hughes and K.R. Tingley. Published by Taxation Publishing Company Ltd., London, second edition 1969. 55 pp.
This supplement adds the amendments made by the Finance Act 1969 relating to capital gains taxation to the main volume and records the law as at October 1, 1969.

Library International Bureau of
Fiscal Documentation no. B 4578.

## U.S.A.

EVERYMAN'S INCOME TAX, published by Commerce Clearing House Inc., 1969. 88 pp.
For income tax returns to be filed in 1970.

Library International Bureau of
Fiscal Documentation no. B 4604

EXPLANATION OF TAX REFORM ACT OF 1969, published by Commerce Clearing House, Inc., 1969. 264 pp.
This book presents a plain explanation of the Tax Reform Act of 1969 as it will affect the returns of individual taxpayers, corporations, financial institutions, real estate interests, oil and mineral interests and every business which once enjoyed an investment credit.

Library International Bureau of
Fiscal Documentation no. B 4544.

INDIVIDUALS' FILLED-IN TAX RETURN FORMS, published by Commerce Clearing House, Inc., Chicago, 1969, 64 pp.
1970 Edition including Sample Filled-in Forms, Rate Tables, Work Sheets, Check Lists.

Library International Bureau of
Fiscal Documentation no. B 5044.

MEDICARE AND SOCIAL SECURITY – EXPLAINED, published by Commerce Clearing House, Inc., Chicago, 1970. 256 pp.
Detailed explanation of the Federal old-age, survivors, and disability insurance program and the Federal health insurance for the aged program, including the Tax Reform Act of 1969.

Library International Bureau of
Fiscal Documentation no. B 4564.

THE LIQUIDATION REINCORPORATION PROBLEM A RUNNING TAX BATTLE, by J.O. Hewitt and J.A. Cuddihy. Published by The Journal of Taxation Inc. New York N.Y., 1969. 225 pp.
This book discusses the current state of affairs and future prospects in the reincorporation area.

Library International Bureau of
Fiscal Documentation no. B 5024.

STOCK VALUES AND DIVIDENDS FOR 1970 TAX PURPOSES, published by Commerce Clearing House, Inc., Chicago, 1970.

Library International Bureau of
Fiscal Documentation no. B 4565.

UNITED STATES TAXATION OF FOREIGN INVESTMENT INCOME, by P.B. Musgrave. Published by The Law School of Harvard University, Cambridge, 1969. 171 pp.
Study on the taxation of foreign investment income based on statistical data and tax rates as of the beginning of 1966 with considerations given to significant changes in tax laws affecting foreign investment occurred in the United States between then and the beginning of 1968.

Library International Bureau of
Fiscal Documentation no. B 4551.

# LOOSE-LEAF SERVICES

Releases from March 1 – March 31, 1970

## AUSTRIA

VERGÜTUNGSGRUPPENVERZEICHNIS FÜR DIE UMSATZSTEUER-AUSFUHRVERGÜTUNG, release 6.
Wirtschaftsverlag Dr. A. Orac, Wien.

## BELGIUM

BELASTING OVER DE TOEGEVOEGDE WAARDE, release 19.
C.E.D. Samsom N.V., Brussels.

DOORLOPENDE DOCUMENTATIE INZAKE B.T.W./LE DOSSIER PERMANENT DE LA T.V.A., releases 10-12.
Editions Service, Brussels.

FISCALE DOCUMENTATIE VANDEWINCKELE BOEK DER BAREMA'S, Tome VIII, release 97.
E.K. Vandewinckele, Brugge/C.E.D. Samsom N.V., Brussels.

GUIDE FISCAL PERMANENT, release 291.
G. Vandenavyle, Brussels.

IMPÔTS ET TAXES, release 191.
C.E.D. Samsom N.V., Brussels.

## CANADA

CANADA TAX SERVICE, releases 291-295.
Richard de Boo, Toronto.

BUTTERWORTHS CURRENT TAXATION, releases 4-9.
Butterworth & Co., Toronto.

PROVINCIAL TAXATION SERVICE, release 248.
Richard de Boo, Toronto.

## COLOMBIA

REGIMEN DEL IMPUESTO A LA RENTA (A. Silva), release 64.
Legislacion Economica LTDA, Bogota.

## DENMARK

SKATTEBESTEMMELSER
– SKATTEBESTEMMELSER, release 47
– SKATTENYTT, release 44.
A.S. Skattekartoteket Informationskontor, Copenhagen.

## E.E.C.

HANDBOEK VOOR DE EUROPESE GEMEENSCHAPPEN
– KOMMENTAAR OP HET E.E.G., EURATOM EN EGK-S VERDRAG, releases 70, 71.
– TARIEFLIJSTEN, releases 95, 96.
N.V. Uitgeversmij. AE.E. Kluwer, Deventer.

## FRANCE

BULLETIN DE DOCUMENTATION PRATIQUE DE TAXES SUR LE CHIFFRE D'AFFAIRES ET CONTRIBUTIONS INDIRECTES, release 12.
Editions F. Lefebvre, Paris.

CONVENTIONS FISCALES INTERNATIONALES, release 6.
Ministère de Finance, Paris.

DICTIONNAIRE FISCAL PERMANENT, release 7.
Editions Legislatives et Administratives, Paris.

DROITS DES AFFAIRES, release 4.
Ed. Législatives et Administratives, Paris.

JURIS CLASSEUR FISCAL: IMPÔTS DIRECTS, release 159.
Editions Techniques, Paris.

## GERMANY

RWP. RECHTS- UND WIRTSCHAFTS PRAXIS STEUERRECHT, releases 101-103.
Forkel Verlag, Stuttgart-Degerloch.

STEUERERLASSE IN KARTEIFORM, releases 99-102.
Verlag Dr. Otto Schmidt, Köln-Marienburg.

UMSATZSTEUER UND MEHRWERTSTEUER KOMMENTAR. PETER, releases 22-24.
Verlag Neue Wirtschafts-Briefe GmbH, Herne.

WORLD TAX SERIES – GERMANY REPORTS, releases 7-9.
Commerce Clearing House, Inc., Chicago, Ill. USA.

## NETHERLANDS

BELASTINGBERICHTEN
– INKOMSTENBELASTING, releases 166, 167
– BELASTING TOEGEVOEGDE WAARDE, releases 42-44.
N. Samsom N.V., Alphen a.d. Rijn.

BELASTINGWETGEVINGSERIE
– WET OP DE VENNOOTSCHAPSBELASTING 1969, I.
J. Noorduyn en Zn. N.V., Groningen.

BELASTINGWETTEN, release 25.
D. Brouwer & Zn., Arnhem.

FED'S FISCAAL REGISTER, release 30.
N.V. Uitgeverij Fed., Amsterdam.

FED'S LOSBLADIG FISCAAL WEEKBLAD, releases 1244-1247.
N.V. Uitgeverij Fed., Amsterdam.

FISCALE WETTEN, release 33.
N.V. Uitgeverij Fed., Amsterdam.

DE GEMEENTELIJKE BELASTINGEN – A.M. Dijk, G. Jansen, J.C. Schroot enz., release 91.
Vuga-Boekenrij, Arnhem.

HANDBOEK VOOR IN- EN UITVOER
– BELASTINGHEFFING BIJ INVOER, releases 107, 108.
– TARIEF VAN INVOERRECHTEN I, release 133.
N.V. Uitgeversmij. AE. E. Kluwer, Deventer.

KLUWER'S FISCAAL ZAKBOEK, releases 33A, 34.
N.V. Uitgeversmij. AE. E. Kluwer, Deventer.

NEDERLANDSE BELASTINGWETTEN. W.E.G. de Groot, release 61.
N. Samsom N.V., Alphen a.d. Rijn.

NEDERLANDSE REGELINGEN VAN INTERNATIONAAL BELASTINGRECHT, release 16.
N.V. Uitgeversmij. AE.E. Kluwer, Deventer.

STAATS- EN ADMINISTRATIEFRECHTELIJKE WETTEN, release 99.
N.V. Uitgeversmij. AE. E. Kluwer, Deventer.

VADEMECUM VOOR IN- EN UITVOER, releases 418-420.
N.V. Uitgeversmij. AE. E. Kluwer, Deventer,
N. Samsom N.V., Alphen a.d. Rijn.

DE VAKSTUDIE: FISCALE ENCYCLOPEDIE
– INKOMSTENBELASTINGEN, releases 66-88.
– VERMOGENSBELASTINGEN, release 14.
– VENNOOTSCHAPSBELASTINGEN 1969, releases 6, 7.
– REGISTRATIEWET, release 27.
N.V. Uitgeversmij. AE. E. Kluwer, Deventer.

VENNOOTSCHAPPEN, VERENIGINGEN EN STICHTINGEN, release 24.
N.V. Uitgeversmij. AE. E. Kluwer, Deventer.

## NORWAY

SKATTELOVSAMLINGEN, release 31.
Jacob Jaroy, Skien.

SKATTE- NYTT II, release 2.
Norsk Skattebetalerforening Huitfeldts, Oslo.

## SWITZERLAND

DIE STEUERN DER SCHWEIZ – LES IMPÔTS DE LA SUISSE, Teil III release 39.
Verlag für Recht und Gesellschaft, Basel.

## UNITED KINGDOM

BRITISH TAX ENCYCLOPEDIA, Vol. 1-5, release 32.
Sweet & Maxwell, London.

SIMON'S INCOME TAX SERVICE, release 64.
Butterworth & Co., London.

## U.S.A.

FEDERAL TAX GUIDE REPORTS, releases 22-24.
Commerce Clearing House, Inc., Chicago.

FEDERAL TAXES REPORT BULLETIN, releases 7-10.
Prentice Hall, Inc., Englewood Cliffs.

FEDERAL TAXES REPORT BULLETIN – TREATIES, release 20.
Prentice Hall, Inc., Englewood Cliffs.

STATE TAX GUIDE, releases 449, 450.
Commerce Clearing House, Inc., Chicago.

TAX IDEAS – REPORT BULLETIN, releases 1, 2, 3.
Prentice Hall Inc., Englewood Cliffs.

TAX TREATIES, release 217.
Commerce Clearing House, Inc., Chicago.

# CUMULATIVE INDEX 1970

Nos. 1, 2, 3 and 4

# CONTENTS

of the June 1970 issue

*With the close cooperation of a network of expert correspondents in each of the Latin American countries, coordinated by Bomchil, Pinheiro, Claro, Lavalle & Bado, the International Bureau of Fiscal Documentation has filled a significant gap in international tax literature by producing —*

# CORPORATE TAXATION IN LATIN AMERICA

**edited by**
**Dr. N. Chedufau**
– Partner of M. & M. Bomchil,
Buenos Aires – Paris

**and**
**Lic. S. García Granados**
**assisted by Robert C. Hammond, B.A.**
– Research Associates at the International Bureau of Fiscal Documentation, Amsterdam

● **loose-leaf** ● **quarterly up-dating supplements** ● **approx. 500 large-format pages**

**CONTENTS**

**Section A – Introduction, Introductory Notes, and Glossary**
**Section B – Summaries of Corporate Taxation in Latin American Countries**
**Section C – Surveys of Corporate Taxation in Latin American Countries**
**Section D – Effective tax treaties on income and/or capital signed by Latin American Countries**
**Section E – Current annotated bibliography of the publications acquired by the I.B.F.D.**

*Section B provides a country-by-country comparative summary of the basic provisions of the Latin American tax law.*

*Section C amplifies the summaries in Section B, following the same per country outline.*

Part 1 – TAXATION OF INCOME
A. General Income Taxation
B. Taxation of Particular Types of Income
Part 2 – TAXATION OF DIVIDENDS, INTEREST, ROYALTIES AND BRANCH PROFITS
A. Dividends, Interest and Royalties Paid to Residents
B. Dividends, Interest and Royalties Paid to Non-Residents
C. Taxation of Branch Profits
Part 3 – TAXATION OF CAPITAL
A. General Net Worth Taxes
B. Taxes on Particular Types of Capital or Property
Part 4 – TAXES ON GOODS, SERVICES AND TRANSACTIONS
A. Turnover or Sales Taxes
B. Taxes on Production and Consumption
C. Transaction Taxes
Part 5 – OTHER FISCAL CHARGES PAYABLE BY CORPORATIONS
Part 6 – MISCELLANEOUS TAX PROVISIONS

**Price: US$ 75.00 – £31.2s. – *Dfl. 270.00 – DM 275.00**
(including supplements for 1970)

**PRE-PUBLICATION OFFER –**

**10 % discount**

*Subscribers to the Bulletin are being offered a special 10 % discount on orders placed direct, before September 30, 1970. A special rate applies to subscribers in Latin America – please write for details.*

* For residents of The Netherlands: the prices quoted are exclusive of TVA (BTW)

**INTERNATIONAL BUREAU OF FISCAL DOCUMENTATION**
Muiderpoort – Sarphatistraat 124 – Amsterdam-C. – The Netherlands

# ARTICLES

## CORPORATE TAXATION IN LATIN AMERICA

### Speeches delivered at the official publication

*A new loose-leaf service entitled "Corporate Taxation in Latin America", a joint publication of the International Bureau of Fiscal Documentation and Bomchil, Pinheiro, Claro, Lavalle & Bado, was officially published on 15 April 1970. Prepared in close co-operation with tax experts in the Latin American countries themselves, this service can be seen to offer a new kind of development aid, i.e. fiscal development aid. The service is designed to provide up-to-date, rapid reference to and comparison of the tax structures of Latin American countries as these affect business enterprises which will be of interest not only to governments but also to businesses, international organizations and tax advisers and scholars. The reception to mark the publication of this service was attended by His Excellency Drs. B.J. Udink, Minister Without Portfolio with responsibility for Netherlands Development Aid. The text of a speech delivered by him, as well as that given by Mr. J. van Hoorn, Jr., the managing director of the International Bureau of Fiscal Documentation, is reproduced below.*

#### SPEECH DELIVERED BY MR. UDINK

The publication of a documentary study of the tax laws in ten Latin American countries is an important event, which most certainly deserves to receive special attention. I am therefore very glad to be with you on this special occasion and, on behalf of the Netherlands Government, to say a few words.

The Netherlands can be proud of the fact that one of the various international organizations established on her territory is the International Bureau of Fiscal Documentation, which has compiled the study. In its early days the Bureau occupied itself exclusively with the industrialized countries. But just as has happened with many other international organizations, it has had to give its attention in increasing measure to the new countries. So, gradually, the Fiscal Documentation Bureau has acquired a task in the sphere of development cooperation, for the developing countries gladly make use of the fund of knowledge and experience the Bureau has accumulated, and it is, moreover, in these very countries that an urgent need can be satisfied.

It is certainly not far-fetched to see a connection between the appearance of this publication and development cooperation. For a direct line may be drawn to the development strategy that is now taking shape in the preparation of the Second Development Decade. The most striking aspects of this strategy are the general objectives, the growth percentages to be aimed at, the commitments the donor countries are expected to give to enable the developing countries to achieve their objectives, and the development of international trade—which is seen as a gauge of the proposed cooperation. However, behind these main features there lie a great number of problems that have to be solved if the development strategy is to be successful. These problems relate to various aspects, such as the groundwork, the coaction of interdependent elements that determine the social and economic development and, consequently, are equally deserving of attention.

It is, I think, self-evident that an efficient tax system is one of those elements so important to the development process. I should like, none the less, to elaborate somewhat on the importance of tax documentation for development strategy. There are three aspects to which I should like to draw attention.

The first is the great intrinsic importance of effective tax legislation. The mountain of capital in the rich countries as against the low-lying plains of poverty in the developing countries has its offshoots in the structure of those latter countries. There, too, there are great discrepancies in the size of incomes, so taxation is needed to bring about a redistribution of wealth. Though the consequent political and social problems are domestic matters and, as such, must be left to the Governments concerned, it is an evident truth that comparison of the tax systems of the various developing countries, between themselves and with those of the industrialized countries, is potentially of great importance. Furthermore, taxation is a means of ensuring savings. If an increase in agricultural production were not accompanied by the utilization of at least a part of the profits on projects designed to create capital, the agricultural sector would make no significant contribution to economic and social growth and an important source of capital would remain unproductive. While farming did not even provide the farmer and his family with sufficient food, it would have been inhuman to impose compulsory saving of that kind, but the success of the agricultural programmes in a number of developing countries have opened up possibilities in this respect that must not remain unutilized. The building up of an economic and social infrastructure—essential elements for an integrated development in the countries concerned—demands among other things a consistently implemented tax policy.

However, the use of taxation as an instrument of social policy is frequently a social problem in itself. Where this is concerned, the developing countries display considerable differences as between themselves. According to the report of the Pearson Commission, in the years from 1960 to 1965 at least seventeen countries managed to obtain 20 per cent of their national incomes from the proceeds of taxation. In twenty other countries the figure was between 15 and 20 per cent, and in a further twenty-nine countries between 10 and 15 per cent. These differences reflect the varying degrees of efficiency of the departments responsible for tax collection and also the measure of acceptance accorded by the people to the tax system. The system should be so transparent that it can be implemented without any great difficulty. Knowledge of the way taxation works in other countries can assist the elaboration of a similar transparent and efficient tax system in one's own country. It follows, then, that the documentation now available on this subject is an extremely useful means for helping the tax departments in the countries concerned to function more efficiently and thus facilitate the execution of the development plans.

In the second place, I should like to point out that the expansion of international trade and the augmentation of the developing countries' share in that trade constitute an important part of the strategy for the Second Development Decade. And here the focus of attention is not only the relations between the industrialized countries and the developing countries but also the relations between themselves of developing countries in a given region and how such relations may be intensified. In various parts of the world plans have been or are being worked out for

achieving closer economic cooperation. In order that these relations may develop, it is necessary that the regulations concerning import and export duties, as also the other tax laws, in the countries with which relations are maintained or contemplated, should be better known. In this endeavour, documentation such as that compiled in respect of the Latin-American countries is an indispensable aid.

The third aspect I should like to mention is the role private enterprise will have to play in development strategy. Though the Governments of both donor and recipient countries will themselves be expected to make a special effort, private investment cannot be dispensed with as a means of expanding activities in important sectors of the developing countries' life and of achieving thereby the development objectives. Before the setting up of overseas establishments or participation in overseas ventures can be contemplated, extensive research has to be carried out—all relevant facts must be collected and the chances carefully weighed. Of great significance in this respect are the tax provisions and special tax arrangements in the prospective country of establishment. Here, too, documentation can render outstanding service, not only as a source of information but also—inasmuch as it facilitates proper consideration of fiscal aspects—as a contribution towards the promotion of private investment in the developing countries.

The service which tax documentation on the developing countries renders to the social and economic development of those countries puts this work in the development cooperation category. This fact is reflected in the grant made by the Netherlands Government to the International Bureau of Fiscal Documentation for the compilation of a report on tax legislation in thirty-three African countries. This study, which is in the course of preparation, has been undertaken at the request of the Economic Commission for Africa. The Commission has utilized some of the funds placed at its disposal by the Netherlands to finance the collection of documentation and the making of a comparative survey of the tax laws of the various African countries. The Netherlands Government was happy to support this work, for it was thus afforded the opportunity of contributing to a joint project of the African countries that will benefit each country separately and the region as a whole. It is expected that the documentary study on tax legislation in Africa will shortly be published. Meanwhile, the honour of being first must go to the study on ten Latin-American countries. Incidentally, the costs involved in these studies did not have to be met out of the funds allotted by the Netherlands to development cooperation. The necessary funds were forthcoming from another source. This fact does not, of course, detract from the value that the Netherlands Government attaches to these works within the context of development cooperation.

I would, in addition, draw your attention to the broad basis of collaboration on which this study has been founded. For, without the very active assistance of the developing countries concerned, it would have been impossible to prepare a documentary study of their tax laws. This assistance plus the International Bureau's knowledge and experience have made it possible to present a survey of the various tax regimes that will be of value to all involved in development strategy. It is an example of what can be achieved by working in partnership. In this case the result has been achieved through an interaction between a central coordinating and stimulating activity and the implementary work in the countries concerned.

Furthermore, it is a collaboration that will have to continue if the documentation is to be kept up to date.

I should like to conclude this short address by complimenting the International Bureau of Fiscal Documentation on its new publication and by wishing it continued success with its further activities in this sphere. The work it performs fulfils a special function within the framework of development strategy and is able, in more ways than one, to activate that international cooperation whose aim is progress in the developing countries.

## SPEECH DELIVERED BY MR. VAN HOORN

When in the late 1940's the European countries were faced with the challenge of reconstructing their national economies, they used taxation more than ever before as an instrument of economic and social policy. New taxes were introduced and existing taxes were considerably increased so as to provide the governments with the significant revenues needed to change or to improve the infrastructure of their countries. At the same time, all kinds of tax incentives aimed at furthering the modernization and expansion of industry and trade, whereby each country focussed its measures primarily on its own interests.

After the first years of recovery, political and economic reasons of all kinds brought about an ever increasing internationalisation of relationships between the European countries and between Europe and the United States. Economic growth was no longer a phenomenon confined to national boundaries.

Trade and industry especially developed on a broad international scale and a strong need for a liberalisation of the movement of persons, merchandise and capital resulted gradually in the recognition that the economic and social policies of a particular country affected, and were affected by, the policies of other countries.

In all this, taxation played a preponderant role. The development of trade relations was hampered by the large variety of taxes and the differences in their application. Governments and taxpayers alike became aware of the fact that any change in another country's tax laws might have, and actually did have, effects on the situation in their own country. It is not surprising, therefore, that during the past 25 years a network of treaties for the avoidance of double taxation came into being. At the same time a need was felt to be informed about taxation elsewhere and more and more publications about other countries' taxes appeared. Even before the term "fiscal harmonisation" had been invented, the most important taxes began to follow more and more a common pattern.

The creation of the European Economic Community was the logical consequence of the development which I have briefly sketched. After the Rome Treaty of 1957 the internationalisation of taxation developed rapidly. I should say, of course, that the institution of the O.E.E.C. (now O.E.C.D.) and its Fiscal Committee greatly contributed to this evolution. The integration movements were facilitated by all sorts of close international contacts, at governmental as well as various business levels, and there is currently hardly any responsible tax man who is not familiar in some way with taxation in other countries than his own.

Ladies and gentlemen, we are here together to discuss taxation—not too much, of

course,—not in Europe but in the developing world. If I gave a brief overview of developments in Europe, however, I did so with the purpose of emphasizing the importance of an exchange of knowledge about national tax structures.

I have had the privilege of travelling in Africa and in parts of Latin America. I was there, not as a tourist but as a tax man. Though constituting two completely different worlds, Africa and Latin America have two things in common. In the first place, both continents consist of a large number of countries in a stage of development which are in need of solidarity and cooperation if not integration. In the second place, there is an almost complete lack of communication in an area as important as that of taxation. My numerous discussions with leading tax experts in Argentina, Brazil, Chile, Perú and Uruguay, both at governmental and at university and business levels, revealed to me the need for communication in tax matters which in spite of the almost common language simply does not exist.

Why is it so important especially for Latin America—and also for Africa—to exchange tax information? Allow me to mention a few points. In the first place, development programmes require increased tax revenues to finance them, and this makes a modernization of tax systems indispensable. Although taxation reflects social, economic, climatological and many other conditions which differ from one country to another, it may be very important to be informed about the experience in other countries where the conditions are comparable. Secondly, economic growth and development depend on the availability of capital which must be attracted from capital exporting countries. There is a certain competition among countries to make foreign investments attractive through a system of tax incentives. Such incentives, apart from reducing the badly needed tax revenue, have two significant drawbacks. On the one hand, it is difficult to evaluate their economic advantages in comparison with the budgetary sacrifices made. On the other hand, the tax systems in capital-exporting countries may be such that the advantages granted by developing countries are nullified and that they do not benefit the foreign investors but the treasuries of their countries. This brings me to a third point. Foreign investors are not against paying taxes in the countries in which they invest. What they object to, is being subject to double taxation. They must know their tax obligations abroad if they are to be successful in applying for double tax relief in their own countries. The governments of capital-exporting countries must examine the possibilities of such relief against the background of tax information about developing countries. This possibility is hampered by the fact that very little is known, in the case of Latin America, of the various national tax systems. An additional problem here is the language barrier.

Even where material is available in a language other than Spanish or Portuguese, a certain drawback is that it is generally not on a comparative scale and, above all, that it is often prepared by outside experts. I shall be the first to admit that many of those, among whom I have several very good friends, have achieved wonderful results. From my own long experience I know, however, that it is not easy to get the feeling and the underlying philosophy of tax systems which have developed over a long period of time in countries where conditions may be basically different from one's own country. Even European tax laws often present surprises, although in this institute we have given up thinking in national tax frameworks.

It is for the reasons mentioned that I have

so warmly welcomed the opportunity of this joint effort with a group of outstanding tax experts in Latin America in publishing a book on Latin American taxation. All parties concerned have done their best to give an insight into those taxes which affect business and investment. The law firm of Bomchil, Pinheiro, Claro, Lavalle & Bado, in the persons of Dr. Chedufau from Argentina and Dr. Streeter from Chile have coordinated the efforts of the various experts. This institute has thrown in its long experience of publishing tax information concerning a large number of countries according to a common denominator making comparisons possible. Special mention should be made of Mr. García Granados from Guatemala and Mr. Hammond from the United Kingdom, both associates of this Bureau, who undertook the difficult job of editing the material received.

By publishing this book in loose-leaf form, we shall be able to keep it up-to-date. Thus, it is hoped that a contribution is made in the area of developing aid by providing the Latin American countries as well as the capital-exporting countries with tax information of a kind which in relation to Europe has already existed for a longer period of time.

JOHN STRASMA*:

# PERU'S NEW APPROACH TO MINING TAXATION

Decree-Law 18.225, enacted April 14, 1970, changes the tax regime for all large mines in Peru.[1] Mines now operating will be subject to the new taxes in 1971. New mines will be governed by contracts extended under the terms of the new law. (Eight are to be negotiated in the near future, for total investments in excess of $ 850 million and eventual yearly output of 428,000 metric tons of copper. By 1975-1980, total copper production could exceed 600,000 metric tons yearly, triple present levels.)[2]

A ninth mine, Cuajones, will be governed by the terms of a somewhat more generous contract signed in December 1969, under the former Mining Code. In addition to these copper projects, the new law and taxes will apply to substantial investment expected in iron and phosphate mines.

Law 18.225 is actually a normative law, spelling out broad policy decisions by the Peruvian government. These will be incorporated in a new mining code to be promulgated later this year. However, the normative law specifies now the provisions on taxation and mixed enterprises to be included in the new code. Uncertainty is thus reduced, and the "rules of the game" are specified so investors can negotiate contracts for the development of specific mines.

## 1. BASIC TAX REGIME

Mine operators are promised that no new taxes will be added to those in effect on April 14, 1970 (art. 13). That is they continue to pay both profits taxes and indirect levies such as social security, stamp, concession and other minor taxes, but they will not be surprised by new sales taxes, export levies or the like.

The rates of existing taxes may of course be changed, but the contracts drawn up for the opening of new mines may include protection against rate changes until the original investment has been recovered, and twice that time for mixed (private-State) enterprises (Arts. 14, 32).

Profits up to 100 million soles per year (US$ 2.6 million)[3] will continue subject to the progressive taxes now in force, as follows:

| Net profits | | Rate |
|---|---|---|
| First S/. | 100,000 | 20% |
| 100,001 - | 500,000 | 30 |
| 500,001 - | 50,000,000 | 35 |
| 50,000,001 - | 100,000,000 | 40 |

Firms earning more than 100 million soles will pay the preceding scale on that amount, for an effective basic rate of 37.465% on the first S/. 100 million.

On all profits above S/. 100 million, a uniform basic tax rate will be applied (*i.e.*, proportionally). That rate will be determined

---

* University of Wisconsin and Advisor, Office of Tax Research and Development, Ministry of Economics and Finance, Lima. The author is responsible for opinions and the accuracy of statements herein, but he wishes to express his special appreciation to Ricardo Jo and Walter Colque, for help in grasping the special complexities of Peruvian mining law.

1. The best recent Peruvian source on the mining sector is *La Minería Metálica en la Economía Peruana*. Daniel Rodriguez Hoyle, editor, Lima, 1969.

2. See this journal, March 1970, pp. 108-9 for the taxes in force until this reform.

3. The relevant exchange rate, for investments, exports and profit remittances, is US $ 1.00 = Soles 38.70.

essentially by the ratio of cash flow to fixed investment. The objective is to facilitate the financing of extremely large mines, in the face of possible lower prices when production begins, and consequent low returns on massive investment.

Existing taxes were progressive according to total profits and reached a maximum effective rate for foreign investors of 68.5%. This was felt to unduly discourage investment in mines which are so large that the absolute amount of profits would take them to the highest tax rate even in years of low prices and the consequent low return on capital.

The new structure is based on cash flow in relation to total investment, whether financed with equity or debt. It somewhat cushions the impact on the company of lower prices but ensures that the State receives an even larger share than at present should world copper prices remain at high levels.

Table I indicates the proportional tax rate which will be applied to all mining company profits above S/. 100 million per year (US $ 2.6 million.) This basic tax rate (col. 2) is applicable to domestic corporations.

Domestic corporations retain a 25% tax on dividends paid, which amount may be taken by local stockholders as a credit on their personal income tax. Hence table I does not reflect this dividend tax. However, foreign-owned mining corporations must pay an additional 30% tax on profits net of the basic tax, for the year in which earned, whether or not remitted. The combined tax is shown in Table I, col. 3.

The table also indicates the lowest possible rate applicable to the profits accruing to foreign-owners-interests in mixed enterprises with at least 25% participation for the Peruvian government (col. 4). As will be explained below, this appears to be the most attractive form of operation for the new mines to be organized in Perú.

TABLE I

*Tax rate applicable to profits above* $/. 100,000,000/year

| Gross Revenues (a) / Investment (b) | Basic tax rate | Total rate (c) (foreign-owned) | Lowest possible Total rate (d) (foreign-mixed) |
|---|---|---|---|
| (1) | (2) | (3) | (4) |
| Up to 0.10 | 29.0% | 50.30% | 43.53% |
| 0.12 | 30.5 | 51.35 | 44.23 |
| 0.14 | 32.0 | 52.40 | 44.93 |
| 0.16 | 33.0 | 53.10 | 45.40 |
| 0.18 | 34.5 | 54.15 | 46.10 |
| 0.20 | 36.0 | 55.20 | 46.80 |
| 0.22 | 36.5 | 55.55 | 47.03 |
| 0.25 | 37.0 | 55.90 | 47.27 |
| 0.30 | 38.5 | 56.95 | 48.03 |

| Gross Revenues (a) / Investment (b) | Basic tax rate | Total rate (c) (foreign-owned) | Lowest possible Total rate (d) (foreign-mixed) |
|---|---|---|---|
| (1) | (2) | (3) | (4) |
| Up to 0.35 | 39.5 | 57.65 | 48.43 |
| 0.40 | 40.5 | 58.35 | 48.90 |
| 0.45 | 41.5 | 59.05 | 49.37 |
| 0.50 | 42.5 | 59.75 | 49.85 |
| 0.55 | 44.0 | 60.80 | 50.53 |
| 0.60 | 45.0 | 61.50 | 51.00 |
| 0.65 | 46.0 | 62.20 | 51.47 |
| 0.70 | 47.5 | 63.25 | 52.17 |
| 0.75 | 48.5 | 63.95 | 52.63 |
| 0.80 | 49.5 | 64.65 | 53.10 |
| 0.85 | 50.5 | 65.35 | 53.57 |
| 0.90 | 52.0 | 66.40 | 54.27 |
| 0.95 | 53.0 | 67.10 | 54.73 |
| 1.00 or more | 55.0 | 68.50 | 55.67 |

a) Net Sales less direct production costs (*i.e.*, not deducting interest, depreciation or amortization of fixed assets).
b) Defined solely for purposes of this rate determination, as book value of fixed assets in the initial year (*i.e.*, 1971 for existing mines, and the first year with profits over S/. 100 million for new ones), plus subsequent investment in fixed assets, both written down 5% yearly.
c) Locally-owned corporations retain a 25% tax on dividends paid, which local stockholders recover as a credit on personal income tax. Foreign owned corporations must pay an additional tax of 30% on profits net of the basic tax, for the year in which earned, whether or not the profits are remitted as dividends. Hence this column shows the combined tax for a mine which is wholly owned by foreign investors.
d) When a mine is operated by a mixed enterprise in which the State has at least 25% participation, the Government may grant a reduction of up to one-third in the basic tax rate on its profits. This column thus shows the lowest possible tax rate on its profits. This column thus shows the lowest possible tax rate on the share of profits going to foreign investors. (The basic rate less one-third, plus 30% dividend tax).

## 2. INCENTIVE PROVISIONS

Apart from the new basis for taxing profits, the principal incentives for new investment are accelerated depreciation, guaranteed stability of taxation and foreign exchange rules, and the deduction of up to 30% from taxable profits if reinvested in approved forms.

Each new mine, and each expansion which increases output of fine metal by at least 20%, is eligible for a contract signed by the President and the entire Cabinet. Depending on the conditions and requirements of each project, these contracts may include all or part, of any or all of these guarantees and incentives:

a. Stability of the entire tax structure in effect when signed.
b. Availability of foreign exchange generated by the mine.
c. Authorization to depreciate fixed assets more rapidly, up to a global rate of 20% in a year.
d. Automatic and taxfree revaluation of the book value of machinery and installations in the event of devaluation greater than 5%, of Peruvian money compared to that used for the investment.
e. Non-discrimination in foreign exchange transactions.
f. Payment at international market levels for mine output.

The contracts will be in force until the investment has been recovered out of depreciation plus after-tax profits. The amount of investment to be so recovered will be specified in the contract; it will include amounts paid for the concession, costs of opening the mine and associated plants, and necessary working capital. (Art. 14).

As a further incentive, up to 30% of pretax profits may be reinvested in the mine (or in other mining activities), free of profits tax. This incentive is limited to a maximum of S/. 200 million per year (US $ 5.2 million). Proposed investments must first be approved by the Dirección General de Minas.

The guarantees and other incentives of Art. 14 contracts will not be extended for the recovery of additional investment so financed. (After all, the exemption from profits tax means the State has provided half or more of the cost of such investment).

### 3. SANCTIONS

Prompt development is ensured not only by the incentives provided, but also by a drastic sanction promulgated in 1969, and maintained in the new law. All mining concessions not developed expeditiously and according to work programs approved by the Ministry of Mines and Energy will revert to the State without compensation. Peru is simply not willing to allow concessionaires to exhaust their mines in other countries before turning to develop their Peruvian interests.

All mine exploitation permit holders were required to file development plans with the State by December 31, 1969. Those approved, and those approved after modification according to indications from the Ministry, must be executed according to the calendar planned, with work beginning not later than May 1, 1970. Failure to submit an acceptable plan, or to carry out the plan once approved, is cause for reversion of the mining permit to the State.

Likewise, any failure to obtain commitments for firm financing for the entire mine within 18 months of signing of a contract, or to begin and execute development work as specified in the contract, will lead to its revocation (Art. 14). Presumably, it would also lead to reversion of the mining permit as well, under the 1969 decree.

The Peruvian approach to mining is thus a combination of the carrot and a rather sturdy stick.

### 4. REFINING AND MARKETING

Like other developing countries, Peru wants a much larger role in the extraction, processing and sale of her mineral resources. Copper refining and marketing are regarded as "basic" activities for national economic development, and will be taken over by the State.

Existing refineries will not be affected, but the State will take over the marketing of their output. The refining of other metals may be undertaken by the State (a zinc refinery is second on the list), or may be licensed to private interests, with preference for mixed enterprises with State participation.

The first State-owned copper refinery will be built at Ilo, to refine the output of the Cuajones and Toquepala mines. It will have a capacity of 100,000 tons per year, double that which the Southern Company originally proposed to build itself for the Cuajones mine.

One leading contender for the copper refinery project is a Yugoslav combine, which offers to build a refinery based on the latest German technology (under license), with 100% financing from Yugoslavia to be repaid with deliveries of copper from the refinery.

When the financing of mine development or expansion requires long-term commitments to deliver metal, the State takeover of marketing means that such financing will only be available if the State underwrites the commitments. It will do so only for the development of mixed enterprises (art. 33).

### 5. MIXED ENTERPRISES

The Peruvian approach to mining development clearly favors mixed enterprises. In fact, it will be almost impossible to avoid giving the State some degree of participation in each new mine. The State, as sole owner of the minerals, obviously intends to charge for its contributions.

For example, if a State guarantee of payment is required for the financing of a new mine, the State will expect a share in the enterprise appropriate to the value of its guarantee—just as would a private guarantor. When financing requires long-term contracts, the State will also contract for or guarantee delivery of metal or concentrates, provided the mine is organized as a joint (mixed) enterprise with at least 25% State participation. This guarantee is also a contribution to the enterprise, and will be counted as part of the State participation (Art. 33).

Likewise, the State may ease the financing of a given mine by undertaking the building of roads, power plants, housing, ports, etc., with external loans it obtains, or with regular public budget funds. Again, it will doubtless expect recognition of this contribution as part of its participation in the mixed enterprise.

Whenever the State does have at least 25% participation, the tax provisions and similar guarantees in each contract will be extended for double the time required to recover the original investment. In addition, the contract may include a reduction of as much as one-third of the basic profits tax (see Table I).

Given these incentives, as well as the worldwide trend against wholly foreign-owned operations in important economic sectors, foreign investors clearly should think seriously in terms of a mixed enterprise as the normal mining operation in Peru.

G.P. MARSHALL, A.W. ROTE AND A.J. WALSH:

# AN APPRAISAL OF THE SPECIAL TAX TREATMENT OF THE AGED IN THE UNITED KINGDOM*

The purpose of this paper is to examine three special provisions relating to the tax treatment of the aged[1] in the United Kingdom. The first part of the paper deals with the application of the "earnings test" to beneficiaries of the flat-rate *state* retirement pension.[2] Part two deals with the special income tax concessions, age relief and age exemption, granted to the aged. Each provision is examined in the light of its history, rationale, objectives and operation. In part three we take specific examples analysed in part one and calculate the post-tax changes in income which would apply in the absence of any earnings test.

## I. THE EARNINGS TEST

The earnings test was incorporated into the social security system on the recommendations of the Beveridge Report[3], which laid down the principle that the main aim of the state retirement pension was to help replace earnings when they cease at the end of a working life.[4] To enforce the principle that benefits were to be conditional upon retirement from regular employment, the earnings test was introduced whereby, in the first five years of the minimum retirement age (65 for men, 60 for women), an individual's current pension became subject to reduction if earnings exceeded a certain threshold level.

Since its introduction the earnings test has been subject to official scrutiny on several occasions,[5] but mainly with regard to its operation, not to the retirement condition for which it acts as the support. Over time, the threshold level has been raised with increases in average earnings, the flat-rate state retirement pension and prices. Furthermore, in the mid 1950's following an official enquiry,[6] a 50 per cent tax band was introduced to lessen the impact of the test on those with earnings just in excess of the threshold limit. With the introduction of the new threshold and band limits in November

---

* The authors are indebted to the Douglas Knoop Research Fund for making this study possible, and to Mr. E.B. Butler and Mr. R.W. Houghton for commenting upon an earlier draft of this paper.

1. Throughout this paper "aged" refers to people (either spouse) who attain the age of 65 or over during the year of assessment when used in conjunction with the income tax system, and to men aged 65 or over, and women aged 60 or over when used in conjunction with the earnings test. All figures mentioned are for a year of assessment unless otherwise stated.
2. The effect of the earnings test upon the graduated part of the state retirement pension is ignored. All pensioners are assumed to be childless.
3. Social Security and Allied Services, Cmnd. 6404, 1942.
4. That is, to fulfil the social insurance objective as presented in J.M. Buchanan's Social Insurance in a Growing Economy: A Proposal for Radical Reform. National Tax Journal, Vol. XXI, No. 4, 1968, pp. 386–395.
5. Social Security and Allied Services. *Op. cit.* Report of the Committee on the Economic and Financial Problems of the Provision for Old Age. Cmnd. 9333, 1954. In particular the reservation of A.K. Cairncross. Report of the National Insurance Advisory Committee—On the Question of Earnings Limits for Benefits, Cmnd. 9752, 1956. Report of the N.I.A.C.—On the Question of the Earnings Limits for Retirement Pensions, Cmnd. 3197, 1967, p. 9.
6. Report of the N.I.A.C.—On the Question of Earnings Limits for Benefits, *op. cit.*

1969 the retirement pension is subject to a marginal "earnings tax" rate of 50 per cent for weekly personal earnings in the range £7.5 to £9.5, and at 100 per cent where earnings exceed this level until the benefit has been taxed away.[7]

The stated objective of the earnings test is to adjust "the amount of the pension payable if remuneration for any work done exceeds a certain level", and thus support the retirement condition.[8] The rationale for its introduction and continued existence has been that insurance benefits should only be made payable to individuals who have suffered a loss of earnings and earning power; the post war pension was not to be an "old-age pension" payable to all contributors on the attainment of a certain age, but was a "retirement pension" payable to those who satisfied the retirement conditions and had made the necessary contributions. In order to encourage people to continue working after the minimum retirement age, increments to the flat-rate pension are made to those people who defer retirement, and continue to pay social insurance contributions, when they do retire.

Officially it is argued that the earnings test does not act as a major disincentive upon the decision to work beyond minimum retirement age because the major influences upon this decision are ill-health, and the inability to cope with the strain of full-time work.[9] In contrast to this official view, economic theory indicates that the earnings test has an independent effect upon the work/leisure choice of those individuals wishing to continue in "regular" employment beyond minimum retirement age.

The provision of a state retirement pension cuts the reduction in income that workers would face upon retirement, ceteris paribus. Assuming that neither money income nor leisure is an "inferior good", an individual receiving a retirement pension which increases his money income will prefer to sacrifice some of his added income for more leisure. The larger the benefit relative to potential earnings, the stronger the desire for leisure. Some workers will wish to maintain their work-load, some will wish to switch from full-time to part-time employment, other will wish to cease employment.[10]

The earnings test alters the situation described above by making at least partial retirement more attractive for those workers who in its absence would have worked enough to earn more than the threshold limit and hence would become subject to 50 per cent, and 100 per cent rates of "earnings tax". If such workers can adjust their work load, and such reductions do not greatly affect the hourly rate of pay, the earnings test will make partial retirement more attractive. Other workers with little or no flexibility in adjusting their hours worked, or substantial flexibility which greatly affects their hourly pay rate may have to choose between the continuation of full-time work, part-time work at a greatly reduced rate of pay, or retirement. In this latter case, the earnings test can cause complete retirement.

Turning to the facts of the situation there are 23.8 per cent of all people eligible to receive a state retirement pension within the earnings test field, that is, within the age limits

---

7. The flat-rate state retirement pension is £5 per week for single persons claiming on their own insurance, and £3.1 per week for wives claiming on their husband's insurance.

8. Report of the N.I.A.C.—On the Question of the Earnings Limits for Retirement Pensions. *Op. cit.* p. 9.

9. *Ibid.* p. 11.

10. These theoretical arguments have been elaborated by J.A. Pechman *et al.* in their recent study, Social Security: Perspectives for Reform. The Brookings Institution, Washington, D.C. 1968.

65 to 69 for men, and 60 to 64 for women. Of those within the earnings test field 16.5 per cent are in employment, and 5.9 per cent of those in employment have their pension reduced or extinguished by the earnings tax. One per cent of all individuals within the earnings test field have their pension reduced or extinguished by the operation of the earnings rule.[11]

We cannot say, "a priori", whether this small proportion is due to the operation of the earnings test, to ill-health and physical decline, non-declaration of earnings or to psychological reasons associated with the administration of the test. However, the empirical evidence is consistent with theoretical analysis and it seems that the disincentive effect of the earnings test on the decision to continue in full-time employment past minimum retirement age is underestimated in official circles.[12]

Although the pensioner does not receive that part of his pension deducted for earnings, and, hence, is not liable to pay income tax on it, he is likely to take into account not only the effect of the earnings test, but also the income tax system when deciding what is to be his work-load at the margin, assuming he is able to adjust this load. It is for this reason that we have calculated the combined impact of the income tax and the "earnings tax", for various combinations of pensioner insurance classifications and earnings, to give a "reduction rate" which is the combined tax rate at the margin. The "reduction rate" is defined as the rate at which net remuneration from an extra £52 worth of work throughout the year, at a constant weekly rate, is reduced by a combination of the income tax and earnings tax.[13]

---

11. The figures relate to the most recent enquiry into the earnings of pensioners carried out in June 1968. We are extremely grateful to the Department of Health and Social Security for supplying this information.

12. Report of N.I.A.C. Cmnd. 3197, 1967, *Op. cit.* For a case against the earnings rule based upon a *private* survey see Douglas R. Snellgrove, *Elderly Employed*, White Crescent Press Ltd. 1965.

13. The reduction rate which ascertains the combined "tax rate" at the margin on an extra £1 earnings per week for a year is not to be confused with the marginal rate of income tax which is later used in its usual sense referring to the rate of income tax on the last increment (£1) of income received.

TABLE I[14]

| *Weekly earnings range* | *Reduction rates under varying circumstances of retirement* | | | | |
|---|---|---|---|---|---|
| | A<br>% | B<br>% | C<br>% | D<br>% | E<br>% |
| 3.5–4.5 | 18.27* | 0.00 | 0.00 | 0.00 | 0.00 |
| 4.5–5.5 | 50.00* | 0.00 | 0.00 | 0.00 | 0.00 |
| 5.5–6.5 | 42.89* | 0 00 | 0.10* | 18.46* | 0.00 |
| 6.5–7.5 | 32.08* | 0.00 | 32.08* | 50.00* | 0.00 |
| 7.5–8.5 | 66.04 | 0.00 | 66.04 | 75.00 | 50.00 |
| 8.5–9.5 | 66.04 | 0.00 | 66.04 | 75.00 | 50.00 |
| 9.5–10.5 | 100.00 | 0.00 | 100.00 | 100.00 | 100.00 |
| 10.5–11.5 | 100.00 | 0.00 | 100.00 | 100.00 | 100.00 |
| 11.5–12.5 | 100.00 | 0.00 | 100.00 | 100.00 | 10.00 |
| 12.5–13.5 | 100.00 | 0.00 | 100.00 | 100.00 | 0.00 |
| 13.5–14.5 | 32.08* | 0.00 | 32.08* | 50.00* | 0.00 |

* The rate of reduction is due solely to the impact of the income tax.

*Circumstances of retirement*

A. Single male, 65 and over, receiving a retirement pension of £5 per week.

B. Married couple, male 65 and over, wife under 60, where the wife is the sole earner. Total weekly retirement pension received is £8.1, of which £3.1 is granted to the husband for the wife as a dependent and which is deducted entirely if the earnings of the wife exceed £3.1 per week.

C. Married couple both entitled to the £5 per week retirement pension based on their own insurance, the male is the sole earner and his £5 per week pension is subject to reduction according to his earnings.

D. Married couple, male 65 and over, and his wife under 60 years of age. The husband is the sole earner, total retirement pension received is £8.1 per week of which £5 is subject to reduction according to the husband's earnings. This circumstance also applies to the case of a married couple where each spouse has reached retirement age and the wife receives

14. The retirement pension is classified as the earned income of the person on whose insurance it is based. A married man receives two-ninths earned income relief up to the income level of £4,005 per annum and one-ninth relief on the next £5,940. In addition he receives a personal allowance of £465. A *working* wife is also entitled to the two-ninths, and one-ninth reliefs, subject to the qualification that total aggregated marital earned income does not exceed the £4,005 and £9,945 figures, plus a relief of seven-ninths of her earned income up to a maximum value of £325. Provided that the working wife is able to claim the full value of these special reliefs a married couple with wholly earned income are exempted from tax liability up to a joint income level of £1,016 per annum. This figure is simply the total personal allowance figure of £465 for the husband and £325 for his wife, grossed up by the earned income fraction.

benefit based on her husband's insurance.

E. Married couple where each spouse is of retirement age, the wife is receiving benefit based on her husband's insurance and she is the sole earner. Total retirement pension received per week is £8.1 of which £3.1 is subject to reduction according to the wife's earnings.

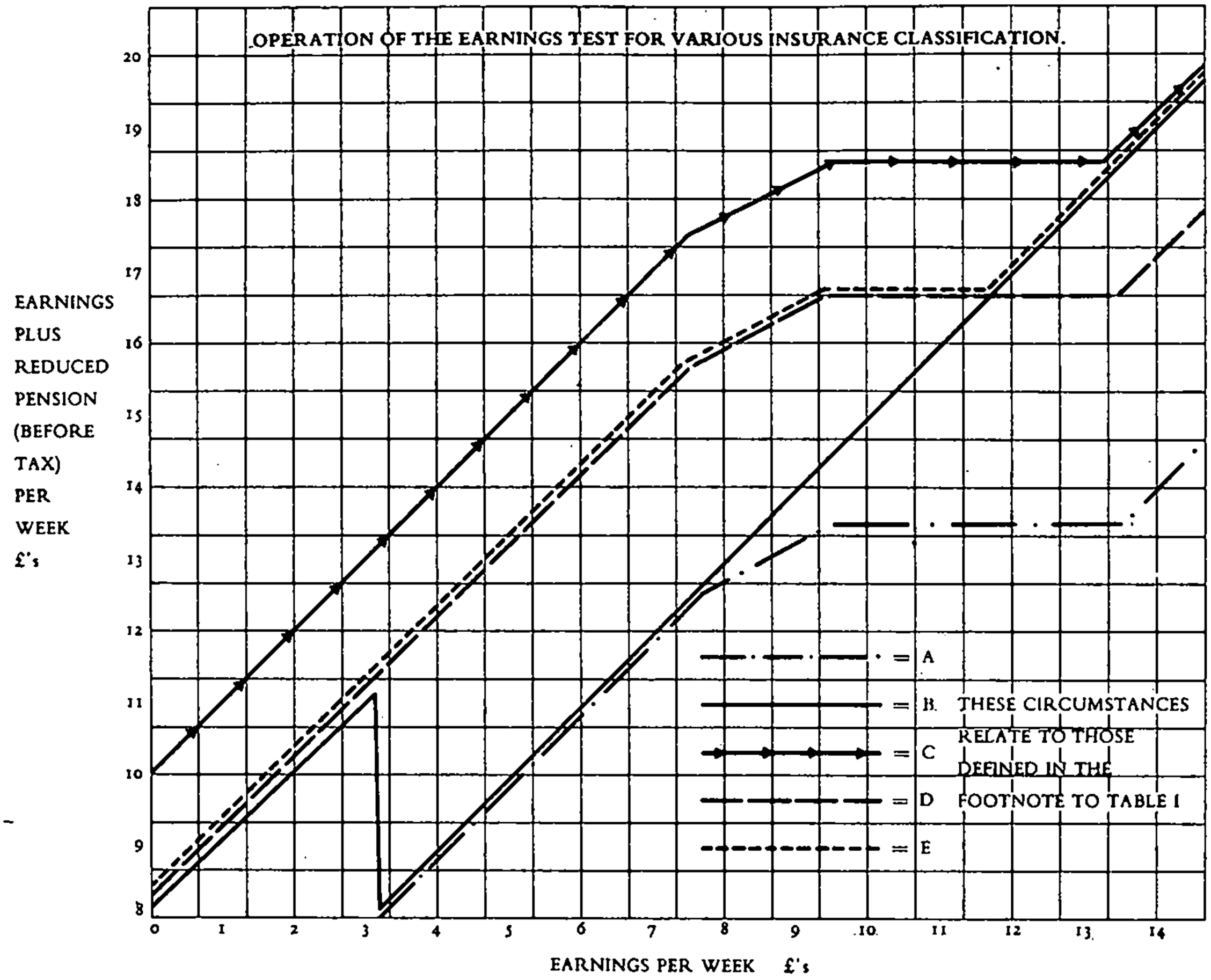
It may be appropriate here to illustrate the idea of a reduction rate by means of an example. If we take circumstance A, a single male receiving a weekly pension of £5 per week with weekly earnings of £8.5 per week, his weekly earnings plus reduced pension will be £13 per week, after income tax £11.41 per week. If he then increases his work level or receives an increased hourly rate of pay so that his earnings rise to £9.5 per week, his earnings plus reduced pension increase by only £0.5 to £13.5 after tax £11.75. The high rates shown in the above table would suggest that those eligible for retirement pensions are subject to very strong pressures in certain income ranges to reduce the number of hours worked and thereby earnings.

*Anomalies and inconsistencies*

The earnings test is not an income test in that no account is taken of income from accumulated assets. Those individuals who underestimate their retirement needs, and hence need to continue in full-time employment when they attain the age of retirement are treated less favourably than individuals who have had sufficient foresight and/or opportunity to provide themselves with an income stream during their retirement years. This discrimination is further strengthened, as we shall see in Part II of this paper, by the existence of special tax concessions for the aged. Further, we can note that pensioners with the same amount of earnings are treated differently according to their insurance classifications—this treatment is graphically illustrated below. In addition, whilst for income tax purposes the incomes of both spouses are aggregated; for the purpose of the earnings test no such aggregation takes place—the test is applied to personal earnings only. A further point of interest is that whereas the progressive income tax system normally penalizes fluctuating incomes relative to constant incomes, with the earnings tax system it is possible for the obverse to obtain. Take situation (A), that of a single male earning £13.5 per week for a full year. The flat-rate state retirement benefit has completely vanished, hence, annual earnings of £702 equal annual income, assuming the individual receives no investment income. Contrast this first case with that of a single male who earns nothing for half the year, (but receives the full flat-rate pension each week for this period) and earns £27 per week for the rest of the year. In both cases annual earnings are £702 per year and are subject, at the margin, to the standard rate of tax on earned income. In the second case, however, the individual receives a full flat-rate pension of £5 per week for 26 weeks, thus increasing his annual income by £130, which on the imposition of income tax leaves him with over £88 per year in addition to his earnings, net of income tax.

It has been estimated that the gross cost of abolishing the earnings test would be £150 million a year initially, most of this extra expenditure being spent in supplementing the earnings of pensioners in regular employment.[15] This initial cost could be

15. National Superannuation and Social Insurance Proposals for Earnings—Related Social Security. Cmnd. 3883, Appendix I p. 54, January 1969.


OPERATION OF THE EARNINGS TEST FOR VARIOUS INSURANCE CLASSIFICATION.
EARNINGS PLUS REDUCED PENSION (BEFORE TAX) PER WEEK £'s
20
19
18
17
16
15
14
13
12
11
10
9
8
0
1
2
3
4
5
6
7
8
9
10
11
12
13
14
EARNINGS PER WEEK £'s
= A
= B. THESE CIRCUMSTANCES
= C RELATE TO THOSE
= D DEFINED IN THE
= E FOOTNOTE TO TABLE I

reduced over time, for example, by the abandonment of the system of paying increments to those pensioners deferring retirement, and/or by raising the minimum retirement age. Part of the cost would be recouped via the income tax system.

## II. TAX CONCESSIONS FOR THE AGED

The first special tax concession for the aged, age relief, was introduced in 1925 for the purpose of extending to the small investment incomes of the aged, the advantage of earned income relief.[16] For the tax year 1970/71 age relief is granted to old people on the condition that either the claimant, or his wife living with him, attains the age of 65 during the year of assessment. The age relief allows a deduction of two-ninths to be claimed on incomes whether earned or unearned, up to the income limit of £1,000 per annum. This limit applies to aggregated income in the case of a married couple. Incomes in excess of the £1,000 limit are subjected to a 55 per cent statutory and effective marginal rate of tax, provided it is beneficial, in terms of tax liability, for the taxpayer to be treated under the age relief provisions as opposed to treatment under the normal tax provisions. Since the aged can claim the normal relief extended to earned income, the age relief is only of benefit to the aged with investment income.

The second special concession, age exemption, is granted on the same conditions as age relief. For the present year of assessment the allowance is £475 for a single individual and £740 for a married couple.[17] Incomes in excess of these limits are subject to a 50 per cent rate of tax on the difference between the taxpayers net income and the income limits of the exemption, provided it is beneficial for taxpayers to be treated in this way. It has been estimated that there are 185,000 single persons and 200,000 married couples with incomes which do not exceed these limits, and, in addition, a further 220,000 single persons and 325,000 married couples benefit from the tapering provisions.[18]

*Age Exemption*

Both the age exemption and age relief are examples of the sympathetic treatment of an easily identifiable group. Unlike the United States, the belief here is not that the aged have less ability to pay tax than do non-aged persons with the same income, but rather that the low-income aged have insufficient ability to obtain a post-tax level of income which will provide them with an adequate standard of living in the absence of a larger exemption. This belief is supported by various arguments[19], namely, that the

16. Reliefs are calculated as a proportion of income, whereas allowances are of a fixed amount. As stated above a taxpayer is entitled to deduct two-ninths of his net earned income up to the income level of £4,005. On the next £5,940, the deduction is one ninth. In applying these limits the earned incomes of husband and wife are aggregated in accordance with the system of mandatory joint returns.

17. The personal allowance for a non-aged individual is £325, for a married man it is £465. In the case of a working wife a relief of seven-ninths of her earned income is claimable up to a maximum amount of £325.

18. Source: Inland Revenue. These figures refer to the tax year 1969/70 when the allowance figures were £425 and £680 for a single person, and a married couple, respectively. With the introduction of the new figures for the tax year 1970/71 a further 100,000 tax paying units will be freed entirely from income tax including some units benefiting from marginal relief provisions under the 1969/70 provisions. 300,000 units will benefit from the marginal relief provisions.

19. Yung-Ping Chen: Income Tax Exemptions for the Aged as a Policy Instrument: National Tax Journal, Vol. XVI, No. 4 1963, pp. 325-336. L.H. Seltzer: Personal Exemptions in the Income Tax: National Bureau of Economic Research, Fiscal Studies No. 12, pp. 7 and pp. 114-118.

aged are less able to bear financial hardship relative to younger persons, because they have less time and ability to recoup losses; that the aged have less earning power than younger persons; and that compared with younger persons the aged tend to have higher costs of living, which is related to age being a disability in itself.

The exemption was introduced in 1957 following the recommendations of the Royal Commission on the Taxation of Profits and Income, which upheld the disability argument[20], and suggested that a special lump-sum allowance, independent of marital status, should be granted to all persons attaining the age of 75. From its inception, however, the magnitude of the exemption has varied with marital status, and the suggested age limit of 75 was rejected in favour of the lower limit of 65[21]. Since its introduction the age exemption has been used as a fiscal device to combat the effects of inflation on the low-income aged.

The income limits for claiming the exemption have been raised continually since 1957 in the belief that such increases have a significant effect on the standard of living of a group who are "particularly vulnerable to increases in taxation and the cost of living".[22]

If we examine the changes in the income limits more closely we find that increases in the limits have been broadly in step with increases in the state retirement pension.[23] Indeed, only in 1961 was an increase in the state retirement pension not accompanied by an increase in the income limits for claiming the age exemption.

In a period of inflation, with a fixed progressive tax rate structure, and exemption levels unchanged, the low-income aged, like all other taxpayers, would have paid an increasing proportion of their incomes in the form of income tax. By increasing the income limits of the age exemption in line with pension increases the Government has been able to avoid the charge that it has increased benefit payment with the one hand and recouped it with the other. The existence of the age exemption has thus enabled the legislature to help protect the living standards of the low income aged by increasing the limits of the age exemption without each time increasing the exemptions claimable by others.

Changes in the income tax system, including changes in the age relief as well as the exemption, have over the years been introduced specifically with the objective of helping the aged on low or modest unearned incomes. Whilst these measures have afforded some help for the aged it has been insufficient to counteract the rising costs of living. Moreover, the degree to which the tax changes have helped to offset inflation has tended to be such as to give a greater absolute advantage, in terms of real unearned income, to those with the relatively higher unearned incomes.[24]

Cost considerations have been an important factor in the determination of Government

---

20. Royal Commission of the Taxation of Profits and Income, 2nd Report, Cmnd. 9105, 1954, p. 64.

21. Budget studies have yet to substantiate the argument that the aged incur higher living costs as compared with the non-aged. However, the case for a tax concession for age would be greater if the age limit was increased. See J.A. Pechman *et al.*: Social Security Perspectives for Reform. The Brookings Institution, Washington D.C. 1968, p. 7; also Report of the Committee on the Economic and Financial Problems of the Provision for Old Age. Cmnd. 9333, *Op. cit.*, para. 184.

22. R. Jenkins, H.C. Debate, 5th Series, Vol. 781, col. 1033, 1969.

23. A.J. Walsh. The Age Exemption and Inflation. British Tax Review No. 5, 1969.

24. A.J. Walsh and A.W. Rote: Age Relief, Inflation and Savings, British Tax Review No. 6, 1969.

policy, it being estimated in 1965 that to exempt from income tax all retirement pensioners in respect of their state retirement pension would have reduced revenue by £60 million per annum[25], whereas the revenue loss from the age exemption was only £13 million in 1966/7[26], and is £14 million according to latest estimates for 1969/70[27]. The vanishing age exemption[28] device ensures that benefits are confined to the low income aged. This device is more effective than the American system whereby the aged are allowed an additional continuing exemption equal in amount to the exemption granted to all taxpayers, where effectiveness is measured by the criterion of only aiding those with the lowest incomes. In addition, the revenue loss resulting from increasing the income limits of the age exemption to take account of increases in the cost of living is much smaller than comparable increases in continuing exemptions of the same magnitude, ceteris paribus, because benefits are confined to low income groups.

*Age Relief*

The age relief was introduced at a time when the state retirement pension, old age pension as it was then, was neither universal in coverage nor of a sufficient amount to provide for subsistence during the years of retirement.[29] Hence it was felt that the savings of old people on a small scale should be treated on a par with earned income[30]. The introduction of this relief marked the first departure from the differentiation principle accepted by the Dilke Committee in 1906[31], which expressed the view that earned income should be treated more favourably than unearned income at the lower end of the income scale.[32] The objective of this relief was therefore similar to the present objective of the age exemption,

25. H.C. Debate, 5th Series, Vol. 706, Col. 230, Written Answer, February 17th, 1965.
26. H.C. Debate, 5th Series, Vol. 743, col. 208-210, Written Answer, March 20th 1967.
27. Source: Inland Revenue Authorities. The increase in the allowance figures for 1970/71 will cost a further £8m per annum. To replace the age exemption (and age relief) by a tax credit for *all* aged with incomes over £330 equal to £22.67 per single person, and £46.16 for a married couple, would cost £50m. per annum.
28. "The vanishing exemption is defined as the complete exemption from tax liability of net income up to a certain level, beyond which, the amount deducted from net income, in order to derive taxable income, declines as net income increases until the exemption vanishes". M. Levy: Income Tax Exemptions, North Holland Publishing Company, Amsterdam, 1960, p. 5. *Ceteris paribus* the United Kingdom age exemption yields the same results as a vanishing exemption of the same magnitude if the rate of decline of the magnitude of the exemption satisfies the equation $\frac{M}{S} - 1 = d$, where M = marginal tax rate under the age exemption provision; S = formal tax rate on the first taxable income bracket; d = rate of decline of the magnitude of the exemption.
29. M.F.W. Hemming: Social Security in Britain and Certain Other Countries. National Institute Economic Review, No. 33, August, 1969. The existence of supplementary benefits at the present time emphasizes the fact that the flat-rate pension is still insufficient. 70% of beneficiaries of the supplementary benefit were over pension age in November, 1968, and of this figure, over 87% were in receipt of a retirement pension. See Annual Report of the Department of Health and Social Security. July, 1969, Cmnd. 4100, Table 27.
30. H.C. Debate, 5th Series, vol. 183, col. 87-88, 1925.
31. Select Committee on Income Tax, 1906.
32. It can be argued that the favourable treatment of earned income is an extension of the ability to pay concept, recognizing the need of the taxpayer to provide for both present and future wants. See L. Eisenstein: The Ideologies of Taxation, Ronald Press, New York, 1961.

namely, to provide special assistance to the aged living on small incomes and who are unable to augment their incomes.

The continued existence of this special relief, since the inception of the age exemption, may be based upon the belief that people who have had sufficient foresight to save to provide a modest income for retirement should be suitably rewarded; that when a person reaches the age of 65 and receives a modest income derived in part or in total from investments the source of this income is no longer of importance; that those who have been forced to save through a pension scheme have their pensions treated as earned income, and hence people who have saved enough voluntarily to provide a modest income stream during retirement years should be treated in the same way. The continued existence of age relief is also consistent with the fact that earned income relief is in part given to enable earners to save for their retirement years. Hence, when they come to need these savings it is consistent to continue to tax them, up to a point, as earned income.

The level of the fraction allowed for age relief has varied directly with the earned income faction, presumably because of administrative convenience. From 1925/6 to 1952/3 the income limit for claiming this relief remained at £500 per annum, doubling in value for the present tax year. As with the age exemption, cost considerations have been an important factor in the determination of the income limit, and the marginal rate of tax applied to incomes in excess of this limit. Ceteris paribus, the higher the income limit and the lower the marginal rate of tax applied to incomes in excess of this limit, the greater the revenue loss, estimated to be £9m for the tax year 1969/70.

*Operation*

The operation of the age relief and exemption provisions for single and married persons is outlined in Tables II and III below, in which the tax treatment of the aged is compared with that of the non-aged for both earned and unearned income, at selected levels of net income. As we have seen in the first part of this paper, the earnings test is applied to the state retirement pension before the income tax liability, if any, is calculated. Hence the marginal rate of tax referred to in Tables II and III is the marginal rate of *income* tax, which in the case of individuals subject to the earnings test, is applied to earnings plus reduced pension, (if any), plus any other income.

TABLE II

| | *Single person* | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | *Under 65* | | | | *65 and over* | | | |
| | Earned income | | Investment income | | Earned income | | Investment income | |
| 1<br>Total net income | 2<br>Tax liability | 3<br>Marginal rate | 4<br>Tax liability | 5<br>Marginal rate | 6<br>Tax liability | 7<br>Marginal rate | 8<br>Tax liability | 9<br>Marginal rate |
| £'s | £'s | % | £'s | % | £'s | % | £'s | % |
| 450 | 10.31 | 32.08 | 10.31* | 32.08 | 0.00 | 0.00 | 0.00 | 0.00 |
| 475 | 18.33 | 32.08 | 24.06* | 55.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| 550 | 42.39 | 32.08 | 65.31* | 55.00 | 37.50 | 50.00 | 37.50 | 50.00 |
| 577 | 51 05 | 32.08 | 80.16* | 55.00 | 51.00 | 50.00 | 51.00 | 50.00 |
| 578 | 51.37 | 32.08 | 80.71 | 55.00 | 51.50 | 50.00 | 51.50 | 50.00 |
| 1,000 | 186.77 | 32.08 | 278.43 | 41.25 | 186.77 | 32.08 | 186.77 | 32.08 |
| 1,400 | 315.10 | 32.08 | 443.43 | 41.25 | 315.10 | 32.08 | 406.77 | 55.00 |
| 1,666 | 400.44 | 32.08 | 553.16 | 41.25 | 400.44 | 32.08 | 553.07 | 55.00 |
| 1,667 | 400.76 | 32.08 | 553.57 | 41.25 | 400.76 | 32.08 | 553.62** | 55.00 |

* Tax liability calculated under small investment income relief provisions which is an extension of the two-ninths earned income relief to incomes which do not exceed £450; where total income exceeds £450 a 55% tax rate is imposed on the excess until the benefit of the special relief is eliminated.

** This tax liability would not be levelled as it is more beneficial for the taxpayer to be treated under the normal tax provisions as outlined in columns 4 and 5. This also applies to married couples at this level of investment income.

It can be seen from columns 7 and 9, that since the exemption does not affect the progressivity of the formal rate structure for incomes exceeding the income limit the statutory marginal rate of tax is also the effective marginal rate. As a result of the tapering provision, the single aged taxpayer benefits from the age exemption provision provided net income does not exceed £577 per annum. Tax relief for a potential taxpayer with income at the statutory income limit of £475, is £18.33 for earned income, and £24.06 for investment income. These amounts represent the maximum financial assistance provided by the age exemption for single people. Whilst for the single person below the age of 65 earned income is treated more favourably than investment income for each level of net income in excess of £450 per annum for the aged the source of income does not affect either tax liability or the marginal rate of tax, provided

income does not exceed £1,000 per annum. For annual incomes in excess of this level earned income is treated favourably vis-a-vis investment income. The aged with investment income are however treated favourably in terms of tax liability when compared with the non-aged for any income not exceeding £1,666.

TABLE III

| | *Married couple* | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | *Under 65* | | | | *65 and over* | | | |
| | Earned income* | | Investment income | | Earned income* | | Investment income | |
| 1 Total net income | 2 Tax liability | 3 Marginal rate | 4 Tax liability | 5 Marginal rate | 6 Tax liability | 7 Marginal rate | 8 Tax liability | 9 Marginal rate |
| £'s | £'s | % | £'s | % | £'s | % | £'s | % |
| 740 | 45.60 | 32.08 | 113.43 | 41.25 | 0.00 | 0.00 | 0.00 | 0.00 |
| 850 | 80.89 | 32.08 | 158.81 | 41.25 | 55.00 | 50.00 | 55.00 | 50.00 |
| 950 | 112.97 | 32.08 | 200.06 | 41.25 | 105.00 | 50.00 | 105.50 | 50.00 |
| 994 | 127.09 | 32.08 | 218.21 | 41.25 | 127.00 | 50.00 | 127.00 | 50.00 |
| 995 | 127.41 | 32.08 | 218.62 | 41.25 | 127.50 | 50.00 | 127.50 | 50.00 |
| 1,000 | 129.02 | 32.08 | 220.68 | 41.25 | 129.02 | 32.08 | 129.02 | 32.08 |
| 1,400 | 257.35 | 32.08 | 385.68 | 41.25 | 257.35 | 32.08 | 349.02 | 55.00 |
| 1,666 | 342.69 | 32.08 | 495.41 | 41.25 | 342.69 | 32.08 | 495.32 | 55.00 |
| 1,667 | 343.01 | 32.08 | 495.82 | 41.25 | 343.01 | 32.08 | 495.87 | 55.00 |

* Earned solely by the husband.

Whereas earned income is treated favourably relative to investment income for the non-aged couple, for the aged couple investment and earned income are treated on a par up to the level of £1,000, beyond this level the latter type of income is treated favourably. In the lower income ranges tax liability for the aged is less than that for the non-aged for any given net income level up to £994 where the age exemption ceases to be of benefit. Earned incomes in excess of this figure are treated in the same manner independent of the age factor. With investment income the aged couples are more favourably treated than their younger counterparts up to the income level of £1,666 because of age relief.

Therefore, up to the income level of £1,666 per annum, both single persons and married couples with investment income benefit from attaining the age of 65. Where income does not exceed £1,000, unearned income received by the aged is treated on a par with earned income. We can note that for certain ranges of income the marginal

rate of tax decreases as income increases.[33]

## III. POST TAX INCOME

With the removal of the earnings test pre-tax income would increase for our circumstances A, C, D, E, for weekly earnings in excess of £7.5, for circumstance B pre-tax income would increase for weekly earnings in excess of £3.1. Table IV below shows the increases in post-tax income which would obtain in the absence of the earnings test. In all circumstances except B there is no change in post-tax income resulting from the removal of the earnings test for weekly earnings which do not exceed £7.5. In circumstance B the benefit claimed by the husband for his wife as a dependent is confiscated when her own earnings exceed the size of this benefit (£3.1 per week). In terms of our earlier analysis this confiscation yields a reduction rate of 310 per cent for the weekly earnings range £2.5 to £3.5.

TABLE IV

| | *Increases in post-tax income in the absence of the earnings test* | | | | |
|---|---|---|---|---|---|
| | Circumstances of retirement | | | | |
| Weekly earnings | A | B | C | D | E |
| £'s | £'s | £'s | £'s | £'s | £'s |
| 8.5 | 17.66 | 161.20 | 17.66 | 13.00 | 26.00 |
| 9.5 | 35.31 | 161.20 | 35.31 | 26.00 | 52.00 |
| 10.5 | 70.63 | 161.20 | 70.63 | 52.00 | 104.00 |
| 11.5 | 105.95 | 160.08 | 105.95 | 82.42 | 154.88 |
| 12.5 | 141.26 | 143.40 | 141.25 | 117.74 | 143.40 |
| 13.5 | 176.58 | 126.71 | 176.58 | 153.05 | 126.71 |
| 14.5 | 176.58 | 110.03 | 176.58 | 162.37 | 110.03 |

*Appraisal*

Whether the abolition of the earnings test would lead to a change in the amount of work undertaken by the aged cannot be ascertained on 'a priori' basis. We can say that empirical evidence—namely the very small proportion of pensioners subject to the earnings tax—supports the view that the earnings test has a strong disincentive effect, especially on pensioners with low earnings potential when in regular employment, with regard to the decision to continue in regular employment beyond minimum retirement age, or to do more part-time work than they undertake at present. This effect should be appreciated by the administrators of the test for two reasons. It seems particularly objectionable that the earnings test should fall heavily on people whose earnings potential is low. In addition, the government has recently contended that "the general need of the country's economy is for people to

33. Thus contravening one of the restrictive criteria laid down for a generally acceptable and properly designed income tax system. See M. Levy. *Op. cit.*, pp. 14-16.

continue in work as long as possible . . ."[34] Admittedly the economist cannot say for certain that the complete abolition of the earnings test would increase the present amount of work done by all pensioners, but it is relevant that the higher a person's earnings potential the less likely he is to be affected by whether the pension is subject to the earnings test or not, ceteris paribus.

The impact of the earnings test could be modified by changing the threshold limit and band limits, but such changes are open to the objection that the retirement pension would have become again an "old age" pension.[35] Nevertheless, such changes and the effects of such changes will have to be examined in the light of the Government's recent proposals for a comprehensive earnings related social security scheme[36] whereby the state pension will be dependent upon lifetime contributions to the "insurance fund" realigned to take account of changes in the value of money over the period of contribution. It has been stated that "something like the existing retirement condition and earnings rule will . . . remain".[37] However, if society wishes to restrict the use of productive capacity of the aged who are in receipt of a State *retirement* pension it has an obligation to provide such pensions on an adequate scale. It will be interesting to see if any changes in the present test are made; will the threshold limit remain a constant amount or will this limit be linked in some way to the size of the pension?

As regards the income tax treatment of the aged the age exemption and to a greater extent the age relief, discriminate in favour of the unearned income of the aged as compared with younger people with like income for certain ranges of income. There exists, therefore, an incentive to redistribute lifetime receipts so as to provide a source of income during the years of retirement. The necessity of providing such a personal incentive to save for old age has declined since 1925 with the wider coverage of state benefits of increased real value; with the growing extent of other tax concessions[38] and occupational pension schemes; and also the introduction of the age exemption. Furthermore, the Royal Commission whilst recognising the need for the individual to save for retirement,[39], felt that measures adopted for the encouragement of personal savings "should lie outside the sphere of the income tax".[40]

Whilst it is a fact that in terms of tax liability the aged are favourably treated relative to the non-aged for certain income ranges, nevertheless, relatively high rates of income tax are applied to incomes in excess of the statutory income limits of the tax concessions for the aged (50% and 55% for the exemption and relief respectively). These rates may adversely offset the level of work effort (especially when levied in conjunction with the earnings tax) and the willingness to save.[41]

---

34. National Superannuation and Social Insurance. *Op. cit.* p. 53.
35. We can note that the abolition of the earnings test would involve no new principle since pensioners engaged in regular employment who are aged 70 or over for men, and 65 or over for women, are not subject to the earnings test.
36. National Superannuation and Social Insurance. *Op. cit.* p. 53.
37. Ibid. p. 55.
38. E.g. Life insurance relief and deductions for superannuation contributions.
39. Royal Commission on the Taxation of Profits and Income. *Op. cit.* Final Report. Cmnd. 9474, Chapter 3. The Commission felt that the existence of life insurance relief and deductions for superannuation contributions were justified.
40. Ibid. p. 76. The opposite view was taken by Mr. Jenkins in his 1969 Budget speech.
41. The effect on the willingness to save of the low income groups dealt with here is unlikely to be significant.

Whether changing the income tax structure is the way to achieve an improvement in the conditions of the low income aged is very debatable. In the first place, for the aged with very low incomes the granting of a special tax concession is an illusory gain because their income is so small that they will obtain little or no gain from the exemption. Secondly, if the granting of the special tax concessions is a good policy for the aged then surely it should be extended to include other low income groups. Against such an extension it can be argued that younger low income receivers could increase income by increasing their work load. However, for many low income receivers their poverty is not self-inflicted in the sense that they would increase their work load and their income, but results from the factors such as residence in depressed areas, little or no education, innate abilities or acquired skills which carry sufficient market value, and because family size is excessive in relation to family income.[42] Evidence has yet to be presented to support the belief that the aged with low or modest incomes require additional financial assistance relative to younger people with equally low incomes. If there exists community agreement that the needy require financial assistance such assistance can be provided in a positive form, and/or in the form of tax concessions. The major drawback of using tax concessions is that individuals with the lowest incomes are unable to take full advantage of these concessions, and hence there has been much interest recently in the positive approach to the provision of financial assistance for the needy.[43]

---

42. For a discussion of the economic approach to poverty see H.G. Johnson "The Economic Approach to Social Question". Economica. New Series, Vol. XXXV, No. 137, Feb. 1968. pp. 17-21.

43. As witnessed by the growth of literature on income maintenance programmes, and the findings of the Canadian Royal Commission on Taxation, Ottawa, 1966, which came to the conclusion that those with very low incomes require positive assistance. See Vol. 3, pp. 220-221.

DR. h.c. W. MERSMANN:

# RESÜMEE ZU DER RESOLUTION ZU THEMA I DES IFA-KONGRESSES IN ROTTERDAM*

Der Kongreß hat sich in seiner Resolution – entsprechend der abgeänderten Richtlinie des Generalberichterstatters – nicht mit der Frage beschäftigt, in welchen Fällen und unter welchen Voraussetzungen Zahlungen für Dienstleistungen oder die Überlassung immaterieller Werte zwischen Muttergesellschaften und deren Tochtergesellschaften in einem anderen Staate als solche nicht anerkannt werden. Die Resolution bezieht sich vielmehr nur auf die Frage, wie im Falle der Nichtanerkennung von Zahlungen für Dienstleistungen oder die Überlassung immaterieller Werte im Rahmen eines internationalen Konzerns die Doppelbesteuerung zu vermeiden ist.

Der Kongreß ist demgemäß bei seinen Erörterungen (1 der Resolution) von einem bestimmten Fall ausgegangen, nämlich dem, daß eine Tochtergesellschaft an ihre ausländische Muttergesellschaft für die Überlassung eines Patents Lizenzgebühren bezahlt und daß der Staat der Tochtergesellschaft einen Teil dieser Zahlung als verdeckte Gewinnausschüttung (Dividende) ansieht. Diese Möglichkeit ergibt sich durchweg schon nach dem nationalen Recht, besonders aber auch nach Art. 12 Abs. 4 des OECD-Musterabkommens, der in zahlreiche neuere Doppelbesteuerungsabkommen aufgenommen ist. Hiernach wird der Artikel über Lizenzgebühren, wenn zwischen Schuldner und Gläubiger besondere Beziehungen bestehen und deshalb die gezahlten Lizenzgebühren, gemessen an der zugrundeliegenden Leistung, den Betrag übersteigen, den Schuldner und Gläubiger ohne diese Beziehungen vereinbart hätten, nur auf diesen letzten Betrag angewendet. Der übersteigende Betrag wird, wenn es sich um Zahlungen einer Tochtergesellschaft an eine Muttergesellschaft des anderen Vertragsstaates handelt, regelmäßig als verdeckte Gewinnausschüttung anzusehen sein. Im allgemeinen sind in diesen Fällen auch die Voraussetzungen des Art. 9 des OECD-Musterabkommens erfüllt. Der als verdeckte Gewinnausschüttung behandelte Betrag ist dann dem Gewinn der Tochtergesellschaft hinzuzurechnen. Diese erhebt regelmäßig für die verdeckte Gewinnausschüttung einen Steuerabzug vom Kapitalertrag.

Es ist, wenn die materiellen Voraussetzungen gegeben sind, grundsätzlich nicht unzulässig, wenn eine Steuerbehörde in dieser Weise abweichend von der Erklärung oder auch, soweit dies nach formellem Recht möglich ist, von einer ursprünglichen Veranlagung bei der Tochtergesellschaft eine Veranlagung durchführt, die zu einer Erhöhung der Körperschaftsteuer führt. Der Gesichtspunkt der Vermeidung der Doppelbesteuerung verlangt aber, daß der Staat der Muttergesellschaft den Fall nach Möglichkeit ebenso beurteilt wie jetzt der Staat der Tochtergesellschaft, also nur zum Teil den Empfang von Lizenzgebühren annimmt, zum anderen Teil aber davon ausgeht, daß die Muttergesellschaft eine verdeckte Gewinnausschüttung (Dividende) empfangen hat. Nur dann führt die Anwendung eines Doppelbesteuerungsabkommens in der Art des OECD-Musterabkommens im allgemeinen zur Vermeidung der Doppelbesteuerung. Die Resolution erklärt es demnach unter II für er-

---

* Der Text der Resolution ist im Bulletin 1969, S. 586 veröffentlicht.

wünscht, daß der Staat der Muttergesellschaft der Umqualifizierung folgt, also auch seinerseits den entsprechenden Teil der Zahlung als verdeckte Gewinnausschüttung behandelt.

Meistens ist nach dem in den Staaten der Muttergesellschaft geltenden nationalen und Vertragsrecht in diesem Falle neben der Lizenzgebühr auch der Betrag der verdeckten Gewinnausschüttung zur Körperschaftsteuer der Muttergesellschaft heranzuziehen. Nach den meisten Doppelbesteuerungsabkommen und zum Teil auch schon nach nationalem Recht ist dann aber der Steuerabzug vom Kapitalertrag, der vom Staate der Tochtergesellschaft erhoben wird, auf die die Gewinnausschüttung belastende Steuer anzurechnen.

In anderen Fällen gilt jedoch das Schachtelprivileg über die Grenze, so daß die Muttergesellschaft die Gewinnausschüttung nicht zu versteuern braucht, der zu besteuernde Gewinn also gegenüber dem ursprünglich die gesamte Zahlung als Lizenzgebühr enthaltenden Gewinn herabgesetzt wird. Gilt das Schachtelprivileg über die Grenze, so entfällt nach einigen Abkommen der Steuerabzug vom Kapitalertrag. Nach anderen bleibt jedoch ein Steuerabzug vom Kapitalertrag, wenn auch meist nur in geringer Höhe, bei der Tochtergesellschaft bestehen. Dieser kann dann vom Staat der Muttergesellschaft nicht angerechnet werden, weil diese infolge des Schachtelprivilegs einer Besteuerung im Staate der Muttergesellschaft nicht unterliegt.

Der Text von II bezieht sich nur auf Beispiele und erhebt keinen Anspruch auf Vollständigkeit.

Unter III beschäftigt sich die Resolution dann mit dem Fall, daß der Staat der Muttergesellschaft die Umqualifizierung nicht mitmacht, also im gegebenen Fall nach wie vor die gesamte Zahlung als Lizenzgebühr behandelt, infolgedessen also den im Staat der Tochtergesellschaft vorgenommenen Steuerabzug vom Kapitalertrag auch dann nicht anrechnet, wenn kein Schachtelprivileg besteht. Hierin würde eine steuerliche Doppelbelastung liegen. Der Kongreß gibt Empfehlungen an die beteiligten Staaten, um diese zu vermeiden. Die Empfehlungen gehen zum Teil über die in den Doppelbesteuerungsabkommen im allgemeinen enthaltenen Vorschriften über das Verständigungsverfahren hinaus.

Das gilt zunächst für die Empfehlung einer Konsultation schon dann, wenn der Staat der Tochtergesellschaft beabsichtigt, die Zahlung ganz oder teilweise nicht als Lizenzgebühr an die ausländische Muttergesellschaft anzuerkennen. Die Empfehlung III Ziff. 1) geht dahin, daß er diese Absicht schon vor der Veranlagung dem Staat der Muttergesellschaft mitteilen soll, damit kurzfristig eine Einigung erzielt werden kann. Diese kann entweder darin bestehen, daß der Staat der Tochtergesellschaft auf die Umqualifizierung verzichtet oder daß der Staat der Muttergesellschaft ihr folgt, oder aber, daß eine eventuelle Doppelbelastung im Wege des gegenseitigen Nachgebens beseitigt wird.

Unter III Ziff. 2) betont der Kongreß, daß in den genannten Fällen einer Umqualifizierung stets ein Verständigungsverfahren möglich sein müsse, das von den beteiligten Steuerpflichtigen oder auch von Amts wegen veranlaßt werden könne, und zwar am besten schon bevor eine Veranlagung durchgeführt sei. Weiter wird gefordert, daß die interessierten Steuerpflichtigen die Möglichkeit haben müßten, am Verständigungsverfahren teilzunehmen.

Im Verständigungsverfahren sind, wenn die abweichenden Auffassungen über die Umqualifikation bestehen bleiben, Billigkeitslösungen im Wege gegenseitigen Nachgebens anzustreben. Der Kongreß betont,

daß die im Verständigungsverfahren getroffenen Maßnahmen sich ohne Rücksicht auf die Rechtskraft von Veranlagungsbescheiden auswirken müßten. Dies geschieht z.B. in der Bundesrepublik durch den Erlaß aus sachlichen Billigkeitsgründen.

Ein wichtiger anderer Weg ist die Einrichtung eines internationalen Schiedsverfahrens oder eines sonstigen gerichtlichen Verfahrens, das für Zweifelsfälle gerade der Umqualifizierung zwischen den Staaten zu vereinbaren ist. Dieses Schiedsgericht wird die streitige Rechtsfrage zu entscheiden haben, ob die Umqualifizierung durch den Staat der Tochtergesellschaft berechtigt war, nach der ein Teil des Entgelts nicht als Lizenzgebühr, sondern als verdeckte Gewinnausschüttung anzusehen ist. Diese Entscheidung würde dann auch für den Staat der Muttergesellschaft maßgebend sein. Insoweit bedarf es keines Verständigungsverfahrens.

Man wird mit Recht hervorheben können, daß die unter III der Resolution genannten Regeln gegenüber den Entschließungen auf den IFA-Kongressen 1951 und 1960 einen erheblichen Fortschritt bedeuten.

Unter IV betont der Kongreß, daß mindestens die nach der Umqualifizierung erhobene zusätzliche Abzugsteuer des Staates der Tochtergesellschaft auf die Steuer des Staates der Muttergesellschaft angerechnet werden sollte. Es handelt sich hier um einen wiederholten Hinweis auf den wohl wichtigsten und häufigstens Fall einer Verminderung der Doppelbesteuerung.

Nach v der Resolution sollen über den vorausgesetzten typischen Fall hinaus deren Empfehlungen, besonders hinsichtlich der Konsultation, des Verständigungsverfahrens und des internationalen Schiedsgerichtsverfahrens, in allen Fällen beachtet werden, in denen zwischen verbundenen Unternehmen gezahlte Lizenzgebühren oder Entgelte für Dienstleistungen seitens eines der beteiligten Staaten umqualifiziert werden. Eine entsprechende Anwendung der besprochenen Regeln wird auch in den Fällen in Betracht kommen, in denen es sich um Verträge zwischen Schwestergesellschaften handelt und als Lizenzgebühren oder Entgelte für Dienstleistungen bezeichnete Zahlungen zum Teil nicht als solche anzusehen sind, sondern wie nach der deutschen Rechtsprechung als verdeckte Gewinnausschüttung an die gemeinsame Muttergesellschaft, die von dieser an die bedachte Schwestergesellschaft im Wege der Einlage weitergeleitet werden. Auch in diesem komplizierten Fall ist es sehr wünschenswert, daß die steuerrechtliche Beurteilung der Vorgänge in den beteiligten Staaten übereinstimmt und daß ggf. eine Konsultation oder ein Verständigungsverfahren zum Zuge kommt.

# BIBLIOGRAPHY

## BOOKS

### ARGENTINA

EVOLUCION DEL IMPUESTO A LOS REDITOS, PERIODO 1956-1968, by P.J. Castro and O. Parreno. Published by Editorial Cangallo Saci, Buenos Aires, 1968, second edition, 934 pp.
The development of the income tax legislation in Argentine since 1956. The book contains statutes, rulings and decisions and is supplemented by the issue of new booklets.

Library International Bureau of
Fiscal Documentation, no. B5012

IDEM, PERIODO 1956-1969. Published 1969, second edition 166 pp.
Booklet supplementing up to September 1969, the basis work as listed above.

Library International Bureau of
Fiscal Documentation, no. B5016

LA INFORMACION, published by Editorial Cangallo Saci, Buenos Aires.
The volumes XVII to XX of the monthly publication "La Información" include all numbers from January 1968 to December 1969. The periodical contains the text of laws, articles on taxation, rulings, decisions and commentaries by well known tax experts.

Library International Bureau of
Fiscal Documentation, no. B5021-B5023

LA GERENCIA DE LA SOCIEDAD ANONIMA, by P. Pascual Megna. Published by Cangallo Sociedad Anonima, Buenos Aires, 1970. 189 pp.
Survey on the management of stock corporations in Argentina and comparative study of management in 14 other countries.

Library International Bureau of
Fiscal Documentation, no. B5038

MANUAL DE ASOCIACIONES CIVILES, by J. Conte. Published by El Accionisto, Buenos Aires, 1961. 494 pp.
Study of the legal regime for partnerships and foundations in Argentina.

Library International Bureau of
Fiscal Documentation, no. B5014

PERFILES DEL PROCESO EN EL TRIBUNAL FISCAL DE LA NACION, by E. López Agnetti. Published by Editorial Cangallo Saci, Buenos Aires, 82 pp.
Survey of legal procedure before the Federal tax court.

Library International Bureau of
Fiscal Documentation, no. B5011

### AUSTRIA

BETRIEBSWIRTSCHAFTSLEHRE. EINZELWIRTSCHAFTLICHE GRUNDFRAGEN, by K. Lechner. Published by Industrieverlag Peter Linde, Dominikanerbastei, 1010 Vienna. 2. erweiterte Auflage 1970. 266 pp.
Second revised edition dealing with business economics. A bibliography is appended.

Library International Bureau of
Fiscal Documentation, no. B5066

GEBÜHREN UND VERKEHRSTEUERN, BAND I. 1. Teil Verfahrensrechtliche Hinweise, 2. Teil Stempel- und Rechtsgebühren. Published by K. Fellner, W. Fellner, Röntgenstrasse 4, 4020 Linz, 1970. 5. erweiterte Auflage, Neufassung 1968-1970. 190 pp.
This loose-leaf publication, volume 1, contains an explanation to the general principles and concepts governed by the General Federal Tax Law (BAO) and the text and explanation of the stamp duties laws.

Library International Bureau of
Fiscal Documentation, no. B5049

### BELGIUM

VOORRADEN - Waarderingsproblematiek bij de fiscale winstbepaling in België (met een overzicht van de toestand in Nederland), by H. Siebens. Published by Etablissements Emile Bruylant, Regentschapsstraat 67, Brussel 1. 194 pp.
Study on the valuation of stock for Belgian tax purposes with comparative reference to the Netherlands. A bibliography is appended.

Library International Bureau of
Fiscal Documentation, no. B4625

### CHILE

REPERTORIO DE LEGISLACION Y JURISPRUDENCIA CHILENAS, published by Editorial Jurídica de Chili, Chile 1955. 2 vols. Vol. I 291 pp., Vol. II 334 pp.
Two volumes containing the connected code of commerce and the bankruptcy Act and other

laws of commercial nature.

Library International Bureau of
Fiscal Documentation, nos. B4626, B4627

EL FOMENTO DE LAS EXPORTACIONES (Estímulos a las exportaciones contemplados en la Ley no. 16.528) by P. Fernandez Barros. Published by Facultad de Ciencias Jurídicas, Politicas y Sociales, Universidad Catolica de Chile, Memoria no. 37, Editorial Juridica de Chile, Ahumada 131, Santiago de Chile, 1968. 157 pp.
Survey of the tax incentives granted for the exportation of nontraditional exports.

Library International Bureau of
Fiscal Documentation, no. B5068

TRIBUTACION NORMAL A LA RENTA DE LAS EMPRESAS EN CHILE Y EN LA LEGISLACION COMPARADA, by E. Carrillo T. and T. Carrillo T. Published by Editorial Juridica de Chile, 1968. 451 pp.
Comparative survey on the tax regime in the U.S.A., 7 European and 8 Latin American countries, for the taxation of the income of corporations. Special attention is devoted to Chilean taxation and several tables are annexed.

Library International Bureau of
Fiscal Documentation, no. B5067

## E.E.C.

FINANCIAL INTEGRATION IN WESTERN EUROPE, by E.S. Kirchen. Published by Columbia University Press, London, 1969. 144 pp.
The author discusses the history of the Rome Treaty, which established the Common Market, the removal of all obstacles to international trade and investment between member countries, the creation of new institutions, and the harmonization of national economic policies. The text of the Rome Treaty pertaining to the subject is appended.

Library International Bureau of
Fiscal Documentation, no. B4651

## EIRE

AN INTRODUCTION TO THE IRISH DEATH DUTIES, by C.H. Haccius. Published by The Institute of Taxation in Ireland, 69/71 St. Stephen's Green, Dublin 2. 1969. 178 pp.
Introductory textbook on the Irish death duties with reference to case law.

Library International Bureau of
Fiscal Documentation, no. B4623

THE PHILOSOPHY OF THE CORPORATE TAX, by S. Reamonn. Published by Institute of Public Administration, 57-61 Landsdown Rd. Dublin 4. 276 pp.
Reference work of the economic double taxation attached to the fact that companies are subject to corporate income tax on their profits and that individual income tax is imposed on the dividend distributions out of such profits at the individual shareholder level with emphasis to the tax treatment in Ireland and the United Kingdom. This work surveys also the history of legislation in this field in many parts of the world and it records the views of commentators, officials and unofficials.

Library International Bureau of
Fiscal Documentation, no. B5063

## FRANCE

LAMY SOCIAL, published by Sociétés des Services Lamy, Paris. 884 pp.
Survey of labour legislation and social security law.

Library International Bureau of
Fiscal Documentation, no. B4629

## GERMANY

ERBSCHAFTSTEUER, by E. Breitenbach. Published by Karl-Brauer-Institut des Bundes der Steuerzahler, 1969. Heft 15. 64 pp.
Considerations on the proposed reform of the present German inheritance tax as based on the Report by the Scientific Committee to the German Federal Ministry of Finance on the reform of direct taxes (individual income tax, corporate income tax, net worth tax and inheritance tax) published on February 11, 1967. A short survey of the taxes levied in this respect in other European countries and the USA is appended.

Library International Bureau of
Fiscal Documentation, no. B5071

FÜNFZIG JAHRE DEUTSCHE STEUERFACHVERWALTUNG, zugleich 50 Jahre deutsche Steuerbeamten-Gewerkschaft, published by Steuerbeamten-Verlag, Cecillen Allee 54, 4 Düsseldorf, 1970. 207 pp.
Jubilee publication prepared by the Bund Deutsche Steuerbeamten surveying the historical development with regard to the German tax administration as early as the Weimar Republic up

to the present moment including the developments in the German Democratic Republic.

Library International Bureau of
Fiscal Documentation, no. B4653

SUBVENTIONEN ALS INSTRUMENT DES FINANZWIRTSCHAFTLICHEN INVENTIONISMUS, by N. Andel. Published by J.C.B. Mohr, Postfach 2040, 74 Tübingen. 175 pp.
Study on the impact of subvention payments as an instrument of intervention in public finance.

Library International Bureau of
Fiscal Documentation, no. B4652

## INTERNATIONAL

CONVENTION BELGO-ALLEMANDE POUR EVITER LES DOUBLES IMPOSITIONS, published by Chambre de Commerce Belgo-Luxembourgeoise-Allemande, Shell Building, Cantersteen 47, Brussels, 1969. 119 pp.
Explanation to the income and capital tax treaty of April 11, 1967 by dr. Helmut Debatin (in German), by Prof. Dr. A. Tiberghien (in French) and by the Belgian Ministry of Finance (in Dutch). The text of the treaty in German, French and Dutch and the Belgian and German implementory provisions thereto are appended.

Library International Bureau of
Fiscal Documentation, no. B4611

EL NACIMIENTO DE LA OBLIGACION TRIBUTARIA. Analisis Jurídico del hecho imponible. Comisión viaje de Estudios de la Facultad de Ciencias Economicas de la Universidad de Buenos Aires, Promoción 1968. 474 pp.
Two studies by Prof. F. Sáinz de Bujanda (U. de Madrid) on the philosophical and juridical basis of taxation.

Library International Bureau of
Fiscal Documentation, no. B5017

MACRO-ECONOMISCHE BESCHOUWINGEN OVER HET AFWENTELEN VAN BELASTINGEN, by J.C.P.A. van Esch. Published by N. Samsom N.V., Alphen a.d. Rijn, (Netherlands) 1969. 183 pp.
Thesis which attempts to investigate the incidence of tax shifting. A bibliography is appended.

Library International Bureau of
Fiscal Documentation, no. B4616

THE INTERNATIONAL BUSINESS ENVIRONMENT, A Management Guide, by H.J. Heck. Published by American Management Association, Inc. 133 West 50th Street, New York, N.Y. 10020, 1969. 192 pp.
The purpose of this guide is to acquaint the reader with the general environment within which international business is conducted. A chapter on Taxation of International Business is appended.

Library International Bureau of
Fiscal Documentation, no. B4617

## NETHERLANDS

CONCENTRATIE IN HET BEDRIJFSLEVEN, by B. Roolink, J. Bosma, H.B.G. Casimir, a.o. Published by N.V. Uitgeversmij. AE.E. Kluwer, Deventer, 1969. 127 pp.
Text of speeches held at a congress in 1969 on the development of mergers viewed from various aspects.

Library International Bureau of
Fiscal Documentation, no. B5053

INKOMSTENBELASTING IN DE AGRARISCHE SECTOR, by A. Jolink. Published by N.V. Uitgeversmij. AE.E. Kluwer, Deventer, 1970. 560 pp.
Loose-leaf publication exclusively dealing with the income taxation of an agriculture enterprise and all its aspects connected therewith including reference to case law, rulings etc.

Library International Bureau of
Fiscal Documentation, no. B5057

INKOMSTENBELASTINGTABEL 1970. Met toelichting en premieheffing A.O.W., A.W.W., A.K.W. en A.W.B.Z. Published by L.J. Veen's Uitgeversmaatschappij N.V., Amsterdam 1970. 92 pp.
Individual income tax rates and social security premiums for 1970 with short explanations.

Library International Bureau of
Fiscal Documentation, no. B4630

IS DE NEGATIEVE INKOMSTENBELASTING EEN SCHREDE VOORUIT OP DE WEG NAAR SOCIALE RECHTVAARDIGHEID? by F.H.M. Grapperhaus. Published by N.V. Uitgeversmij. AE.E. Kluwer, Deventer, 1970. 16 pp.
Text of a speech by the Secretary of the Ministry of Finance contemplating whether the negative income tax should be built-in the Dutch social security system.

Library International Bureau of
Fiscal Documentation, no. B5061

WINSTRECHTEN, by N. Nobel. Published by N.V. Uitgeversmij. AE.E. Kluwer, Deventer, 1970. 303 pp.
Thesis on the tax problems arising from profit shares. By this term is meant the title to a part of the net profit of an enterprise which is held by a person who is not the entrepreneur of the enterprise.

Library International Bureau of
Fiscal Documentation, no. B5047

## NETHERLANDS ANTILLES

BELASTINGEN IN DE NEDERLANDSE ANTILLEN, by K.F.Walboom. Published by AE.E. Kluwer, Deventer, 1970. 120 pp.
Short survey on the corporate income tax. The full text of the corporate income tax and individual income tax ordinances, as amended, are appended, as well as a summary of the other taxes and duties levied.

Library International Bureau of
Fiscal Documentation, no. B4640

## SPAIN

LA CONTRIBUCION TERRITORIAL URBANA, by R. Henriquez. Published by Ediciones Deusto S.A., Barraincuá 14, Apto. 186, Bilbao 9. 1968. 208 pp.
Survey on the urban land tax. This tax is a prepayment to income tax.

Library International Bureau of
Fiscal Documentation, no. B5037

DERECHO TRIBUTARIO, by N. Amoros. Published by Editorial de Derecho Financiero, General Mola 15, Madrid 1, 1963. 495 pp.
Study on the general principles of tax law and on the Spanish tax system.

Library International Bureau of
Fiscal Documentation, no. B4581

IMPUESTOS DIRECTOS E INDIRECTOS, by J.J.P. Bassas, R.F. Ribo and F.X.S. Sors. Published by Libreria Bosch, Apto 991, Barcelona, 1969. 1812 pp.
Compilation of the text of direct and indirect tax laws, by-laws, decrees etc. in connection thereto with the exclusion of import duties, excise duties and such special levies. The texts of tax treaties concluded by Spain are appended as well as two kinds of index entries. The material is updated as at the end of 1968.

Library International Bureau of
Fiscal Documentation, no. B5051

REGIMEN JURIDICO Y FISCAL DE LAS SOCIEDADES Y FONDOS DE INVERSION MOBILIARIA, by J.M.M. Oviedo. Published by Editorial de Derecho Financiero, Gen. Mola 15, Madrid 1. 1967. 174 pp.
Survey of the investment companies and investment funds in Spain.

Library International Bureau of
Fiscal Documentation, no. B4632

## SWEDEN

TAXES IN SWEDEN, Published by The Swedish Taxpayers' Association, P.O. Box 7087, Stockholm. 4th Ed. 1969. 40 pp.
This brochure is a short explanatory summary of the Swedish direct taxation system as effective for the income year 1969.

Library International Bureau of
Fiscal Documentation, no. B 4609

## SWITZERLAND

DIE BESTEUERUNG DER KAPITALGESELLSCHAFTEN UND IHRER TEILHABER. Möglichkeiten und Grenzen der Koordination. By E. Höhn. Published by Aargauische Handelskammer, 1969. Heft 9. 38 pp.
Report dealing with the economic double taxation of income i.e. at the corporate level and at the shareholder level and the possible solutions to give relief thereto with special emphasis to such taxation in Switzerland in particular the tax reform in the Canton of Aargau.

Library International Bureau of
Fiscal Documentation, no. B5058

DOPPELBESTEUERUNG; DIE STEUERN DER SCHWEIZ BEARBEITET VON DER EIDGENÖSSISCHEN STEUERVERWALTUNG. Separatdruck. Published by Verlag für Recht und Gesellschaft AG, Basel. 1969. 55 pp.
General survey of Swiss treaties concluded with other countries with respect to taxation, including Swiss sources of publication of the text. Schemes are appended containing major treaty provisions to avoid double taxation on income. A French edition is available.

Library International Bureau of
Fiscal Documentation, no. B5069

## UNITED KINGDOM

VALUE ADDED TAX. A report by the National Economic Development Office. Published by Her Majesty's Stationery Office, second edition 1969. 98 pp.

The present report examines the implications of a value added tax in the United Kingdom. Attention is paid to the tax on value added introduced in various European countries.

Library International Bureau of
Fiscal Documentation, no. B4612

REVENUE LAW, COMPRISING INCOME TAX, SURTAX, CAPITAL GAINS TAX, CORPORATION TAX, ESTATE DUTY, BETTERMENT LEVY, STAMP DUTIES, TAX AND ESTATE PLANNING. By B. Pinson. Published by Sweet & Maxwell, London, First supplement to the third edition, 1969. 40 pp.
This supplement includes a summary of the main provisions of Finance Act, 1969 and of the more important judicial decisions reported before September 1, 1969.

Library International Bureau of
Fiscal Documentation, no. B4658

INCOME AND CORPORATION TAXES ACT 1970, Chapter 10. Published by Her Majesty's Stationery Office, London, 1970. 670 pp.
Full text of the Act which consolidates certain enactments relating to income tax and corporation tax law up to and including the Finance Act 1969, certain enactments relating to capital gains tax are included.

Library International Bureau of
Fiscal Documentation, no. B5060

## U.S.A.

ALTERNATIVE APPROACHES TO CAPITAL GAINS TAXATION, by M. David. Published by The Brookings Institution, 1775 Massachusetts Ave. N.W., Washington D.C. 20036. 280 pp.
Study which aims to determine what capital gains tax treatment is most desirable, considering in the analysis both the equity of the tax structure and its effect on allocation growth, and output. A bibliography is appended.

Library International Bureau of
Fiscal Documentation, no. B4615

EXCISE TAXATION OF MONOPOLY, by N. Schilling. Published by Columbia University Press, London, 1970. 254 pp.
Study which analyses the different types of excise taxes for fiscal control of monopoly with primary emphasis on the single-firm industry, although the effects of the tax in a variety of market structures are discussed.

Library International Bureau of
Fiscal Documentation, no. B4621

1970 GUIDEBOOK TO NEW YORK TAXES, published by CCH, Inc., Chicago, 1970. 333 pp.
Quick reference guidebook giving general picture of the taxes imposed by the State of New York, of which the six major taxes: the corporation franchise (income) tax, the franchise taxes on banks and other financial institutions, the personal income tax, the unincorporated business tax, the estate tax, and the sales and use taxes are treated in detail.

Library International Bureau of
Fiscal Documentation, no. B4654

THE TAXATION OF INCOME FROM CAPITAL, Edited by A.C. Harberger and M.J. Bailey. Published by The Brookings Institution, 1775 Massachusetts Ave., N.W., Washington D.C. 20036, 1969, 331 pp.
This study presents an analysis of the taxation of income from capital. In a wide variety of papers, the contributors seek to quantify aspect of the effects of current tax law on the allocation of resources and economic efficiency.

Library International Bureau of
Fiscal Documentation, no. B4614

INTERCOMPANY PRICING AND RELATED U.S. INCOME TAX PROBLEMS, published by Institute on U.S. Taxation of Foreign Income Inc., 70 Pine Street, New York, N.Y. 1005. 185 pp.
Publication of the panelists papers of a June 1968, meeting held in New York and Los Angeles, convened by the Institute on U.S. Taxation of Foreign Income, Inc.

Library International Bureau of
Fiscal Documentation, no. B4520

INTERNAL REVENUE CODE. Including 1969 amendments. Published by Commerce Clearing House, Inc., Chicago, 1970. 5439 pp.
This edition of the Internal Revenue Code reflects all income tax charges through December 31, 1969, including those made by the Tax Reform Act of 1969. It also includes the provisions which extend the inerest equalization tax through March 31, 1971.

Library International Bureau of
Fiscal Documentation, no. B4642

TAX REFORM ACT; COMPLETE EXPLANATION; CODE SECTIONS AS AMENDED; COMMITTEE REPORTS; INDEX. Published by Prentice Hall, Inc. Englewood Cliffs, N.J. Federal Taxes, Report Bulletin 1, Vol. L1, Section 2, January 2, 1970. 906 pp.

Library International Bureau of
Fiscal Documentation, no. B5049a

# LOOSE-LEAF SERVICES

## Releases from April 1 – April 30, 1970

### AUSTRIA

DIE EINKOMMENSTEUER, RECHTSPRECHUNG.
Teil III release 11, Teil IV release 5.
Wirtschaftsverlag Dr. Anton Orac, Vienna.

KOMMENTAR ZUM GRUNDERWERBSTEUER-GESETZ, release 3.
Wirtschaftsverlag Dr. Anton Orac, Vienna.

### BELGIUM

BELASTING OVER DE TOEGEVOEGDE WAARDE, release 20.
C.E.D. Samsom N.V., Brussels.

DOORLOPENDE DOCUMENTATIE INZAKE B.T.W. / LE DOSSIER PERMANENT DE LA T.V.A., release 13.

Fiscale Documentatie Vandewinckele, BOEK DER BAREMA'S.
Tome X, release 16.
Tome XI, release 12.
Tome XIII, release 10.
E.K. Vandewinckele, Brugge / C.E.D. Samsom, Brussels.

HANDLEIDING DER INKOMSTENBELASTING, release 30.
C.E.D. Samsom N.V., Brussels.

IMPÔTS ET TAXES, release 192.
C.E.D. Samsom N.V., Brussels.

### BENELUX

BENELUX PUBLICATIEBLAD, release 1.
Staatsuitgeverij, Den Haag.

### CANADA

CANADA ESTATE TAX SERVICE, releases 47, 48.
Richard de Boo, Toronto.

CANADA TAX SERVICE-LETTER, releases 147, 148.
Richard de Boo, Toronto.

CANADA TAX SERVICE-RELEASES, release 296, Special Issue. Richard de Boo, Toronto.

CANADIAN INCOME TAX, J.G. McDonald, release 42.
Butterworth & Co. Toronto.

BUTTERWORTH'S CURRENT TAXATION, releases 10–15.
Butterworth & Co., Toronto.

PROVINCIAL TAXATION SERVICE, release 249.
Richard de Boo, Toronto.

### DENMARK

SKATTEBESTEMMELSER.
– SKATTEBESTEMMELSER, release 48.
– SKATTENYTT, release 45.
– SKATTEBESTEMMELSER – OMSÆTNINGSAFGIFT, releases 19, 20.
A.S. Skattekartoteket Informationskontor, Copenhagen.

### E.E.C.

HANDBOEK VOOR DE EUROPESE GEMEENSCHAPPEN.
– VERDRAGSTEKSTEN EN AANVERWANTE STUKKEN, release 72.
– TARIEFLIJSTEN, releases 98, 99.
N.V. Uitgeversmij. AE.E. Kluwer, Deventer.

### FRANCE

DICTIONNAIRE FISCAL PERMANENT, releases 8–13.
Editions Législatives et Administratives, Paris.

DROITS DES AFFAIRES, releases 5–8.
Ed. Législatives et Administratives, Paris.

FISCALITE EUROPEENNE, release 1970–1.
Les Cahiers Fiscaux Européens, Paris.

CODE FISCAL: CHIFFRE D'AFFAIRES, release 5158.
Editions Techniques, Paris.

### GERMANY

ABC FÜHRER LOHNSTEUER, release 71.
Fachverlag für Wirtschafts- und Steuerrecht, Schaffer & Co., Stuttgart.

A.O. KOMMENTAR, releases 63, 64.
Verlag Dr. Otto Schmidt KG, Köln-Marienburg.

DEUTSCHE STEUERPRAXIS. Nachschlagwerk praktischer Steuerfälle, releases 11, 12.
Verlag Dr. Otto Schmidt KG, Köln-Marienburg.

HANDBUCH DER EINFUHRNEBENABGABEN, release 2.
V.d. Linnepe Verlagsgesellschaft KG, 58 Hagen.

KOMMENTAR ZUM MEHRWERTSTEUERGESETZ, release 18. Hermann Luchterhand, Neuwied.

RECHTS- UND WIRTSCHAFTS PRAXIS STEUERRECHT.
– ABGABENORDNUNG, release 104.
Forkel Verlag, Stuttgart-Degerloch.

STEUERRECHTSPRECHUNG IN KARTEIFORM, releases 217-219.
Verlag Dr. Otto Schmidt, Köln-Marienburg.

## INTERNATIONAL

INTERNATIONAL TAX AGREEMENTS, release 22.
U.N. Palais de Nations, Genève.

## NETHERLANDS

BELASTINGBERICHTEN.
– BELASTING TOEGEVOEGDE WAARDE, releases 45-47.
N. Samsom N.V., Alphen a.d. Rijn.

BELASTINGWETGEVINGSERIE.
– PERSONELE BELASTING, release 9.
J. Noorduyn & Zn. N.V., Groningen.

FED'S FISCAAL REGISTER, release 31.
N.V. Uitgeverij FED, Amsterdam.

FED'S LOSBLADIG FISCAAL WEEKBLAD, releases 1247-1250.
N.V. Uitgeverij FED, Amsterdam.

DE GEMEENTELIJKE BELASTINGEN, release 92.
Vuga-Boekenrij, Arnhem.

HANDBOEK VOOR IN- EN UITVOER.
– BELASTINGHEFFING BIJ INVOER, release 109.
– TARIEF VAN INVOERRECHTEN, release 134.
N.V. Uitgeversmij. AE.E. Kluwer, Deventer.

KLUWER'S FISCAAL ZAKBOEK, release 35.
N.V. Uitgeversmij. AE.E. Kluwer, Deventer.

LEIDRAAD BIJ DE BELASTINGSTUDIE, release 13.
S. Gouda Quint / D. Brouwer en Zn., Arnhem.

MODELLEN VOOR DE RECHTSPRAKTIJK, release 30.
N.V. Uitgeversmij. AE.E. Kluwer, Deventer.

STAATS- EN ADMINISTRATIEFRECHTELIJKE WETTEN, release 100.
N.V. Uitgeversmij. AE.E. Kluwer, Deventer.

REGELINGEN EUROMARKT, release 91.
Vermande & Zonen, IJmuiden.

DE SOCIALE VERZEKERINGSWETTEN, release 38.
N.V. Uitgeversmij. AE.E. Kluwer, Deventer.

VADEMECUM VOOR IN- EN UITVOER, release 421.
N.V. Uitgeversmij. AE.E. Kluwer, Deventer.
N. Samsom N.V., Alphen a.d. Rijn.

DE VAKSTUDIE: FISCALE ENCYCLOPEDIE.
– INKOMSTENBELASTINGEN, releases 69, 70.
– LOONBELASTINGEN, releases 41-43.
– WET OP DE OMZETBELASTING, releases 23-25.

## NEW ZEALAND

NEW ZEALAND TAXATION BOARD OF DECISIONS REVIEW, release 32.
Butterworth & Co., Wellington.

## SWITZERLAND

RECHTSBUCH DER SCHWEIZER. BUNDESSTEUERN, release 47.
Verlag für Recht und Gesellschaft, Basel.

DIE STEUERN DER SCHWEIZ – LES IMPÔTS DE LA SUISSE. Teil IV, release 17.
Verlag für Recht und Gesellschaft, Basel.

## U.S.A.

FEDERAL TAX GUIDE REPORTS, releases 25-29.
Commerce Clearing House, Inc., Chicago.

FEDERAL TAXES REPORT BULLETIN, releases 11-15.
Prentice Hall, Inc., Englewood Cliffs.

FEDERAL TAXES REPORT BULLETIN – TREATIES, release 21.
Prentice Hall, Inc., Englewood Cliffs.

STATE TAX GUIDE, releases 451-452.
Commerce Clearing House, Inc., Chicago.

TAX IDEAS – REPORT BULLETIN, releases 4-5.
Prentice Hall Inc., Englewood Cliffs.

# Books of the series "Afrika-Studien" Economics

**edited by the Ifo-Institute of Economic Research, Munich**

---

Heinz-Günter Geis

## DIE GELD- UND BANKSYSTEME DER STAATEN WESTAFRIKAS

(The Monetary and Banking Systems of the Countries of West Africa)

Afrika-Studien Nr. 20

428 Seiten, 50 Tabellen, 2 Schaubilder und 1 Übersichtskarte. Steifband, DM 54,—, US $ 13,50.

A study of the present state of the West African monetary and banking systems — including the operational channels, agricultural and co-operative credits and all other institutions with banking functions — their development since World War II and their various problems. A comparative, critical analysis. The author is an assistant lecturer at the Institute for Banking and Credit Economy of the Free University of Berlin.

---

Ernst-Josef Pauw

## DAS BANKWESEN IN OSTAFRIKA

(Money and Banking in East Africa) Afrika-Studien Nr. 35

2784 Seiten, 37 Tabellen im Text, 8 Tabellen im Anhang. Steifband, DM 44,—, US $ 11,—,.

Presentation and analysis of the development, structure and functions of the East African banking system (Kenya, Tanzania, Uganda); critical discussion of recent banking policy. The author is a specialist in banking and financial affairs.

---

**African Studies — Special Series "Information and Documentation"**

## AFRIKA-VADEMECUM

Grunddaten zur Wirtschaftsstruktur und Wirtschaftsentwicklung Afrikas (Basic data on the economic structure and development of Africa), bearbeitet von F.H. Betz (prepared by F.H. Betz)

African Studies — Special Series „Information and Documentation" (with English and French headings).

163 Seiten, 81 Tabellen, 12 Schaubilder und 8 Karten. Flexibler Balacronband, DM 16,—, US $ 4,—.

Clearly arranged summary of economic data on Africa which are not always easily available emphasizing population structure, gross national product, centres of production, industrialisation, transport and communication, export trade, and development assistance. Focus on Africa's position in the world economy. The compiler worked for the Bayerische Statistische Landesamt (Bavarian Statistical Office), the former Statistische Reichsamt (Statistical Office of the German Reich) and in the statistical department of the former League of Nations at Geneva.

---

## ENTWICKLUNGSBANKEN UND -GESELLSCHAFTEN IN AFRIKA

bearbeitet von H. Harlander/D. Mezger (Development Banks and Institutions in Africa, prepared by H. Harlander/D. Mezger)

211 Seiten, flexibler Balacronband, ca. DM 26,—, US $ 6,50.

Reference book covering approximately 100 African development finance institutions, arranged in order of countries, with concise information on functions, capital, organisation, operating policies, investments etc. Hildegard Harlander is assistant to the President at the Ifo Institute for Economic Research, Munich. Dorothea Mezger is a member of the scientific staff of the African Studies Centre of the Ifo Institute for Economic Research, Munich.

---

Write for comprehensive Prospectus

**WELTFORUM VERLAG, 8 München 19, Hubertusstrasse 22**

Sole Distributor in the UK: C. Hurst & Co.,
13 James Street, Covent Garden, London W.C.2.

---

# CUMULATIVE INDEX 1970

Nos. 1, 2, 3, 4 and 5

# CONTENTS

of the July/August/September 1970 issue

## ASPECTS DE LA FISCALITE BELGE

Du 7 au 12 septembre 1970 les membres de l'Association fiscale internationale (I.F.A.) vont se réunir à Bruxelles à l'occasion du 24ème Congrès de l'I.F.A., en tant qu'invités du Centre d'études belgo-luxembourgeois de droit fiscal, section nationale pour la Belgique et le Grand-Duché de Luxembourg de l'I.F.A.

Dans ce numéro spécial du Bulletin quelques sujets spéciaux du droit fiscal belge sont mis en relief. Ce sont la Taxe sur la valeur ajoutée, qui entrera en vigueur en Belgique le 1er janvier 1971, les relations internationales entre sociétés-mères et filiales et les mesures unilatérales contre la double imposition.

Les sujets choisis ont de l'intérêt international. Le numéro spécial 1969 du Bulletin à l'occasion du 23ème Congrès contient les mêmes sujets, mais à cette occasion vu du point de vue hollandais.

## ASPECTS OF BELGIAN TAXATION

From the 7th to the 12th of September 1970, the members of the International Fiscal Association (I.F.A.) will gather in Brussels on the occasion of the I.F.A.'s 24th Congress, as guests of the Belgian-Luxembourg Study Center of fiscal law, national branch for Belgium and the Grand Duchy of Luxembourg of the I.F.A. In this special Bulletin issue, a few special aspects of the Belgian tax system are spotlighted. Highlights include coverage of the Tax on Value Added which will become effective in Belgium on the 1st of January 1971, tax aspects of international parent-subsidiary relationships and unilateral measures against double taxation.

The subjects chosen are of wide interest. The special 1969 issue on the occasion of the 23rd Congress was devoted to the same subjects, as treated in the law of the Netherlands, the host country for the 1969 Congress.

## ASPEKTE DES BELGISCHEN STEUERWESENS

Vom 7. bis 12. September 1970 werden sich die Mitglieder der Internationalen Vereinigung für Steuerrecht (IFA) anlässlich des 24. IFA. Kongresses versammlen als Gäste des belgo-luxemburgischen Studienzentrums für Steuerrecht, nationale Abteilung für Belgien und das Grossherzogtum Luxemburg der IFA in Brüssel.

In diesem Sonderheft des Bulletins werden einige spezifische Themen des belgischen Steuerrechts beleuchtet. Es handelt sich über die Mehrwertsteuer, die am 1. Januar 1971 eingeführt wird, die internationalen Beziehungen zwischen Mutter- und Tochtergesellschaften und die einseitige Regelung zur Vermeidung der Doppelbesteuerung.

Die ausgewählten Themen sind von allgemeiner Bedeutung und wurden im Sonderheft 1969 anlässlich des 23. IFA Kongresses aus holländischer Sicht beleuchtet.

# ★ ★ ★ ★ ARTICLES ★ ★ ★ ★

P. SIBILLE★:

## ELEMENTS DU DROIT FISCAL BELGE

### I. GÉNÉRALITÉS

1. 1. L'art. 110 de la Constitution dispose qu'aucun impôt au profit de l'Etat ne peut être établi que par une loi. Aucune imposition provinciale ne peut être établie que du consentement du Conseil provincial. Aucune imposition communale ne peut être établie que du consentement du Conseil communal. C'est généralement le Ministre des Finances qui introduit au Parlement les propositions de lois fiscales. La législation fiscale fait l'objet d'un vote annuel du Parlement pour sa reconduction (loi annuelle des finances).

1. 2. Les impôts d'Etat comprennent des impôts directs et indirects. Les recettes fiscales totales se sont élevées (en millions de francs):

en 1968 à 226.799
en 1969 à 253.463

Les recettes de 1969 se décomposent comme suit:

| | en millions de francs | | en % |
|---|---|---|---|
| *Impôts directs* | | 109.698 | 43,5 |
| Impôts sur les revenus | 106.514 | | |
| Autres impôts et taxes perçus par l'Administration des Contributions | 3.184 | | |
| *Impôts indirects* | | 143.764,6 | 56,5 |
| Douanes | 7.939 | | |
| Accises et divers | 34.863 | | |
| Timbre et taxes assimilées au timbre (taxes sur les affaires) | 87.454 | | |
| enregistrement | 8.666,4 | | |
| succession | 3.892,1 | | |
| l'Administration de l'Enregistrement | 950,1 | 13.508,6 | |
| | | 253.462,6 | 100 |

1. 3. Trois administrations fiscales se partagent les prélèvements fiscaux: l'Administration des contributions directes chargée de l'établissement et du recouvrement des impôts sur les revenus et les taxes assimilées (circulation, jeux et paris, appareils automatiques), l'administration de l'enregistrement et des domaines compétente pour les droits d'enregistrement, de succession, de timbre et de taxes assimilées au timbre (taxes sur les affaires) et enfin l'Administration des douanes et accises.

Si la loi et les arrêtés d'exécution forment le fondement légal de l'impôt, les circulaires administratives en fournissent souvent l'interprétation technique destinée à en permettre l'application par les administrations. Les tribunaux toutefois sont les seuls juges de l'interprétation de la loi fiscale. La procédure du contentieux fiscal diffère selon qu'il s'agit des impôts relevant de l'administration des

★ Avocat près la Cour d'Appel de Bruxelles; directeur de l'Ecole supérieure des sciences fiscales.

contributions directes ou des autres impôts. Les litiges relatifs à ces derniers sont de la compétence des tribunaux ordinaires; le contribuable dispose des degrés de juridiction du justiciable de droit commun. En matière d'impôts directs, le directeur des contributions est considéré comme le premier juge de la contestation. Sa décision peut être l'objet d'un recours devant la Cour d'appel dont les arrêts donneront lieu à pourvoi devant la Cour de Cassation.

1. 4. De 1919 à 1962 la fiscalité des revenus a consisté en un régime d'impôts cédulaires (impôt foncier, taxe mobilière, taxe professionnelle) assortis d'un impôt complémentaire personnel.

La loi du 20 novembre 1962 (Moniteur belge du 1er décembre 1962) a remplacé le système cédulaire fondé sur la nature des revenus par quatre impôts distincts suivant la qualité du bénéficiaire des revenus:

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 réalisés par les sociétés résidentes de la Belgique et par d'autres personnes morales y assimilées;
3. L'impôt des personnes morales (non sociétés) frappant les revenus des propriétés foncières et des biens mobiliers des personnes morales de droit belge ne se livrant pas à des opérations lucratives;
4. L'impôt des non-résidents frappant les revenus réalisés ou recueillis en Belgique par des non-habitants du Royaume ou par des sociétés et associations non résidentes.

L'impôt des personnes physiques et, dans certains cas, l'impôt des non résidents sont calculés au taux progressif. L'impôt des sociétés et l'impôt des personnes morales le sont au taux proportionnel.

Les revenus des contribuables sont considérés globalement pour l'imposition (globalisation); néanmoins l'impôt est perçu par voie de précomptes dans la mesure où il se rapporte à certains revenus immobiliers, mobiliers professionnels ou divers.

1. 5. Les taxes sur les transmissions mobilières, opérations assimilées et entreprises d'ouvrage (taxes sur les affaires) furent instituées en 1921 et forment le code des taxes assimilées au timbre.

Ce régime de taxes à cascade sera remplacé par la T.V.A. dont la loi du 3 juillet 1969 et les arrêtés d'exécution seront mis en vigueur le 1er janvier 1971.

1. 6. Quant à la fiscalité des collectivités locales, elle porte sur les revenus, sous forme d'additionnels aux impôts d'Etat, et sur des biens et services administratifs divers. On retiendra surtout les centimes additionnels provinciaux et communaux au précompte immobilier, la taxe communale additionnelle à l'impôt des personnes physiques et à l'impôt des non-résidents, et les centimes additionnels à l'impôt des sociétés.

## 2. L'IMPÔT DES PERSONNES PHYSIQUES

L'impôt des personnes physiques atteint les revenus belges et étrangers (revenu mondial) recueillis durant une année civile par les personnes résidentes en Belgique. Il est calculé sur les revenus immobiliers, mobiliers, professionnels ou divers réalisés par l'assujetti, même si l'un ou l'autre des revenus considérés a fait l'objet d'un prélèvement anticipé à la source, appelé précompte.

2.1. Les *revenus immobiliers* imposables sont le revenu cadastral des propriétés sises en Belgique, les locations perçues d'immeubles donnés en location à des fins professionnelles (c'est-à-dire la partie du loyer qui dépasse deux fois le revenu cadastral), le loyer ou la valeur locative d'immeubles situés à l'étranger. Il est prévu des immunisations totales ou partielles, définitives ou temporaires du reve-

nu cadastral imposable, ainsi qu'un système d'abattements et de réductions dont le plus important concerne la faculté pour le propriétaire occupant sa maison d'habitation de réduire le montant du revenu cadastral à déclarer d'un chiffre forfaitaire allant de 12.000 à 30.000 francs selon l'importance de la Commune.

2.2. Les *revenus mobiliers* imposables sont les revenus et produits de capitaux et biens mobiliers. Il s'agit essentiellement des revenus suivants, d'origine belge ou étrangère:

- les dividendes des sociétés par actions;
- les revenus des capitaux investis par les associés actifs ou non actifs dans les sociétés de personnes (y compris les intérêts des avances faites à la société par ses associés); les associés peuvent, à certaines conditions, opter pour le régime des personnes physiques.
- revenus de fonds publics (sauf ceux qui sont exemptés de tous impôts en vertu des dispositions légales particulières);
- revenus d'autres obligations, de créances, de prêts;
- produits de la location de biens mobiliers corporels ou incorporels;
- les revenus compris dans les rentes viagères constituées par abandon de capital.

2.3. Les *revenus professionnels* comprennent les bénéfices commerciaux, industriels et agricoles, les rémunérations et salaires, les profits d'activités indépendantes non commerciales.

Des revenus sont immunisés sous certaines conditions: allocations et indemnités à caractère social, plus-values (accroissements d'avoirs), provisions destinées à couvrir des pertes ou charges nettement précisées et que les évènements en cours rendent probables.

Outre les *dépenses professionnelles* faites pendant la période imposable, sont également déductibles les *amortissements,* pour lesquels existe une option d'amortissements dégressifs applicables aux éléments d'actif acquis à partir du 1er janvier 1963 ou au début de l'exercice comptable clôturé dans le courant de l'année 1964.

La compensation des *pertes* est autorisée pendant les 5 années suivant celle au cours de laquelle elles ont été comptabilisées.

Sous certaines conditions et dans certaines limites, sont déductibles du total des revenus professionnels:

- les cotisations d'assurance libre ou complémentaire contre la maladie et l'invalidité;
- les cotisations d'assurance-vie;
- les sommes affectées à l'amortissement ou à la reconstitution d'emprunts hypothécaires contractés en vue de la construction d'un immeuble et garantis par une assurance temporaire au décès à capital décroissant;
- de même qu'un abattement de 5 p.c. du montant total des revenus professionnels nets (avec minimum de 5.000 francs et maximum de 10.000 francs);

Les revenus du mari et de la femme sont *cumulés,* sous réserve d'une déduction de 40 p.c. du montant total des revenus professionnels de la femme, avec minimum de 19.000 francs et maximum de 27.000 francs.

2.4. Les *revenus divers* participant à l'ensemble du revenu global, comprennent les bénéfices ou profits d'opérations occasionnelles (sans caractère professionnel), autres que les opérations de gestion normale de patrimoine, les prix et subsides obtenus d'organismes publics, les rentes alimentaires, les revenus mobiliers compris dans les produits de la sous-location ou de la cession de bail d'immeuble meublé; les lots afférents à certains titres d'emprunts, les produits de la location du droit de chasse, de pêche et de tenderie, ainsi que les plus-values de cession à titre onéreux d'immeubles non bâtis situés en Belgique et depuis moins de huit ans.

2.5. Le *revenu global* ainsi constitué peut en-

core faire l'objet des déductions suivantes, sous certaines conditions:

- les frais d'encaissement et de garde afférents aux revenus mobiliers imposables;
- certains intérêts payés;
- les rentes alimentaires payées;
- les libéralités aux Universités et aux pays en voie de développement;

2.6. *Minima exonérés.*

L impôt n'est pas dû lorsque le revenu global n'atteint pas le chiffre de 35.000 francs pour les contribuables n'ayant aucune personne à charge, ce chiffre étant majoré d'abord de 5.000 francs par personne à charge jusqu'à la troisième, ensuite de 39.000 francs par personne à charge à partir de la quatrième.

2.7. Le *taux de l'impôt* des personnes physiques comprend un barême (minimum de 300 francs avec maximum de 41.450 francs) pour les revenus ne dépassant pas 210.000 francs. Au delà de ce montant, un taux progressif est appliqué qui varie de 30 p.c. pour la tranche de 210.000 à 315.000 francs à 60 p.c. pour la tranche dépassant 4.000.000 de francs.

Il est établi un décime additionnel sur l'impôt afférent à la tranche des revenus imposables excédant 500.000 francs.

En aucun cas l'impôt total, non compris le décime additionnel, ne peut dépasser 50 p.c. du revenu imposable.

La partie de l'impôt qui correspond aux revenus professionnels autres que les rémunérations est en principe majorée de 15 p.c. On peut échapper à cette majoration en cas de versements anticipatifs de l'impôt.

Ajoutons enfin que les communes sont autorisées, sous certaines conditions, à établir une taxe additionnelle qui ne peut dépasser 6 p.c. de l'impôt des personnes physiques dû sur le revenu d'origine belge.

Des réductions de l'impôt pour charge de famille sont accordées qui s'élèvent à 5 p.c. pour les deux premières personnes à charge pour atteindre 100 p.c. lorsque le contribuable a au moins 8 personnes à charge. En aucun cas, la réduction ne peut se rapporter à la partie du revenu qui dépasse 260.000 francs augmentés de 26.000 francs par personne à charge au delà de la quatrième.

L'imputation des précomptes (immobiliers, mobiliers, professionnels), du crédit d'impôt du chef de l'impôt des sociétés perçu sur les dividendes, les revenus des capitaux investis dans les sociétés de personnes et les tantièmes des administrateurs et commissaires de sociétés, répond à des conditions et limitations bien déterminées.

Un régime de cotisations distinctes, généralement à taux proportionnel, est assuré moyennant certaines conditions, en faveur des bénéfices de cessions, plus-values, arriérés de rémunérations et capitaux d'assurance-vie.

2.8. *Revenus étrangers.*

La double imposition résultant du système de l'imposition globale est corrigée soit par les conventions internationales soit par des dispositions spéciales de la loi nationale.

La Belgique a conclu à ce jour des conventions avec les pays suivants:

| | |
|---|---|
| Luxembourg | 9 mars 1931 |
| travailleurs frontaliers | 27 mars 1948 |
| Italie | 11 juillet 1931 |
| Pays-Bas | 20 février 1933 |
| Etats-Unis d'Amérique | 28 octobre 1948 (complétée 9 septembre 1952 et 21 mai 1965) |
| Finlande | 11 février 1954 |
| France | 16 mai 1931 |
| | 10 mars 1964 |
| Suède | 2 juillet 1965 et |
| | 7 mars 1967 |
| Allemagne | 11 avril 1967 |
| Royaume Uni de | 27 mars 1953 et |
| Grande Bretagne | 27 février 1970 |
| Norvège | 30 juin 1967 |

En l'absence de conventions, des réductions de l'impôt sont accordées. Il s'agit:
- pour les revenus immobiliers et professionnels étrangers, de la moitié de la partie de l'impôt qui correspond proportionnellement à ces revenus;
- pour les revenus mobiliers étrangers, d'une quotité forfaitaire de 15 p.c. du revenu qui a été imposé à l'étranger;

## 3. L'IMPÔT DES SOCIÉTÉS

3.1. L'impôt des sociétés est dû par les sociétés commerciales et les associations qui se livrent à des opérations lucratives et qui ont leur domicile fiscal en Belgique.
3.2. La base de l'impôt est constituée par le bénéfice total (réservé et distribué) et mondial (belge et étranger), les dépenses non admises et les tantièmes des mandataires sociaux non actifs.
La compensation des pertes des cinq années antérieures est autorisée, sauf dérogations.
3.3. Le taux normal est de 30 p.c. Il est porté à 35 p.c. sur la partie des bénéfices réservés dépassant 5 million francs et ramené à 25 p.c. sur les réserves inférieures à 1 million francs.
Une majoration de l'impôt de 10 p.c. est calculée sur le cinquième de la tranche du revenu imposable qui excède 3 million francs.
En outre, il est perçu au profit du Fonds spécial 6 centimes additionnels à la quotité de l'impôt des sociétés qui se rapporte aux revenus d'origine belge.
3.4. Les précomptes immobiliers et mobiliers, réels ou fictifs, sont, de même que pour l'impôt des personnes physiques, imputables sur l'impôt des sociétés.
3.5. *Prévention de la double imposition.*
Les dividendes, revenus des capitaux investis et revenus mobiliers exemptés de tous impôts (que ces revenus soient d'origine belge ou étrangère) recueillis par la société sont déduits de la base imposable, à concurrence de 95 p.c. de leur montant net encaissé (90 p.c. dans certaines sociétés de portefeuille). Les intérêts d'obligations, de créances, de prêts, de dépôts, recueillis par la société ne sont pas déduits de la base imposable.
3.6. *Liquidation.*
Une cotisation spéciale (30 p.c. ou 15 p.c. selon la date de constitution des réserves) est perçue à charge des sociétés qui liquident autrement que par voie de fusion, absorption ou scission sur toute somme répartie au-delà du montant du capital investi (éventuellement revalorisé). Cet impôt exonère l'actionnaire de toute imposition individuelle.

## 4. L'IMPÔT DES PERSONNES MORALES

L'Etat, les provinces, les communes, les organismes et associations non commerciales paient l'impôt sur les revenus de capitaux et biens mobiliers, les revenus immobiliers et certains revenus divers. Cet impôt est perçu par voie de précomptes.

## 5. L'IMPÔT DES NON RÉSIDENTS

Y sont assujetties les personnes physiques ou morales non résidentes en Belgique et, partant, non soumises à l'impôt des personnes physiques. L'impôt atteint les revenus produits ou recueillis en Belgique. Les modalités de calcul diffèrent selon les situations.
La perception de l'impôt est généralement assurée par voie de précomptes.
Toutefois, dans les cas où le contribuable étranger exerce une activité par l'intermédiaire d'un établissement (société ou personne physique), dispose d'une habitation en Belgique, exerce des fonctions d'administrateur ou d'associé, un régime de globalisation lui est appliqué, mais pour les revenus belges seulement. Pour les sociétés, le taux afférent aux revenus recueillis par l'établissement de la société étrangère est de 35 p.c. Pour les per-

sonnes physiques, on applique un barême progressif.

## 6. TAXES ASSIMILÉES AUX IMPÔTS SUR LES REVENUS

6.1. *Taxe de circulation sur les véhicules automobiles.*
Il est établi une taxe annuelle pour les véhicules à vapeur ou à moteur servant soit au transport de personnes, soit au transport sur toutes de marchandises ou d'objets quelconques. Des exemptions sont prévues.
Des automobiles servant au transport de personnes sont imposées sur la base de la puissance fiscale en chevaux vapeur (par exemple 12 C.V. = 2448 F). Pour les véhicules servant au transport de marchandises, la taxe est calculée sur la base du poids total du véhicule.
Il est prévu des taxes forfaitaires, des réductions, des majorations et des modalités diverses.
6.2. *Taxes sur les jeux et paris.*
Une taxe spéciale de 4,4 p.c. frappe le montant brut des sommes engagées dans les jeux et paris.
6.3. *Taxes sur les appareils automatiques de divertissement.*
Taxe établie annuellement sur certains appareils placés dans les lieux publics et dans les cercles privés.

## 7. DROITS D'ENREGISTREMENT, D'HYPOTHÈQUE, DE GREFFE, DE SUCCESSION

7.1. *Droits d'enregistrement*
A l'occasion de la formalité de l'enregistrement (par exemple copie, analyse ou mention d'un acte ou d'un écrit) dans un registre à ce destiné, il est perçu des droits. Ceux-ci sont fixes, proportionnels ou progressifs selon les actes.
L'enregistrement est obligatoire pour certains actes (actes authentiques, translatifs de propriétés immobilières, de baux d'immeuble, etc . . .).
Les droits varient selon la nature des actes.
Le code des droits d'enregistrement contient de nombreuses dispositions relatives aux actes, à la base imposable, aux modalités de perception aux moyens de preuves de l'administration, aux droits d'investigations, à la prescription, aux restitutions, aux sanctions et à la procédure.
7.2. *Droits d'hypothèque.*
Il s'agit d'un impôt (0,2 p.c.) sur les inscriptions d'hypothèques et de privilèges sur immeubles.
7.3. *Droits de greffe.*
Il est perçu un droit de greffe sur certaines opérations effectuées dans les cours et tribunaux.
7.4. *Droits de succession.*
Ils sont perçus sur la valeur des biens composant la succession d'un habitant du Royaume. Un droit de mutation par décès frappe la valeur des biens situés en Belgique et faisant partie du patrimoine successoral d'un non-résident.
La détermination de la base imposable répond à des règles de droit civil et à des règles particulières très strictes, de même que les formalités relatives à la déclaration, à la liquidation et au recouvrement de l'impôt.
Le tarif est doublement progressif en ce sens qu'il varie à la fois selon le degré de parenté entre le défunt et les héritiers et selon la hauteur de la base imposable.

## 8. TAXES ASSIMILÉES AU TIMBRE (TAXES SUR LES AFFAIRES).

Ce régime a permis à l'Etat depuis 50 ans de percevoir l'impôt sur les transactions commerciales (transmissions et prestations).
Les onze impôts qui sont rangés sous l'appellation «taxes assimilées au timbre» n'ont rien

de commun avec le droit de timbre. Celui-ci, dont l'importance est fort réduite, frappe certains écrits ou actes. Les taxes assimilées au timbre, au contraire, constituent le prélèvement fiscal le plus important après l'impôt sur les revenus. Il frappe les actes ou faits juridiques et certains actes matériels.

Ce sont la taxe de transmissions, la taxe de facture sur les transmissions et la taxe de luxe qui constituent l'essentiel de ces impôts. La taxe est due à l'occasion de chaque transmission. A ce système de taxes à cascade s'est adjoint, pour un certain nombre de produits, un régime de taxes forfaitaires. En outre, le système comporte de nombreuses dérogations, des taux réduits (le taux normal est de 7 p.c. actuellement) et des taux renforcés (produit de luxe par ex.). Des règles particulières concernent les procédures d'établissement, de perception, de preuve, de poursuites et sanctions.

C'est ce régime qui va bientôt faire place à la T.V.A., le 1er janvier 1971.

### 9. IMPÔTS PERÇUS PAR L'ADMINISTRATION DES DOUANES ET ACCISES.

Ce sont les droits de douane (essentiellement les droits d'entrée), les droits d'accises (sur les alcools, bières, boissons fermentées, eaux minérales et limonades, sucres, huiles minérales, benzol et produits analogues, gaz de pétrole et tabacs fabriqués), ainsi que la taxe d'ouverture des débits de boisson.

P. SIBILLE:

# ELEMENTS OF BELGIAN FISCAL LAW

## I. GENERAL

1.1 Article 110 of the Constitution provides that no tax for the benefit of the State may be imposed except by a law. No Provincial taxation may be imposed except with the consent of the Provincial Council. No Communal taxation may be imposed except with the consent of the Communal Council. It is generally the Minister of Finance who presents to Parliament the proposals for fiscal laws. Fiscal legislation is the subject of an annual vote by Parliament for its renewal (annual finance law).

1.2 State taxes comprise direct and indirect taxes. Total fiscal receipts amounted (in millions of francs):
in 1968 to 226,799
in 1969 to 253,463
The breakdown of the receipts in 1969 was as follows:

| | in millions of francs | | per cent |
|---|---|---|---|
| *Direct taxes* | | 109,698 | 43.5 |
| income tax | 106,514 | | |
| other taxes and duties collected by the Direct Taxes Department | 3,184 | | |
| *Indirect taxes* | | 143,764.6 | 56.5 |
| customs | 7,939 | | |
| excise and sundry | 34,863 | | |
| stamp duties and similar taxes (taxes on business) | 87,454 | | |
| registration | 8,666.4 | | |
| death duties | 3,892.1 | | |
| Registration Department | 950.1 | 13,508.6 | |
| | | 253,462.6 | 100 |

1.3 Taxes are collected by three departments: the Direct Taxes Department, responsible for the assessment and collection of income tax and similar taxes (vehicles, gaming and betting, automatic machines), the Department of Registration and Estates, which deals with registration duties, death duties, stamp duties and taxes similar to stamp duties (taxes on business) and finally the Customs and Excise Department.
Although the law and executive decrees form the legal basis of taxation, administrative circulars often lay down their technical interpretation so as to facilitate their application by the Departments. However the Courts are the sole judges of interpretation of the fiscal law. The procedure for tax disputes differs according to whether they relate to taxes which are the concern of the Direct Taxes Department or other taxes. Disputes relating to other taxes are within the competence of the ordinary courts; the taxpayer has the normal rights of redress under common law. In the field of direct taxes, the Director of Taxes is regarded as the first judge in a dispute. An appeal against his

decision may be made to the Court of Appeal and its judgements can be the subject of appeal to the Supreme Court of Appeal.
1.4 From 1919 to 1962 the income tax system was based on tax schedules (property tax, securities tax, professional tax) combined with a personal supplementary tax.
The law of 20 November 1962 (Moniteur Belge of 1 December 1962) replaced the schedule system based on the nature of the income by four separate taxes according to the status of the recipient of the income.

1. Tax on natural persons due on the total income of the inhabitants of the kingdom;
2. Tax on companies due on the whole of profits made by companies resident in Belgium and by other corporate bodies of the same type.
3. Tax on corporate bodies (other than companies) affecting the income from property and investments on non-profit making corporate bodies constituted under Belgian law.
4. Tax on non-residents affecting the income obtained or received in Belgium by non-residents of the kingdom or by non-resident companies and associations.

The tax on natural persons and, in certain cases, the non-residents tax are calculated at a progressive rate. The tax on companies and tax on corporate bodies are calculated at a proportional rate.
The tax is assessed on the total income of tax-payers; however it is paid by means of pre-payments in the case of certain income from property, securities, professional or miscellaneous sources.
1.5 Taxes on transfers of securities, similar transactions and works enterprises (taxes on business) were instituted in 1921 and form the code of taxes of stamp duty type.
This system of successive taxes will be replaced by the T.V.A. in respect of which the law of 3 July 1969 and the executive decrees will come into operation on 1 January 1971.
1.6 So far as taxes collected by local authorities are concerned, they are charged on income, in the form of additions to the State taxes, and on various assets and administrative services. The chief ones are the amounts in respect of Provincial and Communal tax added to the pre-payment on property income, the Communal tax added to personal income tax and non-residents tax and the additional amounts charged on company tax.

## 2. PERSONAL INCOME TAX

Personal income tax is assessed on Belgian and foreign income (income from all sources) received during a fiscal year by persons resident in Belgium. It is calculated on income from property, securities, professional sources or miscellaneous sources received by the tax-payer, even if one or other of the items of income concerned has been the subject of deduction at source, known as a "pre-payment".
2.1 *Income from property* is assessed on the rateable value of property situated in Belgium, rents received from buildings let for professional purposes (i.e. the part of the rent which exceeds twice the rateable value), and the rent or rentable value of property situated abroad. There is provision for various exemptions—which may be total or partial and final or temporary—from the taxable rateable value, and also a system of abatements and reductions the most important of which is the right of an owner-occupier to reduce the amount of the rateable value and declare a fixed figure ranging from 12,000 to 30,000 francs according to the size of the Commune.
2.2 *Income on securities* is assessed on the income and proceeds of capital and securities. It covers essentially the following types of income, whether of Belgian or foreign origin:

- dividends of joint stock companies;
- income on the capital invested in partnerships by active or non-active partners (including interest on advances made to the partnership by its partners); the partners may, under certain conditions, opt for assessment as personal income tax;
- income on public investments (except those which are exempt from all taxes by virtue of special regulations)
- income from other bonds and debentures, credits and loans;
- the proceeds of hiring of tangible or intangible movable assets;
- income from annuities purchased for a capital sum.

2.3 *Professional income* comprises commercial, industrial and agricultural profits, salaries and wages, and the profits of non-commercial independent activities.

The income is exempt under certain conditions: allowances and indemnities of a social nature, capital gains (increases in assets), and provisions to cover losses or liabilities which are clearly stated and which current events make probable.

In addition to *professional expenditure* incurred during the period of assessment, deduction may also be claimed for amortisations, for which there is an option of a decreasing scale of amortisation applicable to assets acquired on and after 1 January 1963 or the beginning of the trading year ending during 1964.

*Losses* may be offset during a period of five years following that during which they were accounted for.

Under certain conditions and subject to certain limits, the following may be deducted from the total of professional income;

- premiums on private full or supplementary insurance against illness and incapacity;
- life insurance premiums;
- sums applied to the amortisation or reconstitution of mortgage loans contracted for construction of a building and guaranteed by temporary life insurance relating to the decreasing capital sum;
- an abatement of 5% of the total amount of net professional income (with a minimum of 5,000 francs and a maximum of 10,000 francs).

The incomes of a husband and wife are *combined,* subject to a deduction of 40% of the total amount of the professional income of the wife, with a minimum of 19,000 francs and a maximum of 27,000 francs.

2.4 *Miscellaneous income* forming part of the total income, comprises profits from occasional transactions (not of a professional nature), other than transactions relating to normal management of capital, prizes and subsidies obtained from public organisations, pensions, income from the proceeds of subletting or assignment of lease of furnished property; premiums relating to certain loan securities, proceeds of letting hunting, fishing, and trapping rights, and also capital gains on disposal for a consideration within less than eight years, of undeveloped land situated in Belgium.

2.5 *The total income* thus constituted may be the subject of the following further deductions, under certain conditions:

- the cost of collection and safe-keeping relating to the income assessed;
- certain interest paid;
- pensions paid;
- donations to universities and to developing countries.

2.6 *Minimum exemptions*

No tax is due when the total income is less than 35,000 francs for tax-payers with no dependants, this figure being increased by 5,000 francs for each dependant up to the third and then by 39,000 francs for the fourth and each subsequent dependant.

2.7 The *rate* of personal income tax is on a scale (with a minimum of 300 francs and a

maximum of 41,450 francs) for incomes not exceeding 210,000 francs. Above this amount a progressive rate is applied varying from 30% for the amount between 210,000 and 315,000 francs and 60% for the amount exceeding 4,000,000 francs.
An additional tenth is payable on tax relating to the assessable income exceeding 500,000 francs.
In no case may the total tax, not including the additional tenth, exceed 50% of taxable income.
The part of the tax which corresponds to professional income other than remuneration is in principle increased by 15%. This increase may be avoided by advance payments of the tax.
Finally, local authorities are authorised, under certain conditions, to impose an additional tax which may not exceed 6% of the tax due on personal income of Belgian origin.
Reductions in the tax for family dependants are granted amounting to 5% for the first two dependants and rising to 100% when the tax-payer has at least eight dependants. In no case may the reduction relate to the part of the income which exceeds 260,000 francs plus 26,000 francs per dependant beyond the fourth.
Credit for pre-payments (property, securities and professional) in respect of company tax charged on dividends, income on capital invested in partnerships and fees of directors and auditors of companies, is subject to clearly determined conditions and limitations.
A system of separate assessments, generally at a proportional rate, is applicable, under certain conditions, to profits from assignments, capital gains, arrears of remuneration and capital sums paid under life insurance policies.

2.8 *Foreign income*

Double taxation resulting from the system of total assessment is adjusted either by international agreements or by special provisions in the national law.
To date Belgium has concluded agreements with the following countries:

| | |
|---|---|
| Luxembourg | 9 March 1931 |
| "frontier" workers | 27 March 1948 |
| Italy | 11 July 1931 |
| Netherlands | 20 February 1923 |
| United States of America | 28 October 1948 (supplemented 9 September and 21 May 1965) |
| Finland | 11 February 1954 |
| France | 16 May 1931<br>10 March 1964 |
| Sweden | 2 July 1965 and 7 March 1967 |
| Germany | 11 April 1967 |
| United Kingdom | 27 March 1953 and 27 February 1970 |
| Norway | 30 June 1967 |

In the absence of agreements, reductions in tax are granted on the following basis:
- for foreign property and professional income, one half of the part of the tax which corresponds proportionally to this income;
- for income on foreign securities, a fixed amount of 15% of the income taxed abroad.

## 3. COMPANY TAX

3.1 Company tax is payable by commercial companies and associations which engage in profit-making operations and which have their physical domicile in Belgium.
3.2 The tax is based on the total profit (undistributed and distributed) in all countries (Belgium and abroad), non-admissible expenses and fees of non-active company agents.

Losses for the five previous years may be offset, subject to exceptions.

3.3 The normal rate is 30%. It is raised to 35% on undistributed profits exceeding 5,000,000 francs and reduced to 25% on undistributed profits less than 1,000,000 francs.

A 10% increase in the tax is applied to one-fifth of the part of the taxable income exceeding 3,000,000 francs.

In addition, a surcharge of 6% of the basic tax amount, for the benefit of the Special Fund, is made on the part of company tax which relates to income of Belgian origin.

3.4 Property and security pre-payments, real or fictitious, are, in the same way as for personal income tax, deductible from company tax.

3.5 *Prevention of double taxation*

Dividends, income from capital invested and income from securities which are exempt from tax (whether they are of Belgian or foreign origin) received by the company are deducted from the assessment to the extent of 95% of the net amount received (90% in the case of certain holding companies).

Interest on bonds and debentures, credits, loans, and deposits received by the company are not deductible from the assessment.

3.6 *Liquidation*

A special charge (30% or 15% according to the date on which the reserves were constituted) is payable by companies which go into liquidation other than as a result of merger, take-over or partition, on the full amount of the sum distributed over and above the amount of capital invested (after re-valuation where appropriate). This tax exempts the shareholder from any individual taxation.

## 4. TAX ON CORPORATE PERSONS

The State, Provinces, Communes, and non-commercial organisations and associations pay tax on income from capital and securities, property income and certain miscellaneous incomes. This tax is paid by means of deduction at source.

## 5. TAX ON NON-RESIDENTS

This applies to natural persons or corporate bodies not resident in Belgium and therefore not subject to personal income tax. The tax relates to income produced or received in Belgium. The methods of calculation differ according to circumstances.

Payment of the tax is normally made by deduction at source.

However, in cases where the foreign taxpayer exercises an activity through the agency of an establishment (company or natural person), has a residence in Belgium, or holds the office of director or partner, he is subject to tax on total Belgian income only.

For companies, the rate relating to income received by the establishment of the foreign company is 35%. For natural persons, a progressive scale is applied.

## 6. TAXES SIMILAR TO INCOME TAX

6.1 *Road traffic tax on mechanically propelled vehicles*

An annual tax is charged on steam or motor vehicles used for transportation of passengers or any kind of goods or objects. There is provision for exemptions.

Passenger cars are taxed on the basis of the fiscal horse-power (for example 12 H.P. = 2448 F). For goods vehicles the tax is calculated on the basis of the total weight of the vehicle.

Provision is made for fixed taxes, reductions, increases and different methods.

6.2 *Taxes on gaming and betting*

A special tax of 4.4 per cent is charged on the

gross amount of sums applied to gaming and betting.

6.3 *Taxes on automatic amusement machines.*
Tax charged annually on certain machines in public places and private clubs.

## 7. REGISTRATION, MORTGAGE, COURT REGISTRATION AND DEATH DUTIES

7.1 *Registration duties*
On the occasion of formal registration (for example of a copy, analysis or recording of a deed or written document) in an authorised registry, duty is payable. This is calculated on a proportional or progressive basis according to the document.
Registration is compulsory for certain deeds (certified copies, transfers of property and leases, etc.).
The duty varies according to the nature of the document.
The code of registration duties contains numerous provisions relating to the documents, the rate of duty, the payment procedure, means of proof of administration, rights of investigation, time limitation, repayments, sanctions and procedure.

7.2 *Mortgage duties*
A tax (0.2 per cent) is charged on registrations of mortgages and charges on property.

7.3 *Court registration duties*
A registration duty is charged on certain operations effected in the Courts.

7.4 *Death duties*
These are paid on the value of the estate of an inhabitant of the kingdom. A duty on transfer by death is applied to the value of assets situated in Belgium which are part of the estate of a non-resident.
The assessment is based on the rules of Civil Law and very strict special rules, which also apply to formalities relating to the declaration, payment and recovery of the duty.
The tariff is doubly progressive in that it varies both with the degree of relationship between the deceased and his heirs and with the amount on which the assessment is based.

## 8. TAXES OF STAMP DUTY TYPE (TAXES ON BUSINESS)

This system has enabled the State to collect tax on commercial transactions (transfers and services) for the last fifty years.
The eleven taxes covered by the description "taxes of stamp duty type" have nothing in common with stamp duty. This, which is very small, applies to certain documents or deeds. The taxes of stamp duty type, on the contrary, constitute the most important fiscal charge after income tax. They apply to legal acts or events and certain material acts.
The transfer tax, the invoice tax on transfers and the luxury tax constitute the essential part of these taxes. The tax is due on the occasion of each transfer. This system of successive taxes is combined, for a number of products, with the system of fixed taxes. In addition, the system is subject to numerous derogations, reduced rates (the normal rate is 7 per cent at present) and increased rates (for example on luxury products). Special rules lay down the procedures for assessment, payment, proof, proceedings and sanctions. It is this system which will soon be replaced by the T.V.A. on 1 January 1971.

## 9. DUTIES CHARGED BY THE CUSTOMS AND EXCISE DEPARTMENT

These are customs duties (essentially entry duties), excise duties (on alcohol, beer, fermented drinks, mineral waters and lemonades, sugar, mineral oils, benzol and analogous products, petroleum gas and manufactured tobacco), and also the tax on the opening of off-licences.

P. SIBILLE*:

# GRUNDZÜGE DES BELGISCHEN STEUERRECHTS

## I. ALLGEMEINES

1.1. Artikel 110 der Verfassung bestimmt, daß keine staatliche Steuer ohne Gesetz erhoben werden darf. Keine Steuer zugunsten einer Provinz darf ohne Zustimmung des „Conseil provincial" (Landrat) und keine Gemeindesteuer ohne Zustimmung des „Conseil communal" (Gemeinderat) auferlegt werden.
Steuergesetzesvorschläge legt gewöhnlich der Minister der Finanzen dem Parlament vor. Über die Fortgeltung der Finanzgesetze wird alljährlich im Parlament abgestimmt (jährliches Finanzgesetz).

1.2. Staatliche Steuern sind direkte und indirekte Steuern. Die gesamten Steuereinnahmen betrugen (in Millionen Franken):
1968: 226,799
1969: 253,463
Die Aufgliederung der Einnahmen 1969 ergibt:

| | Millionen Franken | | Prozent |
|---|---|---|---|
| *Direkte Steuern* | | 109.698 | 43,5 |
| Einkommensteuer | 106.514 | | |
| andere Steuern und Abgaben, die die Abteilung für direkte Steuern einnimmt | 3.184 | | |
| *Indirekte Steuern* | | 143.764,6 | 56,5 |
| Zölle | 7.939 | | |
| Verbrauchsteuern und andere | 34.863 | | |
| Stempelsteuern und ähnliche Steuern (Geschäftsteuern) | 87.454 | | |
| Registersteuern | 8.666,4 | | |
| Erbschaftsteuern | 3.892,1 | | |
| Registerverwaltung | 950,1 | 13.508,6 | |
| | | 253.462,6 | 100 |

1.3. Steuern werden von drei Abteilungen erhoben: Der Abteilung für direkte Steuern, zuständig für die Veranlagung und Erhebung von Einkommensteuer und ähnlichen Steuern (Kraftfahrzeug-, Spiel- und Wett-, Automatensteuer), der Abteilung für Register und Grundvermögen, die Register- und Erbschaftsteuern, Stempelsteuern und ähnliche Steuern (Geschäftsteuern) erhebt, und schließlich der Abteilung für Zölle und Verbrauchsteuern.
Das Gesetz und Verordnungen der Exekutive bilden die rechtliche Grundlage der Besteuerung. Dagegen regeln häufig Verwaltungsanordnungen ihre technische Auslegung, um so die Anwendung durch die Abteilungen zu erleichtern. Entscheidungsbefugt über die Auslegung vom Steuerrecht sind jedoch allein die Gerichte. Das Verfahren bei Steuerstreitigkeiten ist unterschiedlich, je nachdem, ob es sich um Steuern der Abteilung für direkte Steuern oder um andere Steuern handelt. Ein Rechtsstreit wegen anderer Steuern fällt unter die Zuständigkeit der ordentlichen

Gerichte. Der Steuerpflichtige hat die normalen Ansprüche nach allgemeinem Recht. Auf dem Gebiet der direkten Steuern entscheidet der Leiter der zuständigen Steuerabteilung einen Rechtsstreit in erster Instanz. Gegen seine Entscheidung kann Berufung beim Berufungsgericht und gegen dessen Entscheidung Revision beim obersten Revisionsgericht eingelegt werden.

1.4. Von 1919 bis 1962 beruhte das Einkommensteuerrecht auf Steuergruppen (Steuer auf Einkünfte aus Grundvermögen, beweglichem Vermögen, Berufstätigkeit) kombiniert mit einer persönlichen Ergänzungssteuer.

Das Gesetz vom 20. November 1962 (Moniteur belge vom 1. Dezember 1962) ersetzte das Gruppensystem nach der Art der Einkünfte durch vier unterschiedliche Steuern je nach Stellung des Einkommensempfängers.

1. Steuer der natürlichen Personen auf das gesamte Einkommen der Bewohner des Königreichs;
2. Körperschaftsteuer auf das gesamte Einkommen der Gesellschaften mit Sitz in Belgien und anderer gleichartiger Körperschaften;
3. Steuer auf Einkünfte nicht gewerblich tätiger Körperschaften (außer Gesellschaften) aus Grundvermögen und beweglichem Vermögen dieser nicht gewerblich tätigen juristischen Personen belgischen Rechts;
4. Steuer der beschränkt Steuerpflichtigen auf Einkünfte, die im Königreich nicht ansässige natürliche Personen, Gesellschaften oder Vereinigungen in Belgien erworben oder erhalten haben.

Die Steuer der natürlichen Personen und in gewissen Fällen die Steuer der beschränkt Steuerpflichtigen werden nach einem progressiven Satz berechnet. Die Steuer der Gesellschaften und anderen Körperschaften wird nach einem proportionalen Satz berechnet.

Die Steuer wird vom gesamten Einkommen des Steuerpflichtigen erhoben. In bestimmten Fällen wird sie jedoch bei Einkünften aus Grundvermögen, beweglichem Vermögen und Berufstätigkeit oder aus anderen Einkunftsarten durch Vorauszahlungsabzüge geleistet.

1.5. Steuern auf den Umsatz von beweglichen Sachen, auf ähnliche Geschäfte und auf gewerbliche Leistungen (Besteuerung der Geschäftstätigkeit) wurden 1921 eingeführt. Sie sind Steuern nach Art der Stempelsteuern.

Dieses System aufeinanderfolgender Steuern wird durch die TVA (Mehrwertsteuer) ersetzt werden. Insoweit werden am 1. Januar 1971 das Gesetz vom 3. Juli 1969 und die Durchführungsverordnungen inkraft treten.

1.6. Von Kommunalbehörden erhobene Steuern berechnen sich nach dem Einkommen. Sie werden als Zuschläge auf die staatlichen Steuern und auf verschiedene Vermögenswerte sowie auf Leistungen der Verwaltung erhoben. Die wichtigsten sind die Provinz- und Gemeindesteuerzuschläge auf den Vorauszahlungsabzug für Einkünfte aus unbeweglichem Vermögen, der Gemeindesteuerzuschlag auf Einkommensteuer natürlicher Personen und beschränkt Steuerpflichtiger und die Zuschläge auf die Körperschaftsteuer.

## 2. EINKOMMENSTEUER NATÜRLICHER PERSONEN

Einkommensteuer natürlicher Personen wird auf belgische und ausländische Einkünfte erhoben (Einkünfte aus sämtlichen Quellen), die in Belgien ansässige Personen im Laufe des Steuerjahres erzielen. Sie errechnet sich von Einkünften, die der Steuerpflichtige aus unbeweglichem und beweglichem Vermögen, aus Berufstätigkeit und verschiedenen anderen Quellen erzielt, selbst wenn der eine

oder andere Einkunftsposten einem Abzug an der Quelle, dem sogenannten „Vorauszahlungsabzug", unterlegen hat.

2.1. *Einkünfte aus unbeweglichem Vermögen* werden nach dem steuerbaren Wert des in Belgien gelegenen Grundbesitzes berechnet, nach den für die Vermietung von Gebäuden zu beruflichen Zwecken erzielten Mieten (d.h. dem Teil der Miete, der den steuerbaren Wert zweifach übersteigt) und nach der Miete oder dem Mietwert von Grundvermögen im Ausland. Es gibt verschiedene Befreiungen von der Zurechnung zum steuerbaren Wert. Sie gelten vollständig oder teilweise, endgültig oder befristet. Auch gibt es Milderungen und Ermäßigungen. Die wichtigste ist das Recht des Eigentümers eines eigengenutzten Wohnhauses, den steuerbaren Wert herabzusetzen und einen festen Betrag von 12.000 bis 30.000 Franken, je nach Größe der Gemeinde, zu erklären.

2.2. *Einkünfte aus beweglichem Vermögen* werden von Einkünften und Erträgen aus Kapital und sonstigem beweglichem Vermögen errechnet. Sie umfassen im wesentlichen folgende Einkünfte belgischen oder ausländischen Ursprungs:

- Dividenden von Aktiengesellschaften;
- Einkünfte aus Kapitalanlagen in Personengesellschaften durch geschäftsführende oder nicht geschäftsführende Gesellschafter (einschließlich Zinsen auf Gesellschafterdarlehen an die Gesellschaft); die Gesellschafter können unter gewissen Umständen für eine Veranlagung zur Einkommensteuer der natürlichen Personen optieren;
- Einkünfte aus öffentlichen Anleihen (mit Ausnahme solcher, die durch Sonderbestimmungen steuerbefreit sind);
- Einkünfte aus anderen Schuldverschreibungen, Obligationen und Darlehen;
- Erträge aus Vermietung oder Verpachtung beweglicher Sachen oder Rechte;
- Einkünfte aus Rentenrechten, die gegen Zahlung eines Kapitalbetrages erworben wurden.

2.3. *Einkünfte aus Berufstätigkeit* sind Gewinne aus Handel, Gewerbe und Landwirtschaft, Gehälter und Löhne sowie Gewinne aus nichtkaufmännischer selbständiger Tätigkeit. Folgende Einkünfte sind unter bestimmten Voraussetzungen steuerbefreit: Zuschüsse und Entschädigungen sozialer Art, Wertsteigerungen (Werterhöhungen der Aktiva) und Rückstellungen für Verluste oder Verpflichtungen, die sich deutlich abzeichnen und infolge laufender Ereignisse eintreten können.

Zusätzlich zu den *Ausgaben anläßlich der Berufstätigkeit,* die im Veranlagungszeitraum anfallen, können *Absetzungen für Abnutzung* geltend gemacht werden. Bei Wirtschaftsgütern, die am oder nach dem 1. Januar 1963 erworben wurden oder nach Beginn des abweichenden Wirtschaftsjahres, das in 1964 endete, kann auf Wunsch die degressive Afa vorgenommen werden.

*Verluste* können während eines Zeitraumes von fünf Jahren nach Ablauf desjenigen Jahres abgesetzt werden, in dem sie entstanden sind.

Unter bestimmten Voraussetzungen und in gewissem Umfang können folgende Aufwendungen von den gesamten Einkünften aus Berufstätigkeit abgezogen werden:

- Beiträge zu freiwilligen Kranken- oder Invaliditätsversicherungen oder Zusatzversicherungen;
- Lebensversicherungsprämien;
- Beträge zur Tilgung oder Ablösung von Hypothekenschulden, die zur Errichtung eines Gebäudes aufgenommen worden waren und durch eine Risikolebensversicherung hinsichtlich des abnehmenden Kapitalbetrages gesichert sind;
- ein Nachlaß von 5% der gesamten Einkünfte aus Berufstätigkeit (mindestens 5.000 und höchstens 10.000 Franken).

Die Einkünfte von Eheleuten werden *zusammengefaßt*. Dabei werden 40% von den gesamten Einkünften aus Berufstätigkeit der Frau, mindestens 19.000 und höchstens 27.000 Franken, abgezogen.

2.4. *Sonstige Einkünfte* als Teil des gesamten Einkommens sind Erlöse aus gelegentlichen Geschäften (nichtberuflicher Art), die nicht zur normalen Vermögensverwaltung gehören, Prämien und Subventionen von öffentlichen Organisationen, Unterhaltsrenten, Einkünfte aus Untervermietung von möblierten Räumen, Einkünfte in Zusammenhang mit Darlehenssicherheiten, Erlöse aus Verpachtung von Jagd-, Fischerei- und Fallenstellerrechten, sowie Veräußerungsgewinne aus dem Verkauf von unerschlossenem Grundbesitz in Belgien innerhalb von weniger als acht Jahren.

2.5. Von dem so errechneten *gesamten Einkommen* können unter gewissen Voraussetzungen folgende Abzüge vorgenommen werden:

- Kosten der Einziehung und Verwaltung dieser Einkünfte;
- bestimmte gezahlte Zinsen;
- gezahlte Renten;
- Spenden an Universitäten und Entwicklungsländer.

2.6. *Freigrenze*

Eine Steuer wird nicht erhoben, wenn das gesamte Einkommen eines Steuerpflichtigen ohne unterhaltsberechtigte Angehörige weniger als 35.000 Franken beträgt. Dieser Betrag erhöht sich um 5.000 Franken für jeden bis zu drei unterhaltsberechtigten Angehörigen und um 39.000 Franken für den vierten und jeden weiteren Angehörigen.

2.7. Der *Steuersatz* bei der Einkommensteuer der natürlichen Personen ergibt sich aus einer Tabelle (von mindestens 300 bis höchstens 41.450 Franken) für Einkommen bis zu 210.000 Franken. Für höhere Einkommen gilt ein progressiver Steuersatz von 30% für Einkommen zwischen 210.000 und 315.000 Franken bis zu 60% für Einkommen über 4.000.000 Franken.

Ein zusätzliches Zehntel ist auf Steuern zu zahlen, die auf veranlagte Einkommen von mehr als 500.000 Franken erhoben werden. In keinem Falle darf die gesamte Steuer, ausschließlich des zusätzlichen Zehntels, 50% des steuerbaren Einkommens überschreiten.

Der Teil der Steuer, der auf Einkünfte aus Berufstätigkeit entfällt (mit Ausnahme von Arbeitsentgelt), wird grundsätzlich um 15% erhöht. Diese Erhöhung kann durch Steuervorauszahlungen vermieden werden.

Schließlich können die Kommunalbehörden unter gewissen Voraussetzungen eine zusätzliche Steuer erheben, die nicht mehr als 6% der Einkommensteuer auf Einkünfte belgischen Ursprungs natürlicher Personen betragen darf.

Steuerermäßigungen für Familienangehörige werden in Höhe von 5% für die ersten beiden unterhaltsberechtigten Angehörigen gewährt. Sie steigen bis zu 100%, wenn der Steuerpflichtige wenigstens acht Angehörige hat. In keinem Falle gilt die Ermäßigung für den Teil des Einkommen das 260.000 Franken plus 26.000 Franken für jeden ab dem fünften Angehörigen übersteigt.

Die Anrechnung von Vorauszahlungsabzügen (auf Einkünfte aus Grundvermögen, beweglichem Vermögen und aus Berufstätigkeit) und von Körperschaftsteuer, die auf Dividenden, Einkünfte aus in Personengesellschaften investiertem Kapital und auf Tantiemen der Direktoren und Revisoren von Gesellschaften erhoben wurde, unterliegt genau bestimmten Voraussetzungen und Beschränkungen.

Ein System von gesonderten Festsetzungen, normalerweise zu einem proportionalen Satz gilt gewöhnlich unter gewissen Voraussetzungen für Gewinne aus Abtretungen, Veräußerungsgewinne, Nachzahlungen von Ar-

beitsentgelten, und Kapitalzahlungen aus Lebensversicherungsverträgen.

2.8. *Ausländische Einkünfte*

Die Doppelbesteuerung, die sich aus dem System vollständiger Veranlagung ergibt, wird entweder durch internationale Abkommen oder durch besondere Vorschriften des belgischen Rechts ausgeglichen.

Gegenwärtig hat Belgien mit folgenden Staaten Abkommen geschlossen:

| | |
|---|---|
| Luxemburg | 9. März 1931 |
| Grenzgänger | 27. März 1948 |
| Italien | 11. Juli 1931 |
| Niederlande | 20. Februar 1923 |
| Vereinigte Staaten von Amerika | 28. Oktober 1948 (ergänzt 9. September 1952 und 21. Mai 1965) |
| Finnland | 11. Februar 1954 |
| Frankreich | 16. Mai 1931<br>10. März 1964 |
| Schweden | 2. Juli 1965 und<br>7. März 1967 |
| Deutschland | 11. April 1967 |
| Großbritannien | 27. März 1953 und<br>27. Februar 1970 |
| Norwegen | 30. Juni 1967 |

Besteht kein Abkommen, werden Steuerermäßigungen auf folgender Grundlage gewährt:

- für Einkünfte aus Grundvermögen und Berufstätigkeit im Ausland die Hälfte desjenigen Teiles der Steuer, der sich proportional auf diese Einkünfte bezieht;
- für Einkünfte aus beweglichem Vermögen im Ausland ein fester Betrag von 15% der im Ausland besteuerten Einkünfte.

## 3. KÖRPERSCHAFTSTEUER

3.1. Körperschaftsteuer haben alle kommerziellen Gesellschaften und Vereinigungen zu zahlen, die gewinnerzielende Geschäfte betreiben und ihren Sitz in Belgien haben.

3.2. Die Steuer wird vom gesamten Gewinn (ausgeschüttet oder nicht) aus allen Staaten (Belgien oder Ausland) berechnet, sowie von den nichtabzugsfähigen Ausgaben und den Tantiemen nicht geschäftsführender Gesellschafter.

Verluste aus den fünf vorhergehenden Jahren können abgezogen werden. Hiervon gibt es jedoch Ausnahmen.

3.3. Der normale Steuersatz beträgt 30%. Er erhöht sich auf 35% für nicht ausgeschüttete Gewinne von mehr als 5.000.000 Franken und vermindert sich auf 25% für nicht ausgeschüttete Gewinne von weniger als 1.000.000 Franken.

Eine 10%ige Steuererhöhung gilt für ein Fünftel des 3.000.000 Franken übersteigenden steuerbaren Einkommens.

Zusätzlich wird auf den Teil der Körperschaftsteuer, der sich auf Einkünfte belgischen Ursprungs bezieht, ein Zuschlag von sechs Centimes zugunsten des Sonderfonds erhoben.

3.4. Sowohl tatsächlich gezahlte als auch fiktive Vorauszahlungsabzüge für Einkünfte aus Grundvermögen und beweglichem Vermögen sind in gleicher Weise von der Körperschaftsteuer abziehbar wie von der Einkommensteuer natürlicher Personen.

3.5. *Vermeidung der Doppelbesteuerung*

Von der Gesellschaft erzielte Dividenden und Einkünfte aus investiertem Kapital und beweglichem Vermögen, die steuerbefreit sind (sowohl belgischen als auch ausländischen Ursprungs), werden von dem zu versteuernden Einkommen in Höhe von 95% des erhaltenen Nettobetrages abgezogen (90% bei bestimmten Holdinggesellschaften).

Zinsen, die die Gesellschaft auf Schuldverschreibungen, Obligationen, Kredite, Darlehen und Bankkonten erhält, können nicht von dem zu versteuernden Einkommen abgezogen werden.

3.6. *Liquidation*
Eine besondere Abgabe (30% oder 15%, je nach dem Datum, an dem die Reserven gebildet wurden), haben liquidierende Gesellschaften zu zahlen, es sei denn, die Auflösung erfolgt aufgrund eines Zusammenschlusses, einer Übernahme oder Teilung. Die Abgabe wird auf den vollen verteilten Betrag errechnet, soweit er das investierte Kapital übersteigt (in geeigneten Fällen nach Neubewertung). Diese Steuer befreit die Gesellschafter von persönlicher Besteuerung.

## 4. STEUER AUF ANDERE KÖRPERSCHAFTEN

Der Staat, die Provinzen, Kommunen und nicht kaufmännisch tätigen Organisationen und Vereinigungen zahlen Steuern auf Einkünfte aus Kapital und beweglichem Vermögen, Grundvermögen und bestimmten anderen Einkunftsquellen. Diese Steuer wird durch Abzug an der Quelle erhoben.

## 5. STEUER DER BESCHRÄNKT STEUERPFLICHTIGEN

Sie gilt für natürliche Personen und Körperschaften, die nicht in Belgien ansässig sind und daher nicht der persönlichen Einkommensteuer unterliegen. Die Steuer bezieht sich auf Einkünfte, die in Belgien erworben oder in Empfang genommen werden. Die Berechnungsmethoden unterscheiden sich entsprechend den Umständen.
Die Erhebung der Steuer erfolgt gewöhnlich durch Abzug an der Quelle.
Übt jedoch der ausländische Steuerpflichtige durch eine Betriebstätte (Gesellschaft oder natürliche Person) eine Tätigkeit aus, hat er einen Wohnsitz in Belgien oder ist er Direktor oder Gesellschafter, so unterliegt er nur der Steuer auf das gesamte belgische Einkommen. Für Gesellschaften beträgt der Steuersatz auf Einkünfte aus der Betriebstätte der ausländischen Gesellschaft 35%. Für natürliche Personen gilt ein progressiver Satz.

## 6. STEUERN, DIE DER EINKOMMENSTEUER ÄHNLICH SIND

6.1. *Strassenverkehrsteuer auf mechanisch angetriebene Fahrzeuge*
Eine jährliche Steuer wird auf Dampf- und Motorfahrzeuge erhoben, die der Beförderung von Personen oder Gütern aller Art dienen. Ausnahmen sind vorgesehen.
Personenkraftwagen werden auf der Grundlage von Pferdestärken besteuert (zum Beispiel 12 PS = 2448 F.). Für Lastkraftwagen wird die Steuer auf der Grundlage des Fahrzeuggesamtgewichts berechnet.
Es bestehen Vorschriften über feste Steuern, Ermäßigungen, Erhöhungen und andere Methoden.
6.2. *Spiel- und Wettsteuern*
Eine besondere Steuer von 4,4% wird auf den Gesamtbetrag der für Spiel und Wette aufgewendeten Summen erhoben.
6.3. *Steuer auf Spielautomaten und ähnliche Geräte*
Die Steuer wird jährlich auf bestimmte Automaten erhoben, die an öffentlichen Orten oder in privaten Clubs aufgestellt sind.

## 7. REGISTER- UND HYPOTHEKENSTEUERN, REGISTERGERICHTSABGABEN UND ERBSCHAFTSTEUERN

7.1. *Registersteuern*
Bei förmlicher Registrierung (zum Beispiel Abschrift, Auswertung oder Niederschrift eines Vertrages oder einer schriftlichen Urkunde) vor einer autorisierten Registerstelle ist eine Steuer zu zahlen. Sie wird je nach Ort der Urkunde fest, proportional oder progressiv berechnet.

Für bestimmte Verträge ist die Registrierung vorgeschrieben (beglaubigte Abschriften, Übertragung von Grundvermögen, Mietverträge usw.).
Die Steuer ist unterschiedlich hoch, je nach Art der Urkunde.
Das Registersteuergesetz enthält zahlreiche Vorschriften über Urkunden, Steuersatz, Zahlungsverfahren, Beweismittel der Verwaltung, Prüfungsrechte, Verjährung, Rückzahlung, Zwangsmaßnahmen und Verfahren.

7.2. *Hypothekensteuern*
Eine Steuer (0,2 v.H.) wird auf die Registrierung von Hypotheken und anderen Grundstücksbelastungen erhoben.

7.3. *Registergerichtsabgaben*
Eine Registergerichtsabgabe wird auf bestimmte Handlungen vor Gericht erhoben.

7.4. *Erbschaftsteuern*
Sie werden auf den Wert des Nachlasses einer in Belgien ansässig gewesenen Person erhoben. Nach dem Wert von in Belgien gelegenen Vermögensgegenständen, die zum Nachlaß eines Nichtansässigen gehören, wird eine Steuer auf Übertragungen durch Todesfall erhoben.
Die Veranlagung richtet sich nach Bestimmungen des Zivilrechts und nach sehr strengen Sondervorschriften, die auch die Formalitäten bei der Erklärung, Zahlung und Erstattung der Steuer regeln.
Der Steuersatz ist doppelt progressiv. Er ändert sich je nach dem Verwandtschaftsverhältnis zwischen dem Verstorbenen und seinen Erben und nach dem Betrag, auf dem die Festsetzung beruht.

## 8. STEUERN NACH ART DER STEMPELSTEUERN (GESCHÄFTSTEUERN)

Dieses System hat dem Staat in den letzten fünfzig Jahren die Möglichkeit gegeben, Steuern auf kaufmännische Umsätze (Lieferungen und Leistungen) zu erheben.
Die elf Steuern, die zu den „Steuern nach Art der Stempelsteuern" gehören, haben nichts mit der Stempelsteuer gemeinsam. Diese sehr geringe Steuer gilt für bestimmte Urkunden und Verträge. Die Steuern nach Art der Stempelsteuern dagegen sind die bedeutendste Staatseinnahme nach der Einkommensteuer. Sie erfassen rechtliche Handlungen oder Vorgänge und bestimmte tatsächliche Handlungen.
Die Umsatzsteuer, die Rechnungsteuer nach Umsätzen und die Luxussteuer bilden den Hauptteil dieser Steuern. Die Steuer entsteht bei jedem Umsatz. Dieses System aufeinanderfolgender Steuern ist für eine Anzahl Erzeugnisse mit einem System fester Steuern kombiniert. Außerdem gibt es zahlreiche Befreiungen, ermäßigte Steuersätze (der normale Steuersatz beträgt gegenwärtig 7 Prozent) und erhöhte Sätze (zum Beispiel für Luxusgüter). Sonderbestimmungen regeln Veranlagung, Zahlung, Beweismittel, Verfahren und Zwangsmaßnahmen.
Dieses System wird am 1. Januar 1971 durch die TVA abgelöst.

## 9. ABGABEN AN DIE ABTEILUNG FÜR ZÖLLE UND VERBRAUCHSTEUERN

Diese sind Zölle (insbesondere Einfuhrzölle), Verbrauchsteuern (auf Alkohol, Bier, gegärte Getränke, Mineralwasser und Limonade, Zucker, Mineralöl, Benzol und ähnliche Erzeugnisse, Petroleum, Gas und bearbeiteten Tabak) sowie die Steuer auf die Eröffnung eines Alkoholausschanks.

R. GOFFIN*:

# CONSIDERATIONS SUR LA T.V.A. BELGE

L'espace limité que nous réserve le présent numéro spécial ne nous permet de dégager que l'essence de cette révolution que constitue, sur le plan économique et juridique, l'intronisation en Belgique d'un régime de taxe sur la valeur ajoutée.

Dans une première partie, nous nous efforcerons de dégager l'économie générale de la réforme, en nous attachant plus singulièrement aux espoirs qu'elle autorise sur le plan de notre expansion industrielle et commerciale.

Le second volet du dyptique sera consacré à l'aspect juridique. Présumant le lecteur familiarisé avec la technique propre à tout système de T.V.A., nous limiterons notre propos à l'énoncé des caractéristiques essentielles de la formule belge et de certaines originalités qui la distinguent des autres systèmes connus.

Le lecteur voudra bien accueillir, avec la prudence qui s'impose, un schéma qui, négligeant malgré leurs interférences certaines déviations, entend se cantonner aux axes majeurs du système.

Il excusera aussi l'auteur de n'avoir pu faire écho des dispositions réglementaires qui n'avaient pas encore vu le jour au moment où il rédigeait cette étude –[1]

## I. – L'ASPECT ÉCONOMIQUE DE LA T.V.A. BELGE

Au jour de l'ouverture de notre XXIVe Congrès de l'I.F.A., la réforme belge d'imposition des affaires sera, depuis dix jours, entrée dans sa cinquantième année. C'est en effet le 28 août 1921 qu'une loi promulguait le Code des taxes assimilées au timbre.

L'institution de cet impôt était alors apparu comme un moyen rapide et peu dommageable de redresser une situation financière que la première guerre mondiale avait rendu critique.

A vrai dire, le Gouvernement de l'époque ne pouvait se targuer d'une découverte; il empruntait à l'Allemagne, à la France et à l'Italie une réforme que ces pays venaient d'inaugurer depuis peu.

Le nouveau né – baptisé «taxe de transmission» – était d'allure inoffensive. Mais les contribuables penchés sur son berceau auraient peut être tempéré leur admiration s'ils avaient réalisé que ce petit taux de 1 p.c. allait, en cascade, affecter chaque transmission de bien.

La voracité du bébé fut prodigieuse; au cours de la première année de son existence, il avait absorbé pas moins d'un million de francs par jour.

L'argent facilement gagné exerce une séduction à laquelle les Etats ne résistent pas plus que le particulier. Pour satisfaire les besoins toujours croissants du budget, la formule du recours à l'impôt indirect s'est souvent révélée à la fois la plus efficace – parce que d'une rentabilité immédiate – et la moins impopulaire – parce que son action est plus occulte. C'est ainsi qu'au fil des années le taux initial de 1 p.c. s'est accru par paliers jusqu'à atteindre actuellement 7 p.c. (taux normal) et faire passer la recette journalière de montant de 1 million à 280 millions de francs.

---

* Docteur en droit; attaché au Secrétariat Général de Fabrimetal.

1. A cette date n'avaient encore paru que 11 arrêtés royaux.

A l'accroissement du taux correspondait d'ailleurs une complexité de plus en plus grande du régime.

Avec le recul du temps, il est assez piquant de lire ce qu'écrivait, en 1932, un de nos plus iminents fiscalistes: «Ces viscissitudes étaient inévitables aussi longtemps que la matière était en mouvement et que n'était pas terminé le long et patient travail de l'adaptation de la taxe au commerce. Aujourd'hui, l'ère des modifications législatives est close et le travail de mise au point semble achevé».[2] A l'époque où paraissaient ces lignes, le Code et le Règlement Général des taxes assimilées au timbre comptaient 450 articles; ils en accusent aujourd'hui 625, compte non tenu des quelques 260 articles qui traitent des taxes particulières!

Et cette prolifération d'articles s'agrémente aujourd'hui de 17 taux, qui oscillent entre 1,20 et 23 p.c.

Ainsi que l'exprimait le Directeur Général de l'Administration belge de la T.V.A.: «Les exceptions se développent à mesure que les taux s'élèvent. Elles s'accroissent par contagion; les règlementations particulières qui sont instaurées pour nuancer l'impôt en suscitent d'autres parce que les analogies entre les situations nées des contingences économiques ne manquent pas.

Et de la sorte, les principes se perdent, l'ensemble se désarticule et l'on en arrive à la longue à une juxtaposition des régimes spéciaux qui constitue la phase finale d'un lent processus de désagrégation».[3]

Cette appréciation du système belge rejoignait celle qu'avait déjà formulée M. Maurice Lauré au sujet du régime français: «C'est pourquoi le système français des taxes sur le chiffre d'affaires à gagné en perfection, mais aussi en complexité, à mesure que son poids augmentait».[4]

*

* *

Le contribuable se serait peut être accomodé de ces complications si elles n'avaient affecté que la technique de perception; mais leur accumulation se muait insensiblement en vices redhibitoires à mesure que se modernisaient les conceptions économiques.

A mesure aussi que l'amenuisement des investissements productifs commençait à émousser le pouvoir créateur des entreprises. L'intégration européenne place le *rééquipement* à l'avant plan des préoccupations de l'industrie.

Le constructeur qui, sur ce plan, se laisse décrocher est un constructeur irréversiblement voué à sa perte. Or le contact avec le progrès exige un financement de plus en plus lourd, des sacrifices répétés à une cadence calquée sur l'évolution de plus en plus rapide des techniques.

Les statistiques permettent d'ores et déjà d'estimer à quelque 120 milliards de francs belges les biens d'investissement qui seront achetés ou construits, en 1970, par les entreprises industrielles et commerciales de notre pays. Si l'on considère qu'un équipement incorpore dans son coût ± 14 p.c. de taxes de transmission accumulées, le rééquipement de 1970 aura supporté 17 milliards d'impôt.

Cette lourde ponction n'affecte pas seulement le rééquipement des firmes nationales; elle risque aussi de compromettre dangereusement l'implantation chez nous d'importants complexes étrangers, tentés par des avantages fiscaux plus libéralement dispensés par nos voisins.

En raison de leur nature ou de leur dimen-

---

2. René Symoens: «La Taxe de transmission» – Tome 1er – p. 11 (avril 1932).
3. Camille Scailteur: «La Belgique devant les perspectives d'instauration d'une T.V.A.» – Conférence donnée le 26.5.1966, à la Chambre de Commerce de Bruxelles.
4. Maurice Lauré: «Au secours de la T.V.A.» – p. 7.

sion, ces implantations ne peuvent porter préjudice aux entreprises nationales. En revanche, elles constituent, pour le trésor, un profit réel; pour nos fabricants, des possibilités de sous-traitance; pour nos régions en dépression, de salutaires occasions d'embauche.

*
* *

La nocivité du régime cumulatif se manifeste encore sur le plan de la *rationalisation* et de la *spécialisation* des entreprises.
Dans tous les secteurs, techniques et procédés, évoluent avec une rapidité telle qu'ils ruinent rapidement les entreprises qui n'ont pas assez tôt ou assez radicalement opéré une reconversion.
Certaines s'orientent vers la fusion ou l'absorption. La plupart, cependant, cherchent leur survie dans une technicité poussée, qui fera d'elles les fournisseurs obligés. Mais cette reconversion se trouve aussitôt pénalisée par le système de taxe, dans la mesure où elle contraint le fabricant à n'être plus qu'un façonnier ou un sous-traitant. Il s'ensuit que l'industriel assez courageux et clairvoyant pour s'orienter dans la voie de la spécialisation ne tarde pas à s'apercevoir que le profit escompté de la sous-traitance se trouve absorbé par la taxe rendue exigible sur cette mutation supplémentaire. En d'autres termes, l'entreprise rationalise souvent au seul bénéfice du fisc.
C'est dans le domaine des petites et moyennes entreprises que se marque cette évolution de structure. Or, sur ses 35.000 firmes industrielles, la Belgique en compte 93 p.c. occupant moins de 50 ouvriers. Ces chiffres font apparaître l'urgence et l'intérêt de voir substituer à notre dévorante taxe de transmission une imposition enfin adaptée aux réalités économiques du moment. Car la T.V.A., en rétablissant la neutralité de la taxe, va non seulement réparer une injustice mais aussi permettre à la sous-traitance de s'assurer l'épanouissement qu'elle mérite.

*
* *

La Belgique se réjouit enfin de l'apport que promet le futur régime à son commerce d'*exportation*.
Au cours des quinze dernières années, ses exportations ont quintuplé, pour atteindre, en 1969, ± 450 milliards de francs belges, chiffre qui se trouvera encore dépassé en 1970. Cette progression permet d'affirmer qu'actuellement un ouvrier belge sur deux travaille pour l'exportation.
Cet essor pourraît cependant être plus brillant encore si les produits vendus hors frontières ne restaient grevés des taxes accumulées dans leur circuit de fabrication. Notre régime impose paradoxalement à nos firmes d'exporter des taxes.
Sans doute, la réglementation a-t-elle organisé un système de détaxation, mais outre qu'il n'éponge généralement pas l'intégralité des charges fiscales «en amont», le système n'est pas accessible à l'ensemble des firmes exportatrices.
C'est pourquoi ces entreprises et les sous-traitants qui gravitent dans leur orbite aspirent à l'instauration d'une T.V.A., qui doit enfin assurer un dégrèvement total, automatique et généralisé, un dégrèvement qui leur permettra de résorber l'handicap qu'ils subissent sur le plan de la concurrence internationale.
Cette expansion est vitale au moment où le Marché Commun entre dans sa phase de fiscalité harmonisée, au moment surtout où les espaces économiques s'élargissent et les échanges se libéralisent.
De nombreux pays entament leur démarrage économique et vont constituer d'inestimables débouchés. La participation et l'industrialisation des pays en voie de développement est

largement ouverte; la Belgique doit s'y tailler une place tant qu'il est temps encore.

## II. – LA T.V.A. BELGE SUR LE PLAN TECHNIQUE

C'est par une loi du 3.7.1969, publiée au «Moniteur belge» du 17 du même mois, qu'a été instituée notre Code de la taxe sur la valeur ajoutée (CTVA).
Son entrée en vigueur, primitivement fixée au 1.1.1970, a été prorogée au 1.1.1971, par la loi du 19.12.1969 (Mon. belge du 20.12.1969).
Ainsi qu'il est précisé dans notre introduction, nos commentaires seront réservés aux principaux chapitres de ce Code.

### ASSUJETTISSEMENT

La loi confère la qualité d'assujetti à quatre catégories de personnes.

1. *L'assujetti au sens large*

C'est «toute personne dont l'activité consiste à effectuer d'une manière habituelle et indépendante, à titre principal ou à titre d'appoint, avec ou sans esprit de lucre, des livraisons de biens ou des prestations de services visées – «par le Code» (CTVA, art. 4)
Cette définition ne fait aucune distinction entre la personne physique et la personne morale; elle n'impose aucune capacité juridique déterminée ni aucune condition de nationalité. En revanche, elle exige le caractère d'habitude et d'indépendance de l'activité exercée.
Sont notamment visés par l'art. 4: les producteurs, fabricants, entrepreneurs, artisans, commerçants, façonniers, agents d'affaires, syndics d'immeubles, etc. . ainsi que les commissionnaires en marchandises ou en services.[5]
Sont également assujettis, dès qu'ils répondent aux critères de l'article 4, les titulaires de professions libérales, à l'exclusion toutefois des notaires, des avocats, des huissiers de justice, des médecins, des vétérinaires, des titulaires de professions paramédicales, des professeurs, des conférenciers et d'autres personnes physiques ou morales dont les services sont exonérés en vertu de l'article 44 du CTVA.[6]
Si l'assujettissement est reconnu aux personnes morales ayant une personnalité juridique, il est refusé, par voie de conséquence, aux associations en participation, aux associations momentanées et aux sociétés de fait, en tant qu'entités distinctes, dépourvues de cette personnalité.
La personne qui professionnellement exerce à la fois une activité taxable et exonérée est également assujettie mais uniquement pour son activité soumise à l'impôt. (règle de prorata)
Ajoutons enfin qu'une personne qui exerce à l'étranger une activité visée par notre Code, est considérée comme assujettie à l'occasion d'une opération qu'elle effectuerait en Belgique. Elle est donc soumise au paiement de l'impôt pour cette opération mais ne sera en mesure d'en opérer la déduction que si elle dispose dans le pays d'un établissement stable où si elle y a fait agréer un représentant responsable, au voeu de l'art. 55 du CTVA.

2. *Certains organismes publics*

Si l'Etat, les provinces, les communes et les établissements publics n'ont pas la qualité d'assujettis, le Roi leur reconnaîtra cette qualité dans la mesure où ils exercent d'une manière habituelle une activité économique de producteur, de commerçant ou de prestataire de services. (art. 6, du CTVA)

5. En vertu des présomptions organisées par les articles 13 et 20, du CTVA.
6. Comparer la loi allemande du 29/5/1967, art. 2; loi néerlandaise du 29/6/1968, art. 7; loi Gd Ducale du 5/8/1969, art. 44.

On peut considérer que seront notamment concernés: la S.N.C.B., la S.N.C.V., la Sabena, la Société Nationale du Logement, les associations internationales de distribution d'eau, de gaz, d'électricité, etc. . .

3. *Les associations sans but lucratif*

Le but de lucre n'étant pas une condition imposée par l'article 4, ces associations seront assujetties dès qu'elles remplissent les autres conditions exigées par ledit article.

Quel sera le sort des groupements professionnels, constitués en A.S.B.L., et dont les services sont couverts par une cotisation statutaire?

Ils ne sont pas, en principe, assujettis. Toutefois, ces groupements peuvent, avec l'autorisation de l'Administration, opter pour l'assujettissement. Dans cette hypothèse, les cotisations seront frappées d'une T.V.A., que les adhérents pourront déduire s'ils sont assujettis. De son côté, l'A.S.B.L. bénéficiera également de la déduction des taxes ayant grevé les fournitures et prestations qui lui ont été livrées.

4. *Les vendeurs de bâtiments neufs*

Les personnes qui construisent ou font construire des bâtiments en vue de les céder à titre onéreux, en tout ou en partie, soit avant leur érection, soit en cours d'érection, soit une fois érigés, vont pouvoir revendiquer le bénéfice de l'assujettissement (CTVA, art. 8).

Cette importante innovation requiert une distinction.

Si la personne visée à l'article précité exerce cette activité d'une manière habituelle, elle possède automatiquement la qualité d'assujettie pour l'ensemble de cette activité.

Mais la portée de l'article 8 s'étend à deux autres catégories de personnes, à savoir:

- celles qui se livrent aux opérations indiquées, mais autrement que dans l'exercice de leur activité habituelle;
- celles qui revendent de tels bâtiments après les avoir acquis avec paiement de la T.V.A.

Les personnes ressortissant à ces deux catégories ne seront pas automatiquement assujetties. Elles seront considérées comme «assujettis volontaires», c'est à dire qu'elles ne pourront se prévaloir de l'assujettissement – que pour la cession du bâtiment considéré et à la condition d'avoir au préalable manifeste l'intention de céder avec application de la T.V.A.[7]

## OPÉRATIONS IMPOSABLES

1. *Les livraisons de biens*

La loi entend par «*livraison*»: la mise d'un bien à la disposition de l'acquéreur ou du cessionnaire en exécution d'un contrat à titre onéreux translatif ou déclaratif de propriété ou d'usufruit (CTVA, art. 10).[8]

Quel en est le lieu? (élément à préciser, car la livraison n'est taxable que si elle a lieu dans le pays).

«La livraison a lieu en Belgique lorsque, au moment ou elle s'opère, le bien se trouve dans le pays, sauf preuve contraire, le bien est présumé se trouver dans le pays lorsque l'une des parties au contrat y est établie». (CTVA, art. 16)

Quel en est le moment? (élément utile car il entraîne l'exigibilité de la taxe).

C'est celui de la mise à disposition. Mais ce principe est assorti d'une exception importante: «Toutefois, lorsque la délivrance comporte un transport du bien, la livraison est réputée s'opérer au moment où commence le transport» (CTVA, art. 15).[9]

7. On consultera aussi l'art. 9, § 3, du CTVA.
8. Comparer: France – Loi du 6/1/1966, art. 9.1 (remise effective du bien). Pays-Bas – Loi précitée, art. 3. R.F.A. – Loi précitée art. 3(1) (pouvoir de disposer). Gd Duché – Loi précitée, art. 9.
9. V. 2 directive communautaire, art. 5, 4, a); Comp. Loi allemande précitée, art. 3(7); loi néerlandaise précitée, art. 6.1.a); loi Gd Ducale précitée, art. 14, a).

Cette exception se répercute nécessairement sur la détermination du lieu.
Une marchandise expédiée d'Italie vers la Belgique aura été livrée à l'étranger, mais elle supportera la T.V.A. lors de son importation.
Une marchandise expédiée de Belgique vers la France aura été livrée en Belgique, mais elle sera exonérée, étant exportée.
La loi entend par «*biens*»: «les biens meubles par leur nature, de même que les objets mobiliers corporels affectés au service ou à l'exploitation des biens immeubles», «la fourniture de chaleur, de froid et d'énergie» ainsi que les bâtiments neufs, dont il vient d'être question. (CTVA, art. 9)
Le Code assimile enfin à des livraisons certains *prélévements* opérés par l'assujetti lui-même.
Il s'agit:
- du prélèvement d'un bien meuble pour usage non professionnel (CTVA, art. 12 § 1, 3°)
- de l'utilisation d'un bien meuble comme bien d'investissement (ibid 4°)
- de l'utilisation d'un bien meuble pour effectuer des opérations n'autorisant pas la déduction (ibid 5°)
- de l'utilisation d'un véhicule (CTVA 14, 2°)

A signaler encore que n'est pas une livraison au sens de la loi, la cession sous forme d'apport en société ou autrement, d'une universalité de biens ou d'une branche d'activité, lorsque le cessionnaire à la qualité d'assujetti. (CTVA, art. 11) Dans ce cas, le cessionnaire est censé continuer la personne du cédant, c'est à dire qu'il en hérite du droit à déduction mais également de ses obligations.

2. *Les prestations de services*

Le législateur français ne précise pas cette notion. La loi allemande la définit «les prestations qui ne constituent pas des livraisons».[10]
Si la deuxième directive communautaire recourt, elle aussi, à une définition négative en déclarant «Est considérée comme une prestation de services toute opération qui ne constitue pas une livraison au sens de l'article 5»[11], elle reproduit cependant dans son Annexe B une liste de prestations qu'elle entend soumettre à l'impôt.
La loi belge ne va pas davantage définir la prestation mais elle va, dans son article 18, énumérer limitativement les services imposables. Pour n'être pas satisfaisante sur le plan légistique, cette solution offre à tout le moins le mérite de réduire le champ des interprétations.
Parmi les prestations citées par le Code nous relèverons, entr'autres, les travaux matériels ou intellectuels accomplis d'une manière indépendante; le mandat rémunéré; la location de biens meubles; la cession de clientèle; la cession ou la concession de droits intellectuels; l'entreposage de marchandises; la mise à disposition de parkings et garages par leurs exploitants; les prestations fournies par les hôteliers, restaurants, cafetiers, pâtissiers; les soins corporels (coiffeurs, manucures, pedicures, bandagistes, orthopédistes, etc. . .); la location de coffre-forts; les services procurés par les exploitants d'installations sportives, culturelles ou de divertissement; etc. . .[12]
Le législateur assimile encore à des prestations taxables:
- les prestations exécutées en vertu d'une réquisition par l'autorité publique (art. 19, 1° du CTVA)
- l'exécution par un assujetti, pour ses propres besoins, d'un travail immobilier, à l'exception des travaux de réparation et d'entretien (art. 19, 2° du CTVA)

10. Loi du 29.5.1967, art. 3 (8). Comp. loi néerlandaise, art. 4 et loi Gd ducale, art. 15.
11. 2e directive C.E.C., art. 6.1.
12. Les prestations expressément exonérées sont énumérées à l'art. 44 du CTVA déjà cité.

- la location d'immeubles industriels ou commerciaux consentie par des entreprises autorisées à pratiquer le «leasing immobilier», lorsqu'il s'agit de bâtiments que le bailleur a construit ou fait construire dans les prévisions de l'article 9 § 3. La location d'immeubles industriels ou commerciaux, autres que ceux visés par cet article, pourra aussi bénéficier du régime dans des conditions que le Roi déterminera (art. 18, §§ 2 et 3 du CTVA).

Que faut-il entendre par *«utilisation dans le pays»*?

L'article 6.3 de la deuxième directive n'est guère plus explicite à cet égard que notre texte légal.

D'autre part, le Conseil de la C.E.C. devait, avant le 1.1.1970, arrêter les dispositions précisant la portée de l'article 6.3.[13] Dans l'attente de ces dispositions, non encore parues à ce jour, un arrêté royal n° 5, du 6.2.1970 a précisé la notion d'utilisation au sens de la loi belge (Mon. belge du 14.2.1970).

Cet arrêté pose en principe que les services sont considérés comme utilisés dans le pays «lorsqu'ils sont fournis à une personne établie dans le pays» (art. 3, de l'arrêté royal n° 5). Il en est ainsi, précise l'article 4 dudit arrêté, lorsque le service est fourni «à une personne qui, même en l'absence d'une représentation capable de l'engager, a dans le pays un siège de direction, une succursale, une fabrique, une usine, un atelier, une agence, un magasin, un bureau, un laboratoire, un comptoir d'achat ou de vente, un dépôt ou tout autre installation fixé». Si le service est fourni à un particulier qui ne le destine pas à l'exercice de son activité professionnelle, ce particulier est considéré comme établi dans le pays, s'il y dispose d'une habitation.

Le critère de l'établissement du preneur de services souffre deux catégories d'exceptions.

a) Exceptions découlant de la loi elle-même.[14]
   - Si un transport est effectue à la fois sur le territoire belge et sur celui d'un ou plusieurs autres pays, le service est utilisé dans le pays pour la partie du transport qui y est réalisée.[15]
   - Si un courtier ou mandataire autre qu'un commissionnaire intervient dans la livraison d'un bien qui a lieu à l'étranger, le service de cet intermédiaire n'est pas utilisé dans le pays.[16]

b) Exceptions découlant de l'arrêté royal n° 5
   Certaines d'entr'elles considèrent que le service est utilisé dans le pays lorsque le bien auquel il se rapporte y est lui-même situé.
   Tel sera le cas pour les prestations ci-après:
   - les travaux relatifs à un immeuble par nature. Il faut entendre par là non seulement les travaux de construction, de réparation, d'entretien, de nettoyage et de démolition de tout ou partie d'immeubles par nature; de la fourniture d'un bien meuble et son placement dans un immeuble en manière telle que ledit bien devienne immeuble par nature, mais encore tous travaux d'étude ou de contrôle qui relèvent de l'activité habituelle des architectes, des géomètres et des ingénieurs et qui tendent à préparer ou a coordonner l'exécution des travaux immobiliers. (art. 2, de l'arrêté précité)
   - le «leasing immobilier»;
   - la location de coffres-forts;
   - la mise à disposition de parkings et garage par leur exploitant; la garde de bien meubles;

13. v. 2e directive CEE, Annexe A 11.
14. CTVA, article 21, §§ 2 & 3.
15. Comparer: Loi française du 6.1.1966, art. 6.1; loi allemande du 29.5.1967, art. 3(11) et 18(5); loi néerlandaise, art. 6.3 et loi gd ducale, art. 18.
16. Comparer décret français 67.642, du 31.7.1967 et loi allemande précitée, art. 8 (1).

- la fourniture de logements meublés, de nourriture et boissons à consommer sur place;
- l'octroi du droit d'accéder à des installations culturelles, sportives ou de divertissement.

D'autres exceptions considèrent que le service est utilisé dans le pays quand *la jouissance* ou *l'exécution* s'y manifeste.
Il en est ainsi dans les cas suivants:

- la location de biens meubles corporels;
- les prestations accessoires à certains transports;
- les travaux à façon; la réparation, l'entretien ou le nettoyage d'un bien meuble corporel;
- les prestations des entreprises de radiodistribution, télédistribution ou télécommunication;
- les représentations théâtrales, chorégraphiques ou cinématographiques; les concerts, conférences; spectacles de cirque, de music-hall, de cabarets, etc . . .
- les soins corporels.

On observera toutefois que ces divers services peuvent bénéficier de l'exonération, s'ils sont considérés comme exportés.[17]
Le *moment* (ou fait générateur) de la prestation est en règle, celui de son achèvement. L'article 22 du Code prévoit toutefois que rendent la taxe exigible, sur tout ou partie du prix, un montant facturé ou payé, ou encore l'échéance contractuelle d'un paiement.

3. *Les importations*

Les biens importés sont passibles de la T.V.A., quelle que soit la qualité de la personne qui les importe où à laquelle ils sont destinés. (CTVA, art. 3)
L'impôt est acquitté par apposition, sur le document douanier, de timbres fiscaux actuellement utilisés.[18]
L'importation peut, dans certains cas, s'opérer en franchise.[19]

BASE D'IMPOSITION

En principe, la taxe est calculée sur le montant total du prix des charges et autres prestations imposées par le fournisseur du bien.
Cette base ne comprend cependant pas les sommes déductibles à titre d'escompte, les rabais de prix contractuels, les intérêts dus en cas de paiement tardif, les frais d'emballages ordinaires remboursables, les frais engagés pour compte du co-contractant et la T.V.A. ellemême.
En ce qui concerne les échanges, les cessions de bâtiments visés à l'article 9 § 3, du CTVA, les travaux immobiliers pour compte propre, les prélèvements et les importations sans paiement de prix, la base ne peut être inférieure à la valeur normale que la loi définit en ces termes: «la valeur normale est représentée par le prix pouvant être obtenu à l'intérieur du pays pour chacune des prestations, au moment où la taxe est due, dans des conditions de pleine concurrence entre un fournisseur et un preneur indépendants, se trouvant au même stade de commercialisation».[20]

TAUX DE LA TAXE

La législateur a prévu 4 taux maxima mais abandonne à l'exécutif le soin d'établir la liste des biens et des services soumis à chacun d'eux. Il l'autorise, de surcroit, à réduire les taux ainsi qu'à modifier les listes si les contingences économiques l'imposent. Ces listes et modifications devront toutefois faire l'objet d'une ratification par le Parlement.
L'article 37 du Code se borne donc à énumé-

17. CTVA, art. 39 à 43.
18. Sauf en ce qui concerne les importations en provenance des Pays-Bas et du Gd Duché de Luxembourg et dont la taxe s'acquitte par le truchement de la déclaration mensuelle.
19. Voir CTVA, art. 24, 40, 42 & 43.
20. CTVA, art. 32, 33 & 36§§ 1 et 3.

rer les taux en précisant, comme suit et pour chacun d'eux, les règles à observer pour leur détermination:

6 p.c. pour les livraisons et les importations de biens de première nécessité et pour les services à caractère social;

15 p.c. pour les livraisons et importations de biens de consommation courante et pour les services qui présentent un intérêt particulier sur le plan économique, social ou culturel;

20 p.c. pour les opérations se rapportant à des biens ou des services qui ne sont pas dénommés ailleurs;
ce taux est donc à considérer comme le taux normal de la T.V.A. belge;

25 p.c. pour les livraisons et importations de biens qui, dans notre régime actuel, sont soumis à la taxe de luxe où à une taxe de transmission forfaitaire à taux renforcé.[21]

Par dérogation à l'article 37 du CTVA, les taux de 15 et 20 p.c. seront ramenés respectivement à 14 et 18 p.c., jusqu'au 31.12.1971.[22]

## LES EXEMPTIONS

Les articles 39 à 44, du CTVA, organisent une série d'exemptions qu'il est possible de regrouper en deux catégories.

La première intéresse les mouvements internationaux de marchandises et de services, au sens large.

Elle soustrait à la taxe: l'exportation directe de biens et de services, leur exportation indirecte, les opérations de transit ou en entrepôt, les transports et prestations de services se rapportant à des transports, la livraison de navires, de bâteaux et d'avions ainsi que les fournitures aux ambassades, consulats et certains organismes internationaux.

La seconde catégorie d'exemptions vise les prestations de personnes exerçant une activité judiciaire, médicale ou paramédicale ainsi que les prestations à caractère social ou culturel énumérées à l'article 44 du CTVA. Elle concerne également les contrats d'édition, les dépôts de fonds et opérations de crédit, les prestations de courtage ou de mandat en matière d'assurance, de change, de placement de valeurs mobilières, etc. . ., opérations qui resteront toutefois soumises à une taxe spécifique, non déductible.

## LA DÉDUCTION

Le mécanisme de la déduction tel qu'il se dégage du Code respecte fidèlement les principes définis dans la deuxième directive; dès lors, nous ne nous arrêterons qu'aux particularités qui distinguent le système belge des autres régimes connus.[23]

L'assujetti est autorisé à opérer la déduction de la T.V.A. supportée sur ses entrées, faites à des fins professionnelles, qu'il s'agisse de livraisons ou prestations reçues, d'importations de biens ou services, ou de prélèvements effectués pour les besoins de l'entreprise.

Ce droit n'est cependant pas absolu. C'est ainsi que la déduction est refusée en ce qui concerne la taxe ayant grevé:

- les livraisons de tabacs fabriqués;
- les livraisons de boissons spiritueuses si celles-ci ne sont pas destinées à être revendues ou fournies en exécution d'une prestation de service (hoteliers, restaurateurs, cafetiers, négociants, etc. . .);
- les frais de logement, de nourriture et de boissons à l'exception de ceux qui sont exposées:

---

21. Voir tableaux A et B de l'art. 179 du Règlement Général de taxes assimilées au timbre.
22. CTVA, art. 102, modifié par la loi du 19.12.1969 (Mon. belge du 20.12.1969).
23. La déduction est reglementée par les art. 45 à 49, du CTVA et par l'arrêté royal n° 3, du 10.12.1969 (Mon. belge du 12.12.1969).

- par le personnel chargé de l'exécution, hors de l'entreprise, d'un opération imposable;
- par leur clientèle, par des agences de voyage et des organismes de tourisme;

– les frais de réception.

En revanche, la déduction n'est admise qu'à concurrence de 50 p.c. de la T.V.A. ayant frappé l'acquisition d'un véhicule automobile servant au transport de personnes, si ce véhicule n'est pas exclusivement utilisé à usage professionnel par l'assujetti.

Le droit de déduction prend *naissance* à la date où la taxe est due, qu'il s'agisse de livraisons, de prestations, d'importations ou de prélèvements. La taxe déductible s'impute globalement sur le total des taxes dues pour la période de la déclaration (en principe mensuelle).

Le régime belge ignore par conséquent la règle du «décalage d'un mois» ainsi que celle du «butoir physique» et du «butoir financier» que subit l'assujetti français.[24]

Quel est le sort d'un *crédit d'impot* résultant d'une déclaration?

En règle, l'excédent de T.V.A. déductible fait l'objet d'un report sur la déclaration relative à la période suivante (CTVA, art. 47).

Si un excédent subsiste à la fin de l'année civile, il est restitué en espèces, dans les 3 mois (CTVA, art. 76).

Les auteurs de la loi avaient cependant conscience des difficultés que pourrait susciter une accumulation de taxe dans le chef des assujettis contraints de procéder à des approvisionnements considérables en vue de satisfaire à des marchés à longs délais d'exécution où à caractère saisonnier. Aussi a-t-il délégué au Roi le pouvoir d'accorder des restitutions avant l'expiration de l'année civile.

L'Exécutif a fait usage de ce pouvoir en promulguant l'arrêté royal n° 4, du 29.12.1969 (Mon. belge du 31.12.1969), lequel autorise la restitution de l'excédent de taxes, lorsque celui-ci dépasse, à la fin d'un trimestre civil:

– 25.000 F.B., pour les petites entreprises autorisées à ne disposer que de déclarations trimestrielles;
– 60.000 F.B., pour les assujettis ordinaires.

Si cette solution est moins libérale que celle adoptée par la loi allemande[25], elle se révèle en tout cas plus généreuse que celle du «report jusqu'à épuisement» qu'impose la législation française[26]

## LES RÉGULARISATIONS

N'étant définitivement acquises que lorsque et dans la mesure où les biens et services taxés n'ont pas été ultérieurement affectés à des fins non professionnelles, les déductions doivent faire l'objet de révision en cas de changement d'affectation. Les modalités de cette révision sont réglementées par l'arrêté royal n° 3, du 10.12.1969 (Mon. belge du 12.12. 1969). La revision s'opère dans la déclaration, sous forme de prélèvement ou de reversement, selon les cas.

Il est, au demeurant, des hypothèses ou l'assujetti peut prétendre au remboursement de taxes indûment acquittées; il en est notamment ainsi:

- lorsque la taxe payée est supérieure à celle légalement due;
- en cas de rabais de prix consenti au contractant;
- en cas de renvoi d'emballages donnant lieu à une note de crédit;
- en cas de résiliation avant exécution du marché ou de résolution d'un contrat amiable ou en justice;
- en cas de reprise de marchandise par le fournisseur;

24. v. décret 67/92, du 1.2.1967.
25. Loi du 29.5.1967, art. 18 (2); comparer loi néerlandaise, art. 17 et loi Gd ducale, art. 55.
26. v. décret précité, art. 20.2.

– en cas de perte totale ou partielle de la créance du prix.

Dans toutes ces hypothèses envisagées par l'article 77, § 1, dû Code, la T.V.A. est restituée à l'assujetti par voie d'imputation sur le montant des taxes dues, selon les modalités fixées par l'arrêté royal n° 4, du 29.12.1969.
Dans le domaine des régularisations, il s'indique de signaler le régime particulier des biens d'investissement.
Sont considérés comme tels «les biens corporels, meubles ou immeubles, destinés à être utilisés d'une manière durable comme instruments de travail ou moyens d'exploitation», à l'exclusion «des emballages, du petit matériel, du petit outillage et des fournitures de bureau, lorsque ces biens répondent aux critères fixés par le Ministre des Finances».[27]
La déduction de la T.V.A. qui a grevé un bien d'investissement est sujette à revision pendant cinq ans.
Une régularisation s'opère, chaque année à concurrence d'un cinquième du montant de cette taxe, lorsque des variations sont intervenues dans les éléments qui ont été pris en considération pour le calcul des taxes déductibles (CTVA, art. 48, § 2).
Les modalités de revision sont précisées aux articles 6 à 11, de l'arrêté royal n° 3.

## LE PRORATA

La personne qui effectue professionnellement des opérations permettant la déduction ou ne l'autorisant pas, est soumise au régime du prorata (CTVA, articles 46 et 48). Le Code distingue à cet égard:

– le prorata général: la déduction s'opère en fonction d'un pourcentage, établi par année civile, dans les conditions précisées par l'arrêté royal n° 3, aux articles 12 à 18.
– le prorata d'affectation réelle: la déduction s'opère en fonction du chiffre réel des opérations autorisant cette déduction, et conformément aux articles 19 et suivants du même arrêté.

## DOCUMENTS

Un arrêté royal n° 1, du 23.7.1969 (Mon. belge du 30.7.1969) précise les documents dont la tenue est imposée aux assujettis. Nous ne retiendrons l'attention que sur deux d'entre eux.

– La *déclaration*. Les opérations, imposables ou non, effectuées par un assujetti au cours d'un mois doivent faire l'objet d'une déclaration qu'il est tenu de déposer au plus tard le 20 du mois suivant.
  Les petites entreprises ne sont toutefois tenues à cette obligation que trimestriellement.
  Les déclarations sont établies conformément à des modèles annexés à l'arrêté précité. Elles font apparaître la T.V.A. due ou la T.V.A. récupérable. La T.V.A. due est acquittée au jour même du dépôt de la déclaration.
– Le second document est, à notre connaissance, propre à notre régime. Il consiste en une déclaration que tout assujetti doit déposer chaque année avant le 31 mars et qui fait connaître à l'administration, pour chaque co-contractant assujetti auquel il a fourni des biens ou des services au cours de l'année précédente, l'identité dudit client, le montant total des livraisons et prestations fournies et le montant total des taxes qu'il lui a portées en compte.[28]

Ce document est destiné à faciliter à l'administration le dépistage de la fraude.

27. Arrêté royal n° 3, du 10.12.1969, art. 6, § 1.
28. v. CTVA, art. 50 § 2, dern. al. et arrêté royal n° 1, art. 18.

## LES RÉGIMES PARTICULIERS

Les articles 56 à 58 du CTVA, organisent plusieurs régimes particuliers au bénéfice de certaines catégories d'entreprises qui ne pourraient s'accomoder des complications imposées à l'assujetti ordinaire. Nous ne citerons que «pour mémoire» le régime des tabacs fabriqués (art. 58 § 1), les importations de poissons, crustacés et mollusques (art. 58 § 2), les achats de biens d'occasion faits habituellement par des assujettis à des non-assujettis (art. 58 § 4), pour consacrer quelques réflexions à certaines petites entreprises dont le régime s'écarte sensiblement de ceux admis, à leur égard, par nos partenaires communautaires.

1. *Petites entreprises en régime normal simplifié*
L'article 50 § 2 du CTVA permet au Roi d'autoriser «les catégories d'assujettis qu'Il désigne» à ne déposer de déclarations que trimestriellement et à ne payer la taxe que par acomptes mensuels.
C'est en application de cette disposition que l'arrêté royal n° 1 limite à leur sujet les documents comptables à tenir et ne leur impose que quatre déclarations par an.[29]
Ces petits assujettis ne sont toutefois habilités à revendiquer le bénéfice de cette assouplissement que si leur chiffre d'affaires annuel n'excède pas cinq millions de francs belges (TVA non comprise) et s'ils ne réunissent pas les conditions pour être soumis aux régimes qui seront examinés aux littéras 2 et 3 ci-après

2. *Petites entreprises soumises au régime du forfait*
Sont visés ici les assujettis dont la clientèle est composée en majeure partie de particuliers et dont le chiffre d'affaires annuel n'est pas supérieur à cinq millions de francs belges (TVA non comprise).
La caractéristique du système réside dans le fait que ces assujettis ne sont pas imposés sur base de leur chiffre de vente réel mais sur base d'un forfait établi suivant certains critères: en fonction des marges bénéficiaires, d'un prix unitaire de vente, d'un taux horaire de travail, etc. . .
Ces forfaits sont de trois ordres:
- forfaits généraux: par secteur d'activité;
- forfaits spéciaux par secteurs, prévus pour les entreprises desdits secteurs dont l'activité est marginale;
- forfaits individuels: pour les cas exceptionnels au sein d'un secteur.

Ces forfaits, établis par l'Administration, sont valables pour un an et susceptibles d'être modifiés en cas de variations sensibles des éléments qui ont servi de base à leur établissement.
Les entreprises bénéficiaires de ce système consacré par l'article 56 § 1 du CTVA jouissent des assouplissements accordés à celles visées au littéra 1 ci-avant.
Celles qui en réunissent les conditions seront soumises d'office au forfait dès l'entrée en vigueur de la loi, à moins qu'elles n'aient, avant le 15 décembre précédant cette date, manifeste l'intention d'être assujetties au régime ordinaire.
Après la mise en application de la loi, les entreprises soumises au forfait auront la faculté d'opter, soit pour le régime normal, soit pour celui de l'assujetti visé au littéra 1. Les modalités relatives à l'établissement des bases forfaitaires de taxation et du mécanisme de cette formule ont fait l'objet de l'arrêté royal n° 2, du 7.11.1969 (Mon. belge, 14.11.1969).[30]

3. *Petits détaillants*
Comme ceux des autres Etats de la C.E.E., le législateur belge s'est trouvé confronté avec

29. Consulter l'arrêté royal n° 1, notamment les articles 12, 16, 17 et 18.
30. Comparer: France, loi 6.1.1966, art. 20, 21, 22, 53; R.F A.: loi précitée, art. 23; Pays-Bas, loi précitée, art. 25; Gd Duché: art. 56.

les problèmes posés par l'assujettissement des petits détaillants par suite notamment de l'absence chez eux de cette comptabilité nécessaire au jeu normal d'un système de TVA. La solution belge à ce problème ce différencie nettement de celles adoptées chez nos voisins.[31]

Bien que l'arrêté d'exécution annoncé par l'article 56 § 2 du CTVA n'ait pas encore été promulgué, on peut d'ores et déjà considérer que la qualité de «petit détaillant» devra satisfaire à trois critères:

- son activité devra se limiter à la revente en l'état des marchandises. Ceci exclut le détaillant qui soumet la marchandise à une main-d'oeuvre industrielle, comme par exemple: le boucher, le charcutier, le boulanger, le pâtissier, le poissonnier, le pharmacien, le tailleur, le fleuriste, etc. . . Ce critère exclut encore d'office le petit prestataire de service: coiffeur, cafetier, cordonnier, plombier, électricien, etc. . .
- il ne doit pas être négociant en produits actuellement soumis à la taxe de luxe;
- enfin l'intéressé ne devra pas accuser un chiffre total d'achats annuel supérieur à 1.500.000 F.B., non compris les investissements.

L'originalité de la formule belge réside dans le fait que, bien que étant assujetti à la T.V.A., le petit détaillant reste étranger à l'application de l'impôt sur ses propres ventes. C'est à son fournisseur qu'il incombe de collecter la taxe selon un procédé qui s'apparente à celui des revenues à la source que connaît l'impôt sur le revenu. En d'autres termes, la T.V.A. normale s'appliquée par le fournisseur de la marchandise, sera majorée d'une «taxe d'égalisation» dont le taux est établi en manière telle que la charge fiscale résultant de l'addition de ces impositions cumulées correspond pratiquement à celle qui frapperait la marchandise si le taux normal devait être appliqué lors de la vente par le petit détaillant.

Le fournisseur est donc redevable au trésor de la T.V.A. et de la taxe d'égalisation qu'il facture au détaillant, taxes qu'il pourra déduire; le petit détaillant supportera cette taxe et la répercutera dans son prix de vente.

La taxe d'égalisation étant calculée forfaitairement en fonction des marges bénéficiaires usuelles du commerce de détail, des frais généraux et des investissements courants, ses taux seront nécessairement multiples.

Nous ne pouvons envisager, dans cette étude schématique, d'entrer dans le détail du mécanisme de la formule. Nous complèterons cependant nos réflexions de trois observations:

- le petit détaillant a la faculté d'opter pour le régime du forfait ou le régime normal;
- le régime de la taxe d'égalisation est provisoire; il sera démantelé à partir du 1.1. 1973, par un abaissement progressif du plafond de 1.500.000 F.B.;
- le petit détaillant ne pourra prétendre au remboursement des taxes grevant son stock au 31.12.1970; ce refus ne constitue pas un préjudice puisque la vente du stock ne supportera pas la T.V.A.

4. *Petits exploitants agricoles*

Les raisons qui ont inspiré au législateur l'adoption d'un régime particulier pour le petit détaillant sont plus valables encore en ce qui concerne le petit exploitant agricole. Celui-ci sera soumis au régime que prévoit l'article 57 du CTVA, un régime qui ne se compare, lui non plus, à aucun de ceux adoptés par les autres Etats.[32]

Que fait-il entendre par «petit exploitant agricole»?

31. v. France, décret n° 67.364, du 16.14. 1967; RFA: loi, art. 19(1) Pays-Bas, loir, art. 25; Gd Duché: loi, art. 57.

32. Comparer France, loi du 6.1.1966, art. 4; R.F.A., loi, art. 24; Pays-Bas, loi, art. 17; Gd Duché, loi, art. 58 à 60.

La définition en incombe au Roi. Toutefois, ont peut présumer que sera considéré comme tel l'agriculteur qui vend en l'état les produits de la culture du sol ou de l'élevage. Echapperaient dès lors à l'application de l'article 57: les coopératives agricoles et les exploitants qui soumettent leurs produits à une transformation.

Par ailleurs, la loi exclut explicitement du système les exploitants qui ont emprunté la forme d'une société commerciale et ceux qui auraient déjà la qualité d'assujetti en raison de l'exercice d'une autre activité. Bien qu'il en ait la qualité, le petit agriculteur n'est tenu à aucune obligation de l'assujetti en ce qui regarde la facturation de ses livraisons ou prestations, la déclaration et le paiement de la taxe.

Qui, dès lors, acquittera la T.V.A. normalement due sur ses propres livraisons? Comment l'agriculteur récuperera-t-il la T.V.A. qu'il a supportée sur ses propres achats (engrais, semences, matériel, etc. . .)?

Cette double obligation va incomber au co-contractant de l'agriculteur, s'il est personnellement un assujetti.

La taxe supportée «en amont» par l'agriculteur sera calculée selon un taux forfaitaire à appliquer au prix de vente pratiqué par l'agriculteur. Il appartiendra à son acheteur assujetti de payer à l'agriculteur le prix d'achat, majoré du pourcentage forfaitaire. Ce dernier sera de la sorte remboursé en principe de la T.V.A. qu'il aura supportée sur ces acquisitions.

Quant au co-contractant, il versera au trésor la T.V.A. normale due sur son achat, diminuée du remboursement forfaitaire dont il a crédité son vendeur. Il sera alors autorisé à opérer la déduction du montant qu'il a effectivement versé au trésor et de celui qu'il a remboursé à l'agriculteur.

Notons enfin que le petit exploitant agricole aura la faculté d'opter pour le régime normal, s'il satisfait aux obligations que ce régime requiert.

## LES DISPOSITIONS TRANSITOIRES

### 1. *Détaxation des stocks existant au 31.12.1970.*[33]

a) Evaluation du stock

Alors que les législations française et allemande[34] adoptent comme base de calcul des taxes remboursables, la valeur bilantaire du stock au jour de l'entrée en vigueur du régime, le législateur belge soumet cette évaluation à une distinction.

La base de calcul sera:

- pour les marchandises achetées en vue d'être revendues en l'état et pour les marchandises achetées en vue d'être soumise à une main d'oeuvre industrielle mais qui n'auraient pas encore subi cette main d'oeuvre: le prix d'achat qui a servi de base à la perception de la taxe de transmission lors de leur achat ou de leur importation;
- pour les biens qui ont été fabriqués par l'intéressé ou soumis par lui à une main d'oeuvre industrielle: le prix pouvant être obtenu pour ces biens, lors d'une vente effectuée dans le pays, dans des conditions de pleine concurrence, entre un vendeur et un acheteur indépendants. Cette base ne peut toutefois être supérieure à la moyenne des prix obtenus par l'assujetti pour des ventes de biens similaires au cours du dernier trimestre de l'année 1970;
- pour les biens en cours de fabrication à la date du 31.12.1970: la valeur de ces biens renseignés à l'inventaire établi à

33. CTVA, art. 99.

34. France, décret du 23.5.1967, art. 2.1; R.F.A., loi, art. 28; comparer Pays-Bas, loi, art. 43 et Gd Duché, loi, art. 90.

cette date, majorée d'un pourcentage à déterminer.

Cette méthode d'évaluation paraît plus favorable au contribuable que celle qui résulterait des éléments du bilan, lequel attribue généralement aux biens en stock une valeur inférieure à leur valeur réelle.

b) Calcul de la taxe remboursable

La taxe a restituée sera calculée selon la méthode actuellement applicable en matière de ristournes forfaitaires à l'exportation. Les taux de restitution seront fixés par groupes de produits, en fonction des taux de ristourne actuellement en vigueur. Toutefois, la charge fiscale réelle étant différente selon l'origine des produits, les modalités de calcul seront appropriées selon que le détenteur du stock a acquis la marchandise chez un producteur, un revendeur ou un importateur.

c) Modalités de remboursement

Le remboursement s'operera sous forme de déduction, à concurrence d'un douzième, pour le dernier mois de chaque trimestre civil des années 1971, 1972 et 1973.[35]

d) Cas des travaux à façon et des immeubles en construction

Un arrêté doit déterminer les remboursements des taxes ayant grevé les matières et produits mis en oeuvre dans les travaux en voie d'exécution lors du passage du régime actuel au futur régime.

2. *Détaxation des biens d'investissement*

Sous réserve des régularisations à opérer, le cas échéant, au cours de la période quinquennale dont nous avons parlé plus haut, la détaxation des biens d'investissement est intégrale et immédiate, par voie de déduction. Mais il n'en sera ainsi qu'en «période de croisière». En effet, à l'instar des autres législateurs communautaires[36], l'article 100, du CTVA, n'autorise la détaxation que progressivement à compter de l'entrée en vigueur du régime, aucune détaxation n'étant prévue pour les investissements effectués, en tout ou en partie, avant le 1.1.1971.

L'étalement de la détaxation se présente comme suit. La taxe qui a grevé le bien n'est déductible que dans la mesure où son taux excède les pourcentages de 10 p.c., 7,5 p.c., 5 p.c. et 2,5 p.c. lorsque la dite taxe est due respectivement en 1971, 1972, 1973 et 1974. Cès taux sont portés à 12 p.c., 9 p.c., 6 p.c. et 3 p.c. en ce qui concerne les véhicules automobiles et leurs remorques.

On constatera donc que la détaxation ne sera totale, dans ce domaine, que pour les investissements effectués à partir du 1.1.1975.

3. *Contrats en cours*

L'article 101 du CTVA entend réglementer les rapports entre les parties sur le plan de la contribution à la charge fiscale relative aux opérations dont l'exécution chevauchera sur l'actuel et le futur régime. En fait, il tend à faire échec à la hausse des prix résultant du fait que les futurs assujettis n'auraient pas, dans la fixation de leurs prix, tenu compte notamment de la restitution des taxes sur stock.

A cette fin, ledit article attribue à la partie au contrat qui s'estimerait lésée, le droit d'exiger un abaissement du prix convenu. En sens inverse, une hausse du prix contractuel pourrait être exigée par la partie qui sera préjudiciée par l'introduction de la T.V.A.

---

35. Comparer: France: décret du 23.5.1967, art. 6 à 9; R.F.A.: loi, art. 28 (4) et (5); Pays-Bas, loi, art. 43.4; Gd Duché: loi, art. 90, dern. al.

36. Voir France, décret 67-93, du 1.2.1967, modifié par le décret 67.730, du 30.8.1967; R.F.A., loi, art. 30(5); Pays-Bas, loi, art. 45; Gd Duché, loi, art. 92.

Ce droit ne peut cependant s'exercer – sauf si le co-contractant est un particulier – en ce qui concerne les contrats conclus au cours du dernier trimestre de l'année 1970.
A notre connaissance, la réglementation française ne contient aucune disposition de l'espèce. Il semble que ce soit le législateur allemand[37] qui ait innové à cet égard et qui ait inspiré des prescriptions comparables aux auteurs de notre Code et à ceux des lois néérlandaise[38] et Gd Ducale[39].
Une dernière observation: tandis que la loi grand ducale dispose que son article 91 «ne s'applique pas en cas de convention contraire des parties», notre article 101 s'impose aux parties «nonobstant toute stipulation contraire».

## COLLABORATION ADMINISTRATION-SECTEUR PRIVE

Il ne pourra être reproché à notre futur régime d'avoir été l'oeuvre unilatérale des pouvoirs publics.
A plusieurs reprises, le Code et ses arrêtés d'exécution[40] subordonnent en effet certaines mesures d'exécution à la consultation préalable des groupements professionnels intéressés.
Cette procédure ne s'est pas limitée aux cas expressément visés par la loi; au fil des mois, elle s'est partiquement étendue à la plupart des problèmes posés par la réforme.
A cette fin s'est constituée une Commission permanente où les hauts fonctionnaires du Ministère des Finances et les représentants des principaux groupements professionnels recherchent en commun les solutions les plus réalistes et les plus équitables aux problèmes réservés aux arrêtés d'exécution.
Cette loyale concertation permet de sauvegarder au maximum les intérêts tant publics que privés; elle est aussi suffisamment réconfortante pour qu'un hommage mérité soit rendu à l'Administration de la T.V.A. pour en avoir pris l'initiative.

---

37. v. Loi du 29.5.1967, art. 29.
38. v. Loi du 29.6.1968, art. 52 et 53.
39. v. Loi du 5.8.1969, art. 91.
40. Voir notamment CTVA, article 56 § 1 et 2; Arr. royal n° 2, articles 1, 3, 7, 8 et 12.

R. GOFFIN:

# AN ACCOUNT OF T.V.A. IN BELGIUM (VALUE ADDED TAX - V.A.T.)

In view of the limited space available in this present special issue we must restrict ourselves to describing the essentials of the economic and judicial revolution which the establishment in Belgium of a system of value added tax represents.

In the first part of this article, we will endeavour to describe the general economic aspects of the reform, with particular reference to the hopes it raises of industrial and commercial expansion.

The second part of the article will be devoted to the legal aspect. Presuming that the reader will be familiar with the basic technique of the T.V.A. system, we will restrict ourselves to describing the essential characteristics of the Belgian formula and certain original features which distinguish it from other known systems.

The reader is kindly asked to treat this outline with due reserve, bearing in mind that it deliberately omits certain details and is confined to the major features of the system. He is also asked to forgive the author for not covering regulations which had not appeared at the time he prepared this study.[1]

## I – THE ECONOMIC ASPECTS OF BELGIAN T.V.A.

On the day our XXIVth Congress of the I.F.A. opens, the Belgian reform of business taxation will be ten days into its fiftieth year. It was in fact on 28 August 1921 that a law promulgated the Code of taxes of the stamp duty type.

The institution of this tax had seemed at that time to be a quick and harmless means of restoring a financial situation which the First World War had made critical.

The Government of the time could hardly pride itself on a discovery since it was borrowing from Germany, France and Italy a reform which those countries had recently instituted.

The new baby—christened "transfer tax" looked innocent. But the taxpayers around its cradle might perhaps have tempered their admiration if they had realised that this small rate of 1% was going to affect every successive transfer of an asset.

The baby's appetite was prodigious; during the first year of its existence it had absorbed no less than a million francs a day.

Money which is easily come by has an attraction which governments find irresistible quite as much as individuals. To satisfy the constantly increasing needs of the budget, the indirect tax formula had often proved to be the most effective—since it produces immediate returns—and the least popular—since its action is most hidden. Thus over the years the official rate of 1% has grown by stages to the present level of 7% (normal rate), and the daily receipts from the tax have risen from 1 million to 280 million francs.

The growth in the rate was moreover accompanied by increasingly greater complexity of the system.

With the passage of time it is interesting to read what one of our most eminent fiscal experts wrote in 1932: "These vicissitudes were inevitable as long as matters were in a state of flux and the long and patient work of

---

1. At that date the only regulations which had appeared were 11 Royal Decrees numbered 1-11.

adaptation of this tax to trade had not been completed. Today, the era of legislative modifications has come to an end and the work of perfecting the arrangements seems to be complete".[2] At the time this statement was made the Code and general regulations of transfer taxes comprised 450 Articles; today they have 625, not counting some 260 Articles which deal with special taxes!

And this proliferation of Articles is accompanied by 17 rates, which range from 1.2 to 23%.

The Director-General of the Belgian T.V.A. Administration described the position as follows: "Exceptions develop as the rates are raised. They increase by contagion; the special regulations which are instituted to modify the tax in one respect give rise to others, since analogies between situations arising from economic circumstances are never lacking.

"In this way the principles are lost, the whole scheme falls apart and one ends up finally with a whole series of special regulations which constitute the final phase of a slow process of disintegration".[3]

This appraisal of the Belgian system was very similar to that already expressed by Mr. Maurice Lauré on the subject of the French system: "This is why the French system of turnover taxes has gained in perfection, but also in complexity, as its weight increased".[4]

*

* *

Taxpayers would perhaps have adjusted to these complications if they had affected only the technique of collection; but imperceptibly their effective nature became apparent as economic concepts were modernised and as the reduction in productive investments began to blunt the creative power of enterprises.

European integration places re-equipment in the foreground of industry's preoccupations. A contractor who, in this respect, allows himself to fall behind is irretrievably lost. But progress demands increasingly heavy financing and repeated sacrifices at the same pace as the increasingly rapid development of techniques.

Statistics already make it possible to estimate the value of capital goods which will be purchased or constructed in 1970, by industrial and commercial enterprises in our country, at some 120 milliard francs. Considering that the cost of a piece of equipment incorporates ±14 p.c. of accumulated transfer taxes, the re-equipment of 1970 will have borne 17 milliard francs of tax.

This heavy drain does not only affect the re-equipment of domestic firms; it also runs a serious risk of compromising the installation in our country of important foreign complexes, tempted by the fiscal benefits more liberally dispensed by our neighbours.

Owing to their nature and size, these installations cannot be detrimental to domestic enterprises. On the contrary, they represent a real source of profit for the Treasury, possibilities of sub-contracts for our manufacturers and salutary employment opportunities for our depressed areas.

*

* *

The harmful effects of the cumulative system are also apparent in the field of *rationalisation* and *specialisation* of enterprises.

In all sectors, techniques and processes are

---

2. René Symoens: "The Transfer Tax" — Volume 1 — p. 11 (April 1932).

3. Camille Scailteur: "Belgium faced with the prospects of inauguration of a T.V.A." — Lecture given on 26.5.1966, to the Brussels Chamber of Commerce.

4. Maurice Lauré: "To the rescue of the T.V.A." — page 7.

developing with such rapidity that they rapidly ruin enterprises which have not re-organised themselves quickly enough or radically enough.

Some enterprises tend towards merger or take-overs. The majority, however, seek survival in an advanced technology which will make them the preferred suppliers. But this reconversion is immediately penalised by the tax system, to the extent that it compels manufacturers to be nothing more than sub-contractors. The result is that the industrialist who is sufficiently brave and far-seeing to set out on the path of specialisation soon finds that the profit expected from his sub-contracting activity is absorbed by the tax which becomes payable on this additional change. In other words, the enterprise often re-organises solely for the benefit of the treasury.

This structural development is particularly marked in the field of small and medium-sized enterprises. But it must be borne in mind that, out of 35,000 industrial firms, Belgium has 93% which employ less than 50 workers. These figures show the urgency and the interest in seeing our voracious transfer tax replaced by a tax which is at last adapted to the economic realities of the time. For T.V.A., by re-establishing the neutrality of the tax, will not only remedy an injustice but also enable sub-contracting to flourish in the way it deserves.

*

* *

Finally, Belgium welcomes the contribution which the future system promises to make to its *export* trade.

During the last 15 years, its exports have quintupled, reaching, in 1969, ±450 milliard Belgian Francs, which figure will again be exceeded in 1970. This growth makes it possible to claim that at present one Belgian worker out of two works for export.

This rapid progress could however, be even more brilliant if products sold abroad did not remain subject to taxes accumulated in the series of processes of their manufacture. It is paradoxical that our system requires that our firms export taxes.

It is true that regulations have prescribed a system of tax reliefs, but, in addition to the fact that these generally do not mop up all the fiscal charges "upstream", the system is not accessible to all exporting firms.

This is why these enterprises and the sub-contractors which move in their orbit are in favour of inauguration of a T.V.A., which will finally ensure total, automatic and general relief from taxes, which will remove the handicap under which they operate against international competition.

This expansion is vital when the Common Market enters its phase of fiscal harmonisation, and particularly when economic areas are enlarged and trade is liberalised.

Many countries are reaching the stage of economic take-off and will constitute very valuable markets. Participation in and industrialisation of developing countries is wide open; Belgium must establish a place for herself there while there is still time.

## II – BELGIAN T.V.A. FROM THE TECHNICAL POINT OF VIEW

It was by a law of 3.7.1969, published in the "Moniteur belge" of 17th of that month that our value added Tax Code (CTVA) was instituted.

Its commencement, originally fixed for 1.1.1970, was postponed to 1.1.1971, by the law of 19.12.1969. (Mon. belge of 20.12. 1969).

As explained in our introduction, our comments will be restricted to the principal chapters of this Code.

## LIABILITY

The law lays down four categories of people who are liable to the tax.

1. *Liability in the broad sense*

This falls on "any person whose activity consists in making, habitually and independently, as a principal or contributor, with or without the object of profit, deliveries of goods or services referred to . . . ." in the Code (CTVA Article 4).

This definition makes no distinction between individuals and corporate bodies; it does not stipulate any particular legal capacity nor any nationality. On the other hand, it stipulates that the activity exercised must be habitual and independent.

Article 4 is particularly aimed at: producers, manufacturers, entrepreneurs, artisans, traders, processers, business agents, property trustees, etc., and also commission agents dealing with goods or services.[5]

Also liable, when they comply with the criteria of Article 4, are people engaged in the professions, with the exclusion however of notaries, lawyers, bailiffs, doctors, veterinary surgeons, those practising the paramedical professions, teachers, lecturers and other persons or corporate bodies whose services are exempted by virtue of Article 44 of the CTVA.[6]

Although liability is applicable to corporate bodies which have a legal personality, it is, in consequence, not applicable to non-corporate associations, temporary associations and partnerships, since they are separate entities which do not have a legal personality.

A person who professionally exercises both a taxable activity and an exempt activity is also liable, but only in respect of his activity which is subject to the tax (pro rata rule).

Finally, we should add that a person who exercises abroad an activity referred to in our Code is regarded as liable in respect of any operation which he may carry out in Belgium. He is therefore subject to payment of the tax for this operation, but will be in a position to apply a deduction in respect of it only if he has a stable establishment in the country, or if he has obtained approval of a responsible representative there, in accordance with Article 55 of the CTVA.

2. *Certain public bodies*

Although the Government, Provinces, Local Authorities and public establishments are not liable to the tax, the King will recognise their liability to the extent that they habitually exercise an economic activity of production, trading or rendering of services. (Article 6 of the CTVA).

The following are expected to be particularly concerned: S.N.C.B. (The National Railways), S.N.C.V., Sabena, The National Housing Society, the international association for distribution of water, gas, electricity, etc.

3. *Non-profit making associations*

Since the object of profit is not a condition imposed by Article 4, these associations will be liable if they comply with the other conditions laid down in the said Article.

What will happen to professional groups constituted in the A.S.B.L. and whose services are covered by a statutory subscription?

In principle, they will not be liable. However, these groups may, with the authority of the Administration, opt for liability. If they do, subscriptions will be subject to a

---

5. By virtue of the presumptions laid down by Articles 13 and 20 of the CTVA.

6. Cf. the German law of 29.5.1967, Article 2; the Dutch law of 29.6.1968, Article 7; Luxembourg law of 5.8.1969, Article 44.

T.V.A. which the members will be able to deduct if they are liable to the tax. For its part the A.S.B.L. will also benefit from deduction of taxes which have affected the supplies and services provided to it.

4. *Vendors of new buildings*

Persons who construct or have constructed buildings in order to dispose of them for a consideration, in whole or in part, either before their erection or in course of erection, or after they have been erected, will be able to claim the benefit of liability to the tax (CTVA, Article 8).

This important innovation requires a distinction to be made.

If the person referred to in the Article quoted exercises this activity habitually, he is automatically liable to the tax for the whole of this activity.

But the provisions of Article 8 extend to other categories of persons, namely:

- those who are engaged in the operations indicated but otherwise than in the exercise of their habitual activity,
- those who resell such buildings after having purchased them with payment of the T.V.A.

The persons belonging to these two categories will not be automatically liable to the tax.

They will be regarded as "voluntarily liable", i.e. they will be able to claim liability only for the disposal of the building in question and on condition that they have previously made clear their intention to make the sale with application of the T.V.A.[7]

## TAXABLE TRANSACTIONS

1. *Deliveries of goods*

The law understands by "delivery": placing an asset at the disposal of the purchaser or assignee in execution of a contract for a consideration which transfers or declares ownership or beneficial use (CTVA, Article 10).[8]

What is the place of the transaction? (This must be established since the delivery is taxable only if it takes place in the country).

"The delivery takes place in Belgium when, at the time it becomes operative, the asset is situated in the country. In the absence of proof to the contrary, the asset is presumed to be situated in the country when one of the parties to the contract is established there." (CTVA, Article 16).

What is the time of the transaction? (An important point since it governs liability to the tax).

It is when the goods are put at the purchaser's disposal. But this principle is subject to an important exception: "However, when the supply involves transportation of the asset, delivery is regarded as being operative at the time when the transportation begins." (CTVA, Article 15).[9]

This exception will necessarily affect the determination of the place.

Goods sent from Italy to Belgium will have been delivered abroad, but they will bear T.V.A. when they are imported.

Goods sent from Belgium to France will have been delivered in Belgium, but they will be exempt, being exported.

The law understands by "*assets*": "Assets which are movable by their nature, and also physical movable objects applied to the

---

7. See also Article 9, paragraph 3 of the CTVA.
8. Cf: France—Law of 6.1.1966, Article 9.1 (effective transfer of the asset). Netherlands—Law quoted, Article 3. G.F.R.—Law quoted Article 3 (1), (Power of disposal). Luxembourg—Law quoted, Article 9.
9. See Community directive, Article 5, 4, a); Cf. German Law quoted, Article 3 (7); Netherlands law quoted, Article 6.1.a); Luxembourg law quoted, Article 14,a).

service or operation of immovable assets", "the supply of heat, coal and power" and also new buildings, which are referred to above. (CTVA, Article 9).

Finally the Code treats as deliveries certain *withholding transactions* operated by the person liable to the tax himself.

These are:

- withholding of a movable asset for non-professional use (CTVA, Article 12, paragraph 1, 3),
- utilisation of a movable asset as an investment asset (ibid 4),
- utilisation of a movable asset to carry out operations which do not qualify for the deduction (ibid 5),
- utilisation of a vehicle (CTVA 14, 2).

It should be noted further that assignment in the form of transfer to a company or otherwise of the whole of assets or a branch of activity is not a delivery in the sense of the law when the transferee is subject to the tax. (CTVA, Article 11). In this case, the transferee is deemed to continue the person of the transferor, that is, he takes over his right to deduction but also his obligations.

2. *Rendering of services*

French legislation does not define this concept. German law defines it as "services which do not constitute deliveries".[10]

Although the second Community directive also resorts to a negative definition by declaring, "any transaction which does not constitute a delivery in the sense of Article 5, is regarded as the provision of a service"[11], it gives in its Annex B a list of services which it regards as subject to the tax.

Belgian law will similarly not define the service but will, in its Article 18, give a list of services taxable. Although not satisfactory from a legal point of view this solution at least has the merit of limiting the field of interpretations.

Among the services quoted by the Code we will mention, among others, material or intellectual work carried out independently; paid agency services; hiring of movable assets; the transfer of customers; the transfer or concession of intellectual rights; storage of goods; provision of parking facilities and garages by their operators; services provided by hotels, restaurants, cafes and pastrycooks; physical services (hairdressers, manicures, pedicures, truss suppliers, orthopaedists, etc.); hiring of safes; services provided by those operating sporting or cultural installations or places of entertainments, etc.[12]

The legislation also treats on the same basis as taxable services:

- services rendered by virtue of a requisition by the public authority (Article 19,1 of the CTVA),
- the execution by a person liable to the tax, for his own needs, of building work, with the exception of repair and maintenance works (Article 19,2 of the CTVA),
- the leasing of industrial or commercial buildings, let by enterprises authorised to operate building leasing, in the case of buildings which the lessor has constructed or had constructed under the provisions of Article 9, paragraph 3. The leasing of industrial or commercial buildings other than those referred to in this article may also benefit from the system, under conditions which will be laid down by the King (Article 18, paragraphs 2 and 3 of the CTVA).

What is meant by *"utilisation in the country"?* Article 6.3 of the second directive is hardly more explicit in this respect than our legislation.

10. Law of 29.5.1967, Article 3 (8). Cf. Dutch law, Article 4, and Luxembourg law, Article 15.
11. 2nd E.E.C. Directive, Article 6.1.
12. The services expressly exempted are listed at Article 44 of the CTVA already quoted.

Furthermore, the Council of the E.E.C. was due, before 1.1.1970, to lay down provisions setting out the extent of Article 6.3 [13]. While waiting for these provisions which have not yet appeared, a Royal Decree No. 5, of 6.2.1970, has defined the concept of utilisation in the sense of the Belgian law (Mon. belge of 14.2.1970).

This decree lays down in principle that services are regarded as utilised in the country" when they are provided to a person established in the country". (Article 3, of Royal Decree No. 5).

Article 4 of this Decree stipulates that this is the case when the service is supplied "to a person who, even in the absence of an agency capable of engaging him, has in the country a management office, branch, factory, works, workshop, agency, store, office, laboratory, sales or purchase office, depot, or any other fixed installation". If the service is provided to an individual who does not apply it to the exercise of his professional activity, this individual is regarded as established in the country, if he has a residence there.

The criterion of establishment of the employer of services is subject to two categories of exceptions.

a) Exceptions arising from the law itself[14].
   - If transportation is effected both on Belgian territory and on that of one or more other countries, the service is utilised in the country for the part of the transportation which is carried out there[15].
   - If a broker or agent, other than a commission agent, is concerned in the delivery of an asset abroad, the service of this intermediary is not utilised in the country[16].

b) Exceptions arising from Royal Decree No. 5.

   Certain of these provide that the service is regarded as utilised in the country when the asset to which it relates is itself situated there.

   This will be the case for the following services:
   - works relating to a building. This covers not only works of construction, repair, maintenance, cleaning and demolition of all or part of buildings; and the supply of a movable asset and its installation in the building in such a way that it becomes a part of the building, but also all study or supervisory work which form part of the habitual activity of architects, surveyors and engineers, for the preparation of building work or coordination of its execution. (Article 2 of the Decree quoted).
   - Building leasing.
   - Hiring of safes.
   - Making available of parking and garage facilities by their operators; custody of movable assets.
   - The supply of furnished dwellings, and food and drink for consumption on the premises.
   - Granting the right of entrance to cultural or sporting installations, or places of entertainment.

   Other exceptions provide that the service is regarded as utilised in the country, when its *enjoyment* or *execution* take place there.

   This applies in the following cases:
   - the hiring of tangible movable assets
   - services associated with certain transportation services
   - making up of material; the repair, main-

13. Cf. 2nd E.E.C. Directive Annex A.11.
14. CTVA, Article 21, paragraphs 2 and 3.
15. Cf. French law of 6.1.1966, Article 6.1; German law of 29.5.1967, Article 3 (11) and 18 (5); Dutch law Article 6.3 and Luxembourg law, Article 18.
16. Cf. French Decree 67,642 of 31.7.1967 and German law quoted, Article 8 (1).

tenance or cleaning of a tangible, movable asset
- the services of radiodiffusion, telediffusion or telecommunication enterprises
- theatrical, choreographic or cinema performances; conferences, lectures; circus, music-hall, cabaret etc., performances
- physical treatments.

It will be noted however that these various services may benefit from exemption if they are regarded as exported[17].

The *time* (which is the determining factor) of the service is, as a rule, that of its completion. Article 22 of the Code provides, however, that the tax becomes payable as soon as an amount is invoiced or paid, or payment becomes contractually due, on all or part of the price.

3. *Imports*

Imported goods are subject to T.V.A. whatever the status of the person who imports them or to whom they are destined (CTVA, Article 3).

The tax is paid by affixing, on the customs document, fiscal stamps at present used[18].

The import may, in certain cases, be made free of tax[19].

BASIS OF TAX

In principle, the tax is calculated on the total amount of the prices of the charges and other services imposed by the supplier of the asset.

This basis does not however include sums deductible in respect of discounts, reductions on contractual prices, interest due in the event of delayed payment, reimbursable costs of ordinary packaging, costs incurred on behalf of the other party to the contract and the T.V.A. itself.

In barter or exchange transactions, the assignments of buildings referred to in Article 9, 3, of the CTVA, building works for own account, amounts deducted and imports without payment, the basis may not be lower than the normal value which the law defines as follows: "the normal value is represented by the price which can be obtained in the country for each of the services, at the time the tax is due, in conditions of open competition between a supplier and an independent recipient, and in the same market conditions".[20]

RATE OF THE TAX

The legislation lays down four maximum rates, but has left it to the Executive to draw up lists of goods and services to which they apply. It also authorises reduction in the rates and amendment of the lists if economic circumstances so require. These lists and amendments must however be ratified by Parliament.

Thus Article 37 of the Code restricts itself to enumerating the rates and laying down, as follows, the rules to be observed for determining them in each case:

6% for deliveries and imports of goods of prime necessity and for services of a social nature;

15% for deliveries and imports of current consumer goods and for services which are of special economic, social or cultural interest;

20% for transactions relating to goods or services which are not specified elsewhere;

---

17. CTVA, Articles 39-43.

18. Except for imports from the Netherlands and the Grand Duchy of Luxembourg, for which the tax is paid through the monthly declaration.

19. See CTVA, Articles 24, 40, 42 and 43.

20. CTVA, Articles 32, 33 and 36, paragraphs 1 and 3.

This rate must thus be regarded as the normal rate for the Belgian T.V.A.

25% for deliveries and imports of goods which, under our present system, are subject to the luxury tax or to a fixed transfer tax at an enhanced rate.[21]

By derogation to Article 37 of the CTVA, the rates of 15% and 20% will be reduced to 14% and 18% respectively until 31.12.1971.[22]

EXEMPTIONS

Articles 39 to 44 of the CTVA lay down a series of exemptions which it is possible to classify in two categories.

The first relates to international movements of goods and services, in the broad sense.

It exempts from the tax: the direct and indirect export of goods and services, transit or entrepot transactions, transportation and provision of services relating to transportation, the delivery of ships, boats and aircraft and supplies to Embassies, Consulates and certain international organisations.

The second category of exemptions relates to the services of persons exercising a judicial, medical or para-medical activity, and the services of a social or cultural nature enumerated in Article 44 of the CTVA. It also relates to publishing contracts, deposits of funds and credit transactions, brokerage or agency services in the field of insurance, currency exchange, placing of securities, etc., which transactions will however remain subject to a specific, non-deductible tax.

DEDUCTION

The mechanism of deduction as prescribed by the Code faithfully follows the principles laid down in the second directive; we will therefore restrict our comments to the special features which distinguish the Belgian system from the other known systems.[23]

The taxpayer is authorised to effect the deduction of the T.V.A. borne on his receipts made for professional purposes, whether they relate to deliveries or services received, imports of goods or services, or withholding transactions made for the needs of the enterprise.

This right is however not absolute. Thus the deduction is refused in respect of a tax which has been charged on:

- deliveries of manufactured tobaccos;
- deliveries of manufactured tobaccos;
- deliveries of spiritous drinks, if they are not destined to be resold or supplied in execution of provision of a service (hotels, restaurants, cafes, dealers, etc.);
- costs of accommodation, food and drink with the exception of those incurred:
  by the personnel responsible for the execution, outside the enterprise, of a taxable transaction;
  by their customers, travel agencies and tourist organisations;
- the costs of acceptance.

On the other hand, the deduction is allowed only to the extent of 50% of the T.V.A. charged on the acquisition of a passenger transport vehicle, if this vehicle is not exclusively applied to professional use.

The right to deduction becomes *effective* at the date when the tax is due, whether it relates to deliveries, services, imports or withholding transactions. The total tax deductible is offset against the total of taxes due for the period of the declaration (in principle, monthly).

The Belgian system does not therefore follow

21. See Tables A and B of Article 179 of the General Regulations on stamp duties.
22. CTVA, Article 102, amended by the law of 19.12.1969 (Mon. belge of 20.12.1969).
23. The deduction is governed by Articles 45 to 49, of the CTVA and by Royal Decree No. 3 of 10.12.1969 (Mon. belge of 12.12.1969).

the rule of the "one month time lag" and that of the "physical stop" and "financial stop", which applies under the French system.[24]

What happens to a *tax credit* resulting from a declaration?

As a rule, the excess T.V.A. deductible is carried forward to the declaration relating to the following period (CTVA, Article 47). If an excess remains at the end of the current year, it is repaid in cash, within three months. (CTVA, Article 76).

The authors of the law were however aware of the difficulties which could arise as a result of an accumulation of tax in respect of taxpayers compelled to make substantial supplies in order to satisfy contracts with long execution periods, or of a seasonal nature. It therefore delegated to the King the power to grant reimbursement before the expiration of the fiscal year.

The Executive has made use of this power by promulgating Royal Decree No. 4 of 29.12.1969 (Mon. belge of 31.12.1969) which authorises the reimbursement of the excess tax when it exceeds, at the end of a fiscal quarter:

- 25,000 F.B., for the small enterprises authorised to make quarterly declarations;
- 60,000 F.B., in normal cases.

Although this solution is less liberal than that adopted by the German law[25], it is in any event more generous than that of "carried forward until complete utilisation" imposed by French legislation.[26]

## ADJUSTMENTS

Since they are not finally admissible until, and to the extent that, the goods and services taxed have not subsequently been applied to non-professional purposes, the deductions must be the subject of revision in the event of change of application. The procedure for this is governed by Royal Decree No. 3 of 10.12.1969 (Mon. belge of 12.12.1969). The revision is effected in the declaration, in the form of deduction or repayment, according to circumstances.

There are, however, possible situations in which the taxpayer may claim reimbursement of taxes improperly paid, in particular:

- when the tax paid is higher than that legally due;
- in the case of price reductions granted to him;
- in the case of return of packing containers which give rise to a credit note;
- in the case of termination before execution of the contract or cancellation of a contract by agreement or legally;
- in the case of a supplier taking back the goods;
- in the case of total or partial loss of the claim for the price.

In all the hypotheses envisaged by Article 77, paragraph 1 of the Code, the T.V.A. is repaid by means of offsetting against the amount of tax due, under the procedure established by Royal Decree No. 4 of 29.12.1969.

In the field of adjustments, mention should be made of the special rules for capital goods. These are defined as "tangible goods, movable or immovable, destined to be utilised on a lasting basis as instruments of work or a means of operation", excluding "packaging containers, small equipment, small tools and office supplies, when these goods comply with the criteria fixed by the Minister of Finance"[27].

The deduction of the T.V.A. charged on a capital good is subject to a revision over a period of 5 years.

---

24. See Decree 67/92, of 1.2.1967.
25. Law of 29.5.67, Article 18 (2); cf. Netherlands law, Article 17 and Luxembourg law, Article 55.
26. See Decree quoted, Article 20.2.
27. Royal Decree No. 3 of 10.12.1969, Article 6, paragraph 1.

An adjustment is effected each year in relation to one-fifth of the amount of this tax, when changes have occurred in the factors taken into consideration for the calculation of the taxes deductible. (CTVA, Article 48, paragraph 2).
The revision procedure is laid down in Articles 6 to 11 of Royal Decree No. 3.

PRO-RATA PROCEDURE

A person who conducts professionally transactions, some of which qualify for the deduction and some of which do not, is subject to the pro-rata rules (CTVA, Articles 46 and 48). The Code makes a distinction in this respect between:

- the general pro-rata scheme under which the deduction is applied on the basis of a percentage, established per calendar year, under the conditions laid down by Royal Decree No. 3, Articles 12 to 18;
- the actual allocation pro-rata scheme, under which the deduction applies in relation to the actual figure of transactions qualifying for the deduction, and in accordance with Articles 19 et seq. of the same Decree.

DOCUMENTS

Royal Decree No. 1 of 13.7.1969 (Mon. belge of 30.7.1969) stipulates the documents which must be kept by persons subject to the tax. We will draw attention to only two of them.

- The *declaration*. The transactions, whether taxable or not, effected by a taxpayer during a month, must be the subject of a declaration which he is required to lodge not later than the 20th of the following month. The small enterprises, however, have this obligation only quarterly. Declarations are prepared in accordance with models annexed to the Decree referred to. They show the T.V.A. due or the T.V.A. recoverable. The T.V.A. due is paid on the same day as the declaration is lodged.
- The second document is, so far as we are aware, particular to our system. It consists of a declaration which every person subject to the tax must submit each year before 31 March, and which informs the Administration, for each other contracting party liable to the tax to whom he has supplied goods or services during the preceding year, the identity of the said buyer, the total amount of deliveries and services supplied and the total amount of tax charged to him[28]. This document is designed to help the Administration track down fraud.

SPECIAL RULES

Articles 56 to 58 of the CTVA prescribe several special sets of rules for the benefit of certain categories of enterprise for which the ordinary rules would be too complicated. As an indication we will quote only the rules for manufactured tobaccos (Article 58, paragraph 1), imports of fish, shell fish, molluscs (Article 58, paragraph 2), purchases of secondhand goods habitually made by persons subject to tax from persons not subject to tax (Article 58, paragraph 4), to introduce a few reflections on certain small enterprises, the rules for which are substantially different from those applied to them by our Community partners.

1. *Small enterprises under the simplified normal rules*

Article 50, paragraph 2 of the C.T.V.A.

28. See CTVA, Article 50, paragraph 2, last subparagraph and Royal Decree No. 1, Article 18.

empowers the King to authorise "categories of taxpayers which he will designate" to make declarations only quarterly and to pay the tax only by monthly instalments.
Is is in application of this provision that Royal Decree No. 1 restricts the accounting documents which they have to maintain and requires them to make only 4 declarations per year[29].
These small taxpayers are however entitled to claim the benefit of this relaxation only if their annual turnover is not more than 5 million Belgian Francs (not including T.V.A.). and if they do not fulfil the conditions to make them subject to the rules examined at 2 and 3 below.

2. *Small enterprises subject to the fixed amount rules*

These apply to taxpayers whose customers are mainly private individuals and whose annual turnover is not more than 5 million Belgian Francs (not including T.V.A.).
A characteristic feature of the system is that these taxpayers are not taxed on the basis of their actual turnover but on the basis of a fixed amount, established according to certain criteria: in relation to profit margins, unit price of sales, hourly labour rates, etc.
These fixed amounts are of three types:

- general fixed amounts: by sector of activity;
- special fixed amounts by sectors, applicable to enterprises of the said sectors whose activity is marginal;
- individual fixed amounts: for exceptional cases within a sector.

These fixed amounts, established by the Administration, are valid for one year and subject to modification in the event of substantial changes in the factors on which they are based.
The enterprises benefiting from this system, which is laid down in Article 56, paragraph 1 of the CTVA, enjoy the relaxations granted to those referred to at 1 above.
Those who fulfil the conditions will automatically be subject to the fixed amount scheme when the law comes into force, unless they have declared, before the 15 December preceding that date, their intention to be assessed under the ordinary scheme.
After the entry into application of the law, enterprises subject to the fixed amount scheme will have the right to opt either for the normal scheme or for that referred to at 1. The procedures relating to the establishment of the fixed bases of taxation and the mechanics of this formula were the subject of Royal Decree of 7.11.1969, No. 2 (Mon. belge, 14.11.1969)[30].

3. *Small retailers*

As in other States of the E.E.C., Belgian legislators were confronted with the problems presented by assessment of small retailers as a result, in particular, of their lack of the accounting procedures necessary for the normal operation of a T.V.A. system. The Belgian solution to this problem is quite different from those adopted by our neighbours[31].
Although the Executive Decree referred to in Article 56, paragraph 2, of the CTVA has not yet been promulgated, it can already be said that to qualify as a "small retailer" three criteria must be satisfied:

- his activity must be restricted to the resale of goods in their existing condition. This

29. See Royal Decree No. 1, in particular Articles 12, 16, 17 and 18.
30. Cf. France, law of 6.1.1966, Articles 20, 21, 22, 53; Federal German Republic, law quoted, Article 23; Netherlands, law quoted, Article 25; Luxembourg, Article 56.
31. See France, Decree No. 67,364, of 16.4. 1967; Federal German Republic, law, Article 19 (1), Netherlands, law, Article 25; Luxembourg, law, Article 57.

excludes the retailer who subjects the goods to an industrial labour process, as, for example, the butcher, baker, pastry-cook, fishmonger, chemist, tailor, florist, etc. This criterion also automatically excludes the small provider of a service: hairdresser, cafe proprietor, shoemaker, plumber, electrician, etc.;

- he must not trade in products which are at present subject to the luxury tax;
- finally, the applicant must not have a total annual figure of purchases of more than 1,500,000 F.B., not including investments.

The originality of the Belgian formula rests in the fact that, although subject to the T.V.A., the small retailer remains outside the application of the tax on his own sales. It is the supplier who has the responsibility for collecting the tax according to a procedure similar to that of income at source under the income tax scheme. In other words, the normal T.V.A. applied by the supplier of the goods will be increased by an "equalisation tax" the rate of which is established in such a way that the fiscal charge resulting from the combined total of these taxes corresponds in practice to that which would apply to the goods if the normal rate were to be applied when the sale by the small retailer is made. The supplier is thus accountable to the Treasury for the T.V.A. and the equalisation tax which he invoices to the retailer, these being taxes which he can deduct; the small retailer will bear this tax and will reflect it in his sale price.

Since the equalisation tax is calculated on a fixed basis in relation to the normal profit margins of the retail trade, general expenses and current investments, it will necessarily have multiple rates.

We cannot, in this outline study, go into the details of the mechanics of the formula. However, we will round off our reflections with three observations:

- the small retailer has the right to opt for the fixed amount system or the normal system;
- the equalisation tax system is temporary; it will be dismantled from 1.1.1973 onwards, by a progressive reduction in the ceiling of 1,500,000 F.B.;
- the small retailer will not be able to claim reimbursement of the taxes affecting his stocks at 31.12.1970; this refusal does not constitute a prejudice since the sale of the stocks will not bear the T.V.A.

4. *Small farmers*

The reasons which inspired the legislators to adopt a special system for the small retailer are even more valid with regard to the small farmer. He will be subject to the system laid down in Article 57 of the CTVA, which similarly does not compare with any of the systems adopted by the other States[32].

How is "small farmer" defined?

It will be for the King to make the definition. However, it may be assumed that it will apply to farmers who sell in their existing condition the products of the soil or stock-raising. If this is so, Article 57 would not apply to Agricultural Cooperatives, and farmers who submit their products to processing.

Furthermore, the law explicitly excludes from the system farmers who have adopted the form of a commercial company, and those who are already liable to the tax by reason of the exercise of another activity. Although he is liable to the tax, the small farmer has no obligations with regard to the invoicing of his deliveries or services, declarations and payment of the tax.

---

32. See France, law of 6.1.1966, Article 4; Federal German Republic, law, Article 24; Netherlands, law, Article 17; Luxembourg, law, Articles 58-60.

Who then will pay the T.V.A. normally due on his deliveries? How will the farmer recover the T.V.A. which he bears on his own purchases (fertilisers, seeds, equipment, etc.)? This double obligation will fall on the contractor who supplies to the farmer if he is personally liable to the tax.

The tax borne "upstream" by the farmer will be calculated at a fixed rate to be applied to the sale price charged by the farmer. It will be for his buyer liable to the tax to pay to the farmer the purchase price, plus the fixed percentage. The farmer will thus be reimbursed in principle with the T.V.A. which he has borne on his purchases.

With regard to the other contracting party, he will pay to the Treasury the normal T.V.A. due to his purchase, less the fixed reimbursement which he has credited to his seller. He will then be authorised to apply the deduction of the amount which he has actually paid to the Treasury and that which he has repaid to the farmer.

Finally, it should be noted that the small farmer will have the right to opt for the normal system if he fulfils the obligations which this system requires.

TRANSITORY PROVISIONS

1. *Remission of stocks existing on 31.12.1970*[33]

a) Valuation of the stocks

Whereas French and German legislation[34] adopt as the basis of calculation of refundable taxes the balance sheet value of stocks at the date of entry into force of the system, Belgian legislation makes this valuation subject to a distinction.

The basis of calculation will be:

- for goods purchased with the object of resale in their present condition, and for goods purchased with the object of being submitted to industrial processing, but which have not yet undergone this processing; the purchase price on which payment of the transfer tax at the time of their purchase or import was based;
- for goods which have been manufactured by the applicant or submitted by him to industrial processing; the price which could be obtained for these goods, under a sale made in the country, in conditions of full competition, between an independent seller and an independent buyer. This basis cannot however be higher than the average of prices obtained by the taxpayer for sales of similar goods during the last quarter of 1970;
- for goods in course of manufacture on 31.12.1970; the value of these goods as recorded in the inventory drawn up at that date, plus a percentage to be determined.

This method of valuation seems more favourable to the taxpayer than that which would result from the items in the balance sheet, which generally attributes to the goods in stock a value lower than their true value.

b) Calculation of the tax repayable

The tax to be repaid will be calculated according to the method at present applicable in regard to fixed repayments on export. The rate of repayment will be fixed by groups of products, on the basis of the repayment rates at present in force. However, since the true tax charge is different according to the origin of the products, the calculation procedures will be adapted according to whether the

33. CTVA, Article 99.

34. France, Decree of 23.5.1967, Article 2.1; Federal German Republic, law, Art. 28; Compare Netherlands, law, Art. 43 and Luxembourg, law, Art. 90.

holder of the stock has acquired the goods from a producer, a dealer or an importer.

c) Reimbursement procedure
The reimbursement will be effected in the form of deduction, to the extent of 1/12th, for the last month of each calendar quarter of the years 1971, 1972 and 1973.[35]

d) Cases of making up materials, and buildings under construction
A decree should determine the repayments of taxes which have been applied to materials and products put into use in works in course of execution, at the time of transition from the present system to the future system.

2. *Remission of capital goods*
Subject to the adjustments to be applied, where appropriate, during the 5-year period described above, remission of capital goods is complete and immediate, by means of deduction. But this will apply only during a transitional period. In fact, as in other Community legislations.[36] Article 100 of the CTVA authorises remission only progressively, as from the entry into force of the system, no remission being prescribed for investments effected, in whole or in part, before 1.1.1971.
The staging of the remission is as follows: the tax which has been charged on the assets is deductible only to the extent that its rate exceeds the percentages of 10%, 7.5%, 5% and 2.5%, when the said tax is due in 1971, 1972, 1973 and 1974 respectively.
These rates are raised to 12%, 9%, 6% and 3%, for road vehicles and trailers.
It will be noted therefore that the remission will be total, in this field, only for investments made from 1.1.1975 onwards.

3. *Contracts in course of execution*
Article 101 of the CTVA is designed to govern the relationship between the parties in respect of contribution to the fiscal charge relating to transactions whose execution bestrides the present and the future systems. In fact, it tends to check the increase in prices resulting from the fact that the future taxpayers, in fixing their prices, will not have taken account in particular of repayment of taxes on stocks.
For this purpose, the said Article attributes to the part of the contract which is considered affected the right to demand a reduction in the agreed price. In the other direction, an increase in the contractual price could be demanded by a party who was prejudiced by the introduction of the T.V.A.
This right can however only be exercised—unless the other contracting party is a private individual—in respect of contracts concluded during the last quarter of 1970.
To our knowledge, the French regulations do not contain any provision of the sort. It seems that it was the German legislation[37] which introduced this concept, and which inspired the authors of our Code and those of the Dutch[38], and Luxembourg[39] laws to adopt comparable provisions.
A final observation: whereas the Luxembourg law provides that its Article 91 "does not apply in the case of agreement to the contrary between the parties", our Article 101 is imposed on the parties "notwith-

35. Cf. France: Decree of 23.5.1967. Articles 6 to 9; Germany, law, Article 28, 4 and 5, Netherlands, law, Article 43.4; Luxembourg, law, Article 90, last sub-paragraph.
36. See France: Decree 67-93 of 1.2.1967, amended by Decree 67-730 of 30.8.1967; Germany, law, Article 30 (5); Netherlands, law, Article 45; Luxembourg, law, Article 92.
37. See Law of 29.5.1967, Article 29.
38. See Law of 29.6.1968, Articles 52 and 53.
39. See Law of 5.8.1969, Article 91.

standing any stipulation to the contrary".

## COLLABORATION BETWEEN THE ADMINISTRATION AND THE PRIVATE SECTOR

It cannot be said that our future system was the unilateral work of the public authorities. On several occasions the Code and its executive decrees[40] make certain measures of execution subject to prior consultation with the professional groups concerned.

This procedure has not been restricted to the cases expressly referred to in the law; in the course of the months, it has extended in practice to most of the problems presented by the reform.

For this purpose, a permanent Committee has been constituted in which the high officials of the Ministry of Finance and the representatives of the principal professional groups are jointly seeking the most realistic and the most equitable solutions to the problems relating to the Decrees of execution.

This honest consultation procedure makes possible for both public and private interests to be safeguarded to the maximum extent; it also justifies a vote of thanks to the Administration of the T.V.A. for having taken the initiative in establishing it.

---

40. See in particular CTVA, Article 56, paragraphs 1 and 2; Royal Decree No. 2, Articles 1, 3, 7, 8 and 12.

R. GOFFIN:

# GEDANKEN ZUR TVA IN BELGIEN (MEHRWERTSTEUER)

Mit Rücksicht auf den geringen Platz, der in dieser Sonderausgabe zur Verfügung steht, müssen wir uns darauf beschränken, die wesentlichen Merkmale der wirtschaftlichen und rechtlichen Umwälzung zu beschreiben, als die sich die Einführung eines Mehrwertsteuersystems in Belgien darstellt.

Im ersten Teil dieses Artikels werden wir versuchen, den allgemeinen wirtschaftlichen Aspekt der Reform aufzuzeigen, insbesondere die durch sie erweckten Hoffnungen auf eine Ausweitung von Industrie und Handel. Der zweite Teil des Artikels befaßt sich mit dem rechtlichen Aspekt. Davon ausgehend, daß dem Leser die technischen Grundlagen des TVA-Systems bekannt sind, wollen wir uns darauf beschränken, die bezeichnenden Merkmale der belgischen Methode zu beschreiben sowie einige neuartige Punkte, in denen sie sich von anderen bekannten Systemen unterscheidet.

Der Leser wird gebeten, diese Ausführungen mit Vorbehalt aufzunehmen und zu bedenken, daß Einzelheiten absichtlich weggelassen wurden, um die hauptsächlichen Grundzüge des Systems herauszustellen.

Auch möge er dem Verfasser nicht nachtragen, daß er Vorschriften nicht behandelt, die bei Anfertigung dieser Arbeit noch nicht erschienen waren.[1]

## I. DIE WIRTSCHAFTLICHEN ASPEKTE DER BELGISCHEN TVA

Am Eröffnungstage unseres XXIV. IFA-Kongresses befindet sich die belgische Reform der Wirtschaftsbesteuerung seit zehn Tagen in ihrem fünfzigsten Jahr. Es was am 28. August 1921, als das Steuergesetz über eine Art Stempelsteuer verkündet wurde.

Die Einführung dieser Steuer erschien zu der Zeit als schnell wirkendes und harmloses Mittel zur Wiederherstellung einer Finanzlage, die durch den ersten Weltkrieg kritisch geworden war.

Die damalige Regierung hatte wenig Grund, auf eine Entdeckung stolz zu sein, denn sie übernahm die Reform von Deutschland, Frankreich und Italien, die sie kürzlich eingeführt hatten.

Das neugeborene Kind, das den Namen „Umsatzsteuer" erhielt, sah unschuldig aus. Die Steuerzahler an seiner Wiege hätten ihre Bewunderung jedoch eingeschränkt, wenn sie erkannt hätten, daß der geringe Satz von 1% jede nachfolgende Übertragung eines Gegenstandes belastete.

Der Appetit des Neugeborenen war ungeheuer. Während seines ersten Lebensjahres vereinnahmte es nicht weniger als eine Million Franken täglich.

Leicht einzunehmendes Geld wirkt auf Regierungen in gleicher Weise anziehend wie auf Privatleute. Zur Befriedigung des ständig wachsenden Bedarfs an Haushaltmitteln hat sich die indirekte Besteuerungsmethode schon oft als die wirkungsvollste erwiesen. Sie erbringt die Einkünfte sofort. Außerdem erregt sie in der Öffentlichkeit am wenigsten Aufsehen, da ihre Wirkungsweise am besten verdeckt ist. So wuchs der anfängliche Satz von 1% im Laufe der Jahre schrittweise auf den gegenwärtigen Stand von 7% (normaler Steuersatz). Die täglichen Einnahmen stiegen von 1 Million auf 280 Millionen Franken.

---

1. Zu dem Zeitpunkt waren nur 11 königliche Erlasse erschienen (Nr. 1-11).

Das Ansteigen des Steuersatzes war mit einer zunehmend wachsenden Komplexität des Systems verbunden.

Es ist interessant, einige Zeit später zu lesen, was einer unserer hervorragenden Finanzexperten im Jahre 1932 schrieb: „Diese Veränderungen waren unvermeidlich, solange sich die Dinge im Fluß befanden und die langwierige und mühsame Aufgabe, nämlich die Anpassung dieser Steuer an die Wirtschaft, noch nicht abgeschlossen war. Heute ist die Zeit gesetzlicher Änderungen zu einem Abschluß gekommen und die Arbeit zur Vervollkommnung der Regelungen scheint beendet zu sein".[2] Zur Zeit dieser Ausführungen umfaßten das Gesetz und die übrigen Bestimmungen zur Umsatzsteuer 450 Paragraphen. Heute sind es 625, abgesehen von weiteren 260 Paragraphen, die sich mit Sondersteuern befassen!

Dieser Wust von Bestimmungen wird von 17 Steuersätzen begleitet, von 1,2 bis 23%. Der leitende Direktor der TVA-Verwaltung beschrieb die Lage folgendermaßen: „Ausnahmeregelungen werden getroffen, sobald die Steuersätze erhöht werden. Sie vermehren sich wie durch Ansteckung. Sonderregelungen zur Änderung der Steuer in einer Hinsicht führen zu weiteren Ausnahmen, denn es fehlt niemals an vergleichbaren wirtschaftlichen Situationen. Auf diese Weise gehen die Prinzipien verloren, das ganze System bricht auseinander und man steht schließlich vor einer Serie von Sonderbestimmungen. Dies ist die Endphase eines langsamen Auflösungsprozesses."[3]

Diese Einschätzung des belgischen Systems hatte viel Ähnlichkeit mit der, die Maurice Lauré über das französische System zum Ausdruck gebracht hatte: „Aus diesem Grunde hat das französische Umsatzsteuersystem an Perfektion aber auch an Komplexität in gleicher Weise zugenommen wie an Umfang".[4]

*

* *

Der Steuerzahler hätte sich diesen Komplikationen möglicherweise angepaßt, wenn sie nur die Methode der Steuereinziehung betroffen hätten. Zunächst kaum wahrnehmbar kam jedoch ihre Schärfe zum Vorschein, als die Wirtschaft modernisiert wurde, und der Rückgang ertragreicher Investitionen die schöpferische Kraft der Unternehmen zu schwächen begann.

Die wirtschaftliche Verflechtung in Europa rückt die *Reinvestitionen* auf dem Betätigungsfeld der Industrie an vorderste Stelle.

Ein Unternehmer, der auf diesem Gebiet zurückbleibt, ist unwiederbringlich verloren. Der Fortschritt verlangt in zunehmendem Maße umfangreiche Finanzierung und wiederholte Opfer in gleicher Weise wie die zunehmend schnellere Entwicklung der Technik.

Statistiken ermöglichen bereits jetzt eine Schätzung des Wertes von Investitionsgütern, die 1970 von Unternehmen der Industrie und des Handels in unserem Lande gekauft und hergestellt werden, auf etwa 120 Milliarden Franken. Da die Kosten eines Investitionsgegenstandes etwa 14% kumulierte Umsatzsteuer enthalten, wird die Reinvestition im Jahre 1970 17 Milliarden Franken an Steuern aufbringen.

Diese starke Auszehrung trifft nicht nur die Reinvestition der heimischen Firmen. Sie gefährdet auch ernstlich die Niederlassung bedeutender ausländischer Unternehmun-

2. René Symoens, La Taxe de transmission, (Die Umsatzsteuer) Band 1, Seite 11 (April 1932)
3. Camille Scailteur, La Belgique devant les perspectives d'instauration d'une T.V.A., (Belgien vor den Aussichten der Einführung einer Mehrwertsteuer) Vortrag am 26.5.1966 vor der Handelskammer in Brüssel.
4. Maurice Lauré, Au secours de la T.V.A. (Zur Hilfe der Mehrwertsteuer), Seite 7.

gen, die von großzügiger gewährten Steuervergünstigungen unserer Nachbarländer angelockt werden.
Infolge ihrer Art und Größe können sich diese Unternehmungen nicht nachteilig auf heimische Unternehmen auswirken. Sie sind im Gegenteil eine echte Einnahmequelle für die Staatsfinanzen und bieten unseren Herstellern die Möglichkeit, Zuliefererverträge zu schließen. Außerdem sind sie heilsam für den Arbeitsmarkt in unseren Notstandsgebieten.

*

* *

Die schädigenden Folgen des kumulativen Systems werden auch auf dem Gebiet der *Rationalisierung* und Spezialisierung von Unternehmen sichtbar.
Auf allen Gebieten entwickeln sich Techniken und Verfahren mit einem solchen Tempo, daß sie binnen kurzer Zeit solche Unternehmen zugrunderichten, die nicht schnell genug oder wirkungsvoll genug umorganisieren.
Einige Unternehmen neigen zu Zusammenschlüssen oder Übernahmen. In der Mehrzahl sehen sie dagegen ihre Chance in einer fortschrittlichen Technologie, durch die sie zum bevorzugten Lieferanten werden. Diese Umstellung wird jedoch durch das Steuersystem gehemmt. Es zwingt die Hersteller dazu, nur noch Subunternehmer zu werden. Ein Industrieller, der mit genügend Mut und Weitblick eine Spezialisierung durchführt, entdeckt jedoch bald, daß der von der Subunternehmertätigkeit erwartete Gewinn durch die Steuer aufgezehrt wird, die auf diesen zusätzlichen Umsatz zu zahlen ist. Mit anderen Worten rationalisiert das Unternehmen oftmals nur zum Nutzen des Fiskus. Diese strukturelle Entwicklung ist besonders gravierend bei kleinen und mittleren Betrieben. Dabei ist zu bedenken, daß von 35.000 gewerblichen Unternehmen in Belgien 93% weniger als 50 Arbeitnehmer beschäftigen. Diese Zahlen zeigen die Bedeutsamkeit und das Interesse daran, daß unsere unersättliche Umsatzsteuer durch eine Steuer abgelöst wird, die den wirtschaftlichen Gegebenheiten unserer Zeit entspricht. Dadurch, daß die TVA die Wettbewerbsneutralität der Steuer wieder herstellt, heilt sie nicht nur Ungerechtigkeit, sondern gibt auch den Partnern von Subunternehmerverträgen die Grundlage für ein wirtschaftliches Gedeihen, das sie verdient haben.

*

* *

Schließlich begrüßt Belgien den Beitrag, den das künftige System an seinen *Export*handel zu leisten verspricht.
Während der letzten 15 Jahre haben sich die Exporte verfünffacht. Im Jahre 1969 erreichten sie etwa 450 Milliarden belgische Franken. Diese Zahl wird 1970 wiederum überschritten werden. Das Wachstum rechtfertigt die Behauptung, daß gegenwärtig einer von zwei belgischen Arbeitern für den Export arbeitet.
Die schnelle Entwicklung hätte jedoch noch glänzender verlaufen können, wenn die im Ausland verkauften Erzeugnisse nicht mit Steuern belastet gewesen wären, die sich in einer Reihe von Produktionsprozessen angesammelt hatten. Paradoxerweise verlangt unser System, daß die Firmen Steuern exportieren.
Zwar sehen die Bestimmungen ein System von Steuerbefreiungen vor. Dieses System ist jedoch nicht für alle exportierenden Firmen gültig, abgesehen davon, daß es nicht sämtliche vorausgehenden Steuerbelastungen beseitigt.
Aus diesem Grunde begrüßen diese Unternehmen und mit ihnen ihre Zulieferer die Einführung der TVA, die endlich eine voll-

ständige, automatische und allgemeine Steuerbefreiung garantieren soll. Dadurch wird ein Hindernis beseitigt, das die Firmen bisher im internationalen Wettbewerb überwinden mußten.
Die Ausweitung des Exports wird lebensnotwendig, wenn der Gemeinsame Markt das Stadium der Steuerharmonisierung erreicht, und wenn insbesondere die Wirtschaftsräume sich ausdehnen und der Handel freizügiger wird. Viele Länder sind im Begriff, den wirtschaftlichen Absprung zu schaffen. Sie werden äußerst wertvolle Märkte bilden. Beteiligung und Industrialisierung in Entwicklungsländern bieten sich an. Belgien muß sich dort ein Betätigungsfeld schaffen, solange dazu noch Zeit ist.

## II. BELGISCHE TVA, TECHNISCH GESEHEN

Durch Gesetz vom 3.7.1969, veröffentlicht im „Moniteur belge" vom 17. dieses Monats, wurde unser Mehrwertsteuergesetz (CTVA) verkündet.
Sein ursprünglich auf den 1.1.1970 festgesetztes Datum des Inkrafttretens wurde durch Gesetz vom 19.12.1969 (Mon. belge vom 20.12.1969) auf den 1.1.1971 verschoben.
Wie in der Einleitung gesagt, werden wir unsere Erläuterungen auf die Hauptpunkte dieses Gesetzes beschränken.

### STEUERPFLICHT

Das Gesetz nennt vier Gruppen von steuerpflichtigen Personen.

1. *Steuerpflicht im weiteren Sinne*
Ihr unterliegt „jede Person, deren Tätigkeit darauf gerichtet ist, nachhaltig und selbständig als Haupt- oder Subunternehmer mit oder ohne die Absicht, Gewinn zu erzielen, Lieferungen von Waren oder Leistungen auszuführen im Sinne von . . ." dem Gesetze (CTVA Artikel 4).
Diese Definition macht keinen Unterschied zwischen natürlichen und juristischen Personen. Sie verlangt keine besondere Rechtsfähigkeit oder Staatsangehörigkeit. Andererseits schreibt sie vor, daß die Tätigkeit nachhaltig und selbständig ausgeübt werden muß. Artikel 4 bezieht sich insbesondere auf Hersteller, Erzeuger, Unternehmer, auf Handwerker, Kaufleute, auf die Veredelungsindustrie, auf Handelsvertreter, Vermögensverwalter usw., ebenso auf Kommissionäre, die mit Waren handeln oder Leistungen erbringen.[5]
Wenn sie die Voraussetzungen von Artikel 4 erfüllenl sind ebenfalls solche Personen steuerpflichtig, die eine berufliche Tätigkeit ausüben, jedoch mit Ausnahme der Notare, Rechtsanwälte, Gerichtsvollzieher, Ärzte, Tierärzte, arztähnlicher Berufe, der Lehrer, Dozenten und anderer natürlicher oder juristischer Personen, deren Dienstleistungen durch Artikel 44 CTVA befreit sind.[6]
Die Steuerpflicht erstreckt sich zwar auf juristische Personen mit eigener Rechtspersönlichkeit. Ihr unterliegen jedoch nicht Vereinigungen, die nicht juristische Personen sind, befristete Vereinigungen und Sozietäten. Diese bilden selbständige Einheiten ohne Rechtspersönlichkeit.
Wer beruflich sowohl eine steuerpflichtige als auch eine steuerbefreite Tätigkeit ausübt, unterliegt ebenfalls der Steuer, jedoch nur hinsichtlich seiner Tätigkeit, die steuerpflichtig ist (anteilige Besteuerung).
Schließlich ist hinzuzufügen, daß jemand, der

5. Unter den Voraussetzungen der Artikel 13 und 20 CTVA.
6. Vgl. das deutsche Gesetz vom 29.5.1967, §2; das niederländische Gesetz vom 29.6.1968, Artikel 7; das luxemburgische Gesetz vom 5.8.1969, Artikel 44.

eine in unserem Gesetz genannte Tätigkeit im Ausland ausübt, insoweit als steuerpflichtig anzusehen ist, als er in Belgien tätig wird. Er hat daher Steuer für diese Tätigkeit zu zahlen. Einen Steuerabzug kann er dagegen nur beantragen, wenn er eine Betriebstätte im Inland unterhält, oder wenn er im Einverständnis einen verantwortlichen Vertreter im Inland gemäß Artikel 55 CTVA ernannt hat.

2. *Körperschaften des öffentlichen Rechts*
Obwohl die Regierung, Provinzen, Kommunalbehörden und öffentliche Betriebe nicht steuerpflichtig sind, erkennt der König ihre Steuerpflicht insoweit an, als sie nachhaltig eine wirtschaftliche Tätigkeit in der Industrie, dem Handel oder dem Dienstleistungsgewerbe ausüben (Artikel 6 CTVA). Hiervon werden insbesondere folgende betroffen sein: S.N.C.B. (die staatlichen Eisenbahnen), S.N.C.V. (der staatliche Betrieb der Kleinbahnen und Linienbusse), Sabena, die staatliche Wohnungsgesellschaft, die internationalen Vereinigungen für die Versorgung mit Wasser, Gas, Elektrizität usw.

3. *Vereinigungen, die keine Gewinne erzielen*
Da die Absicht, Gewinne zu erzielen, keine in Artikel 4 genannte Voraussetzung ist, sind diese Vereinigungen steuerpflichtig, wenn sie die sonstigen in diesem Artikel genannten Voraussetzungen erfüllen.
Was geschieht mit Berufsgruppen, die als Vereinigungen, die keine Gewinne erzielen, organisiert sind, und deren Dienstleistungen durch gesetzliche Gebühren abgegolten werden?
Grundsätzlich unterliegen sie nicht der Steuerpflicht. Diese Gruppen können jedoch mit Genehmigung der Verwaltung für die Steuerpflicht optieren. Geschieht dies, so unterliegen die Gebühren der TVA, die dann von den Mitgliedern abgezogen werden kann, sofern diese steuerpflichtig sind. Die Vereinigung selbst erhält ebenfalls die Vergünstigung des Abzugs von Steuern, die auf ihr gegenüber erbrachten Lieferungen und Leistungen lasten.

4. *Verkäufer von Neubauten*
Wer ein Gebäude errichtet oder errichtet hat, um es ganz oder teilweise vor, während oder nach der Errichtung gegen Entgelt zu veräußern, kann die Vorzüge der Steuerpflicht in Anspruch nehmen (Artikel 8 CTVA). Diese wichtige Neuerung verlangt eine Unterscheidung.
Übt die in dem Artikel genannte Person ihre Tätigkeit nachhaltig aus, so ist sie automatisch für die Gesamtheit der Tätigkeit steuerpflichtig.
Die Vorschrift des Artikel 8 gilt jedoch auch für zwei andere Personengruppen, nämlich für solche,
- die die genannte Tätigkeit ausüben, jedoch außerhalb ihrer sonstigen nachhaltigen Tätigkeit;
- die Gebäude wieder verkaufen, nachdem sie sie unter Zahlung von TVA erworben haben.

Personen, die zu diesen beiden Gruppen gehören, sind nicht automatisch steuerpflichtig. Sie gelten als „freiwillig steuerpflichtig", d.h. sie können die Steuerpflicht nur für die betreffende Veräusserung unter der Bedingung in Anspruch nehmen, daß sie zuvor ihre Absicht klar zum Ausdruck gebracht haben, den Verkauf unter Berechnung von TVA durchführen zu wollen.[7]

## STEUERBARE UMSÄTZE

1. *Warenlieferungen*
Das Gesetz versteht unter „Lieferung" folgendes:

7. Vgl. auch Artikel 9 Absatz 3 CTVA.

Ein Gegenstand wird dem Käufer oder seinem Bevollmächtigten in Erfüllung eines entgeltlichen Vertrages zur Verfügung gestellt, wodurch Eigentum oder Nießbrauch übertragen oder bestätigt wird (Artikel 10 CTVA).[8]

Welches ist der Ort der Lieferung? (Dies muß festgestellt werden, da die Lieferung nur besteuert wird, wenn sie im Inland bewirkt wird.)

„Die Lieferung ist in Belgien bewirkt, wenn sich der Gegenstand im Zeitpunkt ihrer Ausführung im Inland befindet. Sofern nicht das Gegenteil bewiesen wird, gilt der Gegenstand als im Inland befindlich, wenn eine der Vertragsparteien dort eine Niederlassung hat" (Artikel 16 CTVA).

Welches ist der Zeitpunkt der Lieferung? (Eine wichtige Feststellung, die maßgebend für die Steuerpflicht ist.)

Es ist der Zeitpunkt, in dem die Waren dem Käufer zur Verfügung gestellt werden. Von diesem Grundsatz besteht jedoch eine wichtige Ausnahme: „Gehört jedoch zur Lieferung die Beförderung des Gegenstandes, so gilt die Lieferung in dem Zeitpunkt als ausgeführt, in dem die Beförderung beginnt" (Artikel 15 CTVA).[9]

Diese Ausnahme wirkt sich notwendigerweise auf die Bestimmung des Lieferungsortes aus. Aus Italien nach Belgien beförderte Waren werden im Ausland geliefert, sie unterliegen jedoch der TVA bei der Einfuhr.

Von Belgien nach Frankreich beförderte Waren werden in Belgien geliefert, jedoch beim Export von der Steuer befreit.

Das Gesetz versteht unter *„Gegenständen"*: „Ihrer Art nach bewegliche Sachen sowie bewegliche Sachen, die der Unterhaltung oder Bewirtschaftung von unbeweglichem Vermögen dienen", „die Versorgung mit Wärme, Kälte und Energie" sowie die oben genannten Neubauten (Artikel 9 CTVA).

Schließlich sieht das Gesetz bestimmte Handlungen des Steuerpflichtigen als Lieferungen an, durch die er *Gegenstände aus dem Warenumlauf* entnimmt.

Dies sind:

- Entnahme von beweglichen Gegenständen für Zwecke, die außerhalb des Unternehmens liegen (Artikel 12, Absatz 1, 3 CTVA),
- Zuführung von beweglichen Gegenständen zur Verwendung als Anlagevermögen (aaO. 4),
- Verwendung von beweglichen Gegenständen zur Ausführung von Tätigkeiten, die nicht zu einem Steuerabzug berechtigen (aaO. 5),
- Verwendung eines Fahrzeuges (Artikel 14 Absatz 2 CTVA).

Weiterhin ist zu beachten, daß die Übertragung des gesamten Anlagevermögens oder eines Unternehmenszweiges durch Übergang auf eine Gesellschaft oder in sonstiger Weise keine Lieferung im Sinne des Gesetzes darstellt, sofern der Übernehmer der Steuerpflicht unterliegt (Artikel 11 CTVA). In diesem Falle setzt der Übernehmer die Persönlichkeit des Übertragenden fort, d.h. er übernimmt dessen Recht auf Steuerabzug aber auch dessen Verbindlichkeiten.

2. *Leistungen*

Die französische Gesetzgebung definiert diesen Begriff nicht. Das deutsche Gesetz formuliert sie als „Leistungen, die keine Lieferungen sind".[10]

---

8. Vgl. Frankreich – Gesetz vom 6.1.1966, Art. 9,1 (wirksame Übertragung des Gegenstandes); Niederlande – angegebenes Gesetz, Art. 3; Deutschland – angegebenes Gesetz, §3 Abs. 1 (Verschaffung der Verfügungsmacht); Luxemburg, angegebenes Gesetz, Art. 9.

9. Vgl. EWG-Richtlinie, Art. 5, 4, a; das deutsche Gesetz §3 Abs. 7; das niederländische Gesetz, Art. 6, 1, a; das luxemburgische Gesetz, Art. 14, a.

10. Gesetz v. 29.5.1967, §3 Abs. 8; vgl. das niederländische Gesetz, Art. 4, und das luxemburgische Gesetz, Art. 15.

Die zweite EWG-Richtlinie nimmt zwar ebenfalls zu einer negativen Definition Zuflucht, indem sie ausführt: „Jedes Geschäft, das nicht eine Lieferung im Sinne von Artikel 5 darstellt, wird als Leistung angesehen"[11], sie führt im Anhang B jedoch eine Reihe von Leistungen auf, die sie als steuerbar ansieht. Das belgische Gesetz definiert die Leistung ebenfalls nicht, sondern zählt in Artikel 18 steuerbare Leistungen auf. Diese Lösung ist zwar unbefriedigend, hat aus der Sicht des Gesetzgebers jedoch wenigstens den Vorzug, daß sie die Möglichkeiten der Auslegung einschränkt.

Von den im Gesetz genannten Leistungen sollen unter anderem erwähnt werden: selbständig ausgeübte körperliche und geistige Arbeit, entgeltliche Vermittlertätigkeit, Vermietung von beweglichen Sachen, Kundenzuführung, Übertragung oder Konzessionierung von Rechten geistigen Ursprungs, Warenlagerung, Verschaffung von Parkmöglichkeiten und Garagen durch Unternehmer, Leistungen der Hotels, Restaurants, Cafés und Konditoreien, Körperpflege (Friseure, Maniküre, Pediküre, Anfertigung von Bruchbändern, Orthopädie usw.), Vermietung von Tresoren, Leistungen bei sportlichen oder kulturellen Veranstaltungen oder in Vergnügungsstätten usw.[12]

Auf der gleichen Grundlage behandelt die Gesetzgebung als steuerbare Leistungen:

- Leistungen anläßlich einer behördlichen Beschlagnahme (Artikel 19, 1 CTVA),
- die Ausführung von Bauarbeiten durch einen Steuerpflichtigen für seinen eigenen Bedarf mit Ausnahme von Reparatur- und Unterhaltungsarbeiten (Artikel 19, 2 CTVA),
- Die Vermietung von Betriebs- und Geschäftsgebäuden durch hierzu berechtigte Unternehmen, sofern der Vermieter das Gebäude gemäß Artikel 9 Absatz 3 errichtet oder errichtet hat. Die Vermietung von anderen als den in diesem Artikel genannten Betriebs- oder Geschäftsgebäuden kann ebenfalls die Vergünstigungen des TVA-Systems beanspruchen. Die Voraussetzungen hierfür werden durch königlichen Erlaß festgelegt werden (Artikel 18 Absätze 2 und 3 CTVA).

*Was bedeutet „Verwertung im Inland"?*

Artikel 6.3 der zweiten Richtlinie ist insoweit kaum ausführlicher als unsere Gesetzgebung.

An sich waren vor dem 1.1.1970 Ausführungsbestimmungen der EWG über den Anwendungsbereich von Artikel 6.3 fällig.[13] In Erwartung dieser Vorschriften, die noch nicht erschienen sind, hat ein königlicher Erlaß Nr. 5 vom 6.2.1970 den Begriff der Verwertung im Sinne des belgischen Rechts definiert (Mon.belge vom 14.2.1970).

Dieser Erlaß legt im Grundsatz fest, daß Leistungen als im Inland verwertet gelten, „wenn sie gegenüber einer Person erbracht worden sind, die ihren Sitz im Inland hat" (Artikel 3 des königlichen Erlasses Nr. 5).

Artikel 4 bestimmt, daß dies dann zutrifft, wenn die Leistung gegenüber einer Person erbracht wird, „die, selbst wenn sie nicht durch jemanden vertreten wird, der sie bindend verpflichten kann, im Inland einen Sitz ihrer Geschäftsführung, eine Zweigstelle, Fabrik, Werkstatt oder Vertretung, ein Geschäft, Büro oder Laboratorium, ein Verkaufs- oder Einkaufsbüro oder eine sonstige feste Einrichtung hat." Wird die Leistung gegenüber einer natürlichen Person erbracht, die sie nicht zur Ausübung ihrer beruflichen Tätigkeit verwendet, so wird für diese Person ein Sitz im Inland dann angenommen, wenn sie dort einen Wohnsitz hat.

---

11. 2. EWG-Richtlinie, Artikel 6, 1.
12. Die ausdrücklich befreiten Leistungen sind in dem bereits zitierten Artikel 44 CTVA aufgeführt.
13. Vgl. 2. EWG-Richtlinie Anhang A 11.

Davon, daß der Sitz des Leistungsempfängers ausschlaggebend ist, gibt es zwei Gruppen von Ausnahmen:

a) Ausnahmen, die sich aus dem Gesetz selbst ergeben:[14]
   - Wird eine Beförderung sowohl auf belgischem als auch auf dem Gebiet eines oder mehrerer anderer Länder ausgeführt, so ist die Leistung hinsichtlich eines jeden Teils der Beförderung in dem Land verwertet, in dem dieser Teil ausgeführt wurde.[15]
   - Ist ein Makler oder Vertreter, der nicht Kommissionär ist, mit der Lieferung eines Gegenstandes im Ausland befaßt, so werden die Leistungen dieses Vermittlers nicht im Inland verwertet.[16]

b) Ausnahmen, die sich aus dem königlichen Erlaß Nr. 5 ergeben:
   Sie bestimmen unter anderem, daß Leistungen als im Inland verwertet angesehen werden, wenn sich der Gegenstand, für den sie erbracht werden, dort befindet.
   Dies ist bei folgenden Leistungen der Fall:
   - Arbeiten an einem Gebäude. Hierzu gehören nicht nur Errichtung, Reparatur, Unterhaltung, Reinigung und Abbruch aller Gebäudeteile sowie Lieferung und Einbau beweglicher Sachen in das Gebäude, wodurch diese Bestandteil des Gebäudes werden, sondern auch alle Planungs- und Überwachungsarbeiten, die zur üblichen Tätigkeit von Architekten, Vermessungstechnikern und Ingenieuren gehören, zur Vorbereitung von Bauarbeiten und zur Koordinierung der Bauausführung (Artikel 2 des angegebenen Erlasses),
   - Gebäudevermietung,
   - Vermietung von Tresoren,
   - Verschaffung von Parkgelegenheiten und Garagen durch Unternehmer; Verwahrung beweglicher Sachen,
   - Bereitstellung von möblierten Unterkünften sowie von Speisen und Getränken zum Verzehr am Verkaufsort,
   - Gewährung von Eintritt in kulturelle oder sportliche Einrichtungen oder in Vergnügungsstätten.

Andere Ausnahmen sehen vor, daß eine Leistung als im Inland verwertet anzusehen ist, wenn sie dort *genossen* oder *ausgeführt* wird.

Dies gilt in folgenden Fällen
- Vermieten von beweglichen Sachen,
- zusätzliche Leistungen in Zusammenhang mit Beförderungsleistungen,
- Bearbeitung von Material; Reparatur, Wartung und Reinigung von beweglichen Sachen,
- Leistungen von Rundfunk-, Fernseh- und Fernsprechgesellschaften, Theater-, Ballett- und Lichtspielvorführungen; Konzerte, Vorträge; Zirkus, Varieté-, Kabarett- und ähnliche Veranstaltungen,
- Körperpflege.

Es ist jedoch zu beachten, daß diese Leistungen steuerbefreit sind, wenn sie als exportiert angesehen werden.[17]

Der *Zeitpunkt* der Leistung (ein entscheidender Faktor) ist grundsätzlich die Vollendung der Leistung. Artikel 22 CTVA bestimmt jedoch, daß die Steuer schon dann zu zahlen ist, wenn über einen Betrag eine Rechnung ausgestellt oder bezahlt worden ist, oder wenn die Zahlung vertraglich im ganzen oder teilweise fällig wird.

---

14. Artikel 21 Absätze 2 und 3 CTVA.
15. Vgl. französisches Gesetz vom 6.1.1966, Artikel 6.1; deutsches Gesetz vom 29.5.1967 § 3 Absatz 11 und § 18 Absatz 5; niederländisches Gesetz, Artikel 6.3 und luxemburgisches Gesetz Artikel 18.
16. Vgl. den französischen Erlaß 67,642 vom 31.7.1967 und deutsches Gesetz, § 8 Absatz 1.
17. Artikel 39–43 CTVA.

3. *Einfuhr*

Die Einfuhr von Waren unterliegt der TVA, gleichgültig, von wem sie eingeführt werden oder für wen sie bestimmt sind (Artikel 3 CTVA).

Die Steuer wird dadurch entrichtet, daß auf den Zollpapieren gültige Steuermarken aufgeklebt werden.[18]

Die Einfuhr kann in bestimmten Fällen von der Steuer befreit werden.[19]

BEMESSUNGSGRUNDLAGE

Grundsätzlich wird die Steuer von dem Gesamtbetrag aus Kaufpreis, Kosten und sonstigen Leistungen errechnet, den der Lieferer des Gegenstandes in Rechnung stellt. In diesem Grundbetrag sind jedoch nicht enthalten Abzüge für Rabatte, Preisnachlässe, Verzugszinsen, erstattungsfähige Verpackungskosten, Kosten der anderen Vertragspartei und die TVA selbst.

Bei Tauschgeschäften, der in Artikel 9,3 CTVA genannten Übertragung von Grundstücken, Bauarbeiten für eigene Rechnung, Abzugsbeträgen und kostenlosen Einfuhren darf der Grundbetrag nicht niedriger als der gemeine Wert angesetzt werden, den das Gesetz wie folgt definiert: „Der gemeine Wert wird ausgedrückt durch den Preis, den ein Lieferer von einem selbständigen Empfänger im Inland für jede der Leistungen zur Zeit der Fälligkeit der Steuer unter der Bedingung eines freien Wettbewerbs und bei gleichartiger Marktlage erzielen kann".[20]

STEUERSATZ

Die Gesetzgebung sieht vier Höchstsätze vor, hat es jedoch der Exekutive überlassen, Listen der Waren und Leistungen aufzustellen, für die diese Sätze gelten sollen. Auch ist eine Ermächtigung zur Herabsetzung der Sätze vorgesehen sowie zur Änderung der Listen, wenn wirtschaftliche Umstände es erfordern. Diese Listen und Änderungen müssen jedoch vom Parlament ratifiziert werden.

So beschränkt sich Artikel 37 CTVA auf eine Aufzählung der Sätze und auf Anordnungen, die bei deren Anwendung im Einzelfall zu beachten sind:

6% für Lieferungen und die Einfuhr von lebensnotwendigen Waren und für Leistungen sozialer Art;

15% für Lieferungen und die Einfuhr von Gebrauchsgütern des täglichen Bedarfs und für Leistungen von besonderem wirtschaftlichen, sozialen oder kulturellen Interesse;

20% für Umsätze von Waren oder Leistungen, die nicht unter andere Sätze fallen;
(dieser Satz muß also als normaler Steuersatz der TVA in Belgien angesehen werden)

25% für Lieferungen und die Einfuhr von Waren, die nach dem gegenwärtigen System der Luxussteuer oder einer festen Umsatzsteuer zu einem erhöhten Satz unterliegen.[21]

Durch Änderung des Artikel 37 CTVA werden die Sätze von 15% und 20% bis zum 31.12.1971 auf 14% bzw. 18% herabgesetzt.[22]

BEFREIUNGEN

Die Artikel 39 bis 44 CTVA regeln eine Anzahl von Befreiungen, die in zwei Gruppen eingeteilt werden können.

Die erste bezieht sich auf internationale Bewegungen von Waren und Leistungen in einem weiten Sinne.

Sie befreit von der Steuer: unmittelbare und

18. Mit Ausnahme von Einfuhren aus den Niederlanden und aus Luxemburg, für die die Steuer aufgrund monatlicher Erklärungen gezahlt wird.
19. Vgl. Artikel 24, 40, 42 und 43 CTVA.
20. Artikel 32, 33 und 36 Abs. 1 und 3 CTVA.
21. Vgl. Tabellen A und B zu Artikel 179 der Allgemeinen Vorschriften über Stempelsteuern.
22. Artikel 102 CTVA, geändert durch Gesetz vom 19.12.1969 (Mon. belge vom 20.12.1969).

mittelbare Ausfuhr von Waren und Leistungen, den Durchgangsverkehr oder Geschäfte unter Zollverschluß, die Beförderung und Nebenleistungen zur Beförderung, die Lieferung von Schiffen, Kähnen und Flugzeugen sowie Lieferungen an Botschaften, Konsulate und bestimmte internationale Organisationen.

Die zweite Gruppe von Befreiungen gilt für Leistungen von Juristen, Ärzten und Angehörigen arztähnlicher Berufe und Leistungen sozialer oder kultureller Art, die in Artikel 44 CTVA aufgezählt sind. Sie gilt ferner für Verlagsverträge, die Deponierung von Wertgegenständen, das Kreditgeschäft, für Börsenmakler und Vertreter auf dem Gebiet des Versicherungswesens, des Devisenhandels und der Anlage von Wertpapieren usw. Solche Geschäfte bleiben jedoch einer besonderen, nicht abzugsfähigen Steuer unterworfen.

## ABZUG

Die Abzugsmethode des CTVA folgt genau den Prinzipien der zweiten Richtlinie. Wir beschränken daher unsere Erläuterungen auf besondere Merkmale, durch die sich das belgische von anderen bekannten Systemen unterscheidet.[23]

Der Steuerpflichtige ist zum Abzug der TVA berechtigt, die auf den an ihn für berufliche Zwecke ausgestellten Quittungen ausgewiesen ist, wenn sich diese Quittungen auf Lieferungen oder Leistungen, eingeführte Waren oder Leistungen oder auf Entnahmen aus dem Warenumlauf für den Bedarf des Unternehmens beziehen.

Das Recht besteht jedoch nicht uneingeschränkt. So wird ein Abzug einer Steuer versagt, die erhoben worden ist auf:

- Lieferungen von bearbeitetem Tabak,
- Lieferungen von alkoholischen Getränken, sofern sie nicht zum Weiterverkauf bestimmt oder zur Erbringung von Leistungen (Hotels, Restaurants, Cafés, Händler usw.) geliefert worden waren,
- Kosten der Unterbringung, Speisen und Getränke mit Ausnahme solcher, die entstanden sind durch:
  Personal, das für die Durchführung steuerbarer Umsätze außerhalb des Unternehmens verantwortlich ist,
  Kunden, Reisebüros und Touristenorganisationen,
- Abnahmekosten.

Andererseits ist der Abzug der TVA bei Erwerb eines Personenkraftwagens nur bis zu 50% zulässig, wenn das Fahrzeug nicht ausschließlich beruflich vom Steuerpflichtigen verwendet wird.

Das Recht auf Abzug *entsteht* an dem Tage, an dem die Steuer fällig wird, gleichgültig ob sie für Lieferungen, Leistungen, Einfuhren oder für Entnahmen aus dem Warenumlauf entsteht. Die gesamte abzugsfähige Steuer wird von der gesamten Steuerschuld für den Anmeldungszeitraum (grundsätzlich monatlich) abgezogen.

Das belgische System folgt nicht der Regelung, die eine „einmonatige Verzögerung" vorsieht, und der des „butoir physique" (materieller Puffer) und des „butoir financier" (finanzieller Puffer) im französischen System.[24]

Was geschieht mit einem *Steuerguthaben*, das sich aus einer Erklärung ergibt?

In der Regel wird die abzugsfähige TVA in die Erklärung des nächsten Anmeldungszeitraums vorgetragen (Artikel 47 CTVA).

Verbleibt am Ende des laufenden Jahres ein Überschuß, wird er innerhalb von drei Monaten in bar zurückgezahlt (Artikel 76 CTVA).

---

23. Der Abzug ist geregelt in den Artikeln 45-49 CTVA und durch den königlichen Erlaß Nr. 3 vom 10.12.1969 (Mon. belge vom 12.12.1969).
24. Vgl. Erlaß 67/92 vom 1.2.1967.

Der Gesetzgeber erkannte jedoch die Schwierigkeiten, die sich infolge einer Vorsteueransammlung bei solchen Steuerpflichtigen ergeben können, die zur Erfüllung langfristiger Verträge oder wegen eines Saisonsgeschäftes erhebliche Anschaffungen machen müssen. Er gab daher die Ermächtigung, durch königlichen Erlaß eine Rückzahlung schon vor Ablauf des Steuerjahres zu gestatten. Die Exekutive hat von dieser Ermächtigung Gebrauch gemacht, indem sie den königlichen Erlaß Nr. 4 vom 29.12.1969 verkündete (Mon. belge vom 31.12.1969). Darin wird die Rückzahlung überzahlter Steuer am Ende eines steuerlichen Quartals gestattet, wenn sie übersteigt:

- 25.000 F.B. bei Kleinunternehmen, die eine Genehmigung zur Abgabe von vierteljährlichen Anmeldungen haben,
- 60.000 F.B. in anderen Fällen.

Diese Lösung ist zwar weniger freizügig als die im deutschen Recht[25], sie ist jedoch in jedem Falle großzügiger als die Regelung des französischen Gesetzgebers, der einen „Vortrag bis zur vollständigenVerrechnung" vorsieht.[26]

### BERICHTIGUNGEN

Der Steuerabzug ist nicht entgültig, bevor nicht feststeht, daß die versteuerten Waren oder Leistungen nicht nachträglich für berufsfremde Zwecke verwendet wurden. Der Abzug muß daher im Falle einer Änderung der Verwendung überprüft werden. Das Verfahren bei dieser Überprüfung ist im königlichen Erlaß Nr. 3 vom 10.12.1969 (Mon. belge vom 12.12.1969) geregelt. Die Überprüfung erfolgt je nach den Umständen bei der Erklärung, beim Abzug oder bei der Rückzahlung.

Es sind jedoch Fälle denkbar, in denen der Steuerpflichtige die Rückzahlung von zu Unrecht geleisteten Steuern verlangen kann, insbesondere

- wenn die gezahlte Steuer höher ist als die gesetzlich geschuldete;
- im Falle einer ihm gewährten Preisherabsetzung; bei Rückgabe von Transportbehältern gegen eine Gutschrift;
- bei Ablauf des Vertrages vor seiner Erfüllung oder bei dessen vertraglicher oder gesetzlicher Auflösung;
- bei Rücknahme von Waren durch den Lieferer;
- bei vollständigem oder teilweisem Verlust des Anspruchs auf Entgelt.

In allen diesen hypothetisch in Artikel 77 Absatz 1 CTVA vorgesehenen Fällen wird die TVA durch Verrechnung mit fälliger Steuer nach dem im königlichen Erlaß Nr. 4 vom 29.12.1969 geregelten Verfahren zurückgezahlt.

Bei den Berichtigungen sind auch die Sonderregelungen für Anlagegüter zu erwähnen. Anlagegüter sind „bewegliche oder unbewegliche Sachen, die auf die Dauer zur Verwendung als Arbeits- oder Betriebsmittel bestimmt sind." Ausgeschlossen davon sind „Verpackungsbehälter, kleine Geräte, kleine Werkzeuge und Bürobedarf, wenn diese Gegenstände die vom Minister der Finanzen festgelegten Voraussetzungen erfüllen."[27]

Der Abzug von TVA auf Anlagegüter unterliegt fünf Jahre lang einer Überprüfung. Eine Berichtigung wird jedes Jahr für 1/5 des Steuerbetrages vorgenommen, wenn sich die Umstände geändert haben, die bei der Berechnung der Abzugsfähigen Steuer zugrundegelegt worden waren (Artikel 48 Absatz 2 TVA).

25. Gesetz vom 29.5.1967, § 18 Abs. 2; vgl. niederländisches Gesetz, Art. 17, und luxemburgisches Gesetz, Art. 55.
26. Vgl. angegebenen Erlaß, Artikel 20.2.
27. Königl. Erlaß Nr. 3 v. 10.12.1969, Artikel 6 Abs. 1.

Das Verfahren bei der Überprüfung ist in den Artikeln 6 bis 11 des königlichen Erlasses Nr. 3 geregelt.

### ANTEILIGE STEUERERHEBUNG

Wer beruflich Geschäfte betreibt, von denen ein Teil zum Abzug berechtigt und ein anderer Teil nicht, unterliegt den Vorschriften über anteilige Steuererhebung (Artikel 46 und 48 CTVA). Das Gesetz unterscheidet:

- die allgemeine anteilige Erhebung, wonach ein Abzug prozentual zulässig ist. Der Prozentsatz wird für das Kalenderjahr gemäß Artikel 12 bis 18 des königlichen Erlasses Nr. 3 festgelegt;
- die anteilige Erhebung aufgrund tatsächlicher Aufteilung, wonach der Abzug nur hinsichtlich der tatsächlichen Umsätze vorgenommen werden darf, die zum Abzug gemäß Artikel 19ff dieses Erlasses berechtigen.

### STEUERERKLÄRUNGEN

Der königliche Erlaß Nr. 1 vom 23.7.1969 (Mon. belge vom 30.7.1969) bestimmt die Unterlagen, die von den Steuerpflichtigen beizubringen sind. Wir wollen nur auf zwei von ihnen hinweisen.

- Die *Erklärung*. Die steuerbaren und nicht steuerbaren Umsätze, die ein Steuerpflichtiger während eines Monats ausgeführt hat, sind in eine Erklärung aufzunehmen, die der Pflichtige bis zum 20. des folgenden Monats einzureichen hat.

Für Kleinunternehmer besteht diese Verpflichtung nur vierteljährlich.

Die Erklärungen werden nach den dem genannten Erlaß anliegenden Mustern abgegeben. Sie weisen die geschuldete oder die zurückzuzahlende TVA aus. Die geschuldete TVA wird am Tag der Abgabe der Erklärung gezahlt.

- Das zweite Schriftstück verlangt – soweit uns bekannt – nur unser Steuersystem. Es besteht aus einer Erklärung, die jeder Steuerpflichtige jährlich bis zum 31. März abgeben muß. Darin ist der Verwaltung folgendes mitzuteilen: Jeder steuerpflichtige Vertragspartner, dem er im vorangehenden Jahr Waren geliefert oder Leistungen erbracht hat, dessen Namen und Anschrift, den Gesamtbetrag der Lieferungen und Leistungen an ihn und den Gesamtbetrag der ihm in Rechnung gestellten Steuer[28].

Diese Erklärung soll der Verwaltung bei der Aufdeckung von Betrügereien helfen.

### SONDERBESTIMMUNGEN

Die Artikel 56 bis 58 CTVA enthalten einige Sonderbestimmungen zugunsten von Unternehmensgruppen, für die die gewöhnlichen Vorschriften zu kompliziert waren. Wir wollen nur andeutungsweise die Bestimmungen für folgende Waren erwähnen: bearbeiteter Tabak (Artikel 58 Absatz 1), Einfuhr von Fisch, Muscheln und Mollusken (Artikel 58 Absatz 2), nachhaltiges Aufkaufen gebrauchter Waren durch steuerpflichtige von nicht steuerpflichtigen Personen (Artikel 58 Absatz 4). Diese Bestimmungen geben einen ersten Eindruck von den Überlegungen, die für bestimmte Kleinunternehmer angestellt werden müssen. Die Vorschriften für ihre Besteuerung sind wesentlich anders als die, die unsere Partner in der EWG anwenden.

1. *Kleinunternehmen, für die die normalen Vorschriften in vereinfachter Form gelten*

Artikel 50 Absatz 2 CTVA ermächtigt den König „Gruppen von Steuerzahlern, die er

28. Vg. Artikel 50 Abs. 2 letzter Unterabsatz CTVA und Artikel 18 des königlichen Erlasses Nr. 1.

bestimmt," zu gestatten, daß sie ihre Steuererklärungen vierteljährlich abgeben und ihre Steuer in monatlichen Raten zahlen.
Auf diese Vorschrift hin beschränkt der königliche Erlaß Nr. 1 den Umfang an Buchführungsunterlagen, die sie zu führen haben, und verlangt nur vier Erklärungen im Jahr.[29]
Diese kleinen Steuerpflichtigen können die Vergünstigung dieser Besteuerung jedoch nur dann in Anspruch nehmen, wenn ihr jährlicher Umsatz 5 Millionen belgische Franken (ausschließlich TVA) nicht übersteigt, und wenn sie nicht die Voraussetzungen für die unten unter 2 und 3 untersuchten Besteuerungsmethoden erfüllen.

2. *Kleinunternehmen, die der Festbetragsregelung unterliegen*
Diese gilt für Steuerpflichtige, deren Kunden überwiegend Privatpersonen sind und deren jährlicher Umsatz 5 Millionen belgische Franken (ausschließlich TVA) nicht übersteigt.
Wesentliches Merkmal dieses Systems ist, daß diese Pflichtigen nicht aufgrund ihres tatsächlichen Umsatzes besteuert werden, sondern auf der Grundlage eines Festbetrages. Dieser wird nach bestimmten Gesichtspunkten festgelegt: im Verhältnis zu Gewinnspannen, einheitlichen Verkaufspreisen, Stundenlöhnen usw.
Es gibt drei Arten von Festbeträgen:
- allgemeine Festbeträge: nach Branchen,
- besondere Festbeträge: nach Branchen, für Grenzfälle,
- Einzelfestbeträge: für Ausnahmefälle innerhalb einer Branche.

Die Festbeträge werden von der Verwaltung festgesetzt und gelten für ein Jahr. Sie können geändert werden, falls sich die Umstände wesentlich ändern, die der Festsetzung zugrundeliegen.
Unternehmen, die gemäß Artikel 56 Absatz 1 CTVA unter dieses begünstigende System fallen, kommen in den Genuß der oben unter 1 beschriebenen Erleichterungen.
Wer die Voraussetzungen erfüllt, fällt bei Inkrafttreten des Gesetzes automatisch unter die Festbetragsregelung, es sei denn, er erklärt bis zum vorangehenden 15. Dezember, daß er nach den normalen Vorschriften besteuert werden will.
Nach Inkrafttreten des Gesetzes können Unternehmen, die der Festbetragsregelung unterliegen, entweder für die normalen Vorschriften oder für die unter 1 beschriebene Methode optieren. Das Verfahren zur Bestimmung der festen Grundlagen für die Besteuerung und die Anwendung der Formeln sind im königlichen Erlaß vom 7.11.1969 Nr. 2, (Mon. belge, 14.11.1969) geregelt.[30]

3. *Kleinhändler*
Wie in anderen Staaten der EWG stand auch in Belgien der Gesetzgeber vor dem Problem, wie Kleinhändler zu veranlagen sind, insbesondere deshalb, weil sie die Buchführungsvorschriften nicht beherrschen, die für die normale Durchführung des TVA-Systems erforderlich sind. Die belgische Lösung dieses Problems unterscheidet sich wesentlich von den Lösungen unserer Nachbarländer.[31]
Der in Artikel 56 Absatz 2 CTVA genannte Erlaß der Exekutive ist noch nicht erschienen. Dennoch kann schon jetzt gesagt werden, daß die Anerkennung als „Kleinhändler" drei Voraussetzungen verlangt:

29. Vgl. königl. Erlaß Nr. 1, insb. Artikel 12, 16, 17 und 18.
30. Vgl. Frankreich, Gesetz vom 6.1.1966, Art. 20,21,53; Bundesrepublik Deutschland, §23 des genannten Gesetzes; Niederlande, Art. 25 des genannten Gesetzes; Luxemburg, Art. 56.
31. Frankreich, Erlaß Nr. 67/364 vom 16.4.1967; Bundesrepublik Deutschland, §19 Abs. 1 UStG; Niederlande, Art. 25 des Gesetzes; Luxemburg, Art. 57 des Gesetzes.

- Seine Tätigkeit muß sich auf den Weiterverkauf von Waren in unverändertem Zustand erstrecken. Damit ist der Wiederverkäufer ausgeschlossen, der die Waren einem gewerblichen Arbeitsprozeß unterwirft, wie beispielsweise der Fleischer, Delikatessenhändler, Bäcker, Konditor, Fischhändler, Apotheker, Schneider, Blumenhändler usw. Dieses Merkmal schließt auch automatisch den kleinen Dienstleistungsbetrieb aus: Friseure, Cafés, Schuster, Klempner, Elektriker usw.
- Er darf nicht mit Erzeugnissen handeln, die gegenwärtig der Luxussteuer unterliegen.
- Schließlich darf der jährliche Einkauf des Antragstellers, ausschließlich des Einkaufs für Anlagezwecke, 1.500.000 F.B. nicht übersteigen.

Die belgische Methode ist aus folgenden Gründen einzigartig: Obwohl der Kleinhändler der TVA unterliegt, ist die Steuer auf seine eigenen Verkäufe nicht anzuwenden. Es obliegt seinem Lieferanten, die Steuer nach einem Verfahren einzuziehen, das Ähnlichkeit mit dem Abzug an der Quelle im Einkommensteuerrecht hat. Anders ausgedrückt: Die normale TVA, die der Warenlieferer verlangt, wird um eine „Ausgleichssteuer" erhöht, deren Satz so festgelegt ist, daß die gesamte Steuerforderung aus beiden Steuerarten in der Praxis gleich hoch, wie die Forderung an TVA wäre, wenn die Waren vom Kleinhändler zum normalen Steuersatz verkauft werden würden.

Auf diese Weise haftet der Lieferant dem Fiskus für die TVA und die Ausgleichssteuer, die er dem Kleinhändler in Rechnung stellt. Dies sind Steuern, die er abziehen kann. Der Kleinhändler trägt die Steuer und bezieht sie in seinen Verkaufspreis ein.

Da die Ausgleichssteuer auf einer festen Grundlage im Verhältnis zu den üblichen Gewinnspannen des Einzelhandels, den allgemeinen Kosten und laufenden Investitionen berechnet wird, hat sie notwendigerweise zahlreiche Steuersätze.

Wir können uns im Rahmen dieser Arbeit nicht mit Einzelheiten der Durchführung befassen. Wir wollen die Betrachtung jedoch durch drei Bemerkungen abrunden:

- Der Kleinhändler ist berechtigt, für die Festbetragsregelung oder die normalen Vorschriften zu optieren.
- Das System der Ausgleichssteuer ist befristet. Es wird vom 1.1.1973 an durch eine stufenweise Verminderung des Höchstbetrages von 1.500.000 F.B. abgebaut werden.
- Der Kleinhändler kann nicht die Rückzahlung von Steuern beanspruchen, die seinen Warenbestand am 31.12.1970 belasten. Ihm entsteht dadurch jedoch kein Schaden, da beim Verkauf der Vorräte keine TVA anfällt.

4. *Kleinlandwirte*

Die Gründe, die zur gesetzlichen Einführung von Sonderbestimmungen für Kleinhändler führten, gelten in noch stärkerem Maße für den Kleinlandwirt. Er unterliegt einem in Artikel 57 CTVA geregelten Verfahren, das ebenfalls mit keinem von anderen Staaten übernommenen System zu vergleichen ist.[32] Wie ist der Begriff „Kleinlandwirt" zu definieren?

Die Definition wird ein königlicher Erlaß enthalten. Vermutlich wird sie jedoch für Landwirte gelten, die Erzeugnisse der Land- und Viehwirtschaft unverändert verkaufen. In dem Falle würde Artikel 57 nicht für landwirtschaftliche Genossenschaften und Bauern gelten, die ihre Erzeugnisse bearbeiten. Auch schließt das Gesetz ausdrücklich solche

32. Frankreich, Gesetz vom 6.1.1966, Artikel 4; Bundesrepublik Deutschland, §24 UStG; Niederlande, Artikel 17 des Gesetzes, Luxemburg, Artikel 58-60 des Gesetzes.

Landwirte von dem Verfahren aus, die die Form einer Handelsgesellschaft für ihren Betrieb gewählt haben, und solche, die infolge Ausübung einer anderen Tätigkeit bereits steuerpflichtig sind. Obwohl er steuerpflichtig ist, treffen den Kleinlandwirt keine Pflichten zum Ausstellen von Rechnungen für seine Lieferungen und Leistungen, zur Abgabe von Erklärungen und zur Zahlung von Steuer.

Wer zahlt demnach die normalerweise für seine Lieferungen anfallende TVA? Wie erhält der Landwirt seine TVA zurück, die er bei Einkäufen getragen hat (Dünger, Samen, Geräte usw.)?

Diese doppelte Verpflichtung fällt auf den Vertragspartner des Landwirts, sofern dieser selbst steuerpflichtig ist.

Die vom Landwirt getragene „vorangehende" Steuer wird zu einem festen Satz berechnet und dem vom Landwirt verlangten Verkaufspreis hinzugerechnet. Sein steuerpflichtiger Käufer muß dem Landwirt den Kaufpreis zuzüglich des festgesetzten Prozentsatzes zahlen. Auf diese Weise erhält der Landwirt im Prinzip seine TVA zurück, die er bei seinen Einkäufen gezahlt hat.

Sein Vertragspartner leistet an den Fiskus die normale TVA, die bei dem Kauf anfiel, abzüglich des festen Erstattungsbetrages, den er an seinen Verkäufer gezahlt hat. Danach ist er berechtigt, einen Abzug des Betrages zu beantragen, den er an den Fiskus gezahlt hat, und des Betrages, den er an den Landwirt erstattet hat.

Abschließend ist zu bemerken, daß der Kleinlandwirt berechtigt ist, für die normalen Vorschriften zu optieren, wenn er die hierfür erforderlichen Voraussetzungen erfüllt.

ÜBERGANGSVORSCHRIFTEN

1. *Entlastung von Vorratsvermögen auf den 31.12.1970*[33]

a) Bewertung der Vorräte

Im Gegensatz zum französischen und deutschen Recht[34], die für die Berechnung zu erstattender Steuern den Bilanzwert der Warenvorräte bei Inkrafttreten des neuen Systems zugrundelegen, macht der belgische Gesetzgeber bei dieser Bewertung Unterschiede.

Grundlage der Bewertung wird sein:

- bei Waren, die zum Zwecke des Weiterverkaufs in ihrem gegenwärtigen Zustand gekauft wurden, und bei Waren, die zum Zwecke gewerblicher Verarbeitung gekauft, aber bisher noch nicht verarbeitet worden sind, der Einkaufspreis, auf den zur Zeit des Kaufs oder der Einfuhr die Umsatzsteuer berechnet worden war;
- bei Waren, die vom Antragsteller hergestellt oder gewerblich verarbeitet worden sind, der Preis, der für diese Waren bei einem Verkauf im Inland durch einen selbständigen Verkäufer an einen selbständigen Käufer unter uneingeschränkten Wettbewerbsbedingungen erzielt werden könnte. Diese Grundlage darf jedoch nicht höher sein als der Durchschnittspreis, den der Steuerpflichtige für den Verkauf ähnlicher Waren während des letzten Quartals 1970 erzielt hat;
- bei Waren, die sich am 31.12.1970 in Verarbeitung befinden, der Inventurwert auf diesen Stichtag plus ein festzulegender Prozentsatz.

Diese Bewertungsmethode scheint für den Steuerpflichtigen günstiger zu sein als die

33. Artikel 99 CTVA.
34. Frankreich, Erlaß vom 23.5.1967, Artikel 2.1; Bundesrepublik Deutschland, §28 UStG; vgl. Niederlande, Artikel 43 des Gesetzes und Luxemburg, Artikel 90 des Gesetzes.

nach der Bilanz, da die Bilanz allgemein für den Warenbestand einen niedrigeren als den wirklichen Wert ausweist.

b) Berechnung der zu erstattenden Steuer
Die zu erstattende Steuer wird nach der Methode errechnet, die zur Zeit auf die festen Erstattungen bei Ausfuhren angewendet wird. Der Erstattungssatz wird nach Warengruppen auf der Grundlage der gegenwärtig geltenden Erstattungssätze festgesetzt. Da jedoch die tatsächliche Steuerbelastung unterschiedlich je nach Herkunft des Erzeugnisses ist, wird das Berechnungsverfahren angepaßt, je nachdem, ob der Unternehmer die Waren von einem Hersteller, Händler oder Importeur erworben hat.

c) Erstattungsverfahren
Die Erstattung wird in Höhe von je 1/12 durch Anrechnung auf die Steuerschuld im jeweils letzten Monat jedes Quartals der Jahre 1971, 1972 und 1973 durchgeführt.[35]

d) Material in Bearbeitung und Gebäude während der Errichtung
Ein Erlaß sollte die Steuererstattungen in solchen Fällen regeln, in denen besteuerte Materialien und andere Erzeugnisse am Stichtag in teilfertigen Wirtschaftsgütern eingebaut sind.

2 *Entlastung von Anlagevermögen*
Abgesehen von der oben beschriebenen Berichtigungsmöglichkeit innerhalb von fünf Jahren, ist die Entlastung des Anlagevermögens vollständig und sofort durch Abzug erfolgt. Dies gilt jedoch nur während einer Übergangszeit. Zunächst gestattet Artikel 100 CTVA, ebenso wie die Gesetzgebung der übrigen Mitglieder der EWG[36], nur eine stufenweise Entlastung ab Inkrafttreten des Systems. Weder eine vollständige noch eine teilweise Entlastung ist für Investitionen vor dem 1.1.1971 vorgesehen.
Die stufenweise Entlastung geht danach folgendermaßen vor sich: Die für einen Gegenstand berechnete Steuer ist nur insoweit abzugsfähig, als sie die Prozentsätze von 10%, 7,5%, 5% bzw. 2,5% übersteigt, sofern die Steuer dieser Reihenfolge entsprechend in den Jahren 1971, 1972, 1973 bzw. 1974 fällig wird.
Diese Sätze erhöhen sich auf 12%, 9%, 6%, 3% für Kraftfahrzeuge und Anhänger.
Es ist daher zu beachten, daß die Entlastung der Investitionen erst dann vollständig erfolgt, wenn sie nach dem 1.1.1975 vorgenommen werden.

3. *Laufende Verträge*
Artikel 101 CTVA soll die Beziehungen zwischen den Vertragsparteien hinsichtlich ihres Beitrags zu der Steuer bei Umsätzen regeln, die zum Teil nach dem gegenwärtigen und zum Teil nach dem künftigen System getätigt werden. Er soll eine Preiserhöhung verhindern, die sich daraus ergeben könnte, daß Steuerzahler bei Festsetzung ihrer künftigen Preise insbesondere die Entlastung des Vorratsvermögens nicht berücksichtigen.
Zu diesem Zweck gibt der Artikel dem betroffenen Vertragspartner das Recht, eine Herabsetzung des vereinbarten Preises zu verlangen. Andererseits kann eine Partei eine Erhöhung des Vertragspreises verlangen, wenn sie durch die Einführung der TVA einen Nachteil erlitten hat.

35. Vgl. Frankreich, Erlaß vom 23.5.1967, Art. 6–9; Deutschland, §28 Abs. 4 und 5 UStG; Niederlande, Art. 43.4 des Gesetzes; Luxemburg, Art. 90 letzter Unterabsatz des Gesetzes.
36. Frankreich, Erlaß 67-93 vom 1.2.1967, geändert durch Erlaß 67-730 vom 30.8.1967; Deutschland, §30 Abs. 5 UStG; Niederlande, Art. 45 des Gesetzes; Luxemburg, Art. 92 d. Gesetzes.

Dieses Recht kann jedoch nur bei Verträgen ausgeübt werden, die während des letzten Quartals 1970 geschlossen worden sind, es sei denn, der andere Vertragspartner ist eine Privatperson.

Nach unserer Kenntnis enthalten die französichen Vorschriften keine derartige Bestimmung. Diese Regelung scheint der deutsche Gesetzgeber eingeführt zu haben.[37] Sie inspirierte die Verfasser des CTVA und der niederländischen[38] und luxemburgischen[39] Gesetze, eine vergleichbare Vorschrift zu übernehmen.

Eine abschließende Beobachtung: Während das luxemburgische Gesetz vorsieht, daß sein Artikel 91 „nicht gilt, wenn die Parteien etwas anderes vereinbart haben", hat unser Artikel 101 für die Parteien Gültigkeit „ungeachtet einer gegenteiligen Vereinbarung".

## ZUSAMMENARBEIT ZWISCHEN VERWALTUNG UND PRIVATWIRTSCHAFT

Man kann nicht sagen, daß unser zukünftiges System das einseitige Werk der öffentlichen Verwaltung ist.

Das Gesetz und seine Ausführungserlasse[40] verlangen verschiedentlich, daß vor Durchführungsmaßnahmen eine Beratung mit den betroffenen Standesorganisationen durchgeführt wird.

Dieses Verfahren wurde nicht nur auf die im Gesetz genannten Fälle beschränkt. Im Laufe der Monate wurde es in der Praxis auf die meisten sich aus der Reform ergebenden Probleme ausgedehnt.

Zu diesem Zweck wurde ein ständiger Ausschuß gebildet, in dem hohe Beamte des Ministers der Finanzen und Vertreter der hauptsächlichen Standesorganisationen sich gemeinsam um die realistischste und gerechteste Lösung der Probleme bemühen, die sich bei den Ausführungserlassen ergeben.

Dieses aufrechte Verfahren einer Beratung macht es möglich, daß sowohl öffentliche als auch private Interessen zu einem Höchstmaß gewahrt werden. Es rechtfertigt auch einen Dank an die Verwaltung der TVA dafür, daß sie die Initiative zur Einführung dieser Beratungen ergriffen hat.

---

37. §29 UStG vom 29.5.1967.
38. Art. 52 und 53 des Gesetzes vom 29.6.1968.
39. Art 91 des Gesetzes vom 5.8.1969.
40. Insbesondere Artikel 56 Absätze 1 und 2 CTVA; Königlicher Erlaß Nr. 2, Artikel 1, 3, 7, 8 und 12.

I. CLAEYS BOUUAERT*:

# LES SOCIETES-MERES ET FILIALES DANS LE DROIT FISCAL BELGE

## I – NOTIONS GÉNÉRALES INTRODUCTIVES.

1. – Le système fiscal belge, comme celui de la plupart des autres pays, comporte un impôt progressif et global sur le revenu des personnes physiques, et un impôt proportionnel sur les bénéfices des sociétés (de 30% en principe). Il comporte en outre, et ceci est assez original, une «cotisation spéciale» sur l'excédent distribué lors de la liquidation d'une société, après remboursement aux actionnaires du capital apporté.

La double imposition des bénéfices sociaux résultant de la perception successive, sur ces bénéfices, de l'impôt des sociétés et de l'impôt des personnes physiques, est tempérée notamment par l'octroi à ces dernières d'un «crédit d'impôt» égal à 15/70èmes du dividende brut.

La double imposition résultant du transfert des bénéfices, par une société à une autre société, sous forme de dividendes, fait l'objet d'une déduction «revenu de revenu», décrite dans les pages qui suivent.

2. – Avant d'entamer cette description, il est utile de rappeler que les dividendes ne constituent qu'une des formes sous lesquelles les bénéfices d'une société peuvent être transférés à une autre.

Cette forme est sans doute la plus répandue et la mieux connue. Mais il en existe d'autres, dont les modalités peuvent varier à l'infini: une société peut vendre ses produits, pour un prix couvrant tout juste ses coûts de production, à une société-soeur qui fonctionne comme comptoir de ventes; une société industrielle peut prendre en charge certaines dépenses grevant une société-soeur, créée par exemple en vue de prospecter certains marchés, organiser des recherches, utiliser des sous-produits, fournir certains services, etc. . . Les bénéfices peuvent être transférés sous la forme de loyers, de redevances, d'intérêts des prêts, etc. . . Inversément, les transferts de bénéfice peuvent résulter de loyers avantageux ou de prêts à intérêts réduits.

3. – Sans doute les bénéfices des sociétés sont-ils toujours destinés à être transférés. Une société n'existe que par la volonté de personnes physiques, et en vue de l'avantage qu'elle peut leur fournir.

D'autre part le monde des affaires crée des sociétés de plus en plus diversifiées. Constituées à l'origine pour grouper des moyens financiers, la société est devenue dans certains cas un moyen de les diviser. Des sociétés sont créées en vue de diviser juridiquement des entreprises économiquement liées. A l'échelle de la petite entreprise, la création de sociétés est devenue un moyen d'isoler les risques de l'exploitation par rapport au patrimoine privé. Pour les entreprises mondiales, la création de sociétés spécialisées facilite l'adaptation au droit économique et aux coutumes commerciales des pays où elles opèrent. Dans nombre d'autres cas, elles favorisent soit la spécialisation du travail, soit une répartition plus efficace des capitaux. Toujours cette création est orientée vers les avantages qu'elle peut procurer à des personnes physiques.

Il est naturel que cette situation engendre des occasions, et aussi des formes de transferts, fort variées.

---

* Avocat près la Cour d'Appel de Gand. Professeur à l'Université de Gand et à l'Ecole supérieure des sciences fiscales.

4. – Le système légal belge présente, à l'égard de cette situation, une double caractéristique. D'une part, il s'en tient strictement au respect de la personnalité juridique des sociétés, excluant par là les bilans consolidés et les différentes formes de transferts autres que les dividendes.
D'autre part, il évite dans une large mesure la double imposition qui peut frapper les dividendes.
A première vue cette dualité dans les solutions adoptées semble révéler une certaine contradiction dans la position prise par le législateur fiscal belge à l'égard de la personnalité juridique des sociétés. En fait cependant la contradiction n'est qu'apparente: le respect de la personnalité juridique des sociétés par le législateur belge est total, peut-être même excessif. Mais ce respect n'exclut pas certaines mesures tendant à alléger les doubles triples impositions qui peuvent frapper les bénéfices sociaux.
5. – Par contre, les transferts du second groupe – c'est-à-dire sous une autre forme que celle de dividendes – sont traités par le législateur fiscal avec une certaine réprobation. Aucun texte ne les organise. Aucune disposition ne vient, à leur sujet, réduire la charge cumulée des impôts successifs. Au contraire, s'ils sont décelés par l'administration, ils sont sanctionnés en ce sens que l'avantage octroyé supportera la pleine charge de l'impôt dans le chef de la société qui en bénéficie, tandis que la société qui le consent se verra imposée sur le même avantage au titre de libéralité non déductible.
Il en résulte que ces transferts seront généralement occultes; les seules dispositions légales qui les concernent ont d'ailleurs pour objet de renforcer les pouvoirs de l'administration en vue de les éliminer.
En outre, le législateur et l'administration ont manifesté – on le comprend – une vigilance toute spéciale pour les transferts du second groupe qui se présentent sur le plan international. Diverses dispositions tendent à sanctionner ces opérations, dans la mesure où elles ont pour effet de déplacer une matière imposable vers l'étranger.
6. – Ainsi, aux deux groupes de transferts correspondent non seulement des solutions législatives divergentes mais aussi des climats législatifs nettement différents. Le paiement des dividendes est une opération connue, présentant peu d'imprévu. Son mécanisme juridique est simple, ses effets économiques sont importants et respectables. Par contre, les transferts irréguliers présentent une infinie variété de circonstances; ils répondent à des objectifs limités, peu connus du dehors, parfois inavoués. Cette variété même rend fort difficile l'élaboration d'un système fiscal qui leur serait applicable dans leur ensemble.
On pourrait souhaiter cependant que le législateur, sans pour autant ouvrir la porte à des évasions d'impôt, étudie d'une façon plus approfondie l'ensemble de ces problèmes. La personnalité juridique des sociétés est une fiction qu'il est dangereux, en matière fiscale, de pousser à ses conséquences extrêmes. Le législateur l'admet en ce qui concerne les dividendes. Ne pourrait-il pas reconnaître aussi sur le plan fiscal certaines autres caractéristiques des groupes de sociétés?
7. – Le système organisé par la loi peut présenter certaines différences selon qu'il s'agit des sociétés par actions ou des sociétés dites «de personnes».
Ces dernières sont fort nombreuses. Mais leur importance au niveau des affaires internationales est quasi-nulle.
Pour ne pas alourdir l'exposé, les différences qui les concernent ont donc été omises.

## II – THÉORIE GÉNÉRALE DES «REVENUS DÉFINITIVEMENT TAXÉS»

8. – *Texte:* Le régime fiscal belge des divi-

dendes, versés par une société et perçus par une autre société, est régi par l'article 111 du Code des impôts sur les revenus.

Dans sa partie principale, le texte porte en déduction du bénéfice soumis à l'impôt des sociétés, dans la mesure où ils s'y retrouvent:

«1° les revenus d'actions ou parts ou capitaux investis . . .»

«2° l'excédent que présentent les sommes obtenues dans les cas visés aux articles 118, 120 et 123, sur la valeur d'investissement ou de revient des droits sociaux dans les sociétés dont l'avoir est réparti totalement ou partiellement . . .»

Le 1° ci-dessus vise, dans un sens large, les dividendes (qu'ils soient d'origine belge ou étrangère); le 2°, les bonis provenant de la liquidation de sociétés belges.

9. – *Origine:* Le texte que l'on vient de lire date de 1962. Mais la déduction qu'il organise n'était, à cette époque, pas une nouveauté. Sous le régime antérieur, les dividendes payés par une société étaient soumis à une taxe mobilière, retenue par celle-ci à la source, mais qui constituait un impôt sur le revenu de l'actionnaire. En outre, si ces dividendes étaient recueillis par une autre société, celle-ci ne devait pas les soumettre à une nouvelle retenue en cas de distribution.

Le système en vigueur en Belgique avant 1962 ne comportait pas d'impôt spécifique sur les bénéfices des sociétés. Le système légal était fondé sur l'idée que ces bénéfices n'atteignaient leur vrai destinataire que dans le chef d'une personne physique.

Le législateur de 1962 a voulu tenir compte des équilibres économiques existants. En introduisant dans le système fiscal belge un impôt des sociétés, il a pris diverses mesures pour atténuer la charge de la double imposition qui en résulterait sur les dividendes et bénéfices distribués. Aux personnes physiques bénéficiant de cette distribution, il a accordé un crédit d'impôt calculé de façon à compenser en principe la moitié de l'impôt des sociétés. En ce qui concerne les sociétés, il a organisé la déduction réglée par l'article 111 cité ci-dessus.

10. – *Principe général – Dividendes:* L'idée de base de ce système est que le même bénéfice ne doit pas supporter plusieurs fois successivement l'impôt des sociétés. Puisque le bénéfice a supporté cet impôt dans le chef de la société qui a distribué le premier dividende, la société qui a recueilli ce dividende et le redistribuera à son tour ne devra, en ce qui le concerne, ni acquitter l'impôt des sociétés, ni retenir une seconde fois le précompte mobilier. Selon une expression souvent employée, le dividende distribué par la première société «transite» en franchise d'impôt par la seconde société, avant d'atteindre l'actionnaire – personne physique, pour qui il constituera un revenu au plein sens du mot.

11. – *Bonis de liquidation:* En ce qui concerne l'excédent distribué par une société en liquidation, après remboursement aux actionnaires du capital apporté, le système légal répond à une intention légèrement différente. Un arrêt de la cour de cassation, datant d'avant la réforme fiscale de 1962 (arrêt du 20 mars 1956) avait mis l'accent sur le fait que ces excédents ou bonis ne répondent pas à la notion de revenu. Le législateur s'est incliné devant cette opinion. Il a donc exonéré ces bonis de l'impôt sur le revenu des personnes physiques.

Il a cependant estimé que ces bonis constituent quand même une matière imposable latente et apparentée aux revenus, soit que la société liquidée distribue ses réserves antérieures, soit qu'elle transfère à ses actionnaires les plusvalues réalisées au cours de sa liquidation. En conséquence, il a soumis ces bonis à une cotisation spéciale enrôlée au nom et à charge de la société elle-même. Ce système est organisé par les articles 118 et suivants du code des impôts sur les revenus.

Cette «cotisation spéciale» constitue de la sorte un impôt particulier, distinct à la fois de l'impôt sur les bénéfices de la société et de l'impôt sur le revenu de l'actionnaire, et destiné à remplacer ce dernier.

La logique du système exigeait que ces bonis soient également exonérés d'impôt lorsque l'actionnaire est une autre société. Tel est le but du 2° de l'article 111, § 1er, reproduit ci-dessus. Tel est également le motif qui a conduit à réserver l'avantage légal aux seules sociétés belges; le système des articles 118 et suivants ne pourrait en effet s'appliquer aux sociétés étrangères.

### III. – LIMITE DU MONTANT DÉDUCTIBLE.

12. – Le système énoncé ci-dessus comporte, dans son application pratique, certaines particularités.

On souligne d'abord que le législateur belge, contrairement à ce qui se fait dans plusieurs pays étrangers, ne fixe aucune limite à la participation dont le dividende est déductible. Que la société B possède une seule action de la société A, ou qu'elle les possède toutes sauf six (la loi belge exige un minimum de sept actionnaires pour les sociétés par actions), le dividende sera déductible au même titre et dans la même mesure.

La même règle s'applique aux bonis de liquidation.

Par contre, le montant déductible sera toujours légèrement inférieur au dividende net réellement perçu. La quotité qui sera exclue de cet avantage sera, selon les cas, de 5 ou 10% du dividende net, c'est-à-dire que la déduction sera limitée à 90 ou 95%.

13. – L'origine de cette limitation remonte également à la période d'avant 1962. Le législateur avait, sous le régime alors en vigueur, limité la déduction «revenu du revenu» en fonction de trois éléments:

a) il fallait que les actions productives de dividendes déjà taxés aient été en possession des contribuables durant toute l'année envisagée: on voulait éviter le gonflement artificiel des dividendes déductibles par la manoeuvre qui consisterait à acheter des actions juste avant l'échéance du coupon, pour les revendre juste après cette échéance.

b) il fallait que ces actions aient été acquises au moyen de fonds propres et non de fonds empruntés; si tel était le cas, les charges financières devaient être défalquées du dividende déductible.

c) il fallait étaler sur les dividendes une certaine quotité des frais généraux d'administration de l'entreprise.

L'application de ces règles, surtout en ce qui concerne les charges financières, avait donné lieu à de nombreuses complications. Le législateur décida de remplacer le tout par un forfait. Pour déterminer celui-ci, il tint compte du fait que les charges financières et les opérations d'achats et reventes sont nettement plus nombreuses dans les sociétés dont l'activité est centrée sur la gestion d'un portefeuille que dans les sociétés exploitant une industrie ou un commerce. En conséquence, la quotité déductible fut fixée à 90% dans les premières sociétés et à 95% dans les secondes.

14. – Cette règle est formulée à l'article 113 du code des impôts, dans les termes suivants:

«les revenus visés aux articles 111, § 1er, 1° . . . sont censés se retrouver dans les bénéfices imposables à concurrence de 95% des montants nets encaissés . . .

«Les excédents visés à l'article 111, § 1er, 2°, sont censés se retrouver dans les bénéfices imposables à raison de 95% de leur montant.

«§ 2. Toutefois, la quotité de 95% prévue au § 1er est ramenée à 90% pour les entreprises qui détiennent des participations dont la valeur d'investissement excède 50%, soit du capital social réellement libéré, restant à rembourser, éventuellement revalorisé conformément à l'article 119, soit du capital so-

cial réellement libéré restant à rembourser, augmenté des réserves taxées et des plus-values comptabilisées. La valeur des participations et le montant du capital social, des réserves et des plus-values sont à envisager à la date de clôture du bilan de la société détentrice des participations.

«Pour déterminer si la limite de 50% est dépassée, il n'est pas tenu compte des participations actives et permanentes qui représentent au moins 75% du capital de la société émettrice.»

15. – La portée concrète de cette disposition pourra être illustrée par quelques exemples.

A. Bilan portant à l'actif un portefeuille-actions de 50 millions. Les dividendes et bonis de liquidation seront déductibles à 95% si l'une des deux hypothèses suivantes est réalisée:

a) le capital et les réserves figurant au passif de ce bilan dépassent 100 millions. Parmi les «réserves» il faut comprendre les plus-values comptabilisées et aussi les comptes de provisions, les bénéfices reportés à nouveau, ou autres inscriptions analogues.

b) le capital seul (sans les réserves cette fois) majoré selon les coefficients de revalorisation de l'article 119[1] dépasse 100 millions. Tel sera le cas, par exemple, si le capital est de 40 millions mais a été apporté en 1930: le coefficient applicable étant 2,35, le capital revalorisé atteindra 94 millions, soit plus que la moitié de 100 millions. Le capital à prendre comme base de ce calcul doit avoir été apporté en biens venant de l'extérieur, c'est-à-dire qu'il ne pourra comprendre ni les réserves virées au capital, ni les apports d'industrie.

B. Bilan portant à l'actif un portefeuille-actions de 75 millions, qui peut être subdivisé comme suit:

- 25 millions en actions dans une ou plusieurs sociétés dans lesquelles la participation est «active et permanente» et dépasse 75%;
- 50 millions en actions d'autres sociétés.

Les dividendes et bonis de liquidation seront déductibles à 95% si l'une des hypothèses décrites ci-dessus est réalisée à l'égard de cette seconde partie du portefeuille. En d'autres mots, il suffira ici encore que soit le capital et les réserves, soit le capital revalorisé dépasse 100 millions.

Les dividendes et bonis de liquidation sont déductibles à 90% si aucune des hypothèses décrites n'est réalisée.

16. – Les mots «participation active et permanente», qui figurent au dernier alinéa de l'article 113 reproduit ci-dessus, visent les participations dans ce qu'on appelle couramment les sociétés-filiales. Ces participations sont «actives» quand la société-mère ne se contente pas d'en recueillir les produits financiers, mais agit sur leur gestion, par exemple en se faisant représenter au conseil d'administration de la société filiale par certains de ses administrateurs. La qualité de «permanente» doit leur être reconnue si l'investissement est conçu, dans l'intention de l'investisseur,

---

1. A titre documentaire, ces coefficients sont actuellement fixés comme suit:

| Années | Coefficients applicables |
|---|---|
| 1918 et antérieures | 16,33 |
| 1919 | 11,49 |
| 1920 | 6,15 |
| 1921 | 6,30 |
| 1922 | 6,43 |
| 1923 | 4,37 |
| 1924 | 3,89 |
| 1925 | 4,02 |
| 1926 | 2,72 |
| 1927 à 1934 incluse | 2,35 |
| 1935 | 1,86 |
| 1936 à 1943 incluse | 1,70 |
| 1944 à 1948 incluse | 1,14 |
| 1949 | 1,10 |
| 1950 et suivantes | 1,— |

comme devant présenter une certaine durée. Aucun délai n'a cependant été fixé.
Le texte vise, en fait, «une activité industrielle exercée à travers une participation prépondérante». Cette expression utilisée au cours de l'élaboration de la loi, décrit à la fois la situation que le législateur avait en vue, et le motif pour lequel il crée en sa faveur une exception.

## IV – IMPUTATION DE LA DÉDUCTION.

17. – Les modalités techniques d'application de l'impôt des sociétés impliquent la distinction, dans l'assiette de cet impôt, de quatre groupes d'éléments:

a) les bénéfices réservés;
b) les dépenses réellement effectuées, mais non admises en déduction du bénéfice fiscal et qui sont donc rajoutées au bénéfice comptable;
c) les émoluments des administrateurs, commissaires et personnes assimilées, dans la mesure où ces émoluments sont soumis à l'impôt des sociétés (on désigne généralement ce groupe par le mot «tantièmes», mais ce terme n'a qu'une valeur approximative et ne peut être utilisée que sous certaines réserves);
d) les bénéfices distribués, ou dividendes.

18. – Il est important de savoir sur lequel de ces éléments sera imputée la déduction des «revenus définitivement taxés», déductibles en vertu de l'article 111. Certains éléments peuvent, en effet, bénéficier d'un autre régime d'immunisation, et le taux de l'impôt des sociétés peut, sur base de la même subdivision, présenter de légères différences.
Le législateur y a pourvu en précisant que la déduction s'opérera dans l'ordre suivant: 1° sur les dividendes; 2° sur les dépenses non admises; 3° sur les tantièmes, et 4° sur les bénéfices réservés. Chaque groupe ne vient en ligne de compte que pour l'excédent laissé par l'imputation sur le groupe précédent (code des impôts sur le revenu, art. 111, § 2).
Une règle d'imputation analogue existe en cas de dividendes puisés dans les réserves d'années antérieures. Les dividendes seront prélevés par préférence sur les réserves formées au moyen des dividendes en question («revenus définitivement taxés»), tandis que les prélèvements sur réserves opérés à d'autres fins seront imputés, dans la mesure des montants disponibles, sur les réserves d'autres origines.
Il va de soi que l'application de ces règles nécessite la tenue d'un relevé des réserves, indiquant l'origine des différents montants qui les composent. Ceci fait l'objet de dispositions règlementaires trop détaillées pour être reproduites ici.
On remarquera cependant que les règles d'imputation énoncées ci-dessus sont favorables aux contribuables, puisque les revenus définitivement taxés sont affranchis non seulement de l'impôt des sociétés, mais aussi du précompte mobilier au moment de leur redistribution.

## V – MODALITÉS D'APPLICATION.

19. – Application I – Dividendes et bonis de liquidation de sociétés belges, perçus par une autre société belge.
D'une façon simplifiée, on peut présenter comme suit l'application des règles exposées plus haut:

| | |
|---|---|
| – Une société industrielle a réalisé des bénéfices, représentés ici par le chiffre ..... | 100 |
| – Sur ces bénéfices, elle paie l'impôt des sociétés. Le tarif de base est de 30% affecté de certaines majorations ou d'additionnels réduits au bénéfice des pouvoirs locaux ..... | –30 |
| – Il reste disponible pour la distribution (en principe) ..... | 70 |
| – La distribution de ce solde comme | |

| | |
|---|---|
| dividende rend exigible un précompte mobilier de 20% ..... | 14 |
| Reste ..... | 56 |

Supposons que ce bénéfice soit distribué à une autre société dont l'activité est celle d'une holding.

Celle-ci, qui perçoit un dividende net de 56, peut déduire ce dividende de son bénéfice à concurrence de 90%, soit (il n'y aura pas de différence selon que ces «revenus définitivement taxés» soient constitués de dividendes ou de bonis de liquidation). 50,4

- Elle redistribue le même montant à ses actionnaires.
- L'actionnaire – personne physique – qui reçoit un dividende net de ..... 50,4

devra payer l'impôt des personnes physiques sur ce montant majoré du précompte mobilier (20%) soit ..... 12,6
et du crédit d'impôt, fixé par la loi à 15/70 du dividende brut (soit 15/70 × 63) 13,5
Il devra donc payer l'impôt des personnes physiques sur: 76,5

Mais sur l'impôt ainsi calculé, il sera imputé d'abord le crédit d'impôt (dont l'excédent éventuel n'est pas remboursable), ensuite le précompte mobilier (dont l'excédent éventuel est remboursable).

Ce schéma, bien connu des praticiens sur le plan interne de la fiscalité belge, peut faciliter l'exposé de ce qui se pratique lorsque des éléments étrangers entrent en jeu.

20. – Application II: les dividendes et bonis proviennent d'une société étrangère.

Dans les données qui suivent, il est fait abstraction de certaines divergences pouvant résulter des conventions bilatérales, conclues en vue d'éviter la double-imposition. Seul le droit commun des revenus étrangers est pris en considération.

Le bénéfice provenant de sociétés étrangères, que peut recueillir une société belge (holding dans notre hypothèse) est imposé d'abord dans le pays d'origine de ces bénéfices, et d'après la législation de ce pays.

21. – Pour le régime fiscal belge de ces bénéfices, il faut faire une distinction entre les dividendes et les bonis de liquidation. Ceux-ci, provenant de sociétés étrangères, n'ont pas subi le régime de l'article 118 de notre code, et ne sont donc pas visés par l'article 111, § 1, reproduit plus haut (n° 8). Ils subissent donc l'impôt belge des sociétés selon le droit commun. Par contre, en ce qui concerne les dividendes, on a vu que l'article 111 ne fait aucune distinction. Le schéma d'application est donc le suivant:

- la société belge qui les perçoit devra acquitter de ce chef un précompte mobilier réduit à 10% (article 88 de l'arrêté royal du 4 mars 1965);
- le dividende étranger net, précompte mobilier déduit, sera ensuite compris dans la masse des «revenus définitivement taxés» qui doivent, en vertu de l'article 113 (n° 14 ci-dessus), être ramenés à 90 ou 95% de leur montant;
- cette opération effectuée, les dividendes étrangers sont, en même temps et de la même façon que les dividendes d'origine belge, attribués aux actionnaires en franchise de précompte mobilier.

L'actionnaire payera l'impôt des personnes physiques sur le dividende ainsi perçu, en ajoutant à son revenu et en imputant sur son impôt le précompte mobilier et le crédit d'impôt, de la même façon que pour le dividende belge.

On peut souligner en passant la libéralité dont le législateur belge a fait preuve dans ce cas, puisque ce système aboutit à imputer, au bénéfice de l'actionnaire, et même éventuellement à rembourser un impôt que le Trésor national n'a jamais perçu.

22. – Application III: Le dividende est

perçu par une société étrangère, ayant un établissement stable en Belgique.
L'hypothèse visée ici est celle où le revenu est, au premier échelon, recueilli par l'établissement belge d'une société étrangère (N.B. S'il n'y a pas d'établissement stable en Belgique, le revenu échappe définitivement à l'application du droit fiscal belge, et les mesures de notre législation tendant à éviter la double imposition, ne peuvent plus avoir aucun effet.)
Les bénéfices obtenus en Belgique par un de ces établissements sont soumis à l'impôt des non-résidents lorsqu'ils sont soit produits, soit recueillis en Belgique (art. 140, § 2, 2°). Tel est nécessairement le cas s'ils proviennent de sociétés belges, s'ils sont encaissés en Belgique, ou s'ils entrent dans la comptabilité de l'établissement belge en question.
L'établissement belge en question sera d'autre part soumis à l'impôt (taux en principal 35%) sur l'ensemble de son bénéfice, compte tenu des diverses règles applicables à l'impôt des sociétés (art. 142). Ceci comprend notamment l'application de l'article 111 et la déduction des revenus définitivement taxés.

23. – Cependant, l'établissement belge ne paie pas de dividende: il transfère son bénéfice, tel quel, à l'établissement principal étranger dont il dépend et d'où seront payés les dividendes éventuels.
Il ne peut donc être question de voir «transiter» ces éléments du revenu par l'établissement belge, pour qu'ils connaissent leur régime fiscal définitif dans le chef d'un bénéficiaire ultérieur. L'impôt payé par l'établissement belge en question sur l'ensemble de son bénéfice, compte tenu de la déduction indiquée, marquera donc le point final de l'application du régime fiscal belge.
Si le dividende versé par la maison-mère étrangère de cette société revenait, pour une certaine partie, à l'un ou l'autre actionnaire belge, ce dividende serait imposé dans le chef de ce dernier au régime commun des revenus d'origine étrangère, sans qu'il soit tenu compte de quelque façon que ce soit de l'origine partiellement belge du revenu ainsi distribué.

24. – Application IV: Le bénéficiaire final (personne physique) n'est pas résident en Belgique.
Dernière hypothèse: les dividendes ou bonis de liquidation, déductibles selon les schémas exposés aux cas d'application I et II, sont ensuite versés par la seconde société à des actionnaires qui ne résident pas en Belgique.
Ici, le mécanisme fiscal est extrêment simple. La société qui paie le dividende n'a pas à se préoccuper de l'identité du bénéficiaire. Dans la plupart des cas, les actions étant au porteur, elle ne pourrait d'ailleurs pas être renseignée à ce sujet. Elle paie par conséquent en franchise de précompte mobilier ses dividendes provenant de revenus définitivement taxés, selon les règles et dans la mesure indiquées plus haut.
Cependant ces dividendes qui n'ont pas fait l'objet d'une imposition effective au deuxième échelon, vont de pair avec un droit d'imputation de précompte mobilier et de crédit d'impôt selon les règles de droit commun. Rien n'est changé à ces règles dans les cas qui nous occupent.
Par conséquent, si l'actionnaire en question se trouve être imposable en Belgique à l'impôt des non-résidents et sur la base d'un revenu globalisé (par exemple s'il a en Belgique une habitation ou en établissement professionnel), il sera imposable sur l'ensemble de son revenu au taux progressif des personnes physiques, mais pourra imputer sur cet impôt le même précompte mobilier et le même crédit d'impôt que l'actionnaire résident.
Si au contraire cet actionnaire n'est pas autrement imposable en Belgique, l'impôt dû par lui sur ce dividende correspondra au précompte et crédit d'impôt, sans qu'il ait de supplément à acquitter, ni d'excédent à récupérer (art. 150).

I. CLAEYS BOUUAERT:

# PARENT COMPANIES AND SUBSIDIARIES UNDER BELGIAN TAX LAW

## I – GENERAL INTRODUCTORY CONCEPTS

1. – The Belgian tax system, like that of most other countries, provides for a progressive tax on total income of individuals, and a proportional tax on company profits (30% in principle). It also provides, and this is somewhat unusual, for a „special contribution" on the surplus distributed on liquidation of a company, after repayment to the shareholders, of the capital subscribed.

Relief from the double taxation of company profits resulting from the successive charging on these profits of company tax and tax paid by individuals is given by allowing the latter a „tax credit" equal to 15/70ths of the gross dividend.

The double taxation resulting from the transfer of profits by a company to another company, in the form of dividends, is the subject of an „income from income" deduction, described below.

2. – Before beginning this description, it should be recalled that dividends constitute only one of the forms under which the profits of one company may be transferred to another.

This form is no doubt the most widespread and best known. But others exist, the range of which is infinite: a company may sell its products, at a price which only just covers its production costs, to an associate company which operates as a sales agency; an industrial company may undertake liability for certain expenditure affecting an associate company, created for example for the purpose of surveying certain markets, organising research, utilising by-products, providing certain services, etc. The profits may be transferred in the form of rents, royalties, interest on loans, etc. Conversely, the profit transfers may result from favourable rents or loans at reduced interest rates.

3. – No doubt the profits of companies are always destined to be transferred. A company exists only by the will of individuals and for the purpose of the benefits which it can provide to them.

Moreover the business world creates companies of an increasingly diversified nature. Originally constituted in order to combine financial means the company has become in certain cases a means of dividing them. Some companies are set up in order to create a legal division between enterprises which are economically bound together. On the scale of the small enterprise, the creation of companies has become a means of insulating the private capital holding from the risks of operation. For international enterprises, the creation of specialised companies facilitates adaptation to the economic law and commercial customs of the countries in which they operate. In many other cases they assist either the specialisation of work or a more effective distribution of the capital. However their creation is always directed towards the advantages which it can procure for individuals. It is natural that this situation should give rise to circumstances and also forms of transfers, which are very varied.

4. – The Belgian legal system presents, with regard to this situation, a double characteristic. On the one hand it adheres strictly to the principle that the legal personality of companies should be respected, thus excluding consolidated balance sheets and the various forms of transfers other than dividends.

On the other hand, it avoids to a large extent the double taxation which may affect dividends.

At first sight this duality in the solutions adopted seems to reveal a certain contradiction in the attitude taken by Belgian tax legislation with regard to the legal personality of companies. In fact however the contradiction is no more than apparent: the respect of the legal personality of companies by Belgian legislation is total, perhaps even excessive. But this respect does not exclude certain measures aimed at alleviating the double or treble taxation which may affect company profits.

5. – On the other hand, transfers of the second group – i.e. in a form other than that of dividends – are treated by the tax legislation with a certain reprobation. No law makes provision for them. No regulation, so far as they are concerned, reduces the cumulative liability of successive taxes. On the contrary, if they are discovered by the Administration they are penalised in the sense that the benefit transferred will bear the full tax charge by the recipient company, while the company transferring it will find itself taxed on the same benefit as a non-deductible transfer.

The result is that these transfers are usually secret; the only regulations relating to them have moreover the object of strengthening the powers of the Administration in order to eliminate them.

In addition, the legislation and the Administration have understandably shown very special vigilance with regard to transfers in the second group which are made at the international level. Various regulations tend to penalise these operations to the extent that they have the effect of transferring a taxable asset abroad.

6. – Thus, for each of the two groups of transfers there is not only a different legislative solution but also a quite different legislative climate. The payment of dividends is a known operation, presenting little that is unexpected. Its legal mechanism is simple and its economic effects are important and respectable. On the other hand, irregular transfers present an infinite variety of circumstances; they meet limited objectives which are little known outside and often unstated. This variety itself makes it very difficult to work out a tax system which would be applicable to them as a whole. One could wish however that the legislator, without opening the door to tax evasions, might study the whole of these problems more deeply. The legal personality of companies is a fiction which it is dangerous, in fiscal matters, to push to its extreme consequences. The legislator admits it so far as dividends are concerned. Could it not also recognise in the taxation field certain other characteristics of groups of companies?

7. – The system prescribed by the law may present certain differences according to whether joint stock companies or partnerships are concerned.

These latter are very numerous. But their importance at the level of international affairs is almost nil.

To avoid over-burdening this study, the differences which concern them have therefore been omitted.

## II – GENERAL THEORY OF „INCOME FINALLY TAXED"

8. – The Belgian tax system regarding dividends paid by one company and received by another company is governed by Article 111 of the Income Tax Code.

In its principal part, the law allows them to be deducted from the profits subject to company tax, to the extent that they are:

1) Income on shares or capital invested . . .

2) the surplus provided by sums obtained in the cases referred to in Articles 118, 120 and 123, over the investment or cost value of shareholders' rights in companies whose assets are totally or partially distributed . . . The first category above relates, in a broad sense, to dividends (whether they are of Belgian or foreign origin); the second to surpluses arising from liquidation of Belgian companies.

9. – *Origin:* The above law dates from 1962. But the deduction for which it provides was not new at that time. Under the previous system dividends paid by a company were subject to a tax[1], which was retained by the company at source, but constituted a tax on the income of the shareholder. In addition, if these dividends were received by another company, it did not have to subject them to a new tax deduction in the event of distribution.
The system in force in Belgium before 1962 did not include a specific tax on company profits. The legal system was based on the idea that these profits reached their true destination only in relation to an individual. The legislation of 1962 wished to maintain the equilibrium of existing economic circumstances. In introducing a company tax into Belgian tax law, it took various measures to relieve the double taxation liability which would result from this on dividends and distributed profits. Individuals benefiting from this distribution were allowed a tax credit calculated in such a way as to offset, in principle, half the company tax. So far as companies are concerned, it made provision for the deduction referred to in Article 111 quoted above.

10. – *General principle – Dividends:* The basic idea of this system is that the same profit should not bear company tax several times in succession. Since the profit has borne this tax in respect of the company which distributed the first dividend, the company which has received this dividend and will re-distribute it in its turn does not, so far as it is concerned, either pay company tax or make the "prepayment"[2] deduction a second time. According to an expression which is often used, the dividend distributed by the first company is "in transit" free of tax through the second company, before reaching the shareholder – for whom it will constitute income in the full sense of the word.

11. – *Liquidation surpluses:* So far as concerns the surplus distributed by a company in liquidation, after repayment to the shareholders of the capital subscribed, the legal system reflects a slightly different intention. A judgment of the Supreme Court of Appeal, dating from before the fiscal reform of 1962, (judgment of 20 March 1956), had stressed the fact that these surpluses do not accord with the concept of income. In drafting the legislation this opinion was accepted and these surpluses were exempted from personal income tax.
It was however considered that these surpluses constitute a latent taxable item related to income, whether the liquidated company distributes its previous reserves or whether it transfers to its shareholders the surpluses achieved in the course of its liquidation. Consequently, these surpluses were made subject to a special contribution assessed and levied against the company itself. This system is laid down by articles 118 et seq. of the Income Tax Code.
This "special contribution" thus constitutes a special tax, distinct both from company tax and from the income tax of the shareholder, and destined to replace the latter.
The object of the system required that these surpluses should also be made exempt from tax when the shareholder is another com-

1. "taxe mobilière".
2. "précompte mobilier".

pany. This is the object of 2 of Article 111, first paragraph, reproduced above. It is also the reason why the legal advantage has been limited to Belgian companies, since the system of Article 118 et seq. could not apply to foreign companies.

### III – LIMIT OF THE AMOUNT DEDUCTIBLE

12. – The system described above has, in its practical application, certain special features. It is emphasized first of all that Belgian legislation, unlike that in other countries, does not lay down any limit on the participation in respect of which the dividend is deductible. Whether company B holds a single share in company A or whether it holds all the shares except six (Belgian law stipulates a minimum of 7 shareholders for a joint stock company) the dividend will be deductible on the same basis and to the same extent.

The same rule applies to surpluses on liquidation.

On the other hand, the amount deductible will always be slightly less than the net dividend actually paid. The percentage excluded from this benefit is, according to circumstances, 5% or 10% of the net dividend, i.e. the deduction is limited to 90% or 95%.

13. – The origin of this limitation also goes back to the period before 1962. The legislation then in force had also limited the "income from income" deduction, in relation to three requirements:

a) the shares on which dividends already taxed were paid had to have been held by the taxpayer during the whole of the year envisaged: this was to avoid the artificial inflation of deductible dividends by the manoeuvre of purchasing shares just before the dividend payment and selling them again immediately afterwards.

b) these shares must have been purchased from the taxpayer's own funds and not from borrowed funds; if they had been purchased from borrowed funds the deductible dividend had to be reduced by the amount of the financial charges.

c) a certain proportion of the general administrative costs of the enterprise had to be spread over the dividends.

The application of these rules, particularly with regard to the financial charges, had given rise to numerous complications. The legislation decided to replace the whole system by a fixed deduction. In determining this, account was taken of the fact that financial charges and purchase and sale transactions are considerably more numerous in companies whose activity is centred on management of a portfolio than in companies operating an industry or trade. Consequently, the deductible proportion was fixed at 90% for the first type of company and 95% for the second.

14. – This rule is laid down in Article 113 of the Tax Code, in the following terms:

"The income referred to in Article 111, paragraph 1,1 . . . is deemed to be part of the taxable profits to the extent of 95% of the net amounts paid. . . .

"The surpluses referred to in Article 111, 1, 2, are deemed to be part of the taxable profits to the extent of 95% of their value.

"2. However, the proportion of 95% referred to in 1, is reduced to 90% for enterprises which hold participations of an investment value exceeding 50%, either of the share capital actually paid up, remaining to be repaid, revalued if appropriate in accordance with Article 119, or of the share capital actually paid up and remaining to be repaid, plus taxed reserves and surpluses accounted for. The value of the participations and the amount of the share capital, reserves

and surpluses, are taken at the date of closure of the balance sheet of the company holding the participations.

"To determine whether the limit of 50% is exceeded no account is taken of active and permanent participations which represent at least 75% of the capital of the issuing company."

15. – The concrete application of this provision may be illustrated by a few examples.

A. Balance sheet including in the assets a shares portfolio of 50 million. Dividends and liquidation surpluses will be deductible at 95% if one of the following two hypotheses is fulfilled:

a) the capital and reserves appearing in the liabilities of the balance sheet exceed 100 million. The "reserves" must include surpluses accounted for and also contingency accounts, profits carried forward, or other similar items.

b) the capital alone (without the reserves this time), increased according to the coefficients of revaluation of Article 119[3], exceeds 100 million.

This will be the case, for example, if the capital is 40 million, but was subscribed in 1930: since the coefficient applicable is 2.35 the revalued capital will be 94 million, or more than one-half of 100 million. The capital to be taken into account as a basis of this calculation must have been subscribed in outside assets, i.e. it cannot include either reserves transferred to capital or industrial investments.

B. Balance sheet showing in the assets an investment portfolio of 75 million, subdivided as follows:

- 25 million in shares in one or more companies in which the participation is "active and permanent" and exceeds 75%;
- 50 million in shares of other companies.

Dividends and liquidation surpluses will be deductible at 95% if one of the hypotheses described above is fulfilled with regard to the second part of the portfolio. In other words, it will again suffice here if either the capital and reserves or the revalued capital exceeds 100 million.

The dividends and liquidation surpluses are deductible at 90% if neither of the hypotheses described is fulfilled.

16. – The words "active and permanent participation" which appear in the last subparagraph of Article 113 above, relate to participations in what are currently called subsidiary companies. These participations are "active" when the parent company does not restrict itself simply to collecting the financial proceeds, but is also involved in their management, for example by being represented on the Board of Directors of the subsidiary company by some of its own directors. The investment is regarded as "permanent" if it was conceived, in the intention of the investor, as lasting for a certain period. No minimum time has however been laid down.

The law in fact refers to "an industrial activity exercised through a preponderant

---

3. For reference, these coefficients are at present fixed as follows:

| Year | Coefficients applicable |
|---|---|
| 1918 and before | 16.33 |
| 1919 | 11.49 |
| 1920 | 6.15 |
| 1921 | 6.30 |
| 1922 | 6.43 |
| 1923 | 4.37 |
| 1924 | 3.89 |
| 1925 | 4.02 |
| 1926 | 2.72 |
| 1927 to 1934 inclusive | 1.86 |
| 1935 | 1.70 |
| 1936 to 1943 inclusive | 1.70 |
| 1944 to 1948 inclusive | 1.14 |
| 1949 | 1.10 |
| 1950 and later | 1.– |

participation". This expression, which was used in the course of drafting of the law, describes both the situation which was in mind and the reason for which an exception in its favour was created.

## IV – CHARGING OF THE DEDUCTION

17. – The technical procedure for application of company tax involves a distinction, so far as this tax is concerned, among four groups of items:

a) retained profits;
b) expenditure actually incurred, but not admitted in deduction from the taxable profit and therefore added to the accounting profit;
c) the emoluments of directors, auditors and similar persons, to the extent to which these emoluments are subject to company tax (this group is normally described by the words "attendance fees", but this term is only approximate and can only be utilised subject to certain reservations);
d) distributed profits or dividends.

18. – It is important to know against which of these items will be charged the deduction of "income finally taxed" deductible by virtue of Article 111. Certain items can in fact benefit from other exemption rules and the rate of company tax can, on the basis of the same sub-division, present slight differences.
The legislation has made provision for this by stipulating that the deduction will operate in the following order: 1) on dividends; 2) on non-admissible expenditure; 3) on attendance fees; and 4) on retained profits. Each group is taken into account only in relation to the surplus left after charging against it, the previous group (Income Tax Code, Article 111, 2).
A similar rule exists in the case of dividends paid from reserves for previous years. The dividends will be charged for preference against reserves formed by means of the dividends in question, ("finally taxed income"), whereas deductions from reserves operated for other purposes will be charged, to the extent of the amounts available, against reserves of other origins.
It goes without saying that the application of these rules makes it necessary to keep a statement of the reserves, indicating the origin of the various amounts of which they are made up. This is the subject of regulations which are too detailed to be reproduced here.
It will be noted however that the rules described above are favourable to the taxpayer, since income finally taxed is free not only of company tax but also of tax deduction at the time of its redistribution.

## V – PROCEDURE FOR APPLICATION

### 19 – Application I – Dividends and liquidation surpluses of Belgian Companies received by another Belgian Company

In a simplified form the application of the rules explained above may be presented as follows:

| | |
|---|---|
| – An industrial company has achieved profits, represented here by the figure ..... | 100 |
| – On these profits it pays company tax. The basic tariff is 30% subject to certain increases or additional reliefs for the benefit of local authorities ..... | –30 |
| – There remains available for distribution (in principle) ..... | 70 |
| – The distribution of this balance as dividend is subject to a prior tax deduction of 20% ..... | 14 |
| Balance ..... | 56 |

Let us assume that this profit is distributed to another company whose activity is that of a holding company.

This company, which receives a net dividend of 56, may deduct this dividend from its profit to the extent of 90%, i.e. ..... 50.4
(it makes no difference whether this "finally taxed income" consists of dividends or liquidation surpluses).
- It redistributes the same amount to its shareholders.
- The shareholder, a natural person, who receives a net dividend of..... 50.4
- must pay personal income tax on this amount plus the "prepayment" (20%) i.e..... 12.6
- and the tax credit, fixed by the law at 15/70ths of the gross dividend (i.e. 15/70 × 63) ..... 13.5
- He must therefore pay personal income tax on ..... 76.5

But from the tax thus calculated will be deducted first the tax credit (any excess amount of which is not repayable) and secondly, the "prepayment" (any excess amount of which is repayable).
This outline, which is well known to tax experts in Belgium, may facilitate the explanation of how the system is applied when outside elements are involved.

20. – Application II: dividends and surpluses derived from a foreign company

The following explanation takes no account of certain divergencies which may result from bilateral agreements concluded in order to avoid double taxation. Only the common law on foreign income is taken into consideration.
The profit derived from foreign companies, which may include a Belgian company (a holding company under our hypothesis) is taxed, first of all, in the country of origin of these profits and according to the legislation of that country.

21. – In the Belgian fiscal system applicable to these profits a distinction must be made between dividends and liquidation surpluses. The latter, when derived from foreign companies, are not subject to Article 118 of our Code, and are not therefore affected by Article 111, paragraph 1, reproduced above (paragraph 8). They are therefore subject to Belgian company tax under common law. On the other hand, so far as dividends are concerned, it has been seen that Article 111 makes no distinction. The application procedure is therefore as follows:
- the Belgian company which receives the dividends must pay in this respect a prior tax deduction reduced to 10% (Article 88 of Royal Decree of 4 March 1965);
- the net foreign dividend, after deducting the "prepayment", will then be included in the "finally taxed income" which must, by virtue of Article 113 (paragraph 14 above) be reduced to 90% or 95% of its amount.
- when this operation has been effected, the foreign dividends are, at the same time and in the same way as dividends of Belgian origin, allocated to shareholders free of "prepayment".

The shareholder will pay personal income tax on the dividend thus received, adding to his income and taking into account in his tax the "prepayment" and the tax credit, in the same way as for Belgian dividends.
Attention should be drawn in passing to the generosity which Belgian legislation shows in this case, since this system finishes by allowing for the benefit of the shareholder, and possibly even reimbursing, a tax which the National Treasury has never received.

22. – Application III: The dividend is received by a foreign company which has a stable establishment in Belgium

The hypothesis taken here is that in which

the income is, at the first stage, received by the Belgian establishment of a foreign company (N.B. If there is no stable establishment in Belgium, the income escapes the application of Belgian tax law and the measures of our legislation aimed at avoiding double taxation cannot have any effect).

The profits obtained in Belgium by one of these establishments are subject to non-residents tax when they are produced or received in Belgium (Article 140, 2, 2). This is necessarily the case if they come from Belgian companies, if they are received in Belgium, or if they are included in the accounts of the Belgian establishment in question.

The Belgian establishment in question will also be subject to tax (principal rate 35%) on the whole of its profits, taking account of the various rules applicable to company tax (Article 142). This includes in particular the application of Article 111, and the deduction of finally taxed income.

23. – However, the Belgian establishment does not pay any dividend: it transfers its profits, as such, to the principal foreign establishment on which it is dependent and by which any dividends will be paid.

There can therefore be no question of regarding these items of income as passing "in transit" through the Belgian establishment in such a way that the final tax assessment is in respect of a subsequent beneficiary.

The tax paid by the Belgian establishment in question on the whole of its profits, taking account of the deduction indicated, will thus mark the final point of application of the Belgian tax system.

If part of the dividend paid by the foreign parent of this company should come back to one or more Belgian shareholders, they would be subject to tax on this dividend under the ordinary system applicable to income of foreign origin, without any account being taken of the fact that the income thus distributed is partially of Belgian origin.

24. – Application IV: The final beneficiary (a natural person) is not resident in Belgium.

Final hypothesis: The dividends or liquidation surpluses, deductible under the procedures explained in the cases of Applications I and II, are subsequently paid by the second company to shareholders who do not reside in Belgium.

Here the fiscal mechanism is extremely simple.

The company which pays the dividend does not have to concern itself with the identity of the beneficiary. In most cases, since the shares would be bearer shares, it could not in any case be informed on this subject. Consequently, it pays, free of prior tax deduction, its dividends derived from finally taxed income, according to the rules and to the extent indicated above.

However, these dividends which have not been the subject of effective taxation at the second stage, run in parallel with a right of allowance for the "prepayment" and tax credit according to the rules of common law. Nothing in these rules is changed in the cases which concern us.

Consequently, if the shareholder in question is subject in Belgium to non-residents tax and on the basis of total income (for example, if he has a residence or professional establishment in Belgium) he will be assessed on the whole of his income at the progressive rate for individuals, but may claim allowance from this tax of the same "prepayment" and the same tax credit as a resident shareholder.

If, on the contrary, this shareholder is not otherwise taxable in Belgium, the tax due by him on this dividend will correspond to the "prepayment" and tax credit, without payment of any supplement or recovery of any surplus (Article 150).

I. CLAEYS BOUUAERT:

# OBER- UND UNTERGESELLSCHAFTEN IM BELGISCHEN STEUERRECHT

## I. ALLGEMEINE EINLEITENDE BEGRIFFE

1. Das belgische Steuersystem sieht – wie das der meisten übrigen Staaten – eine progressive Steuer auf das gesamte Einkommen der natürlichen Personen und eine proportionale Steuer auf Gesellschaftsgewinne (grundsätzlich 30%) vor. Es sieht weiterhin – und das ist ungewöhnlich – eine „Sonderabgabe" auf den Überschuß nach Auflösung einer Gesellschaft vor, der verteilt wird, nachdem das gezeichnete Kapital an die Aktionäre zurückgezahlt wurde.

Eine Erleichterung von der Doppelbesteuerung der Gesellschaftsgewinne, die sich aus der aufeinanderfolgenden Besteuerung dieser Gewinne mit Körperschaftsteuer und Einkommensteuer natürlicher Personen ergibt, wird dadurch erreicht, daß von letzterer ein Steuerguthaben in Höhe von 15/70 der Bruttodividende abgezogen werden kann.

Die Doppelbesteuerung, die sich infolge Übertragung von Gewinnen in Form von Dividenden von einer Gesellschaft auf eine andere ergibt, ist Gegenstand eines Abzuges bei „Einkommen von Einkommen", der unten dargestellt werden soll.

2. Vor dieser Beschreibung wird daran erinnert, daß Dividenden nur eine der Möglichkeiten sind, Gewinne von einer Gesellschaft auf eine andere zu übertragen.

Diese Art ist zweifellos die verbreitetste und bekannteste. Es gibt jedoch noch andere Arten. Ihre Auswahl ist unbegrenzt: Eine Gesellschaft kann ihre Erzeugnisse zu einem eben die Herstellungskosten deckenden Preis an eine Schwestergesellschaft verkaufen, die als Verkaufsvertretung arbeitet; ein Industrieunternehmen in der Form einer Gesellschaft kann die Haftung für die Kosten einer Schwestergesellschaft übernehmen, die beispielsweise zu dem Zweck gegründet worden war, bestimmte Märkte zu erforschen, Forschung zu betreiben, Nebenprodukte zu verwerten, bestimmte Leistungen zu erbringen usw. Die Gewinne können in Form von Mieten, Lizenzgebühren, Darlehnszinsen usw. übertragen werden. Umgekehrt können die Übertragungen aus vergünstigten Mieten oder Darlehen zu ermäßigten Zinssätzen bestehen.

3. Zweifellos sind Gewinne von Gesellschaften immer dazu bestimmt, übertragen zu werden. Eine Gesellschaft existiert nur durch den Willen von natürlichen Personen und zu dem Zwecke, ihnen Vorteile zukommen zu lassen.

Außerdem entstehen in der Geschäftswelt Gesellschaften von zunehmend vielfältigerer Natur. Ursprünglich wurden sie gegründet, um finanzielle Mittel zusammenzufassen. In manchen Fällen verfolgen sie dagegen den Zweck, diese Mittel zu trennen. Manche Gesellschaften werden gegründet, um eine rechtliche Trennung zwischen Unternehmen zu schaffen, die wirtschaftlich aneinander gebunden sind. Bei kleinen Unternehmen ist die Errichtung von Gesellschaften zu einer Möglichkeit geworden, das private Vermögen vom Betriebsrisiko fernzuhalten. Für internationale Unternehmen erleichtert die Gründung spezialisierter Gesellschaften eine Anpassung an Wirtschaftsrecht und Handelsbräuche der Länder, in denen sie tätig sind. In vielen anderen Fällen fördern sie entweder die Arbeitsspezialisierung oder eine wirksamere Kapitalverteilung. Ihre Gründung ist jedoch immer auf die Vorteile ausgerichtet,

die sie natürlichen Personen verschaffen können.
Es ist natürlich, daß sich aus dieser Lage heraus Umstände und Formen der Übertragung ergeben, die sehr unterschiedlich sind.
4. Das belgische Recht nimmt in Hinblick auf diese Lage eine Doppelstellung ein. Einerseits hält es strikt an dem Prinzip fest, daß die Rechtspersönlichkeit von Gesellschaften zu respektieren ist, was gemeinsame Bilanzen und die verschiedenen Formen von Übertragung mit Ausnahme der Dividenden ausschließt. Andererseits vermeidet es weitgehend eine Doppelbesteuerung, die sich auf Dividenden auswirken kann.
Auf den ersten Blick scheint diese Zweigleisigkeit der Lösungen einen gewissen Widerspruch in der Haltung der belgischen Steuergesetzgebung zur Rechtsstellung der Gesellschaften aufzudecken. Tatsächlich ist der Widerspruch jedoch nur scheinbar: die Respektierung der Rechtspersönlichkeit von Gesellschaften durch die belgische Gesetzgebung ist vollkommen, vielleicht sogar übertrieben. Diese Respektierung schließt jedoch bestimmte Maßnahmen nicht aus, die darauf gerichtet sind, die doppelte oder dreifache Besteuerung zu erleichtern, welche die Gesellschaftsgewinne trifft.
Andererseits behandelt die Steuergesetzgebung Übertragungen der zweiten Gruppe – d.h. in anderer Form als der von Dividenden – mit gewissem Mißtrauen. Kein Gesetz befaßt sich mit ihnen. Keine Vorschrift mindert bei ihnen die mehrfache Belastung durch nachfolgende Steuern. Im Gegenteil: Bei Aufdeckung durch die Verwaltung werden die Steuerpflichtigen dadurch bestraft, daß der übertragene Betrag bei der Empfängergesellschaft zum vollen Satz du versteuern ist, während die übertragende Gesellschaft den gleichen Betrag ebenfalls versteuern muß, da er keine abzugsfähige Ausgabe darstellt.
Die Folge ist, daß solche Übertragungen heimlich vorgenommen werden. Die einzigen Vorschriften, die sich auf sie beziehen, haben den Sinn, die Befugnisse der Verwaltung zu erweitern, um diese Übertragungen auszuschließen.
Außerdem haben Gesetzgebung und Verwaltung verständlicherweise eine besondere Wachsamkeit bei Übertragungen der zweiten Gruppe gezeigt, die auf internationaler Ebene vorgenommen werden. Verschiedene Vorschriften hemmen diese Geschäfte in einem solchen Ausmaß, daß sie in ihren Wirkungen der Überführung steuerpflichtiger Vermögenswerte ins Ausland gleichkommen.
6. So gibt es für jede der beiden Gruppen von Übertragungen nicht nur eine unterschiedliche gesetzliche Lösung, sondern auch ein sehr unterschiedliches Gesetzgebungsklima. Die Zahlung von Dividenden ist ein bekannter Vorgang. Sie bringt wenig Unerwartetes. Der gesetzliche Mechanismus ist einfach, und die wirtschaftlichen Auswirkungen sind von ansehnlicher Bedeutung. Andererseits bieten unregelmäßige Übertragungen eine Vielzahl von Umständen. Sie entsprechen begrenzten Zielen, die nach außen hin wenig bekannt und anerkannt sind. Ihre Vielfaltigkeit erschwert die Schaffung eines Steuersystems, das auf sie im ganzen anzuwenden wäre.
Es bliebe jedoch zu wünschen, daß der Gesetzgeber sich mit der Gesamtheit dieser Probleme intensiver befaßt, ohne die Tür zur Steuerumgehung zu öffnen. Die Rechtspersönlichkeit der Gesellschaften ist eine Fiktion. Es ist gefährlich, sie in steuerlichen Dingen zu äußersten Konsequenzen zu zwingen. Der Gesetzgeber duldet sie, soweit es um Dividenden geht. Könnte er nicht auf dem Gebiet des Steuerrechts auch gewisse andere Merkmale von Gesellschaftsgruppierungen anerkennen?
7. Das Gesetz macht bisweilen gewisse Un-

terschiede zwischen Aktiengesellschaften und Personengesellschaften.
Die letzteren sind sehr zahlreich. Ihre Bedeutung auf internationalem Gebiete ist jedoch fast gleich null.
Um eine Überlastung dieser Arbeit zu vermeiden, werden die Unterschiede daher nicht behandelt.

## II. ALLGEMEINE THEORIE DER „ENDGÜLTIG BESTEUERTEN EINKÜNFTE"

8. *Gesetzestext* Im belgischen Steuerrecht wird die Zahlung von Dividenden durch eine Gesellschaft an eine andere Gesellschaft in Artikel 111 des Einkommensteuergesetzes geregelt. Artikel 111 gestattet ihren Abzug von körperschaftsteuerpflichtigen Gewinnen, soweit sie darstellen:
„1) Einkünfte aus Aktien oder Kapitalanlagen. . . ."
„2) den Überschuß, der in den in Artikel 118, 120 und 123 genannten Fällen erlangt wurde, über den Anlage- oder Anschaffungswert von Gesellschafterrechten an Gesellschaften, deren Vermögen ganz oder teilweise verteilt worden ist. . . ."
Die erste Gruppe bezieht sich im weiteren Sinne auf Dividenden (gleichgültig, ob sie belgischen oder ausländischen Ursprungs sind); die zweite auf Überschüsse aus der Auflösung belgischer Gesellschaften.
9. *Entstehung* Das oben genannte Gesetz stammt aus dem Jahre 1962. Der Abzug, den es vorsieht, war zu der Zeit jedoch nicht neu. Nach dem vorangehenden System unterlagen die von einer Gesellschaft gezahlten Dividenden einer Steuer („taxe mobilière"), die die Gesellschaft an der Quelle einbehielt, die jedoch eine Steuer auf das Einkommen des Aktionärs darstellte. Wurden diese Dividenden an eine andere Gesellschaft gezahlt, so brauchte diese sie keinem erneuten Steuerabzug zu unterziehen, wenn sie sie ausschüttete.
Das in Belgien vor 1962 geltende Recht enthielt keine spezielle Steuer auf Gesellschaftsgewinne. Es beruhte auf dem Gedanken, daß diese Gewinne ihre wirkliche Bestimmung erst dann erreichten, wenn sie an eine natürliche Person gelangten.
Der Gesetzgeber im Jahre 1962 wollte das Gleichgewicht der bestehenden wirtschaftlichen Ordnung aufrechterhalten. Bei Einführung einer Körperschaftsteuer in das belgische Steuerrecht ergriff er verschiedene Maßnahmen, um die Last der Doppelbesteuerung zu erleichtern, die sich daraus für Dividenden und Gewinnausschüttungen ergab. Natürliche Personen, denen die Ausschüttungen zugute kamen, erhielten ein Steuerguthaben, welches so berechnet wurde, daß sie im Prinzip die halbe Körperschaftsteuer abziehen konnten. Was Gesellschaften anbetraf, so wurde ein Abzug in dem oben genannten Artikel 111 vorgesehen.
10. *Allgemeiner Grundsatz – Dividenden* Grundgedanke dieses Systems ist, daß der gleiche Gewinn nicht mehrmals hintereinander Körperschaftsteuer tragen soll. Da der Gewinn bereits bei der Gesellschaft versteuert wurde, die die erste Dividende ausschüttete, braucht die Gesellschaft, die die Dividende empfangen hat und sie weiter ausschüttet oder behält, kein zweites Mal Körperschaftsteuer zu zahlen oder einen „Vorauszahlungs"-Abzug („précompte mobilier") vorzunehmen. Mit einem oft verwendeten Ausdruck ist die von der ersten Gesellschaft ausgeschüttete Dividende „beim Durchlaufen" der zweiten Gesellschaft steuerbefreit, ehe sie den Aktionär erreicht, eine natürliche Person, für die sie Einkommen im wahrsten Sinne des Wortes darstellt.
11. *Überschüsse aus Liquidation* Hinsichtlich des Überschusses, den eine in Liquidation befindliche Gesellschaft ausschüttet, nach-

dem sie den Aktionären das gezeichnete Kapital zurückgezahlt hat, bringt das Gesetz eine leicht abweichende Haltung des Gesetzgebers zum Ausdruck.
Ein Urteil des obersten Revisionsgerichts aus der Zeit vor der Steuerreform 1962 (Urteil vom 20. März 1956) hatte betont, daß diese Überschüsse sich nicht mit dem Begriff des Einkommens decken. Im Gesetzentwurf wurde diese Auffassung übernommen, und die Überschüsse wurden von der Einkommensteuer natürlicher Personen befreit.
Es wurde jedoch erwogen, daß diese Überschüsse einen latent zu besteuernden Posten darstellen, der sich auf das Einkommen bezieht. Dabei ist gleichgültig, ob die aufgelöste Gesellschaft ihre früheren Reserven ausschüttet, oder ob sie an ihre Aktionäre die im Laufe der Liquidation erzielten Überschüsse zahlt. Infolgedessen belegte man diese Überschüsse mit einer besonderen Abgabe, die der Gesellschaft selbst auferlegt wurde. Dieses Verfahren enthalten die Artikel 118ff des Einkommensteuergesetzes.
Diese „besondere Abgabe" stellt eine Sondersteuer dar, die sich sowohl von der Körperschaftsteuer als auch von der Einkommensteuer des Aktionärs unterscheidet und die letztere ersetzen soll.
Die Logik des Systems verlangte, daß auch diese Überschüsse von der Steuer befreit werden, wenn der Aktionär eine andere Gesellschaft ist. Diese Regelung enthält der oben wiedergegebene Artikel 111 Absatz 2,1. Satz. Das ist auch der Grund dafür, daß diese gesetzliche Vergünstigung auf belgische Gesellschaften beschränkt wurde. Artikel 118ff könnten nämlich nicht auf ausländische Gesellschaften angewendet werden.

## III. BEGRENZUNG DES ABZUGSFÄHIGEN BETRAGES

12. Das vorstehend beschriebene System hat in der praktischen Anwendung einige Besonderheiten aufzuweisen.
Zunächst ist zu betonen, daß das belgische Recht – abweichend von dem anderer Länder – keine Mindestbeteiligung als Voraussetzung für einen Dividendenabzug vorsieht. Gleichgültig, ob die Gesellschaft B nur eine einzige Aktie der Gesellschaft A besitzt, oder ob ihr alle Aktien bis auf sechs gehören (das belgische Recht verlangt mindestens 7 Aktionäre bei einer Aktiengesellschaft), ist die Dividende auf der gleichen Grundlage und in gleichem Umfang abzugsfähig.
Dies gilt auch für Überschüsse aus Liquidationen.
Andererseits ist der abzugsfähige Betrag immer etwas niedriger als die tatsächlich gezahlte Nettodividende. Der von dieser Vergünstigung ausgeschlossene Prozentsatz beträgt 5% oder 10% der Nettodividende, d.h., der Abzug ist auf 90% oder 95% begrenzt.
13. Die Grundlagen für diese Begrenzung liegen ebenfalls in der Zeit vor 1962. Die damals geltenden Gesetze hatten ebenfalls den Abzug von „Einkünften von Einkünften" durch drei Voraussetzungen beschränkt:
a) Die Aktien, auf die die bereits versteuerten Dividenden gezahlt wurden, mußte der Steuerpflichtige während des ganzen betreffenden Jahres in seinem Besitz gehabt haben. Dadurch sollte eine künstliche Inflation von abzugsfähigen Dividenden vermieden werden, die sich durch den Kauf von Aktien unmittelbar vor Zahlung der Dividenden und ihren Verkauf unmittelbar danach hätte ergeben können.
b) Die Aktien mußten aus eigenen Mitteln und nicht mit geliehenen Geldern gekauft worden sein. Wurden sie mit Fremdmitteln erworben, so war die abzugsfähige Dividende um den Betrag der Finanzierungskosten zu verringern.
c) Ein bestimmter Anteil an den allgemeinen

Verwaltungskosten des Unternehmens war auf die Dividenden anzurechnen.
Die Anwendung dieser Regeln hatte, insbesondere hinsichtlich der Finanzierungskosten, zu zahlreichen Schwierigkeiten geführt. Der Gesetzgeber entschied sich deshalb dafür, das ganze System durch einen pauschalen Abzug zu ersetzen. Bei Festsetzung dieser Pauschale wurde berücksichtigt, daß Finanzierungskosten und Einkaufs- und Verkaufsgeschäfte in erheblich größerem Umfang bei vermögensverwaltenden Gesellschaften anfallen als bei Gesellschaften der Industrie und des Handels. Der abzugsfähige Anteil wurde daher für Gesellschaften des ersten Typs auf 90% und für solche des zweiten Typs auf 95% festgesetzt.
14. Diese Vorschrift wurde in folgender Weise in Artikel 113 des Steuergesetzes niedergelegt:
„Die in Artikel 111 Absatz 1 Nr. 1 genannten Einkünfte werden bis zu 95% der gezahlten Nettobeträge als Teil der zu versteuernden Gewinne angesehen. . . .
Die in Artikel 111 Absatz 1 Nr. 2 genannten Überschüsse werden bis zu 95% ihres Wertes als Teil der zu versteuernden Gewinne angesehen.
2. Der in Absatz 1 genannte Verhältnissatz von 95% verringert sich jedoch auf 90% bei einem Unternehmen, dessen Besitz an Aktien und sonstigen Beteiligungen einen Wert von mehr als 50% entweder seines eingezahlten, nicht zurückgezahlten und möglicherweise gemäß Artikel 119 neu bewerteten Stammkapitals hat, oder seines eingezahlten und nicht zurückgezahlten Stammkapitals plus versteuerter Reserven und buchmäßig nachgewiesener Überschüsse. Der Wert des Besitzes an Aktien und sonstigen Beteiligungen und das Stammkapital sowie der Ansatz der Reserven und Überschüsse sind auf den Bilanzstichtag der die Beteiligungen besitzenden Gesellschaft zu errechnen.
Für die Feststellung, ob die Grenze von 50% überschritten wurde, sind aktive und dauerhafte Beteiligungen außer Ansatz zu lassen, die wenigstens 75% des Stammkapitals der die Beteiligung ausgebenden Gesellschaft betragen."
15. Die Anwendung dieser Bestimmungen im Einzelfall kann anhand einiger Beispiele gezeigt werden.
A. Die Bilanz enthält in den Aktiven einen Posten Aktien von 50 Millionen. Dividenden und Überschüsse aus einer Liquidation sind zu 95% abzugsfähig, wenn eine der folgenden Voraussetzungen erfüllt ist:
a) Das Kapital und die auf der Passivseite der Bilanz erscheinenden Reserven übersteigen 100 Millionen. Die „Reserven" müssen die buchmäßig nachgewiesenen Überschüsse, die Konten für „unvorhergesehene Ausgaben" und vorgetragene Gewinne oder ähnliche Posten enthalten.
b) Das Kapital allein (diesmal ohne die Reserven), erhöht entsprechend dem in Artikel 119 genannten[1] Neubewertungs-Koeffizienten, übersteigt 100 Millionen.
Dies ist beispielsweise dann der Fall, wenn

1. Als Hinweis: Die Koeffizienten sind zur Zeit wie folgt festgesetzt:

| Jahr | Anzuwendender Koeffizient |
|---|---|
| 1918 und früher | 16,33 |
| 1919 | 11,49 |
| 1920 | 6,15 |
| 1921 | 6,30 |
| 1922 | 6,43 |
| 1923 | 4,37 |
| 1924 | 3,89 |
| 1925 | 4,02 |
| 1926 | 2,72 |
| 1927 bis 1934 einschl. | 2,35 |
| 1935 | 1,86 |
| 1936 bis 1943 einschl. | 1,70 |
| 1944 bis 1948 einschl. | 1,14 |
| 1949 | 1,10 |
| 1950 und später | 1,— |

das Kapital 40 Millionen beträgt aber im Jahre 1930 gezeichnet wurde: Der anzuwendende Koeffizient beträgt 2,35, das neu bewertete Kapital 94 Millionen, also mehr als die Hälfte von 100 Millionen. Dieser Berechnung darf nur solches Kapital zugrundegelegt werden, das von außen zugeführt worden war, d.h., es dürfen darin keine auf das Kapital übertragenen Reserven oder Anlagen der Industrie enthalten sein.

B. Die Bilanz enthält in den Aktiven einen Anlageposten von 75 Millionen, unterteilt wie folgt:

- 25 Millionen Aktien einer oder mehrerer Gesellschaften, an denen eine „aktive und dauerhafte" Beteiligung von über 75% besteht,
- 50 Millionen Aktien anderer Gesellschaften.

Dividenden und Überschüsse aus einer Liquidation sind zu 95% abzugsfähig, wenn eine der vorhergehend beschriebenen Voraussetzungen in Hinblick auf den zweiten Teil des Anlagepostens verliegt. Mit anderen Worten: Es genügt auch hier wieder, wenn entweder Kapital plus Reserven oder das neu bewertete Kapital 100 Millionen übersteigt. Die Dividenden und Überschüsse aus einer Liquidation sind zu 90% abzugsfähig, wenn keine der beschriebenen Voraussetzungen erfüllt wird.

16. Die Worte „aktive und dauerhafte Beteiligung" im letzten Unterabsatz von Artikel 113 beziehen sich auf Beteiligungen an neuerdings so genannten Untergesellschaften. Diese Beteiligungen sind „aktiv", wenn sich die Obergesellschaft nicht allein darauf beschränkt, ihre finanziellen Interessen wahrzunehmen, sondern wenn sie sich auch an deren Geschäftsführung beteiligt, z.B. dadurch, daß sie durch einige ihrer Direktoren im Vorstand der Untergesellschaft vertreten ist. Die Beteiligung wird als „dauerhaft" angesehen, wenn sie nach der Vorstellung des Anlegenden für eine gewisse Zeit andauern soll. Eine Mindestzeit ist jedoch nicht festgesetzt.

Das Gesetz bezieht sich auf eine „gewerbliche Tätigkeit, die durch eine überwiegende Beteiligung ausgeübt wird". Dieser Satz, der im Laufe des Gesetzgebungsverfahrens verwendet wurde, bezeichnet sowohl die Situation, von der man ausging, als auch den Grund für die Schaffung einer begünstigenden Ausnahmeregelung.

## IV. BERECHNUNG DES ABZUGES

17. Das technische Verfahren bei der Veranlagung zur Körperschaftsteuer unterscheidet zwischen vier Gruppen:

a) nicht ausgeschüttete Gewinne;
b) tatsächlich entstandene Kosten, die steuerlich nicht als abzugsfähig anerkannt und daher dem ermittelten Gewinn hinzugerechnet werden;
c) Vergütungen an Direktoren, Revisoren und ähnliche Personen, soweit sie der Körperschaftsteuer unterliegen. (Diese Gruppe wird häufig als „Tantiemen" bezeichnet. Dieser Ausdruck ist jedoch nur annähernd richtig und kann nur mit Einschränkungen gebraucht werden);
d) ausgeschüttete Gewinne und Dividenden.

18. Es ist wichtig zu wissen, gegen welchen dieser Posten der gemäß Artikel 111 vorgesehene Abzug „endgültig besteuerter Einkünfte" vorzunehmen ist. Gewisse Posten können durch andere Ausnahmeregelungen begünstigt werden, und der Körperschaftsteuersatz kann folglich bei gleicher Unterteilung geringfügige Abweichungen aufweisen.

Der Gesetzgeber hat insoweit Vorsorge getroffen, indem er bestimmte, daß der Abzug in dieser Reihenfolge vorgenommen wird: 1. von Dividenden; 2. von nicht abzugsfähigen Kosten; 3. von Tantiemen und 4. von

nicht ausgeschütteten Gewinnen. Jede Gruppe wird nur insoweit in Betracht gezogen, als aus der Verrechnung mit der vorangehenden Gruppe ein Überschuß geblieben ist (Artikel 111,2 Einkommensteuergesetz).
Eine ähnliche Regelung gilt für den Fall, daß Dividenden aus Reserven für vorangehende Jahre gezahlt werden. Die Dividenden werden in erster Linie mit den Reserven verrechnet, die aus den betreffenden Dividenden gebildet worden sind („endgültig besteuerte Einkünfte"). Dagegen werden Abzüge von Reserven, die für andere Zwecke gebildet wurden, nur insoweit vorgenommen, als noch Beträge zur Verfügung stehen, und zwar gegen Reserven, die anderswoher stammen.
Es braucht nicht erwähnt zu werden, daß die Anwendung dieser Vorschriften notwendigerweise eine kontenmäßige Darstellung der Reserven voraussetzt, die den Ursprung der verschiedenen Beträge aufzeigt, aus denen sich die Reserven zusammensetzen. Dies ist Gegenstand von Vorschriften, die zu sehr ins einzelne gehen, um hier wiedergegeben zu werden.
Es ist jedoch zu beachten, daß die beschriebenen Regelungen für den Steuerzahler günstig sind, denn endgültig besteuerte Einkünfte sind nicht nur von Körperschaftsteuer befreit, sondern auch von einem Steuerabzug bei ihrer Ausschüttung.

## V. VERFAHREN DER PRAKTISCHEN ANWENDUNG

### 19. Anwendungsfall I – Dividenden und Liquidationsüberschüsse belgischer Gesellschaften fließen einer anderen belgischen Gesellschaft zu

In vereinfachter Form kann die praktische Anwendung der oben beschriebenen Regelungen folgendermaßen dargestellt werden:

- Eine Gesellschaft (Industrieunternehmen) hat Gewinne erzielt von beispielsweise ..... 100
- Auf diese Gewinne zahlt sie Körperschaftsteuer. Der Grundtarif beträgt 30%, unterliegt jedoch bestimmten Zuschlägen oder zusätzlichen Abzügen für die Gemeinden. –30
- Es verbleiben für Ausschüttung (im Prinzip) ..... 70
- Die Ausschüttung dieses Saldo als Dividende unterliegt einem Vorauszahlungsabzug von 20% ..... 14

Saldo ..... 56

Angenommen, dieser Gewinn wird an eine andere Gesellschaft – eine Holdinggesellschaft – ausgeschüttet.
Diese Gesellschaft, die eine Nettodividende von 56 erhält, kann die Dividende von ihrem Gewinn bis zu 90% absetzen d.h. ..... 50,4
(es macht keinen Unterschied, ob diese „endgültig besteuerten Einkünfte" aus Dividenden oder Liquidationsüberschüssen bestehen).

- Sie schüttet den gleichen Betrag an ihre Aktionäre aus.
- Der Aktionär, eine natürliche Person, die eine Nettodividende von . 50,4 erhält,
- muß persönliche Einkommensteuer auf diesen Betrag zahlen, erhöht um den Vorauszahlungsabzug (20%), nämlich ..... 12,6
- und um das Steuerguthaben, das gesetzlich auf 15/70 der Bruttodividende festgelegt is (also 15/70× 63) ..... 13,5
- Er hat daher persönliche Einkommensteuer zu zahlen auf ..... 76,5

Von der so berechneten Steuer wird jedoch

erstens das Steuerguthaben abgezogen (ein Überschuß daraus ist nicht rückzahlbar) und zweitens der Vorauszahlungsabzug (ein Überschuß daraus ist rückzahlbar).

Dieser Überblick, der den Steuerfachleuten in Belgien geläufig ist, erleichtert die Beschreibung von Anwendungsfällen, in denen Auslandsbeziehungen eine Rolle spielen.

20. Anwendungsfall II: Dividenden und Überschüsse stammen von einer ausländischen Gesellschaft

Die folgende Beschreibung berücksichtigt nicht die Abweichungen, die sich aus zweiseitigen Abkommen zur Vermeidung von Doppelbesteuerung ergeben. Es wird nur das allgemeine Recht zu ausländischen Einkünften behandelt.

Der Gewinn aus ausländischen Gesellschaften, der einer belgischen Gesellschaft (im vorliegenden hypothetischen Fall einer Holdinggesellschaft) zufließt, wird zunächst in seinem Ursprungsland entsprechend den dortigen Gesetzen besteuert.

21. Im belgischen Steuerrecht besteht – soweit es auf solche Gewinne zur Anwendung kommt – ein Unterschied zwischen Dividenden und Liquidationsüberschüssen. Die letzteren unterliegen, wenn sie aus dem Ausland stammen, nicht Artikel 118 des Gesetzes und damit auch nicht dem oben (Abschnitt 8) wiedergegebenen Artikel 111 Absatz 1. Sie unterliegen nach den allgemeinen Bestimmungen daher der belgischen Körperschaftsteuer. Andererseits ergab sich, daß Artikel 111 keine solche Unterscheidung bei Dividenden vornimmt. Das Verfahren der praktischen Anwendung verläuft daher wie folgt:

- die belgische Gesellschaft, die die Dividenden erhält, muß insoweit einen Vorauszahlungsabzug, vermindert auf 10%, zahlen (Artikel 88 des königlichen Erlasses vom 4. März 1965);
- die ausländische Nettodividende wird dann – nach Verringerung um den Vorauszahlungsabzug – in die "endgültig versteuerten Einkünfte" eingeschlossen. Diese sind gemäß Artikel 113 (oben Abschnitt 14) auf 90% oder 95% des Betrages zu vermindern;
- danach werden die ausländischen Dividenden zu gleicher Zeit und auf die gleiche Weise wie Dividenden belgischen Ursprungs frei von einem Vorauszahlungsabzug den Aktionären ausgezahlt.

Der Aktionär zahlt persönlich Einkommensteuer auf die so erhaltene Dividende, wobei der Vorauszahlungsabzug und das Steuerguthaben in gleicher Weise wie bei belgischen Dividenden seinem Einkommen hinzu gerechnet werden.

Bei dieser Gelegenheit ist die Großzügigkeit des belgischen Rechts zu beachten, die in diesem Fall zum Ausdruck kommt. Das Steuersystem gestattet dem Aktionär die Anrechnung und möglicherweise sogar Erstattung einer Steuer, die dem Fiskus niemals zugeflossen ist.

22. Anwendungsfall III: Die Dividende fließt einer ausländischen Gesellschaft zu, die in Belgien eine Betriebstätte besitzt

In diesem hypothetischen Fall werden die Einkünfte zunächst von der belgischen Betriebstätte einer ausländischen Gesellschaft in Empfang genommen. (Befindet sich keine Betriebstätte in Belgien, so unterliegt dieser Fall nicht dem belgischen Steuerrecht, und die Maßnahmen unserer Gesetzgebung zur Vermeidung von Doppelbesteuerung können nicht zur Anwendung kommen.)

Die Gewinne, die eine solche Betriebstätte in Belgien erzielt, unterliegen der Einkommensteuer der beschränkt Steuerpflichtigen, wenn sie in Belgien erworben oder entgegengenommen werden (Artikel 140,2,2). Dies ist notwendigerweise dann der Fall, wenn sie aus belgischen Gesellschaften stammen, in

Belgien entgegengenommen werden oder in den Konten der betreffenden belgischen Betriebstätte geführt werden.
Die belgische Betriebstätte unterliegt auch mit ihren gesamten Einkünften der Steuer (hauptsächlicher Satz 35%), wobei die verschiedenen für Körperschaftsteuer geltenden Vorschriften zu beachten sind (Artikel 142). Dazu gehört insbesondere die Anwendung von Artikel 111 und der Abzug von endgültig besteuerten Einkünften.
23. Die belgische Betriebstätte zahlt jedoch keine Dividenden. Sie überträgt die Gewinne als solche auf das ausländische Unternehmen, von dem sie abhängig ist. Dieses Unternehmen schüttet Dividenden aus.
Die Einkünfte können daher zweifellos nicht als „durchlaufender Posten" bei der belgischen Betriebstätte mit der Folge angesehen werden, daß die endgültige Veranlagung für den nachfolgenden Empfänger gilt. Die von der belgischen Betriebstätte auf die gesamten Einkünfte gezahlten Steuern, bei denen die genannten Abzüge berücksichtigt wurden, bilden den Schlußpunkt für die Anwendung des belgischen Steuerrechts.
Kommt ein Teil der Dividenden, die die ausländische Obergesellschaft ausschüttet, zu einem oder mehreren belgischen Aktionären zurück, so unterliegen diese der Steuer auf Dividenden nach den allgemeinen Vorschriften, die für Einkünfte ausländischen Ursprungs gelten. Dabei wird außer acht gelassen, daß die ausgeschütteten Einkünfte teilweise belgischen Ursprungs sind.
24. Anwendungsfall IV: Der endgültige Empfänger (eine natürliche Person) ist nicht in Belgien ansässig Letzter Fall: Die Dividenden oder Liquidationsüberschüsse, die gemäß dem in Anwendungsfall I und II beschriebenen Verfahren abzugsfähig sind, werden anschließend von der zweiten Gesellschaft an Aktionäre gezahlt, die nicht in Belgien ansässig sind.
Hierbei ist das steuerliche Verfahren äußerst einfach.
Die Dividenden ausschüttende Gesellschaft braucht nicht die Identität des Empfängers festzustellen. In den meisten Fällen könnte sie keine Informationen darüber erhalten, da die Aktien auf den Inhaber lauten. Folglich zahlt sie ihre Dividenden, die aus endgültig besteuerten Einkünften stammen, frei von dem Vorauszahlungsabzug nach den Vorschriften und dem Umfang wie oben beschrieben.
Diese Dividenden, die keiner tatsächlichen Besteuerung in der zweiten Stufe unterlegen haben, laufen jedoch parallel zu dem Recht auf Anrechnung für „Vorauszahlungsabzüge" und zu dem Steuerguthaben nach den Vorschriften des allgemeinen Rechts. Nichts ist in den Vorschriften für die hier interessierenden Fälle anders geregelt.
Wenn folglich der Aktionär in Belgien der Einkommensteuer der beschränkt Steuerpflichtigen unterliegt, und zwar auf der Grundlage der gesamten Einkünfte (z.B., wenn er in Belgien ansässig ist oder eine berufliche Unternehmung betreibt), wird er auf seine gesamten Einkünfte zu einem progressiven Satz für natürliche Personen besteuert. Er kann jedoch von seiner Steuer den gleichen Vorauszahlungsabzug und das gleiche Steuerguthaben abziehen wie ein ansässiger Aktionär.
Wird der Aktionär dagegen im übrigen in Belgien nicht besteuert, so entspricht die von ihm für diese Dividende geschuldete Steuer dem Vorauszahlungsabzug und dem Steuerguthaben. Zuschläge sind nicht zu zahlen, und ein Überschuß kann nicht erstattet werden (Artikel 150).

JOSEPH BUBLOT*:

# LES MESURES UNILATERALES DESTINEES A EVITER LA DOUBLE IMPOSITION DES REVENUS EN BELGIQUE

Comme dans la plupart des pays économiquement développés, la législation belge relative aux impôts sur les revenus est basée sur le principe de la territorialité, appliqué dans ses deux aspects classiques: la territorialité des personnes, suivant laquelle les résidents (personnes domiciliées dans le pays) sont imposés sur l'ensemble de leurs revenus qu'elle qu'en soit la source, et la territorialité des revenus, en vertu de laquelle tous les revenus recueillis dans le pays, même par des non-résidents, sont frappés par l'impôt.

L'application de ce principe sur le plan mondial contient le germe des doubles impositions internationales, puisque les revenus recueillis dans un pays par une personne domiciliée dans un autre pays seront normalement assujettis à l'impôt dans les deux Etats.

L'intensification des échanges commerciaux et des mouvements d'investissements internationaux a amené la Belgique, comme d'ailleurs beaucoup d'Etats étrangers, à prendre dès le début du 20ème siècle, des mesures unilatérales en vue d'atténuer les effets de la double imposition internationale.

Dans deux cas, les mesures d'atténuation concernent des revenus recueillis en Belgique par des entreprises de non-résidents: bénéfices de la navigation maritime ou aérienne en trafic international – bénéfices obtenus à l'intervention d'un simple collecteur de commandes[1].

Mais les dispositions de loin les plus importantes se rapportent aux revenus étrangers recueillis par des résidents belges, c'est-à-dire par des personnes physiques ou par des sociétés ayant leur domicile fiscal en Belgique. La présente étude portera essentiellement sur ces dispositions, au sujet desquelles il faut souligner d'abord qu'elles s'appliquent de plein droit, sans que soit exigée une quelconque réciprocité de la part de l'Etat étranger d'où proviennent les revenus bénéficiant en Belgique des mesures d'atténuation.

Traditionnellement, la Belgique a remédié à la double imposition internationale suivant une méthode forfaitaire, en accordant à ses résidents des réductions d'impôt en ce qui concerne leurs revenus étrangers. Déjà avant l'instauration des impôts sur les revenus, la législation de 1906 sur le droit de patente réduisait ce droit au quart du montant normal en ce qui concerne les entreprises exploitées à l'étranger par des résidents belges. Ce système de réductions forfaitaires a été transposé dans la loi de 1919 instaurant les impôts sur les revenus et il a été repris, avec d'importants aménagements dans la loi de réforme fiscale du 20 novembre 1962.

---

* Directeur au Ministère des Finances, à Bruxelles, Professeur à l'Ecole supérieure des sciences fiscales, à Bruxelles.

1. Article 141 C.I.R. (Code des impôts sur les revenus):

«Dans les revenus visés à l'article 140, § 1er, ne sont pas compris:

«. . . . . .

5° sous condition de réciprocité, les bénéfices qu'une entreprise étrangère non visée à l'article 140, § 2, 3°, b, retire en Belgique, soit d'opérations traitées à l'intervention d'un représentant qui se borne à y recueillir les ordres de la clientèle et à les lui transmettre sans l'engager, soit de l'exploitation de navires ou d'aéronefs dont elle est propriétaire ou affréteur et qui font escale en Belgique pour y charge r ou y décharger des marchandises ou des passagers».

*Note:* L'article 140, § 2, 3°, b, vise les assureurs étrangers qui recueillent habituellement en Belgique des contrats autres que des contrats de réassurance.

Les mesures actuellement en vigueur en Belgique sont de trois ordres:

- application de taux réduits à la moitié (Impôt des personnes physiques) ou au quart (Impôt de sociétés), en ce qui concerne les revenus immobiliers d'origine étrangère ainsi que les revenus professionnels réalisés et imposés à l'étranger;
- imputation de la quotité forfaitaire d'impôt étranger, fixée à 15% des revenus imposables, en ce qui concerne les dividendes recueillis par des personnes physiques et les intérêts ou redevances industrielles recueillis par des personnes physiques ou par des sociétés;
- assujettissement au seul précompte mobilier de 10% des dividendes étrangers recueillis par des sociétés résidentes de la Belgique.

Avant d'analyser chacune de ces mesures, il importe de noter que, d'une manière générale, les revenus d'origine étrangère recueillis par des résidents belges ne sont imposables qu'à raison de leur montant diminué de l'impôt étranger, lequel constitue donc une charge déductible en vue de la détermination du revenu passible de l'impôt belge.

### I. – APPLICATION DE TAUX RÉDUITS D'IMPÔT DES PERSONNES PHYSIQUES (1/2) OU D'IMPÔT DES SOCIÉTÉS (1/4)

L'impôt des personnes physiques est réduit de moitié[2] et l'impôt des sociétés est réduit au quart de son montant normal[3], en tant que ces impôts s'appliquent:

- aux revenus immobiliers d'origine étrangère;
- aux revenus professionnels réalisés et imposés à l'étranger (par revenus professionnels, on entend: les bénéfices d'exploitations industrielles, commerciales ou agricoles – les rémunérations et salaires – les tantièmes, jetons de présence, etc, des administrateurs et commissaires de sociétés par actions – les profits des professions libérales, charges ou offices).

Pour les *revenus immobiliers,* aucune condition particulière n'est exigée: il suffit que les revenus soient d'origine étrangère, c'est-à-dire qu'ils se rapportent à des biens immobiliers sis à l'étranger.

Par contre, pour les *revenus professionnels,* la loi exige une double condition:

- les revenus doivent être réalisés à l'étranger (voir ci-après)
- ils doivent avoir été imposés à l'étranger: suivant la jurisprudence administrative, cette conditon est considérée comme remplie si les revenus ont subi régulièrement la charge fiscale du pays d'origine, même s'il s'agit de taxation forfaitaire ou indirecte, ou encore si les bénéfices sont indubitablement d'origine étrangère (par exemple bénéfices réalisés dans un établissement stable étranger).

Notion de «bénéfices réalisés à l'étranger»:

La loi ne contient pas de règles précises à cet égard, mais la jurisprudence administrative retient des critères analogues à ceux qui prévalent lorsqu'il s'agit de définir les revenus

---

2. Article 88, C.I.R. – Est réduite de moitié, la partie de l'impôt qui correspond proportionnellement:
1° aux revenus de propriétés foncières sises à l'étranger;
2° aux revenus professionnels visés à l'article 20 qui ont été réalisés et imposés à l'étranger, à l'exclusion des revenus et produits de capitaux et biens mobiliers, lorsque ces avoirs sont investis dans un établissement dont le contribuable dispose en Belgique.

3. Article 128, C.I.R. – Est réduite au quart la partie de l'impôt qui correspond proportionnellement aux revenus d'origine étrangère visés à l'article 88, 1° et 2°.

d'origine belge, imposables dans le chef de contribuables non-résidents.
Il faut donc distinguer suivant les diverses catégories de revenus professionnels.
Pour les *rémunérations des appointés et salariés,* le critère déterminant est le lieu d'exercice de l'activité (qui est également retenu dans les conventions préventives de la double imposition: cfr article 15, § 1, de la convention modèle O.C.D.E.). Les rémunérations sont donc considérées comme des revenus d'origine étrangère lorsque le bénéficiaire exerce son activité à l'étranger, même si les revenus sont pris en charge par une entreprise belge.
La source des *tantièmes, jetons de présence,* et rétributions similaires des administrateurs et commissaires de sociétés par actions, est considérée comme se trouvant dans l'Etat du siège social de la société qui les alloue.
Quant aux *profits des professions libérales,* charges ou offices, ils sont d'origine étrangère lorsqu'ils sont recueillis à l'intervention d'un établissement (bureau, cabinet de consultation, etc.) situé à l'étranger; mais d'une manière plus générale, eu égard à la définition donnée aux revenus similaires d'origine belge imposables dans le chef de contribuables non-résidents[4], on devrait également considérer ces profits comme des revenus étrangers s'ils se rapportent à une activité exercée indubitablement à l'étranger par les intéressés et s'ils ont été imposés à l'étranger.
Reste la catégorie la plus importante, celle des *bénéfices industriels, commerciaux ou agricoles.*
Ces bénéfices sont incontestablement d'origine étrangère lorsqu'ils sont recueillis par l'entremise d'un établissement stable à l'étranger ou d'un agent établi à l'étranger et ayant capacité pour engager l'entreprise belge.
Sont de même considérés comme revenus professionnels étrangers les revenus de valeurs mobilières étrangères *investies* dans un établissement étranger, c'est-à-dire faisant partie de l'actif de cet établissement; il en est de même des plus-values obtenues à l'occasion de la cession desdites valeurs ainsi investies.
Constituent également des revenus d'origine étrangère:
- les profits recueillis à l'occasion de la cession d'un siège ou établissement étranger (même si cette cession est négociée et réalisée en Belgique);
- la plus-value obtenue par une entreprise à l'occasion de la vente d'un immeuble situé à l'étranger;
- les revenus provenant de la vente ou de la location de terrains situés à l'étranger.

Sont, par contre, considérés comme revenus d'origine belge les revenus d'opérations traitées directement au siège social belge ou de biens et valeurs investis dans un siège belge. Ainsi, les revenus de valeurs mobilières étrangères investies au siège social belge, c'est-à-dire faisant partie du capital d'exploitation de ce siège, constituent des revenus professionnels belges, taxables en principe au taux plein (sous réserve d'application éventuelle des mesures décrites sub 2 et 3 ci-après).
Constituent également des revenus professionnels d'origine belge:
- les profits de spéculations sur portefeuille de valeurs étrangères détenues au siège belge d'une entreprise;
- les bénéfices réalisés sur la vente à l'étran-

---

4. Article 140, C.I.R.
§ 2 – sont compris dans ces revenus:
. . . . . .
3° les bénéfices ou profits produits à l'intervention d'établissements belges visés au § 3, ainsi que ceux résultant, même sans l'intervention de tels établissements:
. . . . . .
c) de l'activité exercée en Belgique par les bénéficiaires de profits visés à l'article 20, 3°.

ger, d'actions ou de parts de sociétés étrangères investies au siège belge;
- les profits obtenus par une société belge en rachetant au dessous du pair, des obligations émises à l'étranger;
- les bénéfices tirés d'opérations de réassurance, lesquelles se traitent habituellement par le siège social des compagnies.

Règles gouvernant la *compensation des bénéfices et des pertes:*

Les entreprises peuvent donc avoir des bénéfices imposables au taux plein (origine belge) des bénéfices taxables au taux réduit (origine dans des pays étrangers avec lesquels la Belgique n'a pas de convention préventive de la double imposition) et des bénéfices exonérés par convention. Il était donc nécessaire de réglementer la compensation des bénéfices et des pertes lorsque les résultats sont positifs dans certains pays et négatifs dans d'autres.

A cet égard, il y a lieu d'effectuer successivement les opérations suivantes:
- au sein de chacune des trois catégories (Belgique – pays étrangers sans convention – pays étrangers avec convention): amalgamer les bénéfices et les pertes des divers pays appartenant à cette catégorie;
- s'il y a lieu, compenser entre eux les bénéfices et les pertes des deux catégories de pays étrangers («avec» convention et «sans» convention);
- s'il y a des bénéfices étrangers des deux catégories («avec» convention et «sans» convention) sur lesquels des pertes belges sont à imputer: compenser ces pertes par priorité avec les bénéfices des pays étrangers «sans» convention (afin de laisser autant que possible au contribuable le bénéfice de la convention préventive de la double imposition).

Extension de la notion de revenus étrangers dans le cas des associés de sociétés de personnes.

Bien que les sociétés belges de personnes[4a] jouissent de la personnalité juridique, le système de taxation qui leur est appliqué postule une certaine confusion entre l'être juridique et les associés.

Ainsi, les revenus alloués aux associés actifs en rémunération de l'activité déployée dans l'entreprise ne sont pas compris dans la base de l'impôt des sociétés mais sont imposables comme bénéfices dans le chef des associés; au surplus, ces bénéfices sont considérés, au point de vue fiscal, comme ayant la même origine géographique que les bénéfices sociaux au moyen desquels ils sont attribués; il en résulte que dans le cas d'une société de personnes belge ayant un établissement stable à l'étranger, d'où elle tire par exemple un tiers de ses bénéfices, les revenus attribués à un associé actif exerçant son activité exclusivement au siège social belge sont, pour un tiers, considérés comme des revenus réalisés et imposés à l'étranger et sont taxés au taux réduit dans le chef de cet associé; l'imposition au taux réduit fait place à l'exonération lorsque l'établissement stable étranger est situé dans un pays avec lequel la Belgique a conclu une convention préventive de la double imposition.

Si la société belge a opté pour l'assujettissement de ses bénéfices à l'impôt des personnes physiques (auquel cas l'intégralité des bénéfices sociaux, distribués ou non distribués est imposée dans le chef des associés), le taux réduit d'impôt (ou l'exonération en cas d'existence d'une convention de double imposition) s'applique non pas seulement aux rémunérations de l'activité des associés actifs, mais

4a. Sont traitées fiscalement comme sociétés de personnes, les sociétés en nom collectif, les sociétés en commandite simple, les sociétés de personnes à responsabilité limitée et les sociétés coopératives.

à l'intégralité des bénéfices sociaux provenant de l'étranger et qui sont distribués à un titre quelconque ou attribuables aux associés tant actifs que non actifs. Dans ce cas, les associés sont, à tous égards, imposés comme s'ils exploitaient personnellement une entreprise à l'étranger.

### 2. – IMPUTATION DE LA QUOTITÉ FORFAITAIRE D'IMPÔT ÉTRANGER[5]

Il s'agit d'une imputation d'impôt étranger sur l'impôt belge, mais le taux de cette imputation est forfaitaire: quel que soit le taux de l'impôt étranger, l'imputation égale 15% du revenu étranger compris dans le revenu imposable du contribuable belge; comme le revenu étranger n'est imposable qu'à concurrence du montant diminué de l'impôt étranger, c'est donc sur ce montant ainsi diminué que se calcule la quotité forfaitaire d'impôt étranger.

Cette imputation est accordée en ce qui concerne:

- les intérêts et les redevances industrielles («royalties» pour concession de brevets, procédés et formules secrets, marques de fabrique, etc), recueillis tant par des personnes physiques que par des sociétés;
- les dividendes et revenus de capitaux investis recueillis par des personnes physiques (les revenus de l'espèce obtenus par des sociétés suivent le régime décrit sub 3 ci-après).

Ce régime ne s'applique que lorsque les valeurs mobilières ou autres biens productifs des revenus en question sont investis au siège social (belge) ou dans un établissement belge de l'entreprise; lorsque lesdits biens et valeurs sont investis dans un établissement stable étranger, les revenus suivent le régime décrit sub 1 ci-avant.

Condition de taxation à l'étranger: l'imputation de la Quotité forfaitaire d'impôt étranger est subordonnée à la condition que les revenus aient été soumis à l'étranger à un impôt sur le revenu analogue aux impôts belges.

En ce qui concerne les dividendes et revenus de capitaux investis, cette condition est considérée d'office comme remplie, étant donné que dans tous les pays les dividendes distribués par des sociétés résidentes sont normalement imposés, soit comme tels, soit comme partie du bénéfice social.

Quant aux intérêts et redevances industrielles, ils ne donnent lieu à imputation que s'ils ont été effectivement imposés à l'étranger, soit nominativement, soit par voie de retenue à la source; cette condition est considérée comme remplie lorsque l'impôt étranger est pris en charge par le débiteur des revenus.

Pour le surplus, la preuve de l'imposition doit être apportée comme suit:

- pour les intérêts de créances nominatives et les redevances industrielles, il appartient au bénéficiaire des revenus de prouver que ceux-ci ont été effectivement imposés à l'étranger;
- pour les intérêts d'obligations et autres ti-

---

5. Art. 187, C.I.R. – Pour ce qui concerne les revenus et produits de capitaux et biens mobiliers et les revenus divers visés à l'article 67, 4° à 6°, qui ont été soumis à l'étranger à un impôt analogue à l'impôt des personnes physiques, à l'impôt des sociétés ou à l'impôt des non-résidents, l'impôt est en outre diminué d'une quotité forfaitaire à cet impôt étranger.
Art. 195, C.I.R. – La quotité forfaitaire d'impôt étranger déductible en vertu de l'art. 187 est fixée à 15% du montant des revenus recueillis, avant déduction du précompte mobilier.
Art. 196, C.I.R. – Aucune déduction n'est opérée au titre d'impôt étranger en raison:
1° des revenus et produits provenant d'éléments investis dans un établissement dont le bénéficiaire dispose à l'étranger;
2° des revenus d'actions ou parts ou de capitaux investis déduits des bénéfices imposables par application de l'article 111.

tres au porteur, il y a lieu d'avoir égard aux indications portées par la Banque sur le bordereau d'encaissement des coupons; l'administration des contributions directes publie également, à l'usage de ses services, la liste des principales obligations étrangères circulant en Belgique, liste qui indique si les intérêts ont été ou non imposés dans le pays de leur source.

### 3. – RÉGIME APPLICABLE AUX DIVIDENDES ET REVENUS DE CAPITAUX INVESTIS[5a] D'ORIGINE ÉTRANGÈRE RECUEILLIS PAR DES SOCIÉTÉS RÉSIDENTES DE LA BELGIQUE

Les sociétés belges recueillant des dividendes ou revenus de capitaux investis d'origine étrangère sont, de ce chef, passibles du précompte mobilier au taux réduit de 10%[6], alors que le taux normal de précompte mobilier est de 20%. Le précompte est retenu par la banque ou autre intermédiaire belge qui intervient dans le paiement des revenus; lorsque les revenus sont encaissés directement à l'étranger, le précompte est enrôlé en même temps que l'impôt des sociétés afférent aux autres bénéfices sociaux[7].

Le montant net (c'est-à-dire après déduction du précompte mobilier) des dividendes et revenus de capitaux investis étrangers constitue, au même titre que les revenus similaires d'origine belge, des «revenus définitivement taxés» en ce sens que ce montant net est déduit d'abord des bénéfices passibles en principe de l'impôt des sociétés[8] et ensuite, (en vue de la fixation de la base imposable au pré-

---

5a. Dans la terminologie fiscale belge, les revenus de capitaux investis constituent la rémunération du capital allouée à leurs associés, actifs ou non actifs, par les sociétés autres que par actions, désignées habituellement sous le vocable de «sociétés de personnes».

6. Art. 88; A.R. d'exécution du C.I.R. – Le précompte mobilier est perçu au taux de 10 p.c. sur les revenus d'actions ou parts ou de capitaux investis dont le débiteur est une société, association, établissement ou organisme qui n'a pas en Belgique son siège social, son principal établissement ou son siège de direction ou d'administration et dont le bénéficiaire est identifié comme étant une société, association, établissement ou organisme soumis à l'impôt des sociétés conformément aux articles 98 à 102 du Code des impôt sur les revenus.
Cette renonciation reste sans effet en ce qui concerne les revenus visés à l'alinéa 1er qui sont encaissés au profit d'un fonds commun de placement belge ou qui sont compris dans les revenus de certificats de fonds communs de placement étrangers.

7. Art. 164 C.I.R. – Sont redevables du précompte mobilier:
. . . . . .
3° les sociétés, établissements, banquiers, notaires, agents de change, receveurs de rentes, gérants d'affaires et autres qui paient les revenus spécifiés à l'art. 11, 3° et 4°, ou qui en sont débiteurs;
4° les sociétés, établissements, organismes et personnes visés aux 1° à 3° qui précèdent, en ce qui concerne les revenus visés aux art. 11, 5° et 6°, 12, § 1er, 3° et 15, alinéa 2;
5° les bénéficiaires des revenus deduits des bénéfices de la période imposable en vertu de l'art. 111 lorsque ceux qui les paient ou en sont débiteurs ne sont pas établis en Belgique.

8. Art. 111, C.I.R. – § 1er. Des bénéfices imposables sont déduits, dans la mesure où ils s'y retrouvent:
1° Les revenus d'actions ou parts ou de capitaux investis, y compris ceux qui sont visés aux art 12, § 1er, 3°, et 15, al. 2
. . . . . .
Art. 113, C.I.R. – § 1er. Les revenus visés aux art. 111, § 1er, 1°, et 112, sont censés se retrouver dans les bénéfices imposables à concurrence de 95% des montants nets encaissés, éventuellement diminués, lorsqu'il s'agit de revenus visés à l'art. 112, des intérêts bonifiés au vendeur en cas d'acquisition des titres productifs pendant la période imposable.
. . . . . .
§ 2. Toutefois, la quotité de 95% prévue au § 1er est ramenée à 90% pour les entreprises qui détiennent des participations dont la valeur d'investissement excède 50%, soit du capital social réellement libéré restant à rembourser, éventuellement

compte mobilier) des dividendes distribués par la société bénéficiaire à ses propres actionnaires[9].

Le montant net des revenus définitivement taxés correspond à 90 ou 95% des revenus effectivement recueillis, après déduction du précompte mobilier; (le solde (10 ou 5%) est considéré forfaitairement comme absorbé par les charges financières et frais d'administration grevant les revenus définitivement taxés). Dans la plupart des cas, le coefficient multiplicateur est 95%; il n'est que de 90% lorsque la valeur d'acquisition des actions ou parts produisant lesdits revenus dépasse la moitié de l'avoir social de la société bénéficiaire, lequel avoir social est déterminé suivant l'une ou l'autre des deux formules, c'est-à-dire en fait la plus avantageuse pour le contribuable (mais à cette fin, les actions ou parts représentant une participation d'au moins 75% au capital de la société émettrice ne sont pas prises en considération).

Suivant l'article 88 des arrêtés royaux d'exécution du C.I.R., le taux réduit de 10% ne s'applique que lorsque les dividendes étrangers sont recueillis par une société belge *soumise* à l'impôt des sociétés, ce qui exclut les fonds communs de placement belges, ainsi que les sociétés belges de personnes ayant opté pour l'assujettissement de leurs bénéfices à l'impôt des personnes physiques dans le chef de leurs associés. Dans ce dernier cas, le régime décrit ci-avant ne trouve pas à s'appliquer, mais les dividendes étrangers, après avoir été soumis à la retenue du précompte mobilier de 20% s'ils sont encaissés en Belgique, sont imposés dans le chef des associés comme s'ils avaient été recueillis personnellement par ceux-ci (taxation à l'impôt des personnes physiques au taux normal, avec imputation du précompte mobilier éventuel et de la quotité forfaitaire d'impôt étranger: cfr point 2 ci-avant).

Par ailleurs, aux termes de l'article 164, C.I.R., les sociétés belges ne sont personnellement assujetties au précompte mobilier sur leurs dividendes étrangers encaissés directement à l'étranger, que dans la mesure où ces revenus ont été *déduits* des bénéfices de la période imposable conformément à l'article 111 C.I.R.. Dès lors, si le montant net (c'est-à-dire 90 ou 95%) des dividendes étrangers encaissés directement à l'étranger dépasse les bénéfices imposables en principe sur lesquels ce montant net est imputable au titre de revenu définitivement taxé, le précompte mobilier de 10% ne doit être enrôlé que sur un chiffre de dividende qui, multiplié par le coefficient de 90 ou 95%, correspond au montant desdits bénéfices (ou, en d'autres termes, sur un montant égal à $\frac{100}{90}$ ou à $\frac{100}{95}$ des bénéfices sociaux imposables en principe).

Ainsi donc, les dividendes et revenus de capitaux investis étrangers, qui ont subi le précompte mobilier de 10% en raison de leur encaissement, échappent ensuite à toute taxation dans le chef de la société bénéficiaire; ils peuvent aussi, à concurrence du même

---

revalorisé conformément à l'article 119, soit du capital social réellement libéré restant à rembourser, augmenté des réserves taxées et des plus-values comptabilisées. La valeur des participations et le montant du capital social, des réserves et des plus-values sont à envisager à la date de clôture du bilan de la société détentrice des participations.

Pour déterminer si la limite de 50% est dépassée, il n'est pas tenu compte des participations actives et permanentes qui représentent au moins 75% du capital social de la société émettrice.

9. Art. 169, C.I.R. – Le précompte mobilier n'est pas dû sur la partie des revenus d'actions ou parts ou de capitaux investis, . . . .:

. . . . . .

2° qui correspond au montant déduit, par application de l'art. 111, desdits bénéfices distribués;

. . . . . .

montant net, être redistribués aux actionnaires de la société bénéficiaire sans donner ouverture à une nouvelle perception de précompte mobilier.

L'exemption d'impôt des sociétés correspond, dans une certaine mesure, au régime des sociétés mères et filiales (encore appelé «privilège holding») en vigueur dans certains Etats étrangers. Mais le régime belge est plus favorable non seulement en ce tant qu'il s'applique de plein droit aux dividendes tirés de sociétés étrangères, mais aussi parce que, contrairement à la règle qui prévaut habituellement à l'étranger, il n'exige aucun taux minimum de participation, en sorte que même des dividendes d'actions isolées bénéficient de l'exemption.

Un autre aspect extrêmement favorable du système belge réside dans le fait que la perception d'un précompte mobilier de 10% lors de l'encaissement des dividendes étrangers par une société dispense celle-ci de retenir 20% à la redistribution de ces dividendes, alors que l'actionnaire de la société belge garde le bénéfice intégral des imputations et remboursements habituels; moyennant la seule perception du précompte mobilier de 10%, l'actionnaire verra imputer successivement sur son impôt personnel:

a) le crédit d'impôt, égal à 15/85 du dividende imposable, qui vise à remédier à la double imposition économique des dividendes (alors qu'en l'espèce, les dividendes n'ont *pas* été effectivement soumis à l'impôt des sociétés);

b) le précompte mobilier de *20*% (alors que les dividendes n'ont subi en réalité qu'un précompte de 10% lors de l'encaissement par la société).

Comme le précompte mobilier est éventuellement remboursable (à la différence du crédit d'impôt, qui est simplement imputable) l'actionnaire de la société belge ayant un taux d'impôt personnel peu élevé obtiendra donc la *restitution* d'un impôt qui n'a pas été versé au Trésor belge, ni sous une forme, ni sous une autre.

Des conséquences aussi inattendues n'ont pas été recherchées par le législateur. En réalité, le régime décrit ci-avant s'explique essentiellement par des considérations d'ordre historique et politique. Alors que la loi de réforme fiscale du 20 novembre 1962 a remplacé les impôts cédulaires par des impôts synthétiques sur le revenu des sociétés et sur le revenu des personnes physiques, on a simplement transposé dans le nouveau régime le mode de taxation qui s'appliquait auparavant aux dividendes étrangers encaissés par des sociétés.

Dans la philosophie du système belge actuel, où le précompte mobilier a essentiellement, comme son nom l'indique d'ailleurs, le caractère d'une retenue à la source ou d'un paiement à valoir, il ne devrait être perçu que sur les dividendes attribués à des personnes physiques puisque les dividendes, belges ou étrangers, recueillis par des sociétés belges sont exonérés dans leur chef. Mais l'anonymat attaché à la grande majorité des actions de sociétés belges n'est pas fait pour faciliter l'adoption d'une solution rationnelle.

Quoi qu'il en soit, la question devra être réexaminée dans un avenir assez rapproché, d'autant qu'un projet de directive élaboré par la Commission des Communautés européennes vise à l'abolition de toute retenue à la source sur les dividendes que des sociétés résidentes d'un Etat membre tirent de leurs filiales établies dans un autre Etat.

*Conclusion*

De par son caractère forfaitaire, le régime décrit ci-avant présente l'avantage de la simplicité. En effet, les réductions de taux et imputations peuvent souvent être appliquées sans avoir à rechercher le régime concret auquel les revenus ont été soumis dans l'Etat de leur source; de plus, le taux ou le montant de

l'impôt étranger ne doit pas être pris en considération; ce qui importe, et dans certains cas seulement; c'est de savoir si le revenu étranger a ou non été imposé dans l'Etat d'où il provient. En raison de l'interprétation large donnée aux textes légaux par l'administration, il apporte – tout au moins pour les bénéfices d'établissements stables et les dividendes de participations – une solution automatique au problème du crédit d'impôt fictif («tax sparing» ou «matching credit») en ce sens que les taux réduits d'impôts sont appliqués même si les bénéfices ou les dividendes n'ont pas été effectivement imposés à l'étranger (par exemple, lorsqu'ils y ont bénéficié d'une exemption temporaire tendant à encourager les investissements). Contrairement au système classique du crédit d'impôt, les dispositions en vigueur en Belgique n'aboutissent donc pas à ce que le Trésor belge reprenne au contribuable belge les avantages qui lui ont été accordés dans le pays étranger où il a effectué un investissement.

Sur le plan de l'efficacité, on est amené à distinguer. On peut tout d'abord affirmer sans conteste que le mode d'imposition des dividendes étrangers recueillis par des sociétés belges (cfr point 3 ci-avant) n'engendre aucune double imposition; en effet, ces dividendes sont, à concurrence de leur montant net, exemptés purement et simplement d'impôt des sociétés dans le chef de la société bénéficiaire; quant au précompte mobilier de 10% perçu à charge de la société en raison de l'encaissement des dividendes étrangers, il apparait en réalité comme une «pré-taxation» des dividendes qui seront redistribués par cette société à ses actionnaires, et comme cette perception libère l'actionnaire de la retenue du précompte mobilier de 20% qui devrait autrement être opérée, tout en lui laissant le bénéfice de l'imputation et du remboursement éventuel de ces 20%, on peut parler ici d'une sorte «d'impôt négatif», phénomène qui ne se rencontre guère dans les législations fiscales modernes . . .

En ce qui concerne les mesures décrites sub. 1 et 2 ci-avant, on doit constater que leur efficacité varie en fonction des taux d'impôts en vigueur dans les pays étrangers d'où proviennent les revenus. Si ces mesures ont contribué puissamment à encourager les investissements belges dans des pays étrangers, et notamment des pays en voie de développement, où la charge fiscale directe est modérée, elles ne remédient que partiellement à la double imposition lorsque, comme c'est le cas depuis plusieurs décades, les taux d'impôts étrangers tendent à se rapprocher des taux belges, sinon à les dépasser. C'est pourquoi ce système ne doit être considéré que comme un premier pas vers la solution du problème de la double imposition internationale, lequel ne peut être réglé de manière vraiment efficace que par la conclusion de conventions internationales appropriées.

JOSEPH BUBLOT:

# UNILATERAL MEASURES DESIGNED TO AVOID DOUBLE TAXATION OF INCOMES IN BELGIUM

As is the case in the majority of economically developed countries, Belgian income tax legislation is based on the principle of territoriality, applied in its two traditional aspects: personal territoriality, according to which residents (persons domiciled in the country) are taxed on their overall income, whatever the source; and income territoriality, whereby all income acquired in the country, even by non-residents, is taxed.

The application of this principle on a world-wide scale may well give rise to international double taxation, since incomes acquired in a country by a person domiciled in another country will normally be liable in both the countries concerned.

Since the start of the twentieth century, Belgium and many other states have been prompted, as a result of the vast increase in international trade and investment movements, to introduce unilateral measures with the aim of mitigating the effects of international double taxation.

In two cases the mitigating measures concern income acquired in Belgium by non-resident-owned enterprises: a) profits from air and shipping lines operating internationally; and b) profits obtained through an agent simply collecting orders[1].

But by far the most important provisions relate to income from abroad acquired by Belgian residents, i.e., by individuals or by companies having their tax domicile in Belgium. The present study deals mainly with these particular provisions, concerning which it should first be emphasized that they apply de jure, no reciprocity of any kind being required on the part of the foreign state where the income arises subject to mitigating measures in Belgium.

Traditionally, Belgium remedied international double taxation by using a fixed-rate method, granting its residents tax reduction on their income from abroad. Even before the creation of income tax, the 1906 laws on the "droit de patente" (trading licence fee) reduced the latter to one-quarter of the normal rate in the case of enterprises operated abroad by Belgian residents. This system of fixed-rate reductions was incorporated into the law of 1919 which introduced income tax and it was adopted with certain major modifications in the tax reorganization law of 20 November 1962.

The measures now in force in Belgium are of three types:

- the application of rates reduced to one-half (personal tax) or to one-quarter (company tax), in the case of income from immovable property arising abroad and also occupational income acquired and taxed abroad;

---

1. Article 141 of the C.I.R. (Income Tax Code): In the incomes referred to in Article 140, Section 1, the following are not included:
"
. . . . . .
Sub-sec. 5 subject to reciprocity, profits derived in Belgium by a foreign enterprise not referred to in Article 140, Sec. 2, Sub-sec. 3, b, either from operations performed through the agency of a representative who is restricted to collecting orders from customers in Belgium and passing them on to the enterprise without binding the latter, or from the operation of ships and aircraft owned or chartered by the enterprise and calling at Belgian ports or airports to ship or unship merchandise or to embark or disembark passengers".
*Note:* Article 140, Sec. 2, Sub-sec. 3, b, refers to foreign insurers who regularly obtain contracts in Belgium other than reinsurance contracts.

- the deduction of a standard proportion of foreign tax, fixed at 15% of taxable income, on dividends acquired by natural persons and interest or industrial royalties acquired by natural persons or by companies;
- foreign dividends accruing to companies resident in Belgium are liable only to the 10% levy on income from personal property.

Before an analysis is made of each of these measures it should be noted that, generally speaking, income abroad accruing to Belgian residents is taxable only as to the amount remaining after the deduction of foreign tax, which is thus a deductible expense for the purposes of determining the income liable to Belgian tax.

## I. – THE APPLICATION OF REDUCED RATES FOR PERSONAL TAX (50%) OR COMPANY TAX (25%)

Personal tax is reduced to one-half[2] and company tax is reduced to one-quarter of the normal rate[3] in so far as these taxes are applied to:

- income from immovable property arising abroad;
- occupational income acquired and taxed abroad (by occupational income is meant: profits from industrial, commercial or agricultural enterprises; salaries, wages, etc.; profits quotas, attendance fees, etc., of directors and auditors of "sociétés par actions" (joint stock companies); profits of the liberal professions or other occupations).

In the case of *income from immovable property*, no special condition is required; all that is necessary is that the income is of foreign origin, i.e., that it relates to immovable property situate abroad.

In the case of occupational income, on the other hand, the law requires fulfilment of a double condition:

- the income must be acquired abroad (see below);
- it must have been taxed abroad; in administrative jurisprudence this condition is considered as fulfilled if (a) the income has been duly subject to the appropriate taxes in the country of origin, including any fixed-rate or indirect taxes, or (b) the profits are unquestionably of foreign origin (e.g. profits acquired in a permanent establishment abroad).

### The concept of "profits acquired abroad":

The law does not contain any precise rules in this respect but administrative jurisprudence adopts criteria similar to those applicable, when it is necessary, to define income of Belgian origin assessable in respect of non-resident taxpayers.

It is therefore necessary to make certain distinctions based on the various categories of occupational income.

For *remunerations of salary- or wage-earners*, the determining criterion is the place in which the activity is carried on (which is also applied in conventions for the avoidance of double taxation: cf. Article 15, Sec. 1, of the

---

2. Article 88, C.I.R. – A reduction to one-half shall be applied to that part of the tax which corresponds proportionally to:
   1) income from real estate situate abroad;
   2) occupational income of the type referred to in Article 20 which has been acquired and taxed abroad, excluding income and yield from capital and real estate, when such assets are deposited in an establishment which the taxpayer possesses in Belgium.
3. Article 128, C.I.R. – A reduction to one-quarter shall be applied to that part of the tax which corresponds proportionally to the income of foreign origin referred to in Article 88, Subsecs. 1 and 2.

OECD model convention). The remunerations are therefore considered as income of foreign origin when the beneficiary carries on his activity abroad, even if the income is borne by a Belgian enterprise.

The source of *profits quotas, attendance fees* and similar payments received by directors and auditors of "sociétés par actions" is considered as being the state in which the registered office of the company granting them is situate.

As regards *profits of the liberal professions* and other occupations, these are of foreign origin when they are acquired through the agency of an establishment (office, consultancy bureau, etc.) situate abroad; but more generally, having regard to the definition of similar income of Belgian origin which is assessable in respect of non-resident taxpayers[4], these profits should also be considered as foreign income if they relate to an activity which is unquestionably carried on abroad by the persons concerned and if they have been taxed abroad.

There remains the most important category, that of *industrial, commercial or agricultural profits.*

These profits are indisputably of foreign origin when they are acquired through the agency of a permanent establishment abroad or by an agent operating abroad who has the capacity legally to bind the Belgian enterprise.

Likewise considered as occupational income from abroad is income from foreign transferable securities deposited with an establishment abroad, i.e., forming part of the assets of this establishment; the same applies to capital gains obtained on the transfer of securities of this type.

The following also constitute income of foreign origin:

- profits on the transfer of a registered office or establishment in another country (even if this transfer is negotiated and effected in Belgium);
- the capital gain acquired by an enterprise on the sale of premises situate abroad;
- the income arising from the sale or renting of land situate abroad.

On the other hand, income is considered as of Belgian origin if it derives from (a) operations performed directly at the registered office in Belgium or (b) from assets and securities deposited with a Belgian establishment.

Income from foreign transferable securities deposited with the Belgian registered office, i.e., forming part of the working capital of that office, thus constitutes Belgian occupational income, in principle taxable at the full rate (subject to the possible application of the measures described under Points 1 and 2 below).

The following also constitute occupational income of Belgian origin:

- profits from speculative transactions in investments in securities held at the enterprise's principal place of business in Belgium;
- profits realized on the sale abroad of shares in foreign companies deposited with the Belgian office;
- profits obtained by a Belgian company from the repurchase below par of debentures issued abroad;
- profits accruing from reinsurance opera-

---

4. Article 140, C.I.R.
Sec. 2—included in such income are:

. . . . . .

Sub-sec. 3—profits of whatever nature accruing through the agency of Belgian establishments of the type referred to in Sec. 3, and those accruing even without the agency of such establishments:

. . . . . .

c) from the activity carried on in Belgium by the beneficiaries of profits of the type referred to in Article 20, Sub-sec. 34.

tions which are regularly performed by the companies' registered office.

Regulations governing the *compensation of profits and losses:*

Companies can thus have profits which are taxable at the full rate (of Belgian origin), profits taxable at a reduced rate (originating in foreign countries with which Belgium has no double taxation convention) and profits exempted by the terms of an agreement. It has thus been necessary to make regulations concerning the compensation of profits and losses when the results show a profit in certain countries and a loss in others.

In this respect it is necessary to carry out the following operations in the order shown:

- in each of the three categories (Belgium; foreign countries not bound by a convention; foreign countries so bound) to amalgamate the profits and losses in respect of the various countries belonging to this category;
- if necessary, to make a compensation for the profits and losses for the two categories of foreign countries (those bound by convention and those not so bound);
- if there are foreign-earned profits in respect of both categories ("convention" and "non-convention") against which Belgian losses are to be offset, to give priority to compensating such losses with profits earned in foreign countries bound by convention (so that the taxpayer can derive as much benefit as possible from the double taxation convention).

Extension of the concept of foreign income in the case of partners in a "société de personnes" (association of persons).

Although the Belgian "sociétés de personnes"[4a] enjoy legal personality, the taxation system which is applied to them invites a certain amount of confusion between the legal entity and the partners.

Thus the income granted to active partners as remuneration for activity pursued in the enterprise is not included in the basis of assessment for corporate tax but is assessed as profits in respect of the partners; furthermore, these profits are considered for tax purposes as having the same geographical origin as the corporate profits from which they are allotted. This means that in the case of a Belgian "société de personnes" with a permanent establishment abroad, from which it derives, for instance, one-third of its profits, the income allotted to an active partner carrying on his activity exclusively at the Belgian registered office is as to one-third deemed income acquired and taxed abroad and is assessed at the reduced rate in respect of the partner. Reduced-rate taxation is replaced by exemption when the permanent establishment abroad is situate in a country with which Belgium has signed a double taxation convention.

If the Belgian company has opted to have its profits liable to personal tax (in which case the whole of the corporate profits, whether distributed or undistributed, is taxed in respect of the partners), the reduced rate of tax (or exemption if a double taxation convention exists) applies not only to remunerations for the active partners' activities but to the whole of the company's foreign-earned profits which are distributed under any head whatsoever or are allocatable to both active and sleeping partners. In this case the partners are taxed in every respect as if they were personally operating an enterprise abroad.

---

4a. For tax purposes the following various types of partnership are treated in the same way as "sociétés de personnes":
- "sociétés en nom collectif"
- "sociétés en commandite simple"
- "sociétés de personnes à responsabilité limitée"
- "sociétés coopératives".

## 2. – CREDIT OF THE FIXED PROPORTION OF FOREIGN TAX[5]

This is a foreign tax credit against Belgian tax, but the rate of this credit is a fixed one; whatever the rate of foreign tax, the credit is equal to 15% of the income from abroad included in the taxable income of the Belgian taxpayer. Since the income from abroad is taxable only as to the amount remaining after deduction of foreign tax, the fixed proportion is thus calculated on the reduced figure.

This credit is granted in the case of:

- interest and industrial royalties (from concessions on patents, secret processes and formulas, trade-marks, etc.) accruing to natural persons and to companies;
- dividends and income from invested capital accruing to natural persons (income of this type obtained by companies being subject to the system described in Point 3 below).

This system does not apply when the transferable securities or other assets from which the income in question is derived are deposited with the (Belgian) registered office or with a Belgian establishment of the enterprise; when the said assets or securities are deposited with a permanent establishment abroad, the income is subject to the system described in Point 1 above.

Condition applying in the case of taxation abroad. The credit of the fixed proportion of foreign tax is conditional upont the income's having been subjected to income tax similar to Belgian taxes.

With regard to dividends and income from invested capital, this condition is automatically deemed to be fulfilled, in view of the fact that in every country dividends distributed by resident companies are normally taxed, either as such or as part of the corporate profits.

In the case of interest and industrial royalties, the credit is granted only if they have actually been taxed abroad, either in respect of a given person or by deduction at source; this condition is deemed to be fulfilled when the foreign tax is assumed by the debtor of the income. For the rest, proof of taxation must be supplied as follows:

- as regards interest from registered claims and industrial royaltics, it is the responsibility of the beneficiary of the income to prove that such income has been duly taxed abroad;
- as regards interest from bonds and other bearer securities, attention must be paid to the particulars shown by the Bank on the coupon collection schedule; the direct tax authorities also publish, for their own departments' use, a list of the main foreign bonds in circulation in Belgium, which shows whether or not the interest has been taxed in its country of origin.

---

5. Art. 187, C.I.R. – With regard to the income and yield from capital and personal property and the various types of income referred to in Art. 67, Sub-secs. 4-6, which have been subjected abroad to a tax similar to personal tax, corporate tax or non-residents' tax, the tax is further reduced by a fixed proportion of this foreign tax.
Art. 195, C.I.R. – The standard proportion of foreign tax deductible pursuant to Art. 187 is fixed at 15% of the amount of the income in question before deduction of the advance levy on personal property.
Art. 196, C.I.R. – No deduction is effected under the head of foreign tax in respect of:
- 1) income and proceeds arising from investments in an establishment owned by the beneficiary abroad;
- b) income from shares or from invested capital deducted from the taxable profits in pursuance of Art. 111.

### 3. – SYSTEM APPLYING TO DIVIDENDS AND INCOME FROM INVESTED CAPITAL[5a] OF FOREIGN ORIGIN ACCRUING TO COMPANIES RESIDENT IN BELGIUM.

Belgian companies in receipt of dividends or income from invested capital of foreign origin are liable in respect thereof to the advance levy on personal income at a reduced rate of 10%[6], the normal rate of this advance levy being 20%. The advance levy is withheld by the bank or other Belgian intermediary involved in the payment of income; when the income is directly collected abroad, the advance levy is recorded at the same time as the corporate tax in respect of other corporate profits[7].

The net amount (i.e., after deduction of the advance levy on personal property) of the dividends and income from capital invested abroad constitutes, under the same head as similar income of Belgian origin, "actually taxed income" in the sense that this net amount is first deducted from the profits liable in principle to corporate tax[8] and thereafter (for the purpose of fixing the basis

---

5a. In Belgian tax terminology the income from invested capital comprises the return on capital granted to their partners, active or sleeping, by companies other than "sociétés par actions", usually described as "sociétés de personnes" (associations of persons).

6. Art. 88; Royal Decree implementing the C.I.R. – The advance levy on personal property is charged at the rate of 10% on the income from shares or invested capital where the debtor is a company, association, establishment or body not having its registered office, main establishment or principal place of management or administration in Belgium and the beneficiary of which is identified as being a company, association, establishment or body liable to corporate tax under Arts. 98-102 of the C.I.R.
This waiver does not operate in the case of income of the type referred to in Para. 1 which is collected on behalf of a Belgian common investment fund or which is included in the income from certificates of foreign common investment funds.

7. Art. 164, C.I.R. – The following are liable to advance levy on personal property:

. . . . . .

Sub-sec. 3 – companies, establishments, bankers, notaries public, stock- and sharebrokers, persons receiving life annuities, managers and other persons paying income of the type specified in Art. 11, Sub-secs. 3 and 4, or who are liable to pay such incomes;
Sub-sec. 4 – companies, establishments, bodies and persons referred to in Sub-secs. 1-3 preceding, in respect of incomes of the type referred to in Arts. 11, Sub-secs. 5 and 6, 12, Sec. 1, Sub-sec. 3 and 15, para. 2;
Sub-sec. 5 – the beneficiaries of the income deducted from the profits for the tax period in accordance with Art. 111 when the persons who pay such income or who are liable to pay such income are not operating in Belgium.

8. Art. 111, C.I.R. – Sec. 1. Taxable profits are deducted to the extent that they incorporate:
Sub-sec. 1 – Income from shares or from invested capital including that referred to in Arts. 12, Sec. 1, Sub-sec. 3 and 15, Para. 2.

. . . . . .

Art. 113, C.I.R., Sec. 1 – Income of the type referred to in Arts. 111, Sec. 1, Sub-sec. 1 and 112 are deemed to be included in taxable profits in the proportion of 95% of the net amount collected and possibly reduced, in the case of income of the type referred to in Art. 112, by the interest allowed to the seller in the event of dividend- or interest-bearing securities being acquired during the tax period.

. . . . . .

Sec. 2 – The proportion of 95% referred to in Sec. 1 is nevertheless reduced to 90% in the case of enterprises with holdings, the investment value of which exceeds 50%, either in the paid-up registered capital still to be repaid and possibly revalued in accordance with Art. 119 or in the paid-up registered capital still to be repaid plus the taxed reserves and the capital gains duly entered in the books. The value of the holdings and the amount of the registered capital, reserves and capital gains are to be taken as at the date of making up the balance sheet of the company holding the participations.
For the purposes of determining whether the 50% limit is exceeded, no account is taken of the active and permanent participations representing

for the advance levy on personal property), from the dividends distributed by the beneficiary company to its own shareholders.[9]

The net amount of the income actually taxed is equivalent to 90% or 95% of the effectively acquired income, after deduction of the advance levy on personal property (the balance—10% or 5%—being considered on a fixed-rate basis as being absorbed by the financial charges and administration expenses encumbering the income actually taxed). In the majority of cases the multiplying coefficient is 95%; it is 90% only when the purchase value of the shares producing the income in question exceeds one-half of the assets of the beneficiary company, such assets being determined according to one or other of of the two formulas, i.e., whichever, in fact, is more advantageous to the taxpayer (but, for this purpose, the shares representing a participation of not less than 75% in the capital of the issuing company are not taken into consideration).

Under Art. 88 of the Royal Decrees implementing the C.I.R., the reduced rate of 10% applies only when the foreign dividends accrue to a Belgian company liable to corporate tax, which excludes Belgian common investment funds, as well as Belgian "sociétés de personnes" having opted to have their profits subject to personal tax in respect of their partners. In this last-named case, the treatment described above does not apply, but foreign dividends, after deduction from them of the 20% advance levy on personal property if they are collected in Belgium, are taxed in respect of the partners as if they had been acquired personally by the latter (taxation at the normal rate for natural persons with crediting of the advance levy on personal property, if due, and of the fixed proportion of foreign tax: cf. Point 2 above).

Furthermore, under the terms of Art. 164, C.I.R., Belgian companies are personally liable to the advance levy on personal property in respect of foreign dividends directly collected abroad only to the extent that such income has been deducted from the profits for the tax period in accordance with Art. 111 of the C.I.R. Consequently, if the net amount (i.e., 90% or 95%) of the foreign dividends directly collected abroad exceeds the profits taxable in principle against which this net amount can be offset under the head of income finally taxed, the 10% advance levy on personal property must be charged only against a dividend figure which, when multiplied by the 90% or 95% coefficient, corresponds to the amount of the said profits (or, in other words, against an amount equal to 100/90 or 100/95 of the corporate profits which are taxable in principle).

Thus dividends and income from capital invested abroad, which have been subjected to the 10% advance levy on personal property on account of their being collected, then escape any taxation in respect of the beneficiary company; they can also, up to the same net amount, be redistributed to the shareholders in the beneficiary company without attracting any further advance levy on personal property.

Exemption from corporate tax is to a certain degree in line with the system applying to parent and subsidiary companies (also called "holding company privilege") in force in

---

at least 75% of the registered capital of the issuing company.

9. Art. 169, C.I.R.—The advance levy on personal property is not due in respect of that part of the income from shares or invested capital, . . .:

. . . . . .

Sub-sec. 2 which corresponds to the amount deducted, pursuant to Art. 111, from the said distributed profits;

. . . . . .

some foreign countries. The Belgian system, however, is more favourable, not only in that it applies de jure to dividends derived from foreign companies, but also because, contrary to the rule which normally operates abroad, it does not require any minimum participation rate, so that even dividends from single shareholdings benefit from exemption.

Another extremely favourable aspect of the Belgian system lies in the fact that the charging of a 10% advance levy on personal property when the foreign dividends are encashed by a company exempts the latter from withholding 20% in respect of the redistribution of these dividends, so that the shareholder in the Belgian company enjoys the full benefit of the normal credits and repayments; the charging of the 10% advance levy on personal property is in itself sufficient to enable the shareholder to have the following items allowed against his personal tax (in the order shown):

a) tax credit equal to 15/85 of the taxable dividend, the aim of which is to remedy the economic double taxation of dividends (although, in this case, the dividends were *not* actually liable to corporate tax);

b) 20% advance levy on personal property (although the dividends were really subject to an advance levy of only 10% when they were collected by the company).

Since the advance levy on personal property is in certain circumstances reimbursable (as distinct from the tax credit, which is simply deductible), a shareholder in a Belgian company who has a low personal tax rate will obtain the refunding of tax which was never paid, in any form, to the Belgian Treasury.

Such unexpected consequences were not what the lawmakers had in mind. In point of fact, the system just described can be fundamentally ascribed to historical and political considerations. When the tax reorganization law of 20 November 1962 replaced schedule taxes with "impôts synthétiques" (artificial taxes) on corporate and personal income, the tax method which had previously applied to dividends collected by companies on securities held abroad was simply incorporated in the new system.

With the philosophy of the present Belgian system as it is, i.e., one in which the advance levy on personal property (as the name suggests) is basically a type of deduction at source or payment on account, this advance levy should be charged only on dividends due to natural persons, since dividends, whether Belgian or foreign, collected by Belgian companies are exempt where the latter are concerned. The anonymity attached to the great majority of shares in Belgian companies is not, however, calculated to facilitate the adoption of a rational solution. At all events, the question must be re-examined in the near future, more especially as the draft directive drawn up by the Commission of the European Communities aims at the abolition of any deduction at source on dividends which companies resident in one Member State derive from their subsidiaries in another State.

*Conclusion*

By virtue of its use of fixed rates, the system described above has the advantage of simplicity. The rate reductions and credits can often be applied without there being any necessity of determining the actual system under which the income was liable in its country of origin. Moreover, the rate or the amount of tax abroad need not be taken into consideration. What is essential, and in certain cases the only factor which matters, is to know whether the income from abroad was taxed or not in the state of origin. Because of the liberal interpretation of legal

texts by the authorities, there is an automatic solution—at least as regards the profits of permanent establishments and dividends from participations—to the problem of fictitious tax credit ("tax sparing" or "matching credit") in the sense that the reduced tax rates are applied even if the profits or dividends have not in effect been taxed abroad (e.g. when they have been accorded temporary exemption abroad for the purposes of encouraging investments). Contrary to the conventional system of tax credits, therefore, the provisions in force in Belgium do not result in the Belgian Treasury's taking back from a Belgian taxpayer the advantages which were granted to him in the foreign country where he made the investment.

As regards effectiveness, certain distinctions must be made. First of all, it can be indisputably asserted that the taxation method for foreign dividends collected by Belgian companies (cf. Point 3 above) in no way gives rise to double taxation. These dividends are quite simply exempt as to their net amount from corporate tax in respect of the beneficiary company's income. As regards the 10% advance levy on personal property levied on the company by reason of the collection of foreign dividends, it is in fact seen to be a "pretaxation" of the dividends to be redistributed by this company to its shareholders, and since this charge exempts the shareholder from the deduction of the 20% advance levy on personal property which would otherwise have to be effected, at the same time allowing the benefit of the credit and possible reimbursement of this 20%, this process may be defined as a kind of "negative tax"—a phenomenon which is hardly ever observed in modern tax legislation systems.

With regard to the measures described under Points 1 and 2 above, it must be stated that their effectiveness varies as a function of the tax rates in force in the foreign countries where the incomes accrue. Although these incomes have made a considerable contribution to the encouragement of Belgian investment in other countries and especially in the developing countries, where direct tax charges are only moderate, they provide only a partial remedy for double taxation when, as has been the case for several decades, foreign tax rates are tending to approach Belgian rates, if not to exceed them. It is for this reason that the system must be considered as merely a first step towards solving the problem of international double taxation, which can be settled in a really effective manner only by the signing of appropriate international conventions.

JOSEPH BUBLOT:

# EINSEITIGE MASSNAHMEN ZUR VERMEIDUNG DER DOPPELBESTEUERUNG VON EINKOMMEN IN BELGIEN

Wie in den meisten wirtschaftlich entwickelten Ländern beruht die belgische Einkommensteuergesetzgebung auf dem Prinzip der Territorialität in ihren beiden klassischen Erscheinungsformen: der persönlichen Territorialität, wonach ansässige Personen (Personen, die ihren Wohnsitz oder gewöhnlichen Aufenthalt im Inland haben) mit ihrem gesamten Einkommen ohne Rücksicht auf die Einkunftsquelle besteuert werden, und der Einkommensterritorialität, wonach alles im Inland (selbst durch nicht ansässige Personen) erworbene Einkommen besteuert wird.

Die weltweite Anwendung dieses Prinzips kann durchaus zu internationaler Doppelbesteuerung führen. Wird nämlich in einem Land Einkommen von einer Person erworben, die ihren Wohnsitz in einem anderen Land hat, so ist sie damit normalerweise in beiden Ländern steuerpflichtig.

Seit Beginn des zwanzigsten Jahrhunderts sahen Belgien und viele andere Staaten sich veranlaßt, infolge der erheblichen Zunahme des internationalen Handels und der Kapitalanlagen einseitige Maßnahmen zu ergreifen, um die Auswirkungen internationaler Doppelbesteuerung zu mildern.

In zwei Fällen betreffen die Milderungsmaßnahmen Einkünfte, welche in Belgien von Unternehmen erworben werden, die nicht ansässigen Personen gehören:

a) Gewinne aus dem internationalen Betrieb von Luft- und Schiffahrtslinien und b) Gewinne, die durch einen Vertreter erzielt werden, der lediglich Aufträge entgegennimmt.[1]

Die weitaus bedeutendsten Vorschriften beziehen sich jedoch auf ausländische Einkünfte von in Belgien ansässigen Personen, d.h. von natürlichen Personen oder von Gesellschaften mit steuerlichem Sitz in Belgien. Die vorliegende Untersuchung befaßt sich hauptsächlich mit diesen speziellen Vorschriften. Dabei ist in erster Linie zu betonen, daß sie kraft Gesetzes gelten. Nicht erforderlich ist irgendeine gegenseitige Behandlung seitens des ausländischen Staates, in dem die den belgischen Milderungsbestimmungen unterliegenden Einkünfte erzielt werden.

Traditionsgemäß heilte Belgien die internationale Doppelbesteuerung mit einer Methode fester Steuersätze. Es gewährte ansässigen Personen Steuervergünstigungen auf ihre ausländischen Einkünfte. Schon vor Schaffung der Einkommensteuer verringerten 1906 die Gesetze über das „droit de patente" (Handelsgenehmigungsgebühr) die Gebüh-

---

1. Artikel 141 des C.I.R. (Einkommensteuergesetz): In den in Artikel 140 Absatz 1 genannten Einkünften sind folgende nicht enthalten:

„. . . . . .

Unterabsatz 5 (unter dem Vorbehalt gegenseitiger Behandlung) Einkünfte, die ein nicht in Artikel 140 Absatz 2 Unterabsatz 3,b genanntes ausländisches Unternehmen in Belgien erzielt, und zwar entweder aus Geschäften, die durch die Tätigkeit eines Vertreters zustandekommen, der auf die Entgegennahme von Aufträgen der Kunden in Belgien und auf deren Weitergabe an das Unternehmen, ohne dieses zu binden, beschränkt ist, oder aus dem Betrieb von eigenen oder durch das Unternehmen gecharterten Schiffen und Flugzeugen, die in belgischen Häfen bzw. Flughäfen Ware ein- oder ausladen oder Passagiere aufnehmen oder absetzen."

*Beachte:* Artikel 140 Absatz 2 Unterabsatz 3,b bezieht sich auf ausländische Versicherer, die regelmäßig Verträge – ausgenommen Rückversicherungsverträge – in Belgien schließen.

ren auf ein Viertel des normalen Satzes in Fällen, in denen in Belgien ansässige Personen ein Unternehmen im Ausland betrieben. Dieses System von Steuervergünstigungen zu einem festen Satz wurde in das Gesetz von 1919 eingefügt, welches die Einkommensteuer einführte. Es wurde mit einigen wesentlichen Änderungen in das Steuerneugestaltungsgesetz vom 20. November 1962 übernommen.

Die jetzt in Belgien geltenden Maßnahmen gliedern sich in drei Gruppen:

- die Anwendung von auf die Hälfte (Einkommensteuer natürlicher Personen) oder auf ein Viertel (Körperschaftsteuer) herabgesetzten Steuersätzen bei Einkünften aus unbeweglichem Vermögen im Ausland und bei beruflichen Einkünften, die im Ausland erworben und versteuert worden sind;
- der Abzug eines einheitlichen Anteils an der ausländischen Steuer, festgesetzt auf 15% der steuerpflichtigen Einkünfte, bei Erwerb von Dividenden durch natürliche Personen und von Zinsen oder gewerblichen Lizenzgebühren durch natürliche Personen oder Gesellschaften;
- ausländische Dividenden, die in Belgien ansässigen Gesellschaften zufließen, unterliegen nur einer 10%igen Vorsteuer auf Einkünfte aus beweglichem Vermögen.

Vor einer Beschreibung dieser Maßnahmen im einzelnen ist allgemein zu bemerken, daß ausländische Einkünfte, die in Belgien ansässige Personen erzielen, nur mit dem Betrag versteuert werden, der nach Abzug der ausländischen Steuer verbleibt. Die ausländische Steuer ist somit eine abzugsfähige Ausgabe bei Ermittlung des der belgischen Steuer unterliegenden Einkommens.

## I. – DIE ANWENDUNG ERMÄSSIGTER STEUERSÄTZE BEI DER EINKOMMENSTEUER NATÜRLICHER PERSONEN (50%) ODER BEI DER KÖRPERSCHAFTSTEUER (25%)

Einkommensteuer natürlicher Personen ist auf die Hälfte[2] und Körperschaftsteuer auf ein Viertel[3] des normalen Steuersatzes ermäßigt, soweit diese Steuern erhoben werden auf:

- Einkünfte aus unbeweglichem Vermögen im Ausland;
- berufliche Einkünfte, die im Ausland erworben und versteuert worden sind (berufliche Einkünfte sind: Gewinne aus Unternehmen der Industrie, des Handels oder der Landwirtschaft; Gehälter, Löhne usw.; Aufsichtsrats- und Verwaltungsratsvergütungen usw. für Direktoren und Revisoren von „sociétés par actions" (Aktiengesellschaften); Gewinne aus freien Berufen und anderen Tätigkeiten).

Für *Einkünfte aus unbeweglichem Vermögen* werden keine besonderen Voraussetzungen verlangt. Es ist lediglich erforderlich, daß die Einkünfte ausländischer Herkunft sind, d.h., daß sie zu unbeweglichem Vermögen im Ausland in Beziehung stehen.

Für berufliche Einkünfte verlangt das Gesetz dagegen Erfüllung einer doppelten Bedingung:

2. Artikel 88 C.I.R.: Der Teil der Steuer ist auf die Hälfte herabzusetzen, der im Verhältnis entspricht:
1. den Einkünften aus im Ausland gelegenen Grundstücken.
2. beruflichen Einkünften der in Artikel 20 genannten Art, die im Ausland erworben und versteuert worden sind. Ausgenommen hiervon sind Einkünfte und Erträge aus Kapital und beweglichem Vermögen, wenn diese Werte im Betrieb des Steuerpflichtigen in Belgien angelegt sind.

3. Artikel 128 C.I.R.: Der Teil der Steuer ist auf ein Viertel herabzusetzen, der im Verhältnis den in Artikel 88 Unterabsätze 1 und 2 genannten ausländischen Einkünften entspricht.

- die Einkünfte müssen im Ausland erzielt werden (siehe unten);
- sie müssen im Ausland versteuert worden sein. In der Verwaltungsrechtsprechung wird diese Bedingung als erfüllt angesehen, wenn a) die Einkünfte den jeweiligen Steuern im Ursprungsland ordnungsmäßig unterworfen waren, einschließlich Steuern mit festem Steuersatz oder mittelbaren Steuern oder b) die Einkünfte unzweifelhaft ausländischer Herkunft sind (z.B. Einkünfte aus einer Betriebstätte im Ausland).

Der Begriff „im Ausland erzielte Gewinne":

Das Gesetz enthält insoweit keine genauen Bestimmungen. Die Verwaltungsrechtsprechung hat jedoch Begriffsmerkmale übernommen, die denjenigen ähneln, mit deren Hilfe Einkünfte belgischer Herkunft definiert werden, mit denen nicht ansässige Steuerpflichtige veranlagt werden.

Es sind daher notwendigerweise bestimmte Unterscheidungen nach den verschiedenen Arten von beruflichen Einkünften vorzunehmen.

Für *Vergütungen an Lohn- und Gehaltsempfänger* ist entscheidendes Begriffsmerkmal der Ort, an dem die Tätigkeit ausgeübt wird. (Diese Regelung ist auch in Abkommen zur Vermeidung von Doppelbesteuerung aufgenommen worden: vgl. Artikel 15 Absatz 1 des OECD Musterabkommens.) Die Vergütungen werden daher als Einkünfte ausländischer Herkunft angesehen, wenn der Empfänger seine Tätigkeit im Ausland ausübt, selbst wenn die Einkünfte von einem belgischen Unternehmen gezahlt werden.

Als Quelle von *Aufsichtsrats- und Verwaltungsratsvergütungen und ähnlichen Zahlungen* an Direktoren und Revisoren von „sociétés par actions" wird der Staat angesehen, in dem sich der Sitz der zahlenden Gesellschaft befindet.

*Einkünfte aus freien Berufen* und anderen Tätigkeiten sind ausländischer Herkunft, wenn sie durch die Tätigkeit eines Betriebes (Kontor, Beratungsbüro usw.) im Ausland erzielt werden. Allgemeiner ausgedrückt – in Hinblick auf die Definition für entsprechende Einkünfte belgischer Herkunft, mit denen nicht ansässige Steuerpflichtige veranlagt werden[4] – sollten diese Einnahmen auch dann als ausländische Einkünfte anerkannt werden, wenn sie für eine Tätigkeit gezahlt werden, welche die betreffenden Personen unzweifelhaft im Ausland ausgeübt haben, und wenn sie im Ausland versteuert worden sind.

Es verbleibt die wichtigste Gruppe, die *Einkünfte aus Industrie, Handel und Landwirtschaft.*

Diese Einkünfte sind unzweifelhaft ausländischer Herkunft, wenn sie durch die Tätigkeit einer Betriebstätte im Ausland oder durch einen im Ausland arbeitenden Vertreter mit Vertragsabschlußvollmacht für das belgische Unternehmen erzielt werden.

Ebenso werden solche als berufliche Einkünfte aus dem Ausland angesehen, die durch ausländische übertragbare Wertpapiere erzielt werden, wenn diese in einem ausländischen Betrieb investiert worden sind, d.h. wenn sie einen Teil der Aktiva dieses Betriebes bilden; das gleiche gilt für Gewinne aus der Veräußerung von Wertpapieren dieser Art.

---

4. Artikel 140 C.I.R.:
Absatz 2 – Zu diesem Einkommen gehören:
. . . . . .
Unterabsatz 3 – Einkünfte oder Gewinne aller Art, die durch die Tätigkeit eines belgischen Betriebes der in Absatz 3 genannten Art erzielt werden, und solche, die auch ohne Tätigkeit eines solchen Betriebes erzielt werden:
. . . . . .
c) durch eine Tätigkeit, die die Empfänger von Einkünften von der in Artikel 20 Unterabsatz 3 genannten Art in Belgien ausüben.

Die folgenden Einkünfte sind ebenfalls ausländischer Herkunft:

- Gewinne aus der Veräußerung eines Geschäftes oder Betriebes in einem anderen Land (selbst wenn die Veräußerung in Belgien vereinbart und durchgeführt wird);
- der Veräußerungsgewinn, den ein Unternehmen durch den Verkauf von Grundstücken im Ausland erzielt;
- Einkünfte aus dem Verkauf oder der Vermietung oder Verpachtung von Grund und Boden im Ausland.

Andererseits werden Einkünfte als belgischer Herkunft angesehen, wenn sie erzielt wurden aus

a) Tätigkeiten unmittelbar am Sitz in Belgien;

b) Anlagevermögen und Wertpapieren, die in einem belgischen Betrieb investiert wurden.

Einkünfte aus ausländischen übertragbaren Wertpapieren, die in einem belgischen Unternehmen investiert wurden, d.h., die zum Betriebskapital dieses Unternehmens gehören, stellen somit belgische berufliche Einkünfte dar, die zum vollen Satz zu versteuern sind (sofern nicht die nachfolgend unter 2 und 3 beschriebenen Maßnahmen eingreifen).

Die folgenden Einkünfte sind ebenfalls belgischer Herkunft:

- Gewinne aus Spekulationsgeschäften mit ausländischen Wertpapieren, die am Geschäftssitz des Unternehmens in Belgien aufbewahrt sind;
- Gewinne aus der Veräußerung im Ausland von ausländischen Gesellschaftsanteilen, sofern diese am belgischen Geschäftssitz investiert worden sind;
- Gewinne einer belgischen Gesellschaft aus dem Rückerwerb von im Ausland ausgegebenen Schuldverschreibungen unter pari;
- Gewinne aus Rückversicherungsabschlüssen, die regelmäßig am Geschäftssitz der Gesellschaft getätigt werden.

*Bestimmungen über den Ausgleich von Gewinnen und Verlusten:*

Gesellschaften können demnach Einkünfte haben, die zum vollen Satz zu versteuern sind (belgischer Herkunft), Einkünfte die zu einem ermäßigten Satz zu versteuern sind (bei Herkunft aus fremden Ländern, mit denen Belgien kein Doppelbesteuerungsabkommen geschlossen hat) und Einkünfte, die gemäß einem Abkommen von der Steuer befreit sind. Es war daher erforderlich, Bestimmungen über den Ausgleich von Gewinnen und Verlusten für den Fall zu treffen, daß in bestimmten Ländern ein Gewinn und in anderen ein Verlust ausgewiesen wird.

Insoweit ist in folgender Reihenfolge zu verfahren:

- In jeder der drei Gruppen (Belgien; fremde Länder, die an kein Abkommen gebunden sind; fremde Länder, die an ein Abkommen gebunden sind) sind die Gewinne und Verluste in den verschiedenen Ländern, die jeweils zu einer Gruppe gehören, zusammenzurechnen;
- Erforderlichenfalls sind die Gewinne und Verluste in den zwei Gruppen fremder Länder (der durch ein Abkommen gebundenen und der nicht gebundenen) auszugleichen;
- Sind ausländische Gewinne aus beiden Gruppen („Abkommen" und „kein Abkommen") vorhanden, von denen belgische Verluste abzusetzen sind, so ist dem Ausgleich dieser Verluste mit Einkünften aus fremden Ländern der Vorzug zu geben, die nicht an ein Abkommen gebunden sind (damit der Steuerpflichtige soviel Nutzen wie möglich aus dem Doppelbesteuerungsabkommen ziehen kann).

Erweiterung der Regelung von ausländischen Einkünften auf Gesellschafter einer „société de personnes" (Personengesellschaft).

Obwohl die belgischen „sociétés de personnes"[4a] Rechtspersönlichkeit besitzen, führt das für sie geltende Besteuerungssystem in gewisser Weise zu einer Vermischung der Gesamtheit und der einzelnen Gesellschafter.

So werden Einkünfte, die geschäftsführende Gesellschafter als Vergütung für ihre Geschäftsführung erhalten, nicht in die Veranlagung zur Körperschaftsteuer einbezogen, sondern als Gewinne der Gesellschafter versteuert. Weiterhin werden diese Gewinne bei der Besteuerung so angesehen, als hätten sie geographisch die gleiche Herkunft wie die Gesellschaftsgewinne, aus denen sie entnommen worden sind. Dies bedeutet, daß im Falle einer belgischen „société de personnes" mit einer Betriebstätte im Ausland, die beispielsweise ein Drittel der Gewinne erwirtschaftet, sind die einem geschäftsführenden Gesellschafter zugewiesenen Einkünfte, obwohl er seine Tätigkeit ausschließlich am belgischen Geschäftssitz ausübt, zu einem Drittel als im Ausland erworbene und versteuerte Einkünfte angeschen und beim Gesellschafter zu einem ermäßigten Steuersatz versteuert.

Statt Besteuerung zu einem ermäßigten Satz wird sogar Steuerbefreiung gewährt, wenn die ausländische Betriebstätte in einem Lande liegt, mit dem Belgien ein Doppelbesteuerungsabkommen geschlossen hat.

Hat sich eine belgische Gesellschaft dafür entschieden, ihre Einkünfte der Einkommensteuer natürlicher Personen zu unterwerfen (in diesem Falle werden die gesamten verteilten oder nicht verteilten Einkünfte der Gesellschaft bei den Gesellschaftern versteuert), so gilt der ermäßigte Steuersatz (oder die Steuerbefreiung bei Vorliegen eines Doppelbesteuerungsabkommens) nicht nur hinsichtlich der Vergütungen an geschäftsführende Gesellschafter für deren Tätigkeit, sondern für die gesamten ausländischen Gewinne der Gesellschaft, die beliebig verteilt oder den geschäftsführenden und den nicht geschäftsführenden Gesellschaftern gleichmäßig zugerechnet werden können. In diesem Falle werden die Gesellschafter in jeder Hinsicht so besteuert, als betrieben sie selbst ein Unternehmen im Ausland.

## 2. – ANRECHNUNG EINES FESTEN ANTEILS AN DER AUSLÄNDISCHEN STEUER[5]

Dies ist eine Anrechnung ausländischer Steu-

---

4a. Für steuerliche Zwecke werden die folgenden verschiedenen Arten von Teilhaberschaft in gleicher Weise behandelt wie „sociétés de personnes":
- „sociétés en nom collectif" (Gemeinschaften)
- „sociétés en commandite simple" (Einfache Kommanditgesellschaften)
- „sociétés de personnes à responsabilité limitée" (Personengesellschaften mit beschränkter Haftung)
- „sociétés coopératives" (Genossenschaften).

5. Art. 187 C.I.R.: Bei Einkünften und Erträgen aus Kapital und beweglichem Vermögen und bei den verschiedenen in Art. 67 Unterabsätze 4-6 genannten Einkünften wird, sofern sie im Ausland einer Besteuerung unterworfen waren, die der Einkommensteuer der natürlichen Personen, der Körperschaftsteuer oder der Einkommensteuer der nicht ansässigen Personen (beschränkt Steuerpflichtigen) entspricht, die Steuer weiter um einen festen Anteil an dieser ausländischen Steuer herabgesetzt.
Art. 195 C.I.R.: Der einheitliche Anteil an ausländischer Steuer, der gemäß Art. 187 abgezogen werden kann, ist mit 15% des betreffenden Einkunftsbetrages vor Abzug der Vorsteuer für Einkünfte aus beweglichem Vermögen festgesetzt.
Art. 196 C.I.R.: Kein Abzug ist in Hinblick auf ausländische Steuern vorzunehmen bei:
- 1. Einkünften und Erträgen aus Anlagen in einem im Ausland gelegenen Betrieb des Empfängers;
- 2. Einkünften aus Aktien oder Anlagekapital, die von den steuerpflichtigen Einkünften gemäß Art. 111 abgezogen wurden.

er auf eine belgische Steuer. Der Anrechnungssatz liegt jedoch fest. Ohne Rücksicht auf die Höhe des ausländischen Steuersatzes beträgt die Anrechnung 15% der im zu versteuernden Einkommen des belgischen Steuerpflichtigen enthaltenen ausländischen Einkünfte. Da die ausländischen Einkünfte nur in der Höhe zu versteuern sind, die nach Abzug der ausländischen Steuer verbleibt, wird der feste Anteil demzufolge von einem verringerten Ausgangswert berechnet.

Die Anrechnung wird in folgenden Fällen vorgenommen:

- Zinsen und gewerbliche Lizenzgebühren (für Patentvergabe, Fabrikationsgeheimnisse und geheime Formeln, Warenzeichen usw.), die natürlichen Personen oder Gesellschaften zufließen;
- Dividenden und Einkünfte aus Kapitalanlagen, die natürlichen Personen zufließen (Einkünfte dieser Art durch Gesellschaften unterliegen der unten unter 3 beschriebenen Regelung).

Diese Regelung gilt nur, wenn die übertragbaren Wertpapiere oder anderen Vermögenswerte, aus denen die betreffenden Einkünfte stammen, im belgischen Hauptgeschäftssitz oder in einem weiteren belgischen Betrieb des Unternehmens investiert worden sind. Sind diese Vermögenswerte oder Wertpapiere in einer Betriebstätte im Ausland investiert worden, so unterliegen die Einkünfte der oben unter 1 beschriebenen Regelung.

Bedingung für eine Besteuerung im Ausland: Die Anrechnung des festen Anteils an der ausländischen Steuer erfolgt unter der Bedingung, daß die Einkünfte einer den belgischen Steuern entsprechenden Einkommensteuer unterworfen waren.

In Hinblick auf Dividenden und Einkünfte aus Kapitalanlagen wird diese Bedingung von selbst als erfüllt angesehen, da in jedem Lande von ansässigen Gesellschaften ausgeschüttete Dividenden normalerweise besteuert werden, entweder selbständig oder als Teil der Einkünfte der Gesellschaft.

Bei Zinsen und gewerblichen Lizenzgebühren wird die Anrechnung nur dann vorgenommen, wenn sie tatsächlich im Ausland versteuert worden sind, und zwar entweder bei einer Person oder durch Abzug an der Quelle. Diese Bedingung wird als erfüllt angesehen, wenn die ausländische Steuer vom Zahlungsschuldner übernommen wird.

Im übrigen muß die Besteuerung wie folgt nachgewiesen werden:

- Bei Zinsen für geschützte Rechte und gewerbliche Lizenzen ist der Empfänger der Einkünfte verpflichtet, deren ordnungsmäßige Besteuerung im Ausland nachzuweisen.
- Bei Zinsen für Schuldverschreibungen und andere Inhaberpapiere sind die Einzelheiten zu beachten, die die Bank im Coupon-Sammelverzeichnis aufführt. Auch die Steuerbehörden veröffentlichen für den behördeneigenen Gebrauch eine Liste der wichtigsten ausländischen Schuldverschreibungen, die in Belgien in Umlauf sind. Daraus ist ersichtlich, ob die Zinsen im Quellenstaat versteuert worden sind oder nicht.

### 3. – BEHANDLUNG VON DIVIDENDEN UND EINKÜNFTEN AUS KAPITALANLAGEN[5a] AUSLÄNDISCHER HERKUNFT,

5a. In der Terminologie des belgischen Steuerrechts umfassen Einkünfte aus Kapitalanlagen auch Kapitalerträge, die den geschaftsführenden oder nicht geschäftsführenden Gesellschaftern von ihren Gesellschaften ausgezahlt werden, wenn diese Gesellschaften keine „sociétés par actions" (Aktiengesellschaften) sondern sogenannte „sociétés de personnes" (Personengesellschaften) sind.

DIE IN BELGIEN ANSÄSSIGEN GESELLSCHAFTEN ZUFLIESSEN

Belgische Gesellschaften, die Dividenden oder Einkünfte aus Kapitalanlagen ausländischer Herkunft erhalten, unterliegen insoweit einer Vorsteuer auf Einkünfte aus beweglichem Vermögen zu einem ermäßigten Satz von 10%[6]. Der gewöhnliche Satz dieser Vorsteuer beträgt 20%. Die Vorsteuer wird von der Bank oder einem sonstigen belgischen Vermittler, der an der Auszahlung der Beträge beteiligt ist, einbehalten. Werden die Einkünfte unmittelbar im Ausland in Empfang genommen, so erfolgt die Festsetzung der Vorsteuer gleichzeitig mit der Körperschaftsteuer für die übrigen Gewinne der Gesellschaft.[7]

Der Nettobetrag (d.h. nach Abzug der Vorsteuer auf Einkünfte aus beweglichem Vermögen) der Dividenden und Einkünfte aus Kapitalanlagen im Ausland bildet in gleicher Weise wie ähnliches Einkommen belgischer Herkunft das „tatsächlich versteuerte Einkommen". Das bedeutet, daß dieser Nettobetrag zunächst von den Einkünften abzusetzen ist, die grundsätzlich der Körperschaftsteuer unterliegen[8], und danach von

---

6. Art. 88 der königlichen Ausführungsverordnung zum C.I.R.: Die Vorsteuer auf Einkünfte aus beweglichem Vermögen wird zu einem Satz von 10% auf Einkünfte aus Aktien oder Kapitalanlagen erhoben, wenn der Schuldner eine Gesellschaft, Vereinigung, ein Betrieb oder eine Einrichtung ist, die keinen Hauptgeschäftssitz, Hauptbetrieb oder keine Hauptverwaltung in Belgien besitzt, und wenn der Empfänger der Einkünfte eine Gesellschaft, Vereinigung, ein Betrieb oder eine Einrichtung ist, die der Körperschaftsteuer nach Art. 98-102 C.I.R. unterliegt. Diese Sonderregelung gilt nicht, wenn Einkünfte der in Absatz 1 genannten Art einem allgemeinen belgischen Investmentfonds zufließen, oder wenn sie in die Erträge aus Wertpapieren allgemeiner ausländischer Investmentfonds einbezogen werden.

7. Art 164 C.I.R.: Folgende Personen haben die Vorsteuer auf Einkünfte aus beweglichem Vermögen abzuführen:

. . . . . .

Unterabsatz 3 – Gesellschaften, Betriebe, Banken, Notare, Effekten- und Aktienmakler, Rentenempfänger, Verwalter und andere Personen, die Einkünfte der in Art. 11, Unterabsätze 3 und 4 genannten Art auszahlen oder Schulden;

Unterabsatz 4 – Gesellschaften, Betriebe, Einrichtungen oder Personen der in den vorangehenden Unterabsätzen 1-3 genannten Art bezüglich von Einkünften der in Art. 11 Unterabsätze 5 und 6, Art. 12 Absatz 1 Unterabsätze 3 und 15 Satz 2 genannten Art;

Unterabsatz 5 – Empfänger der Einkünfte, welche von den Gewinnen im Veranlagungszeitraum gemäß Art. 111 abgezogen sind, wenn der Leistende oder der Schuldner dieser Einkünfte nicht in Belgien tätig ist.

8. Art. 111 C.I.R. Absatz 1: Das steuerpflichtige Einkommen ist insoweit zu kürzen, als es enthält:

Unterabsatz 1 – Einkünfte aus Aktien oder Kapitalanlagen einschließlich der in Art. 12 Abs. 1 Unterabsatz 3 und 15 Satz 2 genannten Einkünfte

. . . . . .

Art. 113 C.I.R. Abs. 1 – Einkünfte der in Art. 111 Abs. 1 Unterabsatz 1 und 112 genannten Art werden zu 95% des eingenommenen Nettobetrages als im steuerpflichtigen Einkommen enthalten angesehen. Dieser Verhältnissatz wird möglicherweise verringert, wenn es sich um Einkünfte der in Art. 112 genannten Art handelt. Er verringert sich um den Anteil, der beim Verkäufer verbleibt, wenn dividenden- oder zinsberechtigte Wertpapiere im Laufe des Veranlagungszeitraums erworben werden.

. . . . . .

Absatz 2 – Der in Absatz 1 genannte Verhältnissatz von 95% verringert sich auf 90% bei einem Unternehmen, dessen Besitz an Aktien und sonstigen Anlagen einen Wert von mehr als 50% entweder seines eingezahlten, nicht zurückgezahlten und möglicherweise gemäß Art. 119 neu zu bewertenden Stammkapitals oder seines eingezahlten und nicht zurückgezahlten Stammkapitals plus versteuerter Rücklagen und Rückstellungen und ordnungsmäßig gebuchter Veräußerungsgewinne hat. Der Wert des Besitzes an Aktien und sonstigen Anlagen und das Stammkapital sowie der Ansatz der Rückstellungen und

dem Gesamtbetrag der Dividenden, die die Empfängergesellschaft an ihre eigenen Aktionäre bzw. Gesellschafter verteilt hat (weil dieser Gesamtbetrag die Grundlage für die Vorsteuer auf Einkünfte aus beweglichem Vermögen für den einzelnen Gesellschafter bildet).[9]

Der Nettobetrag des „tatsächlich versteuerten Einkommens" entspricht 90% oder 95% der tatsächlich erzielten Einkünfte nach Abzug der Vorsteuer auf Einkünfte aus beweglichem Vermögen. (Die Differenz – 10% oder 5% – ist eine Ausgabenpauschale für Finanzierungs- und Verwaltungskosten, die vom „tatsächlich versteuerten Einkommen" abzusetzen ist.) In der Mehrzahl der Fälle beträgt der Multiplikator 95%. Er beträgt nur 90%, wenn der Ankaufwert der Aktien, aus denen die betreffenden Einkünfte herrühren, höher ist als die Hälfte der Aktiva der die Einkünfte erzielenden Gesellschaft. Diese Aktiva werden nach einer der beiden Formeln errechnet, je nachdem welche für den Steuerpflichtigen günstiger ist. (Bei dieser Berechnung sind jedoch Anteile außer Ansatz zu lassen, wenn sie eine Beteiligung von nicht weniger als 75% am Kapital der sie ausgebenden Gesellschaft darstellen.)

Gemäß Art. 88 der königlichen Ausführungsverordnungen zum C.I.R. gilt der ermäßigte Steuersatz von 10% nur dann, wenn ausländische Dividenden einer belgischen Gesellschaft zufließen, die der Körperschaftsteuer unterliegt. Damit sind allgemeine belgische Investmentfonds ausgeschlossen sowie belgische „sociétés de personnes", die sich dafür entschieden haben, ihre Gewinne bei ihren Gesellschaftern der Einkommensteuer für natürliche Personen zu unterwerfen. Im letztgenannten Falle kommt die oben beschriebene Regelung nicht zur Anwendung. Von ausländischen Dividenden wird – sofern sie in Belgien vereinnahmt wurden – zunächst eine 20%ige Vorsteuer auf Einkünfte aus beweglichem Vermögen abgezogen. Sodann werden sie bei den Gesellschaftern versteuert, als wären sie von diesen persönlich erworben worden. (Versteuerung zum normalen Satz für natürliche Personen unter Anrechnung der Vorsteuer – soweit erhoben – auf Einkünfte aus beweglichem Vermögen und des festen Anteils an der ausländischen Steuer, vgl. oben 2).

Außerdem brauchen belgische Gesellschaften gemäß Art. 164 C.I.R. die Vorsteuer auf Einkünfte aus beweglichem Vermögen für direkt im Ausland vereinnahmte Dividenden nur insoweit zu zahlen, als diese Einkünfte gemäß Art. 111 C.I.R. von den gesamten Einkünften im Veranlagungszeitraum abgezogen worden sind. Wenn daher der Nettobetrag (also 90% oder 95%) der direkt im Ausland vereinnahmten ausländischen Dividenden die grundsätzlich zu versteuernden Einnahmen übersteigt, von denen sie mit der Begründung abgesetzt werden könnten, daß es sich um "endgültig versteuertes Einkommen" handelt, so kann die 10%ige Vorsteuer auf Einkünfte aus beweglichem Vermögen nur von einem Dividendenwert berechnet werden, der – wenn er mit 90% oder 95% multipliziert wird – dem Betrag dieser Gewinne entspricht. (Mit anderen Worten: die

---

Rücklagen sowie Veräusserungsgewinne sind auf den Bilanzstichtag des Unternehmens zu errechnen.

Für die Feststellung, ob die Grenze von 50% überschritten wurde, sind aktive, dauerhafte Beteiligungen außer Ansatz zu lassen, die wenigstens 75% des Stammkapitals der die Beteiligung ausgebenden Gesellschaft betragen.

9. Art. 169 C.I.R.: Die Vorsteuer auf Einkünfte aus beweglichem Vermögen ist nicht zu zahlen auf den Teil der Einkünfte aus Dividenden oder Kapitalanlagen,

. . . . . .

Unterabsatz 2 – der dem von den verteilten Einkünften gemäß Art. 111 abgezogenen Betrag entspricht.

. . . . . .

Vorsteuer kann nur von einem Betrag errechnet werden, der 100/95 oder 100/90 der Gewinne der Gesellschaft entspricht, die grundsätzlich zu versteuern sind.)

Dividenden und Einkünfte aus Kapitalanlagen im Ausland, die nach ihrer Vereinnahmung einer 10%igen Vorsteuer auf Einkünfte aus beweglichem Vermögen unterworfen worden sind, entgehen also einer weiteren Besteuerung bei der sie einnehmenden Gesellschaft. Sie können auch bis zum gleichen Nettobetrage an die Gesellschafter oder Aktionäre verteilt werden, ohne daß eine weitere Vorsteuer auf Einkünfte aus beweglichem Vermögen entsteht.

Die Befreiung von der Körperschaftsteuer entspricht in gewisser Weise der Methode, die in einigen ausländischen Staaten für Ober- und Untergesellschaften gilt (auch „Schachtelprivileg" genannt). Das belgische System ist jedoch günstiger. Zum einen gilt es kraft Gesetzes für Dividenden von ausländischen Gesellschaften, zum anderen fordert es – im Gegensatz zu den normalerweise im Ausland geltenden Bestimmungen – keine Mindestbeteiligung. Daher fallen sogar Dividenden für einzelne Aktien unter die Befreiung.

Ein weiterer äußerst günstiger Gesichtspunkt bei dem belgischen System liegt in folgendem: Die Abführung einer 10%igen Vorsteuer auf Einkünfte aus beweglichem Vermögen bei Vereinnahmung der ausländischen Dividenden durch die Gesellschaft befreit diese Gesellschaft davon, 20% bei der Verteilung dieser Dividenden einzubehalten. Der Aktionär bzw. Gesellschafter in der belgischen Gesellschaft zieht daher den vollen Nutzen aus Darlehen und normalen Rückzahlungen. Die Abführung der 10%igen Vorsteuer auf Einkünfte aus beweglichem Vermögen reicht als solche aus, dem Aktionär bzw. Gesellschafter folgende Absetzungen von seiner persönlichen Steuer (in der angegebenen Reihenfolge) zu ermöglichen:

a) ein Steuerguthaben von 15/85 der steuerbaren Dividende als Ausgleich für die wirtschaftliche Doppelbesteuerung von Dividenden (obwohl in diesem Falle die Dividenden tatsächlich der Körperschaftsteuer *nicht* unterlegen haben);

b) 20% Vorsteuer auf Einkünfte aus beweglichem Vermögen (obwohl die Dividenden bei Vereinnahmung durch die Gesellschaft tatsächlich nur einer Vorsteuer von 10% unterlegen haben).

Da die Vorsteuer auf Einkünfte aus beweglichem Vermögen unter Umständen erstattungsfähig ist (im Gegensatz zum Steuerguthaben, das nur abzugsfähig ist) erhält ein Beteiligter an einer belgischen Gesellschaft mit niedrigem persönlichem Steuersatz auf diese Weise eine Steuer erstattet, die niemals in irgendeiner Form an die belgischen Steuerbehörden gezahlt worden ist.

Solche unerwarteten Folgen waren nicht im Sinne des Gesetzgebers. Tatsächlich ist das beschriebene System im wesentlichen auf historische und politische Erwägungen zurückzuführen. Als das Steuerneugestaltungsgesetz vom 20. November 1962 die Einzelsteuern durch „impôts synthétiques" (Gesamtsteuern) auf das Einkommen von Gesellschaften und natürlichen Personen ersetzte, wurde die bisherige Besteuerungsmethode für von Gesellschaften auf ausländische Wertpapiere vereinnahmte Dividenden einfach in das neue System übernommen.

Nach dem Sinn des gegenwärtigen belgischen Systems in seiner jetzigen Form, wonach die Vorsteuer auf Einkünfte aus beweglichem Vermögen (wie der Name sagt) vor allem eine Methode zum Abzug an der Quelle oder für eine Abschlagzahlung ist, sollte diese Vorsteuer nur auf Dividenden erhoben werden, die natürlichen Personen zufliessen. Soweit sie von belgischen Gesellschaften vereinnahmt werden, sind nämlich

sowohl belgische als auch ausländische Dividenden von der Steuer befreit.
Die Anonymität, die der großen Mehrheit der Aktien in Belgien anhaftet, ist jedoch nicht dazu geeignet, die Einführung einer rationelleren Lösung zu erleichtern.
Auf jeden Fall muß die Frage in naher Zukunft überprüft werden, insbesondere deshalb, weil der Entwurf einer Direktive durch die Kommission der Europäischen Wirtschaftsgemeinschaft darauf hinzielt, einen Quellenabzug von solchen Dividenden abzuschaffen, die in einem Mitgliedstaat ansässige Gesellschaften von ihren Untergesellschaften in einem anderen Staat erhalten.

*Ergebnis*
Die Anwendung von festen Steuersätzen gibt dem oben beschriebenen System den Vorteil von Einfachheit. Die Steuerermäßigungen und Anrechnungen können häufig angewendet werden, ohne daß es erforderlich ist, das Steuersystem im Quellenstaat zu ermitteln. Darüberhinaus braucht der Steuersatz oder Steuerbetrag im Ausland nicht berücksichtigt zu werden. Wichtig und in bestimmten Fällen ausschlaggebend ist die Kenntnis darüber, ob die ausländischen Einkünfte im Quellenstaat besteuert worden sind oder nicht. Die freizügige Auslegung von Gesetzestexten durch die Behörden gibt dem Problem der fiktiven Steueranrechnung (Steuerersparnis, ausgleichende Anrechnung) von selbst eine Lösung – zumindest, was die Gewinne fester Betriebstätten und Dividenden aus Beteiligungen anbetrifft – in folgendem Sinne: Die ermäßigten Steuersätze werden selbst dann angewendet, wenn die Gewinne oder Dividenden tatsächlich im Ausland nicht besteuert wurden (z.B. wenn sie im Ausland vorübergehend von der Steuer befreit wurden, um einen Anreiz für Investitionen zu bieten). Im Gegensatz zu den herkömmlichen Steueranrechnungsmethoden führen die in Belgien geltenden Bestimmungen nicht dazu, daß die belgischen Finanzämter einem belgischen Steuerpflichtigen die Vorteile nehmen, die ihm in einem ausländischen Staat gewährt wurden, in dem er Investitionen vorgenommen hat.
Was die Wirksamkeit anbetrifft, so sind gewisse Unterschiede erforderlich. Zunächst kann unbestreitbar behauptet werden, daß die Besteuerung von durch belgische Gesellschaften vereinnahmten Dividenden (vgl. oben 3) in keiner Weise zu einer Doppelbesteuerung führt. Diese Dividenden sind einfach mit ihrem Nettobetrag von der Körperschaftsteuer der sie erzielenden Gesellschaft befreit. Die 10%ige Vorsteuer auf Einkünfte aus beweglichem Vermögen, die der Gesellschaft bei Vereinnahmung ausländischer Dividenden auferlegt wird, stellt tatsächlich eine „Vorwegbesteuerung" solcher Dividenden dar, die von dieser Gesellschaft an ihre Aktionäre bzw. Gesellschafter verteilt werden. Diese Belastung befreit den Aktionär bzw. Gesellschafter von dem Abzug von 20% Vorsteuer auf Einkünfte aus beweglichem Vermögen, die andernfalls bewirkt werden müßten. Gleichzeitig gibt sie die Vergünstigung einer Anrechnung oder möglicherweise Erstattung dieser 20%. Dieses Verfahren kann daher als eine Art „negative Besteuerung" definiert werden – eine Erscheinung, die kaum jemals in modernen Steuergesetzgebungen zu beobachten ist.
Hinsichtlich der oben unter 1 und 2 beschriebenen Maßnahmen ist festzustellen, daß ihre Wirksamkeit unterschiedlich ist, entsprechend den in ausländischen Quellenstaaten geltenden Steuersätzen. Diese Maßnahmen haben erheblich dazu beigetragen, belgische Investitionen in anderen Ländern, insbesondere in Entwicklungsländern, zu ermutigen, in denen direkte Steuern nur gering sind. Sie gewähren jedoch nur teilweise einen Ausgleich für Doppelbesteuerung, wenn – wie

es seit Jahrzehnten der Fall ist – ausländische Steuersätze sich den belgischen Sätzen angleichen oder sie sogar übersteigen. Aus diesem Grunde kann dieses System nur als ein erster Schritt zur Lösung des Problems internationaler Doppelbesteuerung angesehen werden. Dieses Problem kann in tatsächlich wirksamer Weise nur durch den Abschluß geeigneter internationaler Abkommen gelöst werden.

# PUBLIC FINANCE/FINANCES PUBLIQUES

INTERNATIONAL QUARTERLY JOURNAL
founded by J.A. Monod de Froideville

REVUE TRIMESTRIELLE INTERNATIONALE
fondée par J.A. Monod de Froideville

PUBLISHER/EDITEUR
Foundation Journal for Public Finance/Fondation Revue de Finances Publiques
(Stichting Tijdschrift voor Openbare Financiën)





Vol. XXV 1970 No. 2


## CONTENTS/SOMMAIRE

### INNOVATIONS IN TAX POLICY/«INNOVATIONS» EN MATIERE FISCALE

Papers and Proceedings of the XXVth Session of the International Institute of Public Finance at Istanbul, September 2-5, 1969

Travaux de la XXVème Session de l'Institut International de Finances Publiques à Istanbul, 2-5 Septembre 1969




In No. 2 of every volume, PUBLIC FINANCE/FINANCES PUBLIQUES publishes the papers and proceedings of the Congress of the International Institute of Public Finance held the preceding year. The articles published in Nos 1, 3, and 4 in English, French or German are followed by summaries in the two other languages. Please address all correspondence to Dr. Dieter Biehl, Universität des Saarlandes, D 66 Saarbrücken 11. Annual subscription rate (4 numbers): Dfl. 45.–, US$ 12.50 £ 5/4/–. Orders may be sent to your local bookseller or directly to the Administration of PUBLIC FINANCE/FINANCES PUBLIQUES, Postbus 2853, The Hague, Netherlands.

# * * * * BIBLIOGRAPHY * * * *

## BOOKS

### AFRICA

ECONOMIC SURVEY OF AFRICA VOL. II, published by United Nations, New York, 1968. 182 pp.
Analysis of the economic and social outlook in North African Sub-regions e.g. Morocco, Algeria, Tunesia, Libya, Egypt and Sudan.

Library International Bureau of
Fiscal Documentation no. B 4628

### ARGENTINA

TEMAS DE DERECHO TRIBUTARIO, published by Facultad de Ciencas Económicas de la Universidad de Buenos Aires, Promoción 1968. 170 pp. Text of courses given bij D. Jarach and C.M.G. Fonrouge on tax and financial law, at the University of Buenos Aires.

Library International Bureau of
Fiscal Documentation no. B 5015

IMPUESTO MUNICIPAL A LAS ACTIVIDADES LUCRATIVAS; CONVENIOS MULTILATERALES PARA EVITAR LA DOBLE IMPOSICION, by R. García, A. Fratalocchi and R.O. Amigo. Published by Editorial Cangallo Saci, Cangallo 362, piso 1, Buenos Aires, 1969. 781 pp. Study on the local turnover tax levied in Buenos Aires. Included are law texts, rulings and decisions.

Library International Bureau of
Fiscal Documentation no. B 5013

IMPUESTO NACIONALES, TEXTOS ORDENADOS EN 1968 E SUPLEMENTO DE ACTUALIZACIÓN A SETIEMBRE 1969. Published by La Informacion, Cangallo 362, Piso 1, Buenos Aires, 720 pp. supplement 189 pp.
Unofficial codification of the Federal tax laws, as of Dec. 1968. A supplement updates the main volume up to September 1969.

Library International Bureau of
Fiscal Documentation no. B 5019

### AUSTRALIA

AUSTRALIAN TAX CASES, published by Commerce Clearing House Australia Ltd., Box 230, Milsens Point NS.W. 2061.
Loose leaf publication designed to report in full the text of all tax cases heard by the Taxation Board of Review and the High Court of Australia on questions of Federal taxes. A selection of cases heard by the Supreme Court of New Zealand is also appended.

Library International Bureau of
Fiscal Documentation no. B 4149

### AUSTRIA

ABC DER LOHNVERRECHNUNG, mit vielen ausgearbeiteten Beispielen und zahlreichen Tabellen, by H.Westermayer. Published by Industrieverlag Peter Linde, Dominikanerbastei 10, 1010 Wien, 1970. 96 pp.
Fifth revised and supplemented guide for calculating wage and payroll tax.

Library International Bureau of
Fiscal Documentation no. B 5065

EINKOMMENSTEUERGESETZ 1967, by R. Jiresch, J. Fasching and R. Langer. Published by Manzsche Verlags- und Universitätsbuchhandlung, Kohlmarkt 16, 1014 Wien, 1970. 1504 pp.
Annotated text of the Individual Income Tax Law 1967, as amended at the end of 1969. Implementary decrees, rulings, case laws in connection thereto are appended.

Library International Bureau of
Fiscal Documentation no. B 5072

GRUNDLAGEN MODERNER UNTERNEHMENSFUEHRUNG. INSTRUMENTE RATIONALER BETRIEBSLENKUNG, by G. Seicht. Published by Industrieverlag Peter Linde, Dominikanerbastei 10, Wien 1010, 1970. 187 pp. Textbook dealing with business management principles.

Library International Bureau of
Fiscal Documentation no. B 5082

KOMMENTAR ZUM STRUKTURVERBESSERUNGSGESETZ, published by Creditanstalt-Bankverein, Wien, 1970. 140 pp.
Short survey explaining the feasibility of mergers, contributions of assets and transformations of Austrian entities under the Structural Improvement Law 1969.

Library International Bureau of
Fiscal Documentation no. B 5090

## BRAZIL

UN INVESTIMENTO VALIDO IN UNA ECONOMIA IN ESPANSIONE, published by Ambasciata del Brasile, Piazza Navona, Roma, 1970. 46 pp.
Short survey on investment opportunities in Brazil.

Library International Bureau of
Fiscal Documentation no. B 5113

## CANADA

PROPERTY ASSESSMENT IN CANADA, by F.H. Finnis. Published by Canadian Tax Foundation, 100 University Ave., Toronto 1, 1970. 114 pp.
Study describing current legislation, practices and procedures in all provinces of Canada with respect to property assessment.

Library International Bureau of
Fiscal Documentation no. B 5099

## CHILE

EL CODIGO TRIBUTARIO SUS NORMAS COMPLEMENTARIAS Y JURISPRUDENCIA, by L.R. Ugas Canelo. Published by Editorial Juridica de Chile, Ahumada 131, Santiago de Chile, 2nd edition, 1967. 473 pp. The Chilean Tax Code. This second edition is updated with new amendments, rulings and decisions.

Library International Bureau of
Fiscal Documentation no. B 5115

FUNDAMENTOS ECONOMICOS DE LA LEGISLACIÓN TRIBUTARIA CHILENA, by S.C. Hederra. Published by Editorial Juridica de Chile, Ahumada 131, Santiago de Chile, 1967. 358 pp.
Economic aspects of the Chilean tax legislation.

Library International Bureau of
Fiscal Documentation no. B 5116

## COLOMBIA

IMPUESTO A LA RENTA; REGIMEN LEGAL TRIBUTARIO, by C. Torres de Leon and A.R. Correa. Published by Editores y distribuidores asociados LTDA, Avda Jiménez no. 4-49, Bogota, 1970. 196 pp.
Text of Law 81 of 1960 as amended, its implementary provisions and a short explanation for purposes of 1969 income tax liability of corporations and individuals.

Library International Bureau of
Fiscal Documentation no. B 5095

GUIA PARA LA DECLARACION DE RENTA Y PATRIMONIO, published by Ministerio de Hacienda y Credito Publico, Bogotá, 1970. 53 pp.
Guide containing information relevant for the preparation of 1969 tax return with respect to individuals liable to pay income tax and net worth tax.

Library International Bureau of
Fiscal Documentation no. B 5094

## COSTA RICA

LEYES USUALES SOBRE IMPUESTOS DIRECTOS. Segunda edicion con todas las reformas incluye Ley de Impuesto sobre las ventas y su reglamento, by J.L. Quesada Fonseca and J. Obando Vega. Costa Rica, 1969. 248 pp.
Compilation of the main laws concerning direct taxation. The Sales Tax Law and its regulations are also included.

Library International Bureau of
Fiscal Documentation no. B 5119

## EEC

LA CONSTRUCTION D'UNE ORGANISATION JUDICIAIRE COMMUNAUTAIRE DANS LES PAYS DE LA C.E.E. Thèse pour le doctorat de spécialité (3e cycle) en droit du Marché Commun. By J.L. Ibarra-Escamilla, Université de Strasbourg, Faculté de droit et des sciences politiques et économiques, 1970. 378 pp.
Thesis on the necessity of the establishment of a judicial organisation for the Common Market, for the application of the European Community law, both at the national and supra national level.

Library International Bureau of
Fiscal Documentation no. B 4636

INITIATION AU DROIT DES AFFAIRES DES PAYS DU MARCHÉ COMMUN. Tome I: Régime des sociétés. By W. Garcin. Published by Editions Jupiter, Paris, 1969. 365 pp.
Introductory survey of the law governing corporate entities in the member countries of the European Economic Community.

Library International Bureau of
Fiscal Documentation no. B 4624

INLEIDING TOT HET RECHT VAN DE EUROPESE GEMEENSCHAPPEN. Deel 1A. By P.J.G. Kapteyn and P. Verloren van Themaat. Published by Uitgeverij AE.E. Kluwer, Deventer, 1970. 408 pp.

Volume 1A of the series 'Handboek voor de Europese Gemeenschappen' entitled: Introduction to the law of European Communities. The material is updated as of December 31, 1969 by way of an Appendix referring to the chapters and Paragraphs concerned.

Library International Bureau of
Fiscal Documentation no. B 5078

## FRANCE

COMMENT APPLIQUER LA NOUVELLE T.V.A., Published by Editions J. Delmas et Cie, 13 rue de l'Odeon, Paris, third edition, 1968.
Explanation to the Tax on Value Added as in effect on January 15, 1968. The supplements to this work bring the material up-to-date as of January 15, 1970.

Library International Bureau of
Fiscal Documentation no. B 5064

LAMY FISCAL
Tome I: impôts directs; Contrôle, Contentieux, Pénalités; fiscalité immobilière.
Tome II: taxes sur le chiffre d'affaires; enregistrement et timbre; taxes sur les véhicules. Published by Société des Services Lamy, Paris, 1970. Tome I, 692 pp. Tome II 483 pp.
This annual publication of "Services Lamy" explains in extensive form the French tax legislation. Supplements are issued regularly in order to keep these two volumes up-to-date.

Library International Bureau of
Fiscal Documentation no. B 5050

LAMY SPECIAL, published by Société des Services Lamy, Paris. 884 pp.
Survey of labour legislation and social security law.

Library International Bureau of
Fiscal Documentation no. B 4629

LES ASPECTS JURIDIQUES DU COMMISSARIAT AUX COMPTES, by R. Lefebvre and J. Lefebvre. Published by Editions juridiques Lefebvre, Paris, 1970. 158 pp.
Considerations to the legal provisions for the "commissariat aux comptes" (certified public accountants) of companies and such entities obliged to have their administration controlled.

Library International Bureau of
Fiscal Documentation no. B 5097

## GERMANY

DER BUNDESHAUSHALT. Institut "Finanzen und Steuern": Heft 15, Band 19. Published by Wilhelm Stollfuss Verlag, Dechenstrasse 7-11, Bonn, 1970. 78 pp.
Study on the Federal Budget 1970.

Library International Bureau of
Fiscal Documentation no. B 5081

ENTWICKLUNG DURCH PARTNERSCHAFTLICHE ZUSAMMENARBEIT. Der Beitrag der Bundesrepublik zur Entwicklung der indischen Volkswirtschaft. (see *India*).

FINANZBERICHT 1970. Die Volkswirtschaftlichen Grundlagen und die wichtigsten finanzwirtschaftlichen Probleme des Haushaltsplans der Bundesrepublik Deutschland für das Haushaltsjahr 1970. Published by Bundesministerium der Finanzen, Bonn. 359 pp.
A study of the 1969 budget of the German Federal Republic, with consideration of related financial and economic developments.

Library International Bureau of
Fiscal Documentation no. B 4633

KLEIN-KOMMENTAR ZUM GMBH-GESETZ, by F. Scholz and R. Fischer Published by Verlag Dr. O. Schmidt K.G., 5000 Köln-Marienburg, 7th edition 1970. 208 pp.
Seventh revised edition containing text and explanation to the law governing the GmbH entity form including references to important amending proposals and case law as of October 1, 1969.

Library International Bureau of
Fiscal Documentation no. B 5093

PROBLEME DER PROGRESSIVEN BESTEUERUNG, by H. Haller. Published by J.C.B. Mohr (Paul Siebeck) Tübingen. 34 pp.
Consideration on the problems arising from progressive tax treatment.

Library International Bureau of
Fiscal Documentation no. L 4307

DIE PRÜFUNG DES KONZERNABSCHLUSSES UND DES KONZERNGESCHÄFTSBERICHTS NACH DEM AKTIENGESETZ 1965, by G. Klein. Published by Verlagsbuchhandlung des Instituts der Wirtschaftsprüfer GmbH, Düsseldorf 1970. 200 pp.

Treatise on the consolidated balance sheet and annual report of a group of companies under the 1965 Company Law. The text of the relevant provisions and a literature list are appended.

Library International Bureau of
Fiscal Documentation no. B 4641

STEUERBERATER JAHRBUCH 1969/70, by C. Thoma, O.H. Zacharias and U. Niemann. Published by Verlag Dr. Otto Schmidt, K.G., Köln, 1970. 541 pp.
Tax counsel's yearbook 1969/70 contains the text of lectures held at the XXI congress of tax counsels at Cologne, November 10–12, 1969.

Library International Bureau of
Fiscal Documentation no. B 4610

## INDIA

ENTWICKLUNG DURCH PARTNERSCHAFTLICHE ZUSAMMENARBEIT. Der Beitrag der Bundesrepublik zur Entwicklung der indischen Volkswirtschaft. Published by Indian Investment Center, Karelstr. 76, 4 Düsseldorf, Germany, 1970.
Considerations of the relationship between Germany and India in the field of culture, education, trade and joint enterprise.

Library International Bureau of
Fiscal Documentation no. B 5025

MERGETS, AMALGAMATIONS AND TAKEOVERS. The law, the procedure and the valuation of shares. By S.C. Sen. Published by Eastern Law House Private Ltd., P..OB. 7810, Calcutta, 1969. 266 pp.
This work deals with the law, procedure and taxation aspects of the problem as such.

Library International Bureau of
Fiscal Documentation no. B 5105

## INTERNATIONAL

FISCALITE EUROPEENNE, Tome II: Allemagne, Luxembourg, Pays Bas. By P. Fontaneau. Published by Les Cahiers Fiscaux Europeens, 15, rue du Louvre, Paris 1, 1970.
Loose leaf publication (second volume) containing surveys of the tax system in Germany, Luxembourg and the Netherlands. (Individual income tax, corporate income tax, capital tax, turnover tax, local taxes, inheritance tax, appeal procedure etc.).

Library International Bureau of
Fiscal Documentation no. B 4657

GESELLSCHAFTERDARLEHEN AN KAPITALGESELLSCHAFTEN NACH DEUTSCHEM RECHT UNTER BERÜCKSICHTIGUNG DES SCHWEIZERISCHEN UND DES FRANZÖSISCHEN RECHTS, by C. Kamm. Published by Verlagsbuchhandlung des Instituts der Wirtschaftsprüfer GmbH, 4 Düsseldorf, 1970. 272 pp.
This thesis presents a study of the legal and tax aspects of loans granted by members of a business entity to the entity itself. Comparison is made between the German, and the French and Swiss provisions.

Library International Bureau of
Fiscal Documentation no. B 4613

OEFFENTLICHE AUSGABEN UND REGIONALE WIRTSCHAFTSENTWICKLUNG, by H. Zimmermann. Published by J.C.B. Mohr (Paul Siebeck) Tübingen. 331 pp.
Study on Government spending and regional economic development.

Library International Bureau of
Fiscal Documentation no. B 5062

## ITALY

CORSO DI DIRITTO TRIBUTARIO, by G.A. Micheli. Published by Unione Tipografico-Editrice Torinese, Corso Monte Grappa 218, Torino, 1970. 514 pp.
This work aims to clarify the basic principles of the Italian tax Legislation.

Library International Bureau of
Fiscal Documentation no. B 5073

NOMINATIVITA AZIONARIA E "CEDOLARE". Disciplina della nominativita dei titoli azionari e delle ritenute sugli utili distribuiti dalle societa' Adempimenti pratici. Published by Associazione Bancaria Italiana, Roma, 2nd edition, 1969. 442 pp.
Survey of the taxation of dividends and the registration of shares.

Library International Bureau of
Fiscal Documentation no. B 4639

TESTO UNICO DELLE LEGGI. Sulle imposte dirette. Published by Banco Commerciale Italiana, Piazza della Scala 6, Milano, 1970. 1567 pp.
Compilation of texts of the Italian Direct Taxation Code, the implementary provisions, by laws and case laws related thereto. The texts of conventions for the avoidance of double taxation

concluded with other countries are appended.

Library International Bureau of
Fiscal Documentation no. B 5101

## LATIN AMERICA

CORPORATE TAXATION IN LATIN AMERICA, published by International Bureau of Fiscal Documentation, Amsterdam. Loose-leaf.
This publication is a joint project of the International Bureau of Fiscal Documentation and Bomchil, Pinheiro, Claro, Lavalle and Bado, Paris. It provides a country-by-country comparative summary of the basic provisions of Latin American tax law and per country surveys following the same outline. An extensive bibliography is appended.

Library International Bureau of
Fiscal Documentation no. B 5051 a

REPERTORIO ANUAL DE LEGISLACIÓN NACIONAL Y EXTRANJERA VIII-1965, by F.E. Rodriguez Garciá. Published by Universidad Nacional autónoma de Mexico, Instituto de Investigaciones Jurídicas, 1969, 325 pp.
Compilation of the main laws issued in 1965 in Mexico and in some other Latin-American countries.

Library International Bureau of
Fiscal Documentation no. B 5120

## NETHERLANDS

BELASTINGEN VAN RECHTSVERKEER EN REGISTRATIEWET. E.V.B. No. 7. By A.C. Gorren. Published by Uitgeversmij. AE.E. Kluwer, Deventer and J. Noorduyn & Zn, Gorinchem, 1970.
Loose-leaf publication containing text and explanation to the Bill for taxes on various transactions and the Bill on registration duties which will replace the present laws relating thereto. See TNS I-12 (1970).

Library International Bureau of
Fiscal Documentation no. B 5104

HANDLEIDING VOOR LOONBELASTING EN PREMIEHEFFING, published by Ministerie van Financiën, Den Haag, 1969. 71 pp.
Official guide explaining the imposition of wage tax and social insurance levies, for purposes of employers.

Library International Bureau of
Fiscal Documentation no. L 4308

INLEIDING TOT HET BALANS LEZEN, by W.J. De Langen and Th. S. Ysselmuiden. Published by N. Samsom N.V., Alphen a.d. Rijn, 1969. 93 pp. Eight revised edition explaining problems with respect to the balance sheet and profit and loss account.

Library International Bureau of
Fiscal Documentation no. B 5075

STAATS- EN ADMINISTRATIERECHTELIJKE WETTEN (Nederlandse wetgeving deel A), by J.R. Stellinga, Ph.A.N. Houwing and G.J.L. Seesink. Published by Uitgeversmij. AE.E. Kluwer, Deventer. Loose-leaf publication in two volumes containing the full text of all public- and administrative laws, by-laws and Royal Decrees pertaining thereto.

Library International Bureau of
Fiscal Documentation nos. B 4618, B 4619

## NIGERIA

ESTIMATES OF THE GOVERNMENT OF THE FEDERAL REPUBLIC OF NIGERIA 1969-70 (Capital). Published by Federal Ministry of Information, Printing Div., Lagos, 1969. 32 pp. 1969–70 Budget figures.

Library International Bureau of
Fiscal Documentation no. B 5100

## PUERTO RICO

WHAT YOU SHOULD KNOW ABOUT TAXES IN PUERTO RICO, published by Commonwealth of Puerto Rico, Department of Treasury, Office of Economic and Financial research, San Juan, 1970, VII. 100 pp. The most important facts about taxation in Puerto Rico, written for the layman.

Library International Bureau of
Fiscal Documentation no. B 5084

## SPAIN

ASPECTOS ADMINISTRATIVOS Y FISCALES DE LAS UNIONES DE EMPRESAS, by J.M.M. Oviedo. Published by Editorial de Derecho Financiero, Gen. Mola 15, Madrid, 1968. 275 pp.
A study of the fiscal and administrative aspects encountered by mergers between companies in accordance with Spanish law, case law and jurisprudence.

Library International Bureau of
Fiscal Documentation no. B 5117

CRITERIOS DE JURISPRUDENCIA FISCAL (IMPUESTOS DIRECTOS), by C.I. Luis and A.P. Vizcarra. Published by Editorial de Derecho Financiero, Gen. Mola 15, Madrid. 176 pp.
Compilation of jurisprudence on direct taxes.

Library International Bureau of
Fiscal Documentation no. B 4637

EL IMPUESTO DE DERECHOS REALES EN LA VIDA MERCANTIL, by J.M. Tejera Victory. Published by Editorial de Derecho Financiero, Madrid, 1956. 173 pp.
A study of the tax which affects transfers of immovables according to Spanish legislation, and its relation to commercial acts and operations.

Library International Bureau of
Fiscal Documentation no. B 5118

RÉGIMEN FISCAL DE LES CONVENIOS DE ASISTENCIA TECNICA, by C. Bénitez Castelar. Published by Quintana, Alb. Aquilera 40, Madrid. 139 pp.
Consideration of the taxation of payments for know-how arising from contracts concluded between both residents and non-residents of Spain, including legal and administrative aspects thereof.

Library International Bureau of
Fiscal Documentation no. B 5074

## SWEDEN

THE TAX SYSTEM IN SWEDEN, by M. Norr, C. Sandels and N.G. Hornhammar. Published by Stockholms Enskilda Bank, Nov. 1969. 132 pp.
Summary of the Swedish income tax structure with emphasis to the corporate income tax and individuals income tax in connection to international aspects. Explanation to the tax on value added is appended.

Library International Bureau of
Fiscal Documentation no. B 4556

## SWITZERLAND

DIE BESTEUERUNG DER BASISGESELLSCHAFTEN IN DER SCHWEIZ UNTER BESONDERER BERÜCKSICHTIGUNG DER DOMIZIL- UND HILFSGESELLSCHAFTEN. Dissertation der Hochschule St. Gallen Nr. 348. By P. Stadler. Published by Verlag Hans Schellenberg, Winterthur, 1970. 205 pp. Thesis on the taxation of base companies in Switzerland.

Library International Bureau of
Fiscal Documentation no. B 5110

## UNITED KINGDOM

ELEVEN-YEAR DIGEST OF INCOME TAX CASES CLASSIFIED 1959-1969. In continuation of Butterworths Income Tax Digest. Published by Butterworths, London, 1970. 294 pp.
This eleven-year digest supersedes the ten year digest, published in 1969 which may now be destroyed.

Library International Bureau of
Fiscal Documentation no. B 5098

HANDBOOK ON THE CONSOLIDATED TAXES ACTS 1970, prepared by Butterworths Editorial staff. Butterworths, London 1970. 768 pp.
This book contains the complete text of the income and Corporation Taxes Act 1970 and the Taxes Management Act 1970 which represent a consolidation of the Income Tax Acts, Corporation Tax Acts and certain enactments relating to capital gains tax and to administration and procedure. Each section or paragraph of both Acts is followed by notes of the former enactments from which it is derived.

Library International Bureau of
Fiscal Documentation no. B 5046

POVERTY IN BRITAIN AND THE REFORM OF SOCIAL SECURITY, by A.B. Atkinson. Published by Cambridge University Press, 200 Euston Rd., London N.W. 1. 224 pp.
Study examining the available evidence about poverty in Britain today and to evaluate the various proposals that have been made for reforming the social security system as the introduction of a negative income tax.

Library International Bureau of
Fiscal Documentation no. B 4643

PRACTICAL ESTATE DUTY PLANNING, by R. Ray. Published by Butterworth & Co. Ltd., London, 1970. 142 pp.
This book treats the subject of estate duty mainly from a practical approach rather than summarising the law as such.

Library International Bureau of
Fiscal Documentation no. B 5106

TABLES OF COMPARISON. Income and Corporation Taxes Act 1970. Taxes Management Act 1970. Published by Her Majesty's Stationery Office, 49 High Holborn, London WC1, 1970. 181 pp.
The tables show how the provisions of earlier

Acts are incorporated in the consolidation Acts.

Library International Bureau of
Fiscal Documentation no. B 5102

VALUE ADDED TAX, THE U.K. POSITION AND THE EUROPEAN EXPERIENCE. Papers read at a Business Economists' Group Conference, sponsored by The United Dominions Trust Ltd. Edited by T.M. Rybczynski. Published by Basil Blackwell, 49 Broadstreet, Oxford, 1969. XI, 66 pp.

Library International Bureau of
Fiscal Documentation no. B 5076

## U.S.A.

NEGATIVE TAXES AND THE POVERTY PROBLEM by C. Green. Published by The Brookings Insitution, 1775 Massachusetts Ave. N.W., Washington, D.C., 1967. 210 pp.
A background paper prepared for a conference of experts held June 8-9, 1966, together with a summary of the conference discussion.

Library International Bureau of
Fiscal Documentation no. B 5109

TAX CHANGES AND MODERNIZATION IN THE TEXTILE INDUSTRY, by T.M. Stanback. Published by National Bureau of Economic Research, New York 1969 Distributed by Colombia University Press. 119 pp.
Study which primarily investigates the effects of the depreciation allowances and the investment tax credit in regard to the modernization of the textile industry.

Library International Bureau of
Fiscal Documentation no. B 4650

TAX CREDITS. Past Experience and Current Issues. Published by Tax Foundation Inc., 50 Rockefeller Plaza, New York N.Y. 10020. 35 pp.
Study which discusses the advantages and disadvantages of tax credits, analyses the concept of tax credit, and presents a brief history of the use of tax credits in the United States of America.

Library International Bureau of
Fiscal Documentation no. B 4646

# LOOSE-LEAF SERVICE

Releases from May 1 - May 31, 1970

## AUSTRIA

DIE OESTERREICHISCHEN ABGABENGESETZE. TEXTAUSGABE, release 5.
Wirtschaftsverlag Dr. A. Orac, Wien.

## BELGIUM

DOORLOPENDE DOCUMENTATIE INZAKE B.T.W. / LE DOSSIER PERMANENT DE LA T.V.A., release 14.
Editions Service, Brussels.

FISCALE DOCUMENTATIE VANDEWINCKELE.
BOEK DER BAREMA'S
Tome IV release 14
Tome IXa release 13.
E.K. Vandewinckele, Brugge / C.E.D. Samsom N.V., Brussels.

HANDLEIDING DER INKOMSTENBELASTING, release 31.
C.E.D. Samsom N.V., Brussels.

IMPÔTS ET TAXES, release 193.
C.E.D. Samsom N.V., Brussels.

TRAITÉS DES IMPÔTS SUR LES REVENUS, releases 35, 36.
C.E.D. Samsom N.V., Brussels.

## BENELUX

BENELUX PUBLICATIEBLAD, release 2.
Staatsuitgeverij, The Hague.

## CANADA

CANADA ESTATE TAX SERVICE, release 49.
Richard de Boo, Toronto.

CANADA TAX SERVICE-LETTER, release 149.
Richard de Boo, Toronto.

CANADA TAX SERVICE-RELEASES, release 297.
Richard de Boo, Toronto.

CANADIAN INCOME TAX. J.G. McDonald, release 43.
Butterworth & Co., Toronto.

BUTTERWORTH'S CURRENT TAXATION, release 16.
Butterworth & Co., Toronto.

PROVINCIAL TAXATION SERVICE, releases 250, 251.
Richard de Boo, Toronto.

## DENMARK

SKATTEBESTEMMELSER
- SKATTEBESTEMMELSER, release 49
- SKATTENYTT, release 46
- KILDESKAT, release 15, 16
- SKATTEBESTEMMELSER – OMSAETNINGSAFGIFT, release 21

A.S. Skattekartoteket Informationskontor, Copenhagen

## E.E.C.

HANDBOEK VOOR DE EUROPESE GEMEENSCHAPPEN.
- VERDRAGSTEKSTEN EN AANVERWANTE STUKKEN, releases 73, 74
- TARIEFLIJSTEN, release 100

N.V. Uitgeversmij. AE.E. Kluwer, Deventer

## FRANCE

CODE ANNOTÉ DES CONTRIBUTIONS DIRECTES, releases 54, 55.
Editions Seteca, Paris.

CODE ANNOTÉ DES TAXES SUR LE CHIFFRE D'AFFAIRES, release 41.
Editions Seteca, Paris.

DICTIONNAIRE FISCAL PERMANENT, releases 13-16.
Editions Législatives et Administratives, Paris.

JURIS CLASSEUR FISCAL:
- COMMENTAIRE CHIFFRE D'AFFAIRES, release 6071.
- CODE FISCAL CHIFFRE D'AFFAIRES, release 5159.

Editions Techniques, Paris.

JURIS CLASSEUR FISCAL
- COMMENTAIRES IMPÔTS DIRECTS, releases 1080, 1081.

Editions techniques, Paris.

## GERMANY

DEUTSCHE GESETZE. Schönfelder, release February.
Verlag C.H. Beck, München.

HANDBUCH DER EINFUHRNEBENABGABEN, release 3.
v.d. Linnepe Verlagsgesellschaft KG, 58 Hagen.

MEHRWERTSTEUER, DAS NEUE UMSATZSTEUERRECHT, release 9.
C.H. Becksche Verlagsbuchhandlung, München.

RECHTS- UND WIRTSCHAFTS PRAXIS STEUERRECHT, releases 105, 106.
Forkel Verlag, Stuttgart-Degerloch.

STEUERERLASSE IN KARTEIFORM, releases 103, 104
Verlag Dr. Otto Schmidt, Köln-Marienburg.

STEUERN UND ZOLLE IM GEMEINSAMEN MARKT, release 18.
Nomos Verlagsgesellschaft m.b.H. & Co., Baden-Baden.

UMSATZSTEUER UND MEHRWERTSTEUER KOMMENTAR. PETER, release 18.
Verlag Neue Wirtschafts-Briefe G.m.b.H., Herne-Berlin.

WORLD TAX SERIES – GERMANY REPORTS, release 10.
Commerce Clearing House Inc , Chicago.

## NETHERLANDS

FED'S LOSBLADIG FISCAAL WEEKBLAD, releases 1251-1255.
N.V. Uitgeverij FED, Amsterdam.

DE GEMEENTELIJKE BELASTINGEN
A.M. Dijk, G. Jansen, J.C. Schroot enz. releases 93, 94.
Vuga-Boekenrij, Arnhem.

HANDBOEK VOOR IN- EN UITVOER
- BELASTINGHEFFING BIJ INVOER, releases 110, 111
- TARIEF VAN INVOERRECHTEN, release 135.

N.V. Uitgeversmij. AE.E. Kluwer, Deventer.

NEDERLANDSE BELASTINGWETTEN. W.E.G. de Groot, release 62.
N. Samsom N.V., Alphen a.d. Rijn.

NEDERLANDSE WETBOEKEN, release 106.
N.V. Uitgeversmij. AE.E. Kluwer, Deventer.

DE SOCIALE VERZEKERINGSWETTEN, release 39.
N.V. Uitgeversmij. AE.E. Kluwer, Deventer.

VADEMECUM VOOR IN- EN UITVOER, release 422.
N. Samsom N.V., Alphen a.d. Rijn.

DE VAKSTUDIE: FISCALE ENCYCLOPEDIE
- ALGEMENE WET RIJKSBELASTINGEN - WET ADMINISTRATIEVE RECHTSPRAAK - BELASTINGZAKEN, release 30-32.
- SUCCESSIEWET, release 262.

N.V. Uitgeversmij. AE.E. Kluwer, Deventer.

VAKSTUDIE BELASTINGWETGEVING,
- BELASTINGEN VAN RECHTSVERKEER EN REGISTRATIEWET, release: May

N.V. Uitgeversmij. AE.E. Kluwer, Deventer.

## UNITED KINGDOM

BRITISH TAX ENCYCLOPEDIA Vol. I release 33.
Sweet & Maxwell, London.

SIMON'S INCOME TAX SERVICE, release 65.
Butterworth & Co., London.

## U.S.A.

FEDERAL TAX GUIDE REPORTS, releases 30-34.
Commerce Clearing House Inc., Chicago.

FEDERAL TAXES REPORT BULLETIN, releases 16-19.
Prentice Hall, Inc., Englewood Cliffs.

FEDERAL TAXES REPORT BULLETIN - TREATIES release 22.
Prentice Hall, Inc., Englewood Cliffs.

STATE TAX GUIDE, releases 453, 454.
Commerce Clearing House, Inc., Chicago.

TAX IDEAS - REPORT BULLETIN, release 6.
Prentice Hall Inc., Englewood Cliffs.

TAX TREATIES, releases 218, 219.
Commerce Clearing House Inc., Chicago.

*announces No. 22 in its series*

Publications of the International Bureau of Fiscal Documentation:

## CONVENTION ENTRE LES PAYS-BAS ET LA SUISSE EN VUE D'EVITER LES DOUBLES IMPOSITIONS DANS LE DOMAINE DES IMPOTS SUR LE REVENU ET SUR LA FORTUNE

**by W. Dirksen and Georges Muller**

**Foreword by: Dr. J.C.L. Huiskamp**

*A commentary in French on the Netherlands-Switzerland Double Taxation Convention:*

- *from the Dutch point of view, by W. Dirksen*
- *from the Swiss point of view, by Georges Muller*

*—including the text (in Dutch and French) of the Convention of November 12, 1951; and the Supplementary Convention of June 22, 1966.*

As Dr. Huiskamp points out in his Foreword, this Convention has a particularly important place in the network of tax conventions because, although the Convention (as amended in 1966) is based on the O.E.C.D. Draft Convention, it contains special provisions against the avoidance of taxation through establishment in a tax haven.

While dealing primarily with the purely practical aspects of the Convention, it also sketches the essential background of the Convention thus contributing to the better understanding of its provisions.

**Normal price: Dfl. 30.-*/US $ 8.50 with postage (airmail US $ -.50 extra)**

---

**To: International Bureau of Fiscal Documentation**
**„Muiderpoort" - Sarphatistraat 124**
**Amsterdam-C. - Holland**

**ORDER FORM**

**PLEASE SUPPLY** ..... copy/ies of:

**CONVENTION ENTRE LES PAYS-BAS ET LA SUISSE EN VUE D'EVITER LES DOUBLES IMPOSITIONS DANS LE DOMAINE DES IMPOTS SUR LE REVENU ET SUR LA FORTUNE. 1970. By W. Dirksen & Georges Muller**

Name: .....

Organisation: .....

Address: .....

City: ..... Country: .....

Signed: ..... Date: .....

☐ cheque enclosed

☐ please invoice us

---

**PRE-PUBLICATION OFFER:**

**A reduced price of Dfl. 25.-*/US $ 7.00 (airmail US $ -.50 extra) is offered on orders placed before December 31, 1970.**

* *For residents of the Netherlands: prices exclusive of B.T.W. (T.V.A.)*

*With the close cooperation of a network of expert correspondents in each of the Latin American countries, coordinated by Bomchil, Pinheiro, Claro, Lavalle & Bado, the International Bureau of Fiscal Documentation has filled a significant gap in international tax literature by producing —*

# CORPORATE TAXATION IN LATIN AMERICA

**edited by**
**Dr. N. Chedufau**
– Partner of M. & M. Bomchil,
Buenos Aires – Paris

**and**
**Lic. S. García Granados**
**assisted by Robert C. Hammond, B.A.**
– Research Associates at the International Bureau of Fiscal Documentation, Amsterdam

● **loose-leaf** ● **quarterly up-dating supplements** ● **approx. 500 large-format pages**

**CONTENTS**



*Section B provides a country-by-country comparative summary of the basic provisions of the Latin American tax law.*

*Section C amplifies the summaries in Section B, following the same per country outline.*



**Price: US$ 75.00 – £31.2s. – *Dfl. 270.00 – DM 275.00**
(including supplements for 1970)

**PRE-PUBLICATION OFFER –**

**10% discount**

*Subscribers to the Bulletin are being offered a special 10% discount on orders placed direct, before September 30, 1970. A special rate applies to subscribers in Latin America – please write for details.*

* For residents of The Netherlands: the prices quoted are exclusive of TVA (BTW)

**INTERNATIONAL BUREAU OF FISCAL DOCUMENTATION**
Muiderpoort – Sarphatistraat 124 – Amsterdam-C. – The Netherlands

# CUMULATIVE INDEX 1970

Nos. 1, 2, 3, 4, 5 and 6

# CONTENTS

EDITORIAL

# FOURTH ALL-INDIA CONFERENCE OF TAX EXECUTIVES

The Fourth All-India Conference of Tax Executives was held at New Delhi under the auspices of the Federation of Indian Chambers of Commerce and Industry, on 21st and 22nd November, 1969. About 280 senior executives from all parts of India participated. The Conference was inaugurated by P.C. Sethi, Minister of State in the Ministry of Finance, Government of India.

The subjects discussed at the Conference were:

(i) Tax Incentives for Social Services;
(ii) Functional System of Work in Income-tax Offices;
(iii) Collection and Recovery of Tax; and
(iv) Assessment of Charitable and Non-Profitmaking Organizations.

Recently a summary of the proceedings, the text of important speeches and working papers and the statement of conclusions were published in a special Souvenir Volume,* which contains articles on some special topics as well.** It follows from the conclusions that the frequent changes in tax laws are felt by the Conference to be an undesirable feature of modern taxation. These changes lead to a lack of confidence in the minds of the taxpayers. The laws should be so conceived and drafted as to be easily understood, even by an average taxpayer, and should be stable. The Conference felt that too much time and energy is wasted on comparatively small and insignificant matters. Instead, an effort should be made to make the tax laws compact, comprehensive and clear. The Minister of State put forward as his opinion that many of the complications of tax law result from Government's anxiety to plug loopholes.

It may be learned from the reports that it is not only difficult to collect taxes in India but that it is not easy to pay taxes either. Mr. K.C. Khanna stated in his report:
"In a city like Calcutta, I send a man to the Reserve Bank with a cheque. He comes back. There is a strike on. Next day he goes and comes back because there is a firing going on. The man escapes police firing but I cannot escape the firing by the Income Tax officer. He imposes a penalty. And perhaps rightly so because if he does not fire, he will be fired."

On the whole the papers are worth reading; they will help us to reach a better understanding of the special tax problems arising in a country in which 15% of the population of the world lives and works.

DR. J.C.L. HUISKAMP

---

* Souvenir Report, 246 pages, including a list of participants, published by the Federation of Indian Chambers of Commerce and Industry, New Delhi; Library International Bureau of Fiscal Documentation no. B. 5287.

** Statutory Discretionary Powers (R.S. Gae);
Role of Income Tax in Promoting our Foreign Exchange Resources (R.N. Muttoo);
Tax Incentives in International Tax Law (J. v. Hoorn);
Amortization of Preliminary Expenses (C.C. Chokski);
Intent versus Effect of some proposed changes in the Income Tax Law (H.B. Dhondy).

# ARTICLES

MARSHALL J. LANGER:*

## TAX HAVENS OF THE WORLD**

Three centuries ago the noted English scientist, Sir Isaac Newton, stated that: "to every action there is always opposed an equal reaction." This statement can be applied today to the field of international taxation. As tax rates rise and currency controls become increasingly more strict in some countries, other countries make themselves available as havens for the avoidance of these taxes and controls.

Individuals and companies from all over the world come to these havens to organize companies which, in turn, carry on business operations and make investments throughout the world. The primary attraction which brings people to these havens is either low taxes or no taxes at all. Therefore, these places are generally called *tax havens.*

A person resident in almost any country in the world may have use for a tax haven. In fact, it is not unusual to find a resident of one tax haven country seeking to establish a company or trust in another tax haven. For example, Panama is certainly a leading tax haven. Yet, some Panamanians use Netherlands Antilles or Caymanian companies to handle their offshore operations and investments.

An investor may establish a tax haven company or trust to prevent local authorities in his country of residence from knowing of assets and income he may have abroad. Sometimes this is done to avoid present taxes and controls. Just as often, it is done to protect against the possibility of future taxes and controls, or even against possible future confiscation.

In 1968, Alexander B. McKie, a Toronto banker, addressed the Canadian Tax Foundation Conference on the subject: *Tax Havens — Use and Abuse.*[1] He discussed the morality of tax planning involving the use of tax havens. He stated that too many people consider all tax haven transactions illegal, evasive, unethical and unpatriotic, but that this is not justified. Obviously, there are tax evaders who abuse tax haven facilities, but tax haven operations are not necessarily illegal. In fact, most international tax planning involves legal tax avoidance rather than illegal tax evasion. Such tax avoidance is based on interpretation of the law rather than the expectation of escaping law enforcement. In most instances it is desirable for an individual to make his investments in any foreign country through a corporation rather than in his own name. The need for limited liability is usually greater in the case of foreign investments than it would be for domestic investments.[2]

---

* Marshall J. Langer is a member of the law firm of Bittel Langer Blass & Corrigan, Miami, Florida, U.S.A.: Adjunct Assistant Professor of Law at the University of Miami; and Managing Director of Grand Cayman Bank Ltd., Grand Cayman, Cayman Islands, BritishWest Indies.

** This article is based on a talk delivered by Mr. Langer to the 25th Annual University of Miami Tax Conference, at Ocho Rios, Jamaica, in May, 1970.

1. See 21 Tax Executive 73 (1969).

2. There is a sound tax reason why foreign individuals should always make their investments in the United States through foreign corporations. This simple step exempts the investment from potential U.S. federal estate tax liability. If a foreigner dies owning U.S. securities or property, such assets are subject to federal estate tax; but if he dies owning the shares of a foreign corporation which owns the very same U.S. securities or property, these assets are not subject

## FACTORS IN SELECTING A TAX HAVEN

Where should a tax haven corporation be formed? What are some of the factors which investors consider in the selection of a particular place as a tax haven? They include:

- The political and economic stability of the country and the integrity of its government.
- The attitude of the country toward tax haven business.
- Even where a country is completely free of income tax, it is necessary to look into other taxes and fees which it imposes.
- Individuals establishing a tax haven company or trust are also concerned with any death duties or inheritance taxes which may be imposed by the tax haven country.
- Tax treaties are also important. Some tax havens owe their very existence as such to the fact that they are parties to advantageous tax treaty arrangements. Other tax haven countries are parties to few, if any, tax treaties. These countries often consider the lack of tax treaties to be an advantage since it eliminates the need to furnish information to other governments.
- Exchange controls are also a factor. Generally, most offshore companies organized by nonresidents of countries having exchange controls can obtain nonresident status giving them relative freedom from such controls. Some leading tax havens have no exchange controls.
- The ability to conduct substantial business activities within the tax haven country is another factor.
- An important factor in selecting a particular tax haven country may be the liberality of its corporation laws.
- The tradition of the English common law is an advantage enjoyed by present and former members of the British Commonwealth. When it comes to a trust, civil law countries cannot compete with common law jurisdictions.
- Transportation facilities are important, as are telephone, cable and telex communications with the rest of the world.
- Banking facilities are also important.
- The cost of incorporation and the length of time it takes to incorporate are also factors. However, investors are generally more concerned with the annual cost of maintaining a company than they are with the initial cost of incorporation.
- Perhaps the most important single factor in the mind of an offshore investor about to establish a tax haven company or trust is the long-range prospects for continued freedom from taxation. In some jurisdictions it is now possible for an investor to obtain a long-term written guarantee against taxes upon incorporation of a company or establishment of a trust.

## CLASSIFICATION OF TAX HAVENS

As pointed out in an editorial which appeared in the *Bulletin for International Fiscal Documentation*[3], the tax havens of the world are not homogeneous. They may be broadly classified into four separate categories:

*First,* there are the traditional tax havens with virtually no taxes at all, such as the Bahamas, Bermuda and the Cayman Islands.

*Second,* there are those havens which impose taxes, but do so at a relatively low rate. These include the British Virgin Islands and Gibraltar.

*Third,* there are the havens which tax income from domestic sources but exempt all income from foreign sources. Included in this category are Hong Kong, Liberia and Panama.

---

to U.S. estate tax. They are deemed to be foreign property which is not taxable in the estate of a nonresident alien decedent. U.S. Internal Revenue Code of 1954, Sections 2103, 2104 (a).

3. 23 Bulletin for International Fiscal Documentation 458 (1969).

*Fourth*, there are those countries which allow special privileges. These include some countries which are not traditionally considered to be tax havens, such as Luxembourg and the Netherlands. These countries are usually suitable as tax havens only for limited purposes.

Some tax haven countries remain such year after year. Others come and go. A list of tax haven countries made ten or 12 years ago would probably have included Canada, Tangier, Uruguay and Venezuela,[4] and it might have even included Cuba. Some countries, like Canada, no longer welcome tax haven companies. Others, including Cuba, have lost their status as tax havens because of economic chaos and political instability.

What are some of today's leading tax havens? And, what are their relative advantages and disadvantages?

A recently published book entitled *Tax Havens*[5] provides basic information about 14 leading tax havens. Edited by Milton Grundy, an English lawyer, it consists of separate reports on each of the covered tax haven jurisdictions prepared by local bank or trust company officials. Unfortunately, the book makes no attempt to compare one jurisdiction with another or to determine when a particular tax haven may offer advantages over others.

The 14 tax havens covered in the Grundy book are: Bahamas, Bermuda, British Virgin Islands, Cayman Islands, Gibraltar, Hong Kong, Isle of Man, Jersey, Liberia, Liechtenstein, Luxembourg, Netherlands Antilles, Panama and Switzerland. It is the purpose of this article to give you an appraisal of current conditions in each of these 14 havens as well as brief comments about some other potential tax haven jurisdictions.

Starting alphabetically, the first tax haven is one which few of us are likely to try to use. In November, 1969, the Peoples Republic of *Albania* announced a decision to abolish personal income taxes.[6] Albania thus became one of the few countries in the world to abolish income taxes, and it is the first Communist country in Europe where there is no direct taxation on citizens.

*Andorra* is a tiny country located in the Pyrénées between France and Spain. The entire country is considered to be one fantastic supermarket with bargains for tourists in everything from cigarettes to automobiles. Andorra has no income taxes, and no sales taxes or customs duties. The few taxes it does have are low. However, its remote location destroys its usefulness as a tax haven.

The Caribbean island of *Antigua* is one of several high-tax Caribbean Commonwealth jurisdictions which allow special privileges to qualifying International Business Companies. These will be elaborated upon in the discussion of Barbados.

For many years the *Bahamas* has been one of the favorite tax haven countries of the world.[7] It is today a selfgoverning, almost-independent member of the British Commonwealth. It has a complete absence of direct taxation, with no income tax or capital gains tax. Since the repeal of a 4% probate duty several years ago, it has no gift,

---

4. See Gibbons, William J., *Tax Factors in Basing International Business Abroad*, Harvard Law School, Cambridge, Mass. (1957).
5. *Tax Havens* (Milton Grundy, editor, 1969), Etablissement Général des Instituts Financiers, Vaduz, Liechtenstein (hereinafter cited as *Tax Havens*).
6. Tax News Service 1-45 (1969).
7. For additional information on the *Bahamas*, see Pine, Sidney R., *Tax and Business Benefits of the Bahamas*, Prentice-Hall Tax Ideas, paragraph 24,033 (1967); *Tax Havens*, *supra* note 5, at 9; and *Information Guide for Doing Business in The Bahamas*, Price Waterhouse & Co., New York (1969).

inheritance or estate taxes of any kind. During 1969, the Government enacted new legislation imposing a $100 yearly fee on all Bahamian companies,[8] but this is not likely to have any serious effect on the status of the Bahamas as a tax haven. The Bahamas has no tax treaties requiring it to furnish information to other governments.

On the minus side, there is the reluctance of the Bahamas immigration authorities to grant work permits to qualified foreigners even when there are no qualified Bahamians available for a particular position. The Bahamas *Companies Act*[9] dates back to 1866 and there is considerable need for modernizing both its companies and trusts laws.

Until now, Freeport, on Grand Bahama Island, has had a distinct tax haven status of its own. By virtue of the *Hawksbill Creek Act,*[10] a private company known as The Grand Bahama Port Authority Limited has been able to control immigration into Freeport and to grant long-term tax guarantees to Freeport investors which were not available elsewhere in the Bahamas. In February, 1970, the Bahamas Government took action to strip The Grand Bahama Port Authority Limited of its control over immigration into the Freeport area. The Government feels it alone should determine who can come into and who can remain in the Bahamas. This is causing grave concern to investors in Freeport who feel that if the Government can abrogate concessions relating to immigration it might later do the same to tax concessions.

During 1970, the Bahamas enacted a new Industries Encouragement Act to encourage manufacturing throughout the Bahamas. The new Act offers tax incentives to eligible companies by way of long-term guarantees against taxes.[11] Such guarantees were previously available only in the Freeport area. However, the Freeport guarantees have been available to a wide range of business activities, not just manufacturing.

The British Protectorate of *Bahrain* in the Persian Gulf is sometimes mentioned as a possible tax haven. However, its use as such appears to be quite limited, particularly since the British have announced that they will withdraw from the area in 1971.

*Barbados* became an independent nation within the British Commonwealth in 1966.[12] Its tax rates on regular companies are quite high, but it has two types of special International Business Companies,[13] similar to those of Antigua and Jamaica. An ordinary International Business Company is completely exempt from Barbados income tax and dividends paid by such a company to nonresident shareholders are also exempt from income tax. International Business Companies which are investment companies pay 2-1/2% Barbados income tax on investment income after deducting management expenses. Dividends from such an investment company to nonresident shareholders are also subject to a 2-1/2% withholding tax. An investment-type International Business Company could theoretically take advantage of the income tax treaty between the United States and the United

---

8. Companies (Amendment) Act, 1969 of the Bahama Islands (Law 19 of 1969). Except as otherwise noted all figures are stated in U.S. dollars or the equivalent.
9. Companies Act (Chapter 184 of the Statute Law of the Bahama Islands, 1965, as amended).
10. Hawksbill Creek, Grand Bahama (Deep Water Harbour and Industrial Area) Act of the Bahama Islands (Law 5 of 1955).
11. Industries Encouragement Act, 1970 of the Bahama Islands (Law 10 of 1970).
12. For additional information on *Barbados*, see *Information Guide for Doing Business in Barbados*, PriceWaterhouse & Co., New York (1969).
13. International Business Companies (Exemption from Income Tax) Act, 1965 of Barbados.

Kingdom which has been extended to Barbados.[14] As a result of the treaty a dividend paid by a U.S. company to such a Barbados company would be subject to a combined effective rate of only 17-1/8%, much lower than the customary 30% U.S. tax alone. If any extensive use is made of this "loophole" the United States might terminate the application of the United Kingdom income tax treaty to Barbados.

*Bermuda* is a self-governing British colony located in the mid-Atlantic less than two hours by jet from New York. It has no income tax, capital gains tax or death duty.[15] It has no tax treaties with other countries requiring the exchange of fiscal information. Bermuda has become a great favorite with Canadians because decisions of the Bermuda courts have held against Canadian governmental bodies which have sought to pierce Bermuda companies to determine their true ownership and the source of their assets. Foreign-owned companies, or *exempted* companies, pay about $480 upon incorporation and a like amount annually thereafter. Incorporation of a Bermuda company may only be accomplished by a private act of the Bermuda legislature. This is often a slow process and it is somewhat expensive, but exempted companies are granted long-term guarantees against possible future taxes.[16]

In February, 1970, Bermuda changed its currency from the pound to the dollar.[17] The new Bermuda dollar is on a par with the United States dollar. At about the same time, the Bahamas increased the par value of the Bahamian dollar from 98 cents to one United States dollar. Both the Bahamas dollar and the Bermuda dollar are sterling area currencies, but neither is likely to be devalued in the event of a further devaluation of the British pound.

The *British Virgin Islands* is sometimes classified as a tax haven because of its relatively low 12% rate of income tax on companies.[18] However, there is also a 12% withholding tax on dividends paid to shareholders, and in some cases this second tax may even apply to undistributed profits. This limits its usefulness as a haven.

*Campione* is a tiny enclave on Lake Lugano near the Swiss-Italian border which has a famous gambling casino. Its favorable tax status is due to the fact that apparently neither Switzerland nor Italy have chosen to exercise taxing jurisdiction. It is generally not well known outside of the area.

The *Caymian Islands* is a British Crown Colony located about 475 miles south of Miami.[19] The total population is about 13,000. It is not as developed as some of the better known tax havens, but it has good transportation facilities with 1 or 2 nonstop

---

14. The United Kingdom-United States income tax treaty was extended to Barbados in 1958 and still applies even though Barbados is now an independent country. The 1966 amendments to the treaty do not apply to Barbados.

15. For additional information on *Bermuda*, see Pine, Sidney R., and Graham, David H., *Bermuda—A Base for Foreign Business and Investment*, Prentice-Hall Tax Ideas, paragraph 24,023 (1967); *Tax Havens*, *supra* note 5, at 18; and *Memorandum Regarding Domicile of Investment Funds in Bermuda*, The Bank of Bermuda, Limited, Hamilton, Bermuda (8th edition, 1967).

16. An exempted company may apply under the *Exempted Undertakings Tax Protection Act, 1966*, for an undertaking from the Bermuda Government that in the event taxes are enacted they will not apply to the company until 1996.

17. See International Commerce, March 2, 1970, at 26.

18. For additional information on the *British Virgin Islands*, see *Tax Havens*, *supra* note 5, at 27. See also Tax News Service II—48 (1970).

19. For additional information on the *Cayman Islands*, see Langer, Marshall J., and Walker, W. S., *The Cayman Islands—A New Base for Foreign Companies and Trusts*, Prentice-Hall Tax Ideas, paragraph 24,008 (1968); and *Tax Havens*, *supra* note 5, at 34.

jet flights from Miami each day. There is no present taxation and none is likely in the foreseeable future. There are presently no tax treaties which would require the Cayman Islands Government to furnish information to other governments.[20]

A major attraction of the Cayman Islands comes from legislation under which companies and trusts which are not locally owned or operated can obtain long-term guarantees against future taxes. *Exempted companies* are guaranteed against taxes for 20 years and *exempted trusts* can obtain guarantees for 50 years.

An exempted company pays an incorporation fee of $480 and a minimum annual fee of $240. These fees are somewhat higher than those for an ordinary company, but an exempted company has several advantages which are not available to an ordinary company.[21] A Cayman exempted company may issue no par value shares. It may use bearer shares, provided they are not made available to residents of the sterling area. It need not include the word *Limited* as part of its company name. Shareholders need not be disclosed to the Registrar of Companies, thus ensuring greater secrecy. By far the most important advantage, however, is the undertaking from the Government that no taxes will be applied to it for a period of 20 years.

A new *Trusts Law*[22] enacted in the Cayman Islands in 1967, provides for exempted trusts with similar guarantees against future taxes for up to 50 years from the date the trust is created. An exempted trust can also be exempted from the antiquated and complex legal rule against perpetuities. It may instead run for a duration of up to 100 years. During 1971, the Cayman Islands will adopt their own currency, the Cayman dollar, a sterling area currency on a par with the United States dollar.

The Cayman Islands has come a long way as a tax haven in a relatively short space of time, and it is likely to continue to be one of the important tax havens of the world.

There is another point which should be kept in mind in comparing the relative merits of the Bahamas, Bermuda and the Cayman Islands. All three of them are *less developed countries* for U.S. income tax purposes.[23] However, the Bahamas and Bermuda are no longer deemed *less developed countries* for purposes of the U.S. interest equalization tax,[24] and many investments there by U.S. persons are presently subject to a tax of 11¼% of the amount invested. The Cayman Islands remains a less developed country for the interest equalization tax as well as the income tax.

The Rock of *Gibraltar* has some tax advantages, but its political situation leaves much to be desired.[25] Spain has closed her frontier to Gibraltar and prohibits any land traffic to or from the territory. Despite pressure by Spain, Gibraltar remains British and is connected to the outside world by both sea and air. Although ordinary companies pay 25% income tax, an *exempt company* pays only an annual fee which fluctuates, based upon the total amount of its share capital,

20. Since January 1, 1969, the United Kingdom-United States income tax treaty does not apply to the Cayman Islands. U.S. Treasury Department Release F.1368 (October 4, 1968).

21. See Companies Law, Chapter 22, Laws of the Cayman Islands, 1963, as amended, Sections 179-193; and Tax Concessions Law, Chapter 164, Laws of the Cayman Islands, 1963, as amended, Sections 6-7.

22. Trusts Law, 1967, of the Cayman Islands (Law 6 of 1967).

23. Executive Order 11071, December 28, 1962, 1963-1 Cumulative Bulletin 137.

24. Executive Order 11285, June 10, 1966, 1966-2 Cumulative Bulletin 480.

25. For additional information on *Gibraltar*, see *Tax Havens*, *supra* note 5, at 42.

borrowings and reserves. The minimum annual fee is about $240. An exempt company receives an exemption certificate granting it full exemption from Gibraltar income tax and estate duty for 25 years.[26] The complex sliding scale of fees payable by exempt companies may be replaced shortly by a flat fee of about $480 per year. Special exemptions also apply for exempt ships and shipping companies.[27] These have been particularly attractive to owners of pleasure yachts.

Although *Greenland* is an integral part of Denmark, a Greenland corporation is not subject to Danish taxation as long as it does not conduct business within mainland Denmark. Greenland is excluded from the Danish–U.S. income tax treaty, but Danish withholding tax does not apply to dividends paid by corporations having their registered offices in Greenland. If appropriate formalities are followed, there are no exchange control problems on remitting funds from Greenland to foreign countries.

*Haiti* could be a popular tax haven were it not for its political situation.[28] Investors hesitate to put their assets in places which may be lacking in political stability.

*Hong Kong*, a tiny British Crown Colony bordering on mainland China, is a major international financial center. It is the primary tax haven of the Far East, even though it does impose taxes.[29] Income from sources within Hong Kong is taxed at a 15% rate, but foreign-source income is completely exempt. Because it is also the leading manufacturing and trading center of Southeast Asia, operations established in Hong Kong often appear to have a legitimate business purpose and may be less suspicious than those of the purer tax havens when analyzed by tax officials of other countries. Although Hong Kong is within the Scheduled Territories of the sterling area, it has a free market in which both sterling and non-sterling currencies are freely exchanged. Hong Kong has no tax on capital or capital gains, no tax on dividends and no death duty on property situated outside of the Colony. It has no tax treaties with other countries. There has recently been a sharp increase in the number of U.S. companies establishing regional offices in Hong Kong.

The *Isle of Man* is located in the Irish Sea between Great Britain and Ireland. It is a self-governing territory within the British Commonwealth. It is easily reached by air or sea from the British Isles. There is a Manx income tax at the rate of 21-1/4%. A Manx company which is controlled and managed from another country is exempt from Manx income tax.[30] Use of the Isle of Man as a tax haven is generally of benefit only to residents of the United Kingdom, who enjoy special exchange control privileges on transfers to the island.

*Jamaica* has International Business Companies much like those of Antigua and Barbados. Jamaica is an independent nation within the British Commonwealth.[31] The Jamaican

---

26. Companies (Taxation and Concessions) Ordinance of Gibraltar.
27. Merchant Shipping (Taxation and Concessions) Ordinance of Gibraltar, as amended.
28. For additional information on *Haiti*, see *Tax Factors, supra* note 4, at 83, but note that some of this information is now out of date.
29. For additional information on *Hong Kong*, see Pine, Sidney R., and Moore, Raymond E., *Hong Kong—The Commercial Center of Southeast Asia*, Prentice-Hall Tax Ideas, paragraph 24,034 (1967); *Tax Havens, supra* note 5, at 52; and *Information Guide for Doing Business in Hong Kong*, Price Waterhouse & Co., New York (1969).
30. For additional information on the *Isle of Man*, see *Tax Havens, supra* note 5, at 63.
31. For additional information on *Jamaica*, see *Information Guide for Doing Business in Jamaica*, Price Waterhouse & Co., New York (1967); and Swanson, Howard P., *Income Tax Aspects of an Investment in Jamaica*, 35 Taxes 371 (1957).

International Business Company is much like those of Antigua and Barbados, and the same comments would apply.

The Jamaican Minister of Finance and Planning has recently announced plans for proposed legislation to combat both tax evasion and avoidance, with emphasis on curbing the use of tax havens by Jamaicans. It should also be noted that while the United Kingdom-United States income tax treaty still applies to Jamaica, negotiations have been taking place which may result in a separate new income tax treaty between the United States and Jamaica.[32]

*Jersey* is the largest of the English Channel Islands. Although it is nearer to France than to England, it is a part of the United Kingdom. Jersey income tax is imposed on companies at a 20% rate and a similar rate is imposed on dividends paid by a Jersey company. A nonresident Jersey company—one which is registered in but controlled from outside Jersey—pays an annual fee of about $240 in lieu of company income tax, but its dividends are taxable.[33] Jersey would not appear to be generally suitable as a tax haven except for United Kingdom residents.

*Lebanon* has been mentioned from time to time as a possible tax haven.[34] Its capital city, Beirut, has long served as the banking and financial center for the wealthy Arab oil sheiks of the Middle East. Its haven status has declined drastically in recent years due to a major bank failure in 1966 and to readjustments required by the 1967 Arab-Israeli war. Nevertheless, for its fellow Arab countries it is still a haven.

*Liberia,* on the west coast of Africa, has been particularly successful in attracting a large number of shipping companies and ship registrations. As a result of its modern maritime code adopted in 1948,[35] Liberia now has the largest merchant fleet in the world. Although it has an income tax and a withholding tax on dividends remitted abroad, Liberian corporations controlled by nonresidents are free from these taxes with respect to foreign-source income.[36]

Liberia has had a long history of political stability and encouragement of foreign investment. Other inducements, some of which are particularly attractive to Americans, are the complete absence of exchange controls, the fact that the United States dollar is used as the official currency and the ease of incorporating companies and registering ships.[37] Liberian corporation law is very similar to United States corporation law and it is readily understood by American lawyers and accountants and their clients. Companies may be formed rapidly and the cost of forming and maintaining companies is reasonable. There are no annual reporting requirements, but an annual government fee of $100 must be paid. Meetings may be held and records may be kept anywhere in the world. Either registered or bearer shares may be issued. There are no nationality requirements for officers, directors, shareholders or incorporators.

*Liechtenstein* is a tiny principality located between Switzerland and Austria, about two

---

32. Tax News Service II-14 (1969). See also Tax News Service II-46 (1970) and II-50 (1970).

33. For additional information on *Jersey*, see *Tax Havens, supra* note 5, at 71.

34. For additional information on *Lebanon*, see *Information Guide for Doing Business in Lebanon*, Price Waterhouse & Co., New York (1968).

35. Liberian Maritime Law (Title 22 of the Liberian Code of Laws of 1956, as amended).

36. Liberian Internal Revenue Code, as amended.

37. For additional information on *Liberia*, see Diamond, Walter H., *Advantages of Incorporating in Liberia*, Prentice-Hall Tax Ideas, paragraph 24,019 (1966); *Tax Havens, supra* note 5, at 81; and Liberia as a *Corporate Domicile*, The International Trust Company of Liberia, Monrovia (1966).

hours by car from Zürich, Switzerland. It is tied economically to Switzerland. Foreign-owned enterprises doing business abroad pay only a small capital tax which can be kept as low as about $150 per year. They are exempt from all other taxes. Liechtenstein is commonly used by wealthy Europeans as a haven for holding and investment companies.[38] It has a flexible corporation law.

Liechtenstein has an entity known as an *Anstalt*, or establishment, which is a mixture between a company and a trust.[39] In Europe it is considered something of a status symbol to have an Anstalt. Anyone can have a Swiss bank account but not everyone has his own Anstalt. Recently, however, this has begun to backfire. Tax inspectors in some European countries are now very rough in their examinations of a taxpayer who has dealings with an Anstalt. They assume that he is doing that which he probably is doing—that is, hiding assets and income.

The Grand Duchy of *Luxembourg* is the smallest member of the European Economic Community, or Common Market. Some of its tax laws are being unified with those of the other member countries of the EEC. However, Luxembourg holding companies are not subject to either direct or indirect taxation.[40] Instead, they pay only an annual fee of 0.16% of the value of their issued shares and debentures, with a minimum fee of $30 per year. Holding companies may take participations in domestic or foreign enterprises and they may own securities. Luxembourg holding companies are very popular in Europe. Luxembourg is a party to a number of tax treaties, but holding companies are generally excluded from obtaining the benefits of these treaties.

*Malta* has recently been publicized as a proposed new tax haven. An article published in *The Wall Street Journal* late in 1969 stated that the Maltese Government was preparing to enact new legislation with regard to offshore companies and a new maritime code patterned after that of Liberia.[41] However, this proposed legislation has not yet been enacted.

Malta could become an important tax haven, especially for Europeans. It is now an independent nation within the British Commonwealth. It has a prime location, in the Mediterranean Sea, about 60 miles south of Sicily and about two hours by air from Rome.

*Monaco* is a tiny principality located on the French Riviera. Monégasques are free of income tax and they hope to remain that way now that their problems with France have been resolved. In 1962, former French President Charles de Gaulle declared that Monaco's status as an international tax haven was detrimental to France. A new tax treaty was signed in 1963, under which French citizens, who had taken up residence in Monaco since 1957 have to pay income taxes, but all others remain exempt. Under the treaty, companies doing more than 25% of their business outside of Monaco are subject to tax. Monaco's status as a tax haven has declined somewhat as a result of the fact that it came out second best in its tax struggles with France.

The *Netherlands* is a haven for holding companies as a result of its *substantial holding*

---

38. For additional information on *Liechtenstein*, see *Tax Havens*, *supra* note 5, at 87.

39. See Güggi, Bruno B., *The Establishment as a Type of Enterprise of Private Law in Liechtenstein Law*, General Trust Corporation Limited, Vaduz, Liechtenstein (2nd edition, 1967).

40. For additional information on *Luxembourg*, see *Tax Havens*, *supra* note 5, at 102; and *Holding Companies in the Grand Duchy of Luxembourg*, 19 Foreign Tax Law Weekly Bulletin, March 12, 1969, at 1.

41. Wall Street Journal, November 4, 1969, at 32.

*privilege*. Under it, a Netherlands holding company is completely free from tax on income and capital gains arising from its direct participations in either domestic or foreign subsidiaries.[42] Under the 1969 Netherlands corporate income tax law the holding company must have at least a 5% direct participation in the share capital of the subsidiary, the participation must not be a portfolio investment, it must be held from the beginning of the fiscal year and the subsidiary must be subject to income tax.[43] The privilege is designed to prevent double taxation of the same profit. The use of Netherlands holding companies is made attractive in some cases by the fact that the Netherlands has no withholding tax on interest and that withholding on dividends going to a foreign parent company is often reduced to zero by Netherlands income tax treaties with other countries.

The *Netherlands Antilles* is a major tax haven although its status as a haven began only about 15 years ago.[44] Virtually all of its tax haven business is centered in Curaçao. The Netherlands Antilles has become an important base for mutual funds and other investment companies, both public and private. Such companies pay a small local income tax which is generally more than offset by other advantages including those obtained under tax treaties. Substantial benefits are also available for holding companies, shipping and aviation companies and companies investing in real estate abroad. Netherlands Antilles subsidiaries are used by major international companies to float Eurobond issues. Income from many of these activities is taxed at a rate of 3% or less. Substantial advantages are also available with respect to United States real estate investments by Netherlands Antilles companies and many sophisticated nonresident aliens investing in United States real property do so through Curaçao companies. The destructive riots which took place at Curaçao in May, 1969, appear to have had relatively little effect on the use of the Netherlands Antilles as a base for offshore operations.

The British-French condominium of *New Hebrides* in the South Pacific is currently being promoted as one of the world's newest tax havens. It has no individual or corporate income tax. Laws are being patterned after those of the Cayman Islands. Britain and France rule the islands as equal partners and new legislation requires joint approval. The lack of adequate transportation and communication facilities somewhat inhibits the use of New Hebrides as a haven.

*Norfolk Island* is a tiny Australian External Territory located about 1,000 miles northeast of Sydney, Australia. Many of its inhabitants are descendants of the *H.M.S. Bounty* mutineers. The islanders reputedly have been guaranteed that they will never be taxed. Australia has introduced legislation to curb the use of Norfolk Island as a tax haven by Australians, but it is nevertheless available for use as a haven by others.

*Panama* is a major tax haven.[45] It has an

---

42. See van Rooijen, M.J., *The Substantial Holding Privilege in Netherlands Corporation Income Tax*, 23 Bulletin for International Fiscal Documentation 337 (1969). For additional information on the *Netherlands*, see *Information Guide for Doing Business in the Netherlands*, Price Waterhouse & Co., New York (1966); and *Taxation in the Netherlands*, Haskins & Sells, New York (1967).

43. The principle of "tax sparing" is recognized. The other country must have a tax, but there need not be an actual obligation to pay such tax where, for example, a tax holiday is granted by the other country.

44. For additional information on the *Netherlands Antilles*, see *Tax Havens*, *supra* note 5, at 108.

45. For additional information on *Panama*, see *Advantages of Incorporating in Panama*, Prentice-Hall Tax Ideas, paragraph 24,028 (1966); *Tax*

income tax, but all foreign-source income is exempt.[46] It has no income tax treaties. Like Liberia, it goes out of its way to encourage the incorporation of companies and the registration of ships. Panama has no exchange control. Its currency is considered stable and is pegged to the United States dollar. Although the language of Panama is Spanish, the articles of incorporation of a Panamanian company may be written in any language. The incorporation law is extremely liberal.[47] In recent years Panama has adopted banking legislation patterned after Swiss law which permits numbered bank accounts and offers complete assurance of bank secrecy. If Panama has a problem it is probably due to the political unrest which has occurred there in recent years.

*Sark* is another one of the English Channel Islands. Its status as a potential tax haven declined drastically during 1969, when the Dame of Sark threatened to turn over administration of the island to Guernsey, another of the Channel Islands.

*Sealand* is a new "country" which has been created for the primary purpose of serving as a tax haven.[48] It is located six miles off the east coast of Great Britain and is smaller than a football field. It is one of seven island forts built near the Thames Estuary during World War II and it became a full-fledged country about two years ago. Offshore companies registered in Sealand pay only nominal fees. Under British tax law profits earned by a company from sources outside the United Kingdom are not taxed if the company's affairs are managed and controlled outside the United Kingdom. British directors of companies with headquarters in Sealand therefore take a 10-minute helicopter ride to Sealand to conduct their meetings on the island. It is unlikely that anyone other than the British will make use of Sealand as a tax haven for some time to come.

*Switzerland* is probably the most difficult country to generalize about as a tax haven.[49] Most direct taxes are levied by the cantons (of which there are 25), rather than by the federal government. Switzerland has concluded tax treaties with many other countries. Some of these countries complained to Switzerland that people from all over the world were using Swiss companies to take advantage of treaty concessions to which they were not entitled. A 1962 decree of the Swiss Federal Council has effectively put an end to these alleged abuses.[50] No place on earth has a better reputation than Switzerland for political and economic stability. Swiss banks and the bank secrecy laws under which they operate have the reputation of being the finest in the world. A few of the lesser known Swiss cantons—such as Zug and Fribourg—offer attractive homes for holding companies.

---

*Havens*, *supra* note 5, at 120; *Information Guide for Doing Business in Panama*, PriceWaterhouse & Co., New York (1967); and *Taxation in Panama*, Haskins & Sells, New York (1969).

46. Law 9 of 1964, the income tax law of Panama, specifically defines offshore activities which are not subject to Panamanian income tax.

47. See Law 32 of 1927 and Law 9 of 1946, the basic Panamanian laws on corporations. For a good summary thereof, see Darling, Ricardo A., *The Commercial Laws of Panama*, Oceana Publications, Inc., Dobbs Ferry, New York, 1966.

48. See Foreign Tax and TradeWinds, October 1969, at 3.

49. For additional information on *Switzerland*, see *Tax Havens*, *supra* note 5, at 128; *Information Guide for Doing Business in Switzerland*, Price Waterhouse & Co., New York (1965); *Tax and Trade Guide—Switzerland*, Arthur Andersen & Co., New York (1965); and *Switzerland—A Digest of Principal Taxes*, Ernst & Ernst, New York (1968).

50. See Locher, Kurt, and Ryser, Walter, *Swiss Measures Against Abuse of Tax Conventions*, International Bureau of Fiscal Documentation, Amsterdam, Netherlands (1963).

The use of Switzerland as a haven has recently come under attack by several countries, including both the United States and Germany. The United States Congress is in the process of enacting legislation designed to prevent Americans from using secret bank accounts in Switzerland to circumvent tax and securities laws. At the same time, the United States authorities are trying to get the Swiss to agree on a special new treaty which would permit penetration of bank secrecy in cases of tax evasion. It is not likely that the Swiss will accede to any material degree. The German Federal Government also is seeking treaty assistance and legislation to combat tax evasion by "post box" companies.

The *Turks and Caicos Islands,* adjacent to the Bahamas, qualify as a separate tax haven. Substantial efforts are now being made to develop the tax haven facilities of these islands. Unfortunately, they are presently too hard to reach but it is likely that they will eventually become an important tax haven.

Even the *United States* has been accused of being a tax haven. The following somewhat amazing sentence appeared in the House Ways and Means Committee Report on the *Foreign Investors Tax Act of 1966:*[51]

> "The interplay between the tax rules of certain foreign countries and the United States has in some cases permitted the use of the United States as a tax haven."

Needless to say, the allegedly shameful use of the United States as a tax haven in the manner described in the Committee Report was effectively stopped by the enactment of the *Foreign Investors Tax Act.*[52] Other possibilities still exist.

An interesting observation can be made from this review of tax haven jurisdictions. A large number of these havens are either present or former British colonies. The American Revolution was fought largely because the Americans complained that taxation without representation was tyranny. Following the loss of the American colonies, the British apparently changed their basic philosophy with respect to colonies. They made taxation generally a matter for self-determination by each colony through its own elected representatives. Thus, the American Revolution probably contributed to many of these present and former British colonies being tax havens today.

## CHOOSING A TAX HAVEN

It is not possible to rate tax havens in quite the same manner as the *Guide Michelin* or *Temple Fielding* rate restaurants and hotels. The final choice of which tax havens to use always depends on the special circumstances of each individual case. Generally, problems arise not in the tax haven but in the country of residence of the person wishing to use the tax haven. The problems are compounded when he may be deemed resident in more than one country, or when persons having different residences join together in a single project. The problems may be further compounded where, as in the case of the United States, taxation is also imposed based upon citizenship without regard to residence. International tax planning is a complex field. It requires a knowledge of the tax and corporate laws of many countries, as well as the numerous income and estate tax treaties between countries. A careful blending of entities—some from tax havens and some not—can often result in legal avoidance by an investor of substantial taxes which he might otherwise have to pay.

---

51. Report of the Committee on Ways and Means, U.S. House of Representatives No. 1450, 89th Congress, Second Session at 14.
52. U.S. Public Law 89-809 (1966).

TORAO AOKI:*

# DOUBLE TAXATION CONVENTIONS OF JAPAN

## (Part I)

### I. BACKGROUND

*1. Forerunner of Double Taxation Treaties*

Double taxation treaties in the form of the Draft Convention for the Avoidance of Double Taxation as prepared by the Fiscal Committee of the Organisation for Economic Co-operation and Development (hereinafter referred to as the "OECD Model") or its predecessors became known to Japan after the war. As a means of elimination of double taxation, however, exemption of taxes on income from international transportation on a reciprocal basis is a time-honored practice in Japan. In prewar days, the devices for mitigating international double taxation in Japan included the unilateral deduction of tax payable to foreign countries as necessary expense from the gross income and bilateral tax exemption of profits from the operation of ships in international traffic.

By the law of 1924, the Japanese Government was authorized to exempt foreign shipping enterprises from tax on income arising from ships registered in foreign countries if such foreign Governments grant the same tax exemption to Japanese enterprises. Under this law, the Japanese Government had mutual arrangements with several countries, some of which are still in force. After the war, this law was replaced by Law No. 144 of 1962 which makes it possible to exempt not only national taxes (income tax and corporation tax) but also local taxes (inhabitant taxes and enterprise tax) on income from air transport as well as shipping, regardless of the country of registration of aircraft or ships. Of course, as will be mentioned later, like the OECD Model, all Japan's double taxation treaties contain provisions for shipping and air transport. By virtue of the Law, however, the Government may make administrative arrangements, without concluding a full-fledged double taxation convention, on the basis of reciprocity to exempt tax on international transportation business, which, by its very nature, is one of the areas most vulnerable to double taxation. These agreements are also used to extend, in terms of the territory or tax covered, the application of the tax exemption as provided in the double taxation treaties. There are now arrangements of this kind with the United States[1, 2], the Netherlands[1, 2], Argentina, Aden and Kenya for ocean transportation, with Iran[1] for air transportation, and with Sweden (on enterprise tax), South Africa, the Republics of Korea and Lebanon for both ocean and air transportation.

*2. Developments of Double Taxation Conventions*

The first convention for the avoidance of double taxation which Japan has ever concluded is the one with the United States signed in April 1954. As Japan's stake in the

---

* The author is Director, International Tax Affairs Division, Tax Bureau, the Ministry of Finance of the Japanese Government. Needless to say, however, the views expressed here are strictly his own and in no way reflect the opinion of the Japanese Government.

1. Income tax and corporation tax only.
2. Requirement with respect to registration of ships is involved.

world economy grows, the network of double taxation arrangements has considerably widened.

So far, Japan has concluded 24 treaties with respect to taxes on income, of which those with Italy, Zambia, the Republic of Korea, and the Netherlands are not yet in force. It should be noted that these treaties do not apply to taxes on capital since, in Japan, tax on capital is not levied by the Central Government but only by the local authorities. Incidentally, according to the Constitution of Japan, treaties are subject to approval by the National Diet (parliament), which is bicameral. The 24 countries with which Japan has entered into tax treaty relations and the dates of entry into force of their respective conventions are as follows in chronological order of the signature of the original convention:

| | | |
|---|---|---|
| 1. The United States | April 1, 1955 | (Revised on September 9, 1957, September 2, 1964 and May 6, 1965)<br>(New one was initialled on May 4, 1970) |
| 2. Sweden | June 1, 1957 | (Revised on May 25, 1965) |
| 3. Pakistan | May 14, 1959 | (Revised on August 1, 1961) |
| 4. Norway | October 25, 1968 | (Former one on September 15, 1959) |
| 5. Denmark | July 26, 1968 | (Former one on April 24, 1959) |
| 6. India | June 13, 1960 | (Revised one was signed on April 8, 1969) |
| 7. Singapore | September 5, 1961 | |
| 8. Austria | April 4, 1963 | |
| 9. New Zealand | April 19, 1963 | (Revised on September 30, 1967) |
| 10. The United Kingdom | April 23, 1963 | (New one was signed on February 10, 1969) |
| 11. Thailand | July 24, 1963 | |
| 12. Malaysia | August 21, 1963 | (New one was signed on January 30, 1970) |
| 13. Canada | April 30, 1965 | |
| 14. France | August 22, 1965 | |
| 15. The Federal Republic of Germany | June 9, 1967 | |
| 16. Brazil | December 31, 1967 | |
| 17. Ceylon | September 22, 1968 | |
| 18. Belgium | April 16, 1970 | |
| 19. The United Arab Republic | August 6, 1969 | |
| 20. Italy | Signed on March 20, 1969 | |
| 21. Australia | July 4, 1970 | |
| 22. Zambia | Signed on February 19, 1970 | |

| | |
|---|---|
| 23. The Republic of Korea | Signed on March 3, 1970 |
| 24. The Netherlands | Signed on March 3, 1970 |

Conventions were also initialled with Switzerland on July 10, and with Kenya, Tanzania and Uganda on August 13 this year. As a rough indication of the coverage of the tax conventions in terms of foreign trade, Japan's exports to these 24 countries as a percentage of its total exports, excluding those to the Communist block, are about 64 per cent.

As for the double taxation treaty with respect to estates and inheritances, Japan has concluded only one Convention, i.e., with the United States. This Convention was signed and entered into force on the same day as the Convention with the United States concerning taxes on income.

*3. Accession to the OECD Model*

A member of the OECD since April 1964, Japan conforms to the Model to the greatest possible and practical extent when concluding new conventions or revising existing ones. However, when it announced its accession to the Recommendation concerning the Model in July 1964, the Japanese Government reserved its position and made observations on some Articles. The reservations have been made on the following five Articles. Japan reserves its position on the application of the convention to taxes on capital (Article 2) because, as noted previously, no tax on capital is levied by the State in Japan. Since Japanese taxation laws use the criterion of place of head or main office to determine the residence of a company, it reserves its position on the adoption of the place of effective management as the preference criterion (mainly Article 4). Because of its split rates taxation on profits of a company, Japan reserves its position on the five per cent maximum tax rate on dividends paid by the subsidiary to its parent company (Article 10), usually keeping such upper limit at ten per cent. Japan reserves the right to tax royalties as well as profits from the alienation of rights or property giving rise to royalties (Article 12). Japan also reserves the right to tax profits derived from a business providing services of public entertainment, regardless of whether the business is conducted through a permanent establishment (Article 17) or not.

Japan has made some observations to clarify its position regarding the following provisions. The term "permanent establishment" (Article 5) may be interpreted in such a manner as to cover the case of supervisory activities carried on in connection with a construction, installation or assembly project for more than 12 months. Japan wishes to tax gains from the alienation of shares of a company resident of Japan if the alienator of the shares has a predominant position in the company (Article 13). Japan understands that the provisions of non-discrimination (Article 24) do not prevent the contracting State from not granting to non-resident companies such tax reliefs as are available to resident companies for the purposes of avoidance of double taxation.

## II. TAXATION OF NON-RESIDENTS AND FOREIGN CORPORATIONS

*1. The Concept of Non-residents and Foreign Corporations*

In order to understand better the tax conventions which Japan has concluded, it may be necessary and helpful to know, in general, how non-residents and foreign

corporations are taxed under the Japanese Income Tax and Corporation Tax Laws unless otherwise provided in the double taxation agreements.

A resident taxpayer, who has residence or domicile for a period of one year or more in Japan, is subject to income tax upon his world-wide income ("full tax liability"), while a non-resident taxpayer is taxed solely on income from sources within Japan. A "non-permanent resident" who has no intention of residing permanently but stays in Japan for not more than five years is liable to tax on income from sources within Japan and income from foreign sources which is paid in or remitted to Japan. However, the principle of computing tax liability of such non-permanent resident is the same as that of the resident taxpayer.

A corporation (domestic corporation), which has its head or main office within Japan, is subject to the corporation tax on its entire income regardless of whether it is derived from within or outside Japan and irrespective of the nature of income. A corporation which has its head or main office outside Japan is a foreign corporation, the place of effective management having no bearing in this connection. The underlying philosophy and methods for computing the tax liability of the foreign corporations are not materially different from those for non-resident individuals. For the sake of brevity, it suffices here to give primarily a brief account of the taxation of foreign corporations which most foreigners and foreign enterprises may be interested in.

It should be added that, besides the national taxes mentioned above, as local tax, the prefectural and municipal inhabitant taxes and the enterprise tax are also levied.

*2. Taxation of Foreign Corporations*

For taxation purposes, foreign corporations are classified in the following four types:

(i) a foreign corporation which has a branch, office, factory or other fixed place of business in Japan;

(ii) a foreign corporation, other than of the type (i) above, which undertakes construction, installation or assembly activities or supervision of such activities for more than one year in Japan;

(iii) a foreign corporation, other than of the type (i) above, which carries on business in Japan through agents having, and habitually exercising, authority to conclude contracts on behalf of that foreign corporation;

(iv) a foreign corporation not falling under categories (i) to (iii) above.

The foreign corporation mentioned in (i) above is liable to the Japanese corporation tax on its entire income from sources in Japan at the rate of 36.75 per cent (28 per cent in case of certain small-sized corporations). The foreign corporation falling under the category of (ii) or (iii) is subject to corporation tax on the total income from business carried on in Japan and income derived from the sale or holding of assets situated in Japan and on such portion of other income, including interest, dividends and royalties, as is attributable to the business in Japan. The aforesaid other income which may not be attributed to the business in Japan is subject only to "separate income taxation," i.e., taxation at a flat rate of 20 per cent (as a special measure, the reduced rate temporarily applies to some items of income) of gross revenue. In the case of a foreign corporation referred to in (iv) above, corporation tax is not imposed on business income, but only on income derived from the sale or holding of certain assets situated in Japan, while all the other income mentioned above is liable only to "separate income taxation".

*3. Taxation of Non-resident Individuals*

Non-resident individuals are also classified, for taxation purposes, into the same four categories as foreign corporations, and comparable principles and rules govern these individuals. A non-resident carrying on business through a branch, office or other fixed place of business in Japan is subject to "aggregate income taxation", i.e., income taxation at the graduated tax rates from 10 per cent to 75 per cent on the basis of net income on his entire income from sources in Japan. The items of income other than those subject to "separate income taxation" as mentioned in the case of foreign corporations are also liable to income tax under the "aggregate income taxation" as far as non-resident individuals as are concerned.

*4. Income from Sources in Japan*

For the purpose of calculating taxable income, the following are treated as income from sources in Japan, viz. income from business carried on in Japan, income from business primarily providing personal services performed in Japan, rent, etc., for the use of immovable property located in Japan or from the utilization, holding, sale or disposal of an asset situated in Japan, interest on bonds issued by domestic corporations or on loans for business carried on in Japan, dividends paid by domestic corporations, royalties for properties used in respect of business carried on in Japan, salaries, wages, and other remunerations for personal services performed in Japan.

Income from a business carried on concurrently both within Japan and abroad shall be allocated according to the following criteria: (i) the total income from the sale of goods purchased abroad is treated as arising in the country where such sale is made; (ii) income from the sale of goods manufactured abroad is allocated among the countries involved on the basis of normal transactions at arm's length; (iii) income from construction, installation or assembly projects undertaken in Japan is treated as arising in Japan; and (iv) in the case of international maritime transportation, income from the business allocated on the basis of the ratio that revenue from outgoing passengers and cargoes from Japan bears to the world-wide revenue is treated as arising in Japan, and in the case of international air transportation, the allocation is made on the basis of revenue obtained or expense incurred in Japan, the value of assets located in Japan or other reasonable factors. No income is deemed to arise from activities auxiliary to the main business, such as advertising, collection of information, etc., and intra-company transfer or use of money, industrial property or other assets.

## III. ANALYSIS OF THE CONVENTIONS

*1. Scope of the Conventions*

(1) Subjects of the conventions

As already stated, no national tax is levied on capital although the capital tax is levied by the local authorities only on capital located in Japan, and, therefore, the double taxation conventions which Japan has signed do not cover taxes on capital. In recognition of the advisability of widening the convention's field of application, the Japanese Government has included taxes imposed by local authorities as far as possible, depending on the counterparts of the other contracting States. Thus, about half of the tax treaties that Japan has so far concluded cover local taxes (mostly inhabitant taxes). In the interest of greater benefits from mutual tax exemption, Japan also includes the enterprise tax in the provisions concerning the profits from the operation of ships or aircraft in international traffic under most of its conventions.

(2) Personal scope

For taxation purposes, Japan attaches more importance to residence than to nationality. All the conventions in which Japan is involved apply to residents without distinction of nationality. Some of Japan's earlier treaties were not applicable to residents of both contracting States, thus avoiding the problems of conflicts in fiscal domicile. However, since 1966, when the Convention with the Federal Republic of Germany was signed, all the conventions except those with the United Arab Republic, the original draft of which had been prepared some time before, and Australia, cover residents of both of the contracting States. Japan is not necessarily accustomed to the "preference criteria" such as a permanent home, centre of vital interests and habitual abode as set forth in the OECD Model. Therefore, under the conventions to which Japan is a party, the residence of the individual is to be determined by mutual agreement between the contracting States, sometimes (under the Conventions with Belgium, the Federal Republic of Germany, Brazil, the United Kingdom and Malaysia) taking into consideration the above "criteria".

In the case of persons other than individuals, the idea of "place of effective management" is not well-established in Japan, either. Instead, the place of head or main office is the only criterion to establish the residence of a corporation, since any corporation organized under Japanese law is required to have its head office in Japan and is deemed to be situated in the place of such head office. This rule of the place of head or main office governs most of Japan's conventions. While, under some conventions, the residence of the corporations managed and controlled in the other contracting State, if considered of double residence, is to be determined by mutual agreement. The Conventions with the United States, Thailand and the United Arab Republic employ as such criterion the law under which corporations are created and organized, which is, in effect, the same as the criterion of the place of head or main office as far as Japan is concerned.

*2. Business Profits*

(1) Permanent establishment

The permanent establishment plays a key role in determining the industrial or commercial profits, since such profits are subject to tax only if the enterprise deriving them has a permanent establishment in the contracting State concerned. By and large, Japan has accepted the concept of permanent establishment as worked out by the OECD Model, whenever necessary and appropriate, with some modifications. The period for which a building site or construction, installation, or assembly project can be carried without giving rise to a permanent establishment is shortened from twelve months specified in the OECD Model to mostly six months under the existing conventions with developing countries. In addition, according to half of the treaties which Japan has concluded, supervisory activities performed for more than twelve months (six months under three conventions) in connection with a construction or assembly project constitute a permanent establishment.

Like the OECD Model, Japan's conventions provide that a dependent agent who has, and habitually exercises, authority to conclude contracts in the name of the enterprise is deemed to be a permanent establishment. The concept of permanent establishment is extended, under many of the conventions, to a person who keeps an inventory of goods belonging to the enterprise from which he regularly fills orders or delivers goods on behalf of the enterprise or, under the Conventions with Thailand, India, New

Zealand and the Republic of Korea, to a person who regularly secures orders for the enterprise or affiliated group of enterprises. On the other hand, in conformity with the OECD Model, if the enterprise carries on business through independent agents such as brokers and commission agents, it is not deemed to have a permanent establishment in the other contracting State.

As under the OECD Model, activities which do not create a permanent establishment include, for example, the maintenance of a stock of goods belonging to the enterprise solely for the purpose of storage, display or delivery, the use of facilities for similar purposes and the maintenance of a fixed place of business for preparatory or auxiliary activities such as advertising, supply of information and scientific research.

(2) Determination of business profits

Following the OECD Model, Japan in its conventions has made it a rule to allow the contracting State to tax only as much of the profits of the enterprise as is attributable to the permanent establishment through which the enterprise carries on business in that State. The taxing right does not extend to profits to which the permanent establishment of the enterprise has not contributed. Admitting the principle of "force of attraction" for the permanent establishment, however, Japan's earlier conventions used to permit the contracting State to tax all profits of enterprise from sources within its territory, if the enterprise deriving such profits has a permanent establishment therein, regardless of whether the profits come from permanent establishment. These conventions, with the broad principle of taxation on the entire income, have been gradually changed to the ones with principle of taxation on the attributable income only. The Conventions with Pakistan and the Republic of Korea are now characterized by the former principle and have detailed rules and arrangements regarding the allocation of income to a permanent establishment.

Japan follows most of the rules as laid down in the OECD Model with respect to determination of business profits. Even if a permanent establishment carries on mere purchasing activities for the enterprise, the profits of the permanent establishment will not be increased by adding to them a national figure for profits from such purchase. Moreover, an office which functions solely to purchase goods is not deemed a permanent establishment. The allocation of profits to a permanent establishment is to be based on the "arm's length" rule, as a distinct and separate enterprise. However, the profits to be attributed to a permanent establishment may be determined simply by apportioning the total profits of the enterprise on the basis of formula, such as indirect method, when it is in accordance with national law or custom. With a view to securing arm's length dealings between associated enterprises (parent and subsidiary companies and companies under common control), the taxation authorities may, for the purpose of calculating tax liabilities, rewrite the accounts of such enterprises if the accounts do not disclose the true taxable profits on the separate enterprise principle due to such special relations between the enterprises. In calculating the profits of a permanent establishment, all expenses incurred for the purposes of the establishment, including executive and general administrative expenses, may be deducted, regardless of where such expenses are incurred. Finally, the profits should be calculated by a consistent method.

(3) Profits from international transport business

As stated at the outset, Japan is very much interested in the reciprocal exemption of tax on profits from the operation of ships or aircraft in international traffic, which are particularly exposed to double taxation because of the international character of their business. All the conventions to which Japan is a signatory have provisions concerning profits from international transportation. It is to be noted, however, that, according to the OECD Model, the exclusive taxing power over such profits is left to the contracting State in which the place of effective management of the enterprise is situated, but treaties signed by Japan substitute the country of residence of the enterprise for the OECD criterion. While most of Japan's conventions provide for the full tax exemption for both sea and air transport, in the cases of Thailand and Malaysia or India 50 or 45 per cent of the income derived from the operation of ships is taxed, respectively, and in the case of Ceylon, one half of the income from the operation of both ships and aircraft is subject to tax. The Convention with Pakistan does not exempt tax on profits from sea transport. In this connection, as expressly agreed with Malaysia, the methods of computing income of a shipping company under Japanese tax laws and the certificates issued by the Japanese tax authorities are accepted by the tax authorities of the other contracting States. The majority of the treaties with the developed countries and some of those with developing countries make the enterprise tax, which is the Japanese local tax, a subject of the reciprocal exemption. The Conventions with the United States, Sweden, Pakistan and the Republic of Korea additionally condition tax exemption on the use of ships or aircraft registered in the contracting State or in any third country which exempts tax on operation of ships or aircraft registered in the contracting State.

J.R.C. BEIRENS:*

# BELGIUM - TVA:

# THE IMPORT OF GOODS

## INTRODUCTION

In art. 3, the Belgian basic TVA law[1] subjects to TVA "the import of goods into Belgium irrespective of by whom".
By import must be understood the entry of a good into Belgian territory with the exception of those areas to which taxation is not applied by virtue of a Royal Decree.[2]

## I. THE CONDITIONS UNDER WHICH GOODS MAY BE IMPORTED INTO BELGIAN TERRITORY

A. If the import of goods is subjected to customs regulations, these regulations apply including the obligation to declare the imported goods and the way in which the declaration has to be made, even if the goods are not subjected to import duty because of their nature, origin or any other reason.[3]
B. If the import of goods is not subjected to customs regulations, the goods must be imported into Belgian territory under conditions to be laid down by the Minister of Finance and should be declared as follows:[4]
- oral declaration is made in the case of import at the frontier between Belgium and Luxembourg and Belgium and the Netherlands. When an oral declaration is made a copy is given of the invoice which was sent to the consignee of the imported goods; however the declaration is made in writing on a form (according to a model laid down by the administration) if the import takes place for a destination which is not that of consumption.

## II. PAYMENT OF THE TVA WITH RESPECT TO IMPORT

If the imported goods are declared for consumption, tax must be paid on the date of declaration.[5]
In cases and under conditions to be fixed by the Minister of Finance, payment may be deferred, until a period of not more than 10 days has expired, to be calculated from the date of declaration.[6] The tax is paid in the name of the consignee of the imported goods.[7]
The consignee is he who receives or takes over the goods sent to him on the date on which the tax is due; if there is no person who receives or takes over the goods, then the owner is the consignee.
The seller or transferor or a former seller or a former transferor may also act as the consignee on condition that he has a permanent establishment or a responsible agent in Belgium for the application of TVA.
The tax is paid in adhesive stamps which are affixed to a form conforming to the model

---

* Doctor iuris of the Free University of Brussels, 1969. Member of the Belgian Bar.
1. The Law of July 3, 1969, Moniteur Belge (Official Gazette) of July 17, 1969. Hereinafter cited as "Basic TVA law".
2. Basic TVA law art. 23.
3. Art. 1,2 of Royal Decree no. 7, March 12, 1970, Moniteur Belge (Official Gazette) of March 18, 1970. Hereinafter cited as "TVA Royal Decree no. 7".
4. TVA Royal Decree no. 7, art. 1,2 and art. 2,2.
5. TVA Royal Decree no. 7, art. 4.
6. TVA Royal Decree no. 7, art. 4.
7. TVA Royal Decree no. 7, art. 5 (1).

laid down by the tax administration or by using a stamp machine.[8]
If the import takes place with exemption from tax (cfr. *infra*) or payment of the tax at a rate which is lower than the highest rate that may be due for the imported good, the declarant must show in a simple declaration the legal regulatory or administrative provision governing the exemption or payment of the tax at a lower rate.[9]

## III. EXEMPTION ON IMPORT

Exemption from TVA is granted for:
A. *the final import* of certain goods;
B. *the temporary import* of some goods;
C. *the re-import* of certain goods which were sent temporarily abroad.
It should be noted that other conditions than those discussed below may be laid down by, or on behalf of the Minister of Finance.[10]
He can also grant partial or total exemption when the conditions as to form, formalities or dates were not fulfilled.[11]
The parties concerned lose exemptions:[12]
(i) if the information which they provided to be granted exemption was incorrect or incomplete;
(ii) if the imported goods are used for other purposes than was permitted;
(iii) if the goods imported with exemption are replaced by other goods;
(iv) if the conditions laid down for the application of the exemption are not fulfilled.

A. *The final import with total exemption from tax:*
(1) samples and specimens of trivial value which can only be used for taking orders for goods to be imported or exported;[13]
(2) catalogues, price lists and other commercial printed matter on behalf of an enterprise established abroad, imported by the consignee in small quantities;[14]
(3) some goods such as medical preparations, foodstuffs and clothing etc. if it is shown that they are presented to charitable institutions;[15]
(4) used goods inherited by a person who is resident in Belgium;[16]
(5) import of used goods transported during a removal, which goods belong to an individual taking up residence in Belgium where he had not yet a place of residence; or used goods transported by a group or association which is not liable to tax when it comes to establish itself in Belgium.[17]
This exemption (5) is only granted under the following conditions:[18]
- the goods must be part of the furnishings or equipment before the import;
- the goods must correspond to the prosperity of the individual or with the nature and importance of the group or association;
- the goods may not have been purchased with the object of transferring them to Belgium;
- for at least 6 months after import the goods must remain the property of the individual or association or group

The exception (5) only applies to motor cars if the individual or association or group proves that TVA or a similar tax was imposed on them in Belgium or in another country and that such tax is not liable to restitution.[19]

---

8. TVA Royal Decree no. 7, art. 6,1 and art. 9,1.
9. TVA Royal Decree no. 7, art. 9,1.
10. In other words, conditions different from those explained in arts. 20–33 of TVA Royal Decree no. 7 may be fixed.
11. TVA Royal Decree no. 7, art. 16.
12. TVA Royal Decree no. 7, art. 18.
13. TVA Royal Decree no. 7, art. 20 (1).
14. See note 13.
15. See note 13.
16. See note 13.
17. TVA Royal Decree no. 7, art. 21 (1).
18. TVA Royal Decree no. 7, art. 21 (2).
19. TVA Royal Decree no. 7, art. 21 (3).

It should be noted that no exemption is granted for consumer goods nor for stocks, furnishings and equipment which are intended to be used for commercial, industrial or agricultural purposes.[20]

(6) the import of a trousseau and wedding presents destined for a person resident abroad who is going to marry a Belgian resident and interests to settle in Belgium, on condition that that person comes from a state which grants Belgium a similar exemption.[21]

(7) the import of fruit and vegetables gathered in farms situated abroad near the Belgian frontier and exploited by Belgian residents.[22]

(8) the import of goods which, because of their nature or special destination can be considered as of being of no significance for trade, and goods which are part of travellers' personal luggage. The total value of these a head may not exceed:

a) 1250 Bfrs. or 500 Bfrs. according to whether the traveller is at least 15 years old or younger than 15 years, if the goods are imported from a country which is not a member state of the EEC

b) 3750 Bfrs, or 1000 Bfrs. according to whether the traveller is at least 15 years old or younger than 15 years, if the goods are imported directly or in transit through a country that is not a member state of the EEC from a member state of the EEC where they were in free commerce.[23]

(9) An exemption from TVA with limitation as to the quantity which may be imported, is also granted for certain products as tobacco, perfume, alcoholic beverages, etc.[24]

B. *The temporary import with total exemption from tax*

This complete exemption is consequently granted for certain goods on the condition that they are re-exported.[25]

(1) books imported for the use of public state libraries, and those of the Provinces, municipalities and institutions of higher education;[26]

(2) pictures and other objects imported to be exhibited in museums or at exhibitions which are held without any commercial aim;[27]

(3) Original objects of art imported by an artist;[28]
(It should be noted that the application of these provisions can be elaborated by or in the name of the Minister of Finance).

(4) The import of material intended for any kind of operations subject to the following conditions:[29]

- the material must be re-exported;
- the material must be and must remain the property of someone who has no permanent establishment in Belgium and is not liable to the payment of taxes and therefore compelled to make a monthly or a quarterly return;
- the material may not be used for any other activities as a result of which the owner would be compelled to make a monthly or quarterly return. (the Minister of Finance may make exceptions)

(5) The import of professional material which is used exclusively in Belgium for assembling, testing, checking, verification, servicing or repairing of machines,

---

20. TVA Royal Decree no. 7, art. 21 (1).
21. TVA Royal Decree no. 7, art. 22 (1).
22. For further details, see TVA Royal Decree no. 7, art. 23 (1-3).
23. TVA Royal Decree no. 7, art. 24 (1-3).
24. For further details see TVA Royal Decree no. 7, art. 24 (3,3).
25. TVA Royal Decree no. 7, art. 25 (1).
26. TVA Royal Decree no. 7, art. 26 (1).
27. TVA Royal Decree no. 7, art. 26 (2).
28. TVA Royal Decree no. 7, art. 26 (3).
29. TVA Royal Decree no. 7, art. 27 (1).

installations or vehicles.[30]

No exemption is granted for material imported to be used for inland transport or for the manufacturing or packing of goods, or for the material (with the exception of hand tools) which are imported for the exploitation of natural resources, for the construction, the repairing or the maintenance of buildings or for earth-works or similar works.[31]

To enjoy this exemption it is necessary that:

- the material must be imported by someone who has no permanent establishment in Belgium and is employed exclusively by him or under his personal supervision;
- the material must be the property of someone who has not a permanent establishment in Belgium;
- the material must be re-exported within six months from the date of importation.[32]

C. *The re-importation with complete or partial exemption for goods which were temporarily exported*

COMPLETE EXEMPTION FOR THE TVA IS GRANTED FOR:

(1) the re-importation of animals and other goods which are exported by persons having farming activities situated abroad near to the national frontiers;
(The Minister of Finance may prescribe special conditions to this exemption to determine its applicability)[33]

(2) the re-importation of packing materials and other objects which are specially designed for use in the transportation of goods.[34]

(3) containers and normal accessoires which are exported and re-imported with them.[35]

(Note that for (2) and (3) it is necessary that the goods are used for the export and import of goods and that they are not transformed abroad. Further upon their exportation a declaration must be made that the goods will be re-imported free from TVA)

A partial exemption is granted for:

(4) goods which are re-imported after having been repaired abroad, including reconditioning;[36]

(5) goods which are re-imported after being assembled abroad;[37]

(6) goods, parts of which have been re-imported after having been adopted to such goods;[38]

(7) goods which have been manufactured abroad from goods which have been exported for the purposes of such transformation;

(Note that for the exemptions (4), (5), (6) and (7) the following conditions must be observed:[39]

- on their exportation a declaration must be made that the goods will be re-imported free from TVA and the exportation and importation must be carried out by one and the same person)

The partial exemption concerning (4), (5), (6) and (7) is granted to the amount of tax computed on the normal value which the exported goods would have on the day of their re-importation at the rate which is normally applied for imported goods. The amount of tax payable may not in any case be less than the tax calculated on the value of work performed on the goods at the rate applicable to imported goods.

Tax must be paid by the person who carries

30. TVA Royal Decree no. 7, art. 28 (1).
31. TVA Royal Decree no. 7, art. 28 (1).
32. TVA Royal Decree no. 7, art. 28 (2).
33. TVA Royal Decree no. 7, art. 29 (1).
34. TVA Royal Decree no. 7, art. 30 (1).
35. TVA Royal Decree no. 7, art. 30 (1).
36. TVA Royal Decree no. 7, art. 31 (1).
37. See note 36.
38. See note 36.
39. TVA Royal Decree no. 7, art. 31 (2).

out the exportation and importation. On the other hand, a total exemption is granted when goods were repaired free abroad under the terms of a manufacturer's garantee or owing to the faulty manufacture of the good, on the condition that when the good was originally imported the tax base was not reduced on account of faulty manufacture.

(8) A total exemption is also granted for the re-importation of:

- transportation equipment, including spare parts and the normal accessoires and equipment which is re-imported with the goods, on the condition that such goods remain the property of the person who owned them at their exportation;
- used accessories for railways and airplanes;
- goods which are imported by a person resident in Belgium, which he exported on the occasion of travel abroad under the condition that such goods are definitely destined for personal use.[40]

## IV. MEASURES GUARANTEEING THE RECOVERY OF TAX DUE AT IMPORTATION

The customs and excise administration responsible for the TVA may request a surety deposit to assure the recovery of TVA, under the following conditions:[41]

- when it is of the opinion that insufficient tax has been paid or that the right to an exemption was not sufficiently demonstrated;
- when the tax was not paid on the date when the goods were declared;
- when the tax has been paid at a rate lower than the highest rate applicable to the good.

This surety deposit must be paid at the office appointed by the responsible authorities. When such a deposit is not paid the customs authorities may hold the goods or require that they be sent out the country.

40. TVA Royal Decree no. 7, art. 32 (2).
41. TVA Royal Decree no. 7, art. 34.

# DEVELOPMENTS IN INTERNATIONAL TAX LAW

## TAX TREATIES BETWEEN DEVELOPED AND DEVELOPING COUNTRIES*

**(International Chamber of Commerce (ICC) : Report of the Commission of Taxation, Doc. 180/122, 2. IV 1970)**

A – RESOLUTION OF THE ECONOMIC AND SOCIAL COUNCIL

1. In Resolution 1273 of 4 August 1967 the Economic and Social Council of the United Nations expressed the belief that:

"tax treaties between developed and developing countries can serve to promote the flow of investment useful to the economic development of the latter, especially if the treaties provide for favourable tax treatment to such investments on the part of the country of origin (i.e. the financing country), both by outright tax relief and by measures which would ensure to them (i.e. the investments) the full benefit of any tax incentives allowed by the country of investment".

2. The ICC shares this belief, but would prefer to express it in a different way. Once the taxing powers of the host country have been defined, it is the duty of the country from which the investment is made to afford relief against its own taxes to the maximum level of the taxing powers available to the host country under the treaty whether those powers are fully used or not.

3. This means that financing countries should recognise that there is a place for both the exemption method and the tax-credit method of relief in their tax systems:

(a) The exemption method should be adopted for income in respect of which the treaty imposes no limitation on the taxing rights of the host country, other than the obligation to refrain from discrimination. The most important items of income of this type will be those derived by a company from dividends, the profits of a permanent establishment, and income from real property or natural resources.

(b) The tax-credit method may be used in other cases, but with the important qualification that credit should be given up to the rate of tax allowed to the host country by the treaty instead of being restricted to the tax actually borne in the host country.

4. In recommending this policy to the developed countries, the ICC has in mind that the developing countries may seek to encourage investment by various means. Although attention has been focused on special, selective tax incentives in recent years, such measures may be supplemented by encouragement of a more general nature such as low rates of tax on profits and income, allowances for expenditure on capital assets in excess of commercial depreciation and the facility to create tax-free reserves for various purposes. It is desirable that the full benefit of all such measures should accrue to the investor.

---

## B – THE AD HOC EXPERT GROUP

5. The resolution of the Economic and Social Council set up an Ad Hoc Expert Group on Tax Treaties between Developed and Developing Countries to explore:
"ways and means for facilitating the conclusion of tax treaties between developed and developing countries, including the formulation, as appropriate, of possible guide lines and techniques for use in such tax treaties which would be acceptable to both groups of countries and would fully safeguard their respective revenue interests".
6. The ICC regrets that the terms of reference were circumscribed in this way. It appears from the record of the first meeting of the Expert Group in Geneva in 1968 that more attention was paid to "safeguarding their respective revenue interests" than to promoting the flow of investment. It is to be feared that tax treaties which fully safeguard respective revenue interests and are acceptable to both groups of countries will inhibit the flow of investment.
7. The developing countries express two objections in principle to the model double taxation agreement designed by the OECD Fiscal Committee: i.e.
(a) it frequently departs from an earlier ECOSOC resolution that the prior right to tax income belongs to the source country;
(b) the forms of relief provided by the developed countries frequently fail to eliminate double taxation and also frustrate the fiscal policies of the developing countries.
8. The purpose of this paper is to express the views of the ICC on these objections, but on the basis of achieving the maximum contribution to trade with and investment in the developing countries rather than undue concern about protection of current revenue yields.

## C – THE PRIOR RIGHT OF THE SOURCE TO TAX

9. It is far from true to assume that all less developed countries seek extension of the term "source of income" or that they desire to take to extreme lengths the principle that the source country has the prior claim to tax. A few do so, but their views alone would not justify the evolution of a special form of model double taxation agreement between developed countries and less developed countries.
10. Though recognising that serious socio-political problems exist in most of the developing countries, basic principles of income taxation must be safeguarded as much as possible in order to avoid curtailing or even destroying the production of income at the affected sources.
11. The term "source", in common with the term "income", has a popular meaning which does not lend itself to positive definition. The popular meaning might be held to embrace any country from which a payment is made which is income or gives rise to income. In double taxation agreements a more practical economic interpretation is adopted and the ICC believes that the source principle promulgated by ECOSOC is misunderstood if applied in any other context.
12. Subject to minor exceptions, wherever the OECD model agreement appears to depart from the principle that the source in the popular sense has the prior right to tax, it can be shown that any other solution would tend to deter trade or investment or the furnishing of skills and know-how. The deterrent effect usually arises from the fact that in most such cases the so-called source country cannot, or is not prepared to, measure the non-resident's taxable capacity as reflected by his net income and particular

circumstances, and must therefore base its claims on an arbitrary assessment derived from the gross income figures which are within its knowledge.

13. The existence of this problem indicates the rational and realistic interpretation of the source principle. Although there cannot always be a precise dividing line between the claims of the debtor and the creditor country to be the source of income, more weight should be given to the country where the essential activity giving rise to the income is carried on and where the essential expenses are incurred than to the country which pays the bill.

## D – THE NATURE OF THE OECD MODEL

14. The OECD model agreement was not conceived as a completely rigid ideal code governing the tax treatment of non-residents and foreign income. It is a compromise between the more or less divergent viewpoints of member countries on a number of technical issues. Bilateral agreements subsequently negotiated have not always adopted the model provisions in their entirety. Regardless of the merits of any particular variation, however, there is much to be said for adherence to a standard form, and the ICC would wish to see closer adherence to a single pattern in the future rather than increasing divergence.

15. If the Fiscal Committee had been representative of both developed and less developed countries, the greater diversity of national attitudes might well have resulted in marginal variations in the model provisions, but the extreme views of a few developing countries could not have so influenced the whole as to produce a model of an entirely different character.

16. Much has been made of the argument that OECD-type allocation of taxing powers between the host country and the financing country involves an approximate balance of revenue sacrifice under agreements between two developed countries. This is by no means a valid assumption. The fact that trade and capital movements between two countries are closely balanced does not mean that the revenue effects of an OECD-type treaty will be more or less equal. The revenue effects will depend upon the pre-treaty characteristics of each national tax system.

17. The fact is that in any agreement between two countries, whether they are at the same or very different stages of development, double taxation and other forms of excessive taxation must be removed if the agreement is to achieve its economic purpose. The revenue sacrifice will always be greater for the country which has previously shown the least restraint.

## E – THE PERMANENT ESTABLISHMENT CONCEPT

18. In the 1968 meetings of the Ad Hoc Expert Group, a great deal of discussion centred around the "permanent establishment" concept. Proposals for its adaptation to the needs of developing countries varied from unexceptionably logical refinements to virtual abandonment of the concept in favour of ad hoc solutions which would assure a tax yield to the developing countries from almost every conceivable transaction with private sector enterprises in the developed countries.

19. The ICC is aware that some features of the model definition of "permanent establishment" are capable of variation without any serious loss of effectiveness of the agreement. The regular delivery of goods ex consignment stocks has frequently been brought within the definition in the past, and there would have been no serious objection to its

inclusion in the OECD model.

20. A matter of more general significance is the importance of the place where the contract for sale of goods is concluded, and the distinction between dependent and independent agents. It is possible to appreciate, without accepting, the views of some countries that such criteria are too legalistic and do not always reflect the substance of the arrangements between the principal and his agent or representative. The subject merits further study by the OECD Fiscal Committee, but it must be remembered that certainty of interpretation and administrative convenience are valuable secondary attributes of a double taxation agreement. Juridical standards or points of reference contribute to such certainty and convenience, and although this may provoke the complaint that their adoption enables each enterprise to determine for itself where it shall be taxed, the answer must be that such a facility is and will remain an integral part of the right of every enterprise to determine whether, with whom, and on what terms it is prepared to carry on business.

21. Many suggestions for consideration by the Ad Hoc Committee go far beyond any rational basis for determining the "source" country for industrial or commercial profits. Inter alia:

(a) Part of the profits from the sale of goods might be attributed to the country in which they are purchased.

(b) On the force of attraction principle, the existence of a permanent establishment might be equated with "residence", so that the foreign parent enterprise becomes chargeable to tax in respect of transactions in no way associated or connected with the permanent establishment itself.

(c) The arm's length method of attribution of profits to a permanent establishment might give place to a percentage division of total profit between the parent enterprise and the permanent establishment according to the nature of the activity in each territory.

(d) At the extreme, every export from a developed country to a less developed country might be the occasion for a tax demand by (or a tax transfer to) the latter.

22. The basis of such claims is pure revenue expediency and the ICC believes their incorporation in bilateral agreements between developed and developing countries would do greater damage to the flow of trade than could possibly be justified by the uncertain net gain to the revenue of developing countries.

23. The developing countries whose revenue needs lead them to make such claims are characterised by high rates of tax on the trading income of non-residents and by unorthodox methods of measuring the profits of non-residents. To this extent, a more or less substantial tax burden would fall on the non-resident enterprises themselves unless the developed countries supplemented the exemption or tax credit system with direct compensatory grants, and this would seem an utterly anomalous and unfair employment of public funds.

24. Furthermore, adoption of such proposals would bring almost every exporting and importing enterprise in the developed countries, to a greater or lesser degree, within the tax jurisdiction of all the developing countries.

25. The combination of these consequences would have the most restrictive effects on international trade.

### F – CAPITAL GAINS AND OTHER OCCASIONAL INCOME

26. Some developing countries would prefer to see the prior right to tax capital gains allocated generally to the country in which

the property giving rise to the gain is situated. The point is particularly relevant in relation to the sale of shares, and the presumption is that the rule should apply to all shares issued by a locally registered company.

27. In the first place, the ICC must repeat its view that the existence of a capital gains tax at all in a developing country (or elsewhere) is a serious brake on capital growth and inimical to the evolution of an active capital market.

28. However, the proposal raises a problem which is common to some other forms of occasional income. If the non-resident is not trading on a more or less continuing basis in a territory, the right to tax becomes a right to tax capital profits exclusively without any responsibility for, or effective means of, affording relief for capital losses.

29. It is presumably the intention to leave the taxpayer's country of residence to relieve losses, but even if the necessary goodwill were there to do so, situations would frequently arise in which that would be impracticable, and the rule would operate as a distinct deterrent to capital investment.

30. Some other forms of occasional income present the same difficulty. Building and installation works undertaken by civil engineering contractors and turnkey factory projects often involve a once-for-all operation in a country. If such activities are deemed to be derived from a permanent establishment because their duration exceeds (say) twelve months, the same effective denial of tax relief for losses is likely to be experienced. The ICC has therefore serious doubts whether the meaning of "permanent establishment" should be extended in this way, and would certainly consider the adoption of even shorter periods than twelve months as the criterion to be contrary to the interests of the developing countries.

### G – ROYALTIES

31. The ICC recommendations on the tax treatment of royalties for the use of intangible property and know-how were fully described in ICC Brochure No 208 (1966). The creation, management and disposition of intangible property is an economic acitivity in itself, and the source of income derived therefrom is properly identified with the place where the activity is exercised and the costs are borne. It is especially in the interests of developing countries that they should accept this principle and that their tax policies should cease to impede the communication and application of technical and commercial know-how.

### H – INTEREST

32. The Ad Hoc Group has to consider whether any interest payable by a debtor in a developing country constitutes a source properly chargeable to tax there. Revenue needs prompt some developing countries to make this claim without qualification, although they recognise somewhat regretfully that it is not always possible to identify the interest element in inclusive prices for goods supplied on deferred payment terms.

33. The ICC takes the view that interest on credits for trade goods for less than one year should be regarded as arising from a source in the creditor's country. Any other method would have serious consequences for the level of trade with developing countries, involving as it would the collection of innumerable small amounts of tax from innumerable exporters who would then be obliged to submit corresponding claims for relief in their own countries.

34. In respect of longer term credits for capital goods and financing loans generally, there can be no practical objection to

allocating taxing rights to the debtor country on a net income basis. In the view of the ICC, the OECD recommendations of a maximum charge equal to 10 per cent of gross income is properly regarded as an administratively convenient compromise, and is as appropriate for agreements with developing countries as for agreements with developed countries. It would be entirely wrong to interpret the solution as a breach with the principle of the prior taxing right of the source country; if anything, the principle is strained to give the advantage to debtor countries.

35. At the suggestion of some developing countries, the margins between gross interest rates and net interest income are to be studied in some detail. The Committee must not however be misled by the fact that the severity of taxes in a few developing countries itself determines the margin.

### I – DIVIDENDS

36. There is probably no area of the double taxation problem in which the developing countries show wider divergencies of practice than in the tax treatment at the source of dividends payable to non-residents. Many impose no tax additional to that suffered on the underlying profits of the paying company; many others unilaterally limit withholding taxes to relatively low proportional rates and would have no difficulty in accepting the limitations suggested in the OECD model agreement. A few countries, however, impose heavy progressive taxes on non-resident individual shareholders with a substantial minimum charge, and high rates of proportional tax on non-resident corporate shareholders.

37. It is clear from the working papers of the Ad Hoc Expert Group that some of the latter countries feel unable, in principle, to admit any restrictions on their right as the source country to all taxation to which the dividends, directly or indirectly, eventually give rise. On this basis, the developing countries would become involved in a fractionated pursuit of dividends through inter-company and institutional holdings to the eventual individual beneficiaries.

38. Taken to these lengths, the claim is of course administratively impracticable and this fact is usually recognised by all but a few exponents. But the thesis is the basis for some developing countries insisting on higher rates of withholding tax than the maxima in the OECD model agreement. In doing so, they have no regard for the fact that the higher the withholding rates under present conditions the greater the burden of double taxation for some investors and the burden of inability to recover the tax for others.

### J – INTER-COMPANY DIVIDENDS

39. In current practice, taxation payable on dividends declared by a subsidiary company tends to fall on a non-resident parent company as an additional, unrelieved tax burden. The yield to the shareholders of the parent company is lower than if there were no such tax at the source, and this will operate as a disincentive to investment. The ICC holds firmly to the view that *either* there should be no tax on dividends at the source *or* the financing country must accept full responsibility for relief. It is a matter of concern to the ICC that the developed countries have not so far accepted the logical consequences of agreeing to withholding taxes at the source on inter-company dividends. Taxation of this kind derives its "raison d'être" from the taxable capacity of the individuals who at the end of the corporate chain receive the income. The withholding tax at the source should therefore be carried through as

a credit to those individuals (or institutions representative of individuals) in whose personal tax declarations the income finally comes to rest.

40. Once a proportional rate of withholding has been determined by treaty, a foreign tax should be treated in exactly the same way as a domestic withholding tax. It should operate as a credit against the individual's personal liability or be wholly or partly refunded when the credit exceeds that personal liability. It is not a defensible argument for governments to say in the latter case that they are being asked to refund taxes which some other revenue authority has received. The revenue is compensated for such refunds by the additional tax collected from taxpayers with incomes subject to higher rates of tax.

41. Until this more logical attitude to relief for foreign withholding taxes is adopted, it would clearly be damaging to international investment to contemplate higher rates of withholding tax than those recommended by the OECD. If, on the other hand, the developed countries are prepared to give unqualified relief (including repayment in all appropriate cases) for taxes imposed on dividends from developing countries, the level of such taxes becomes less critical to the investor.

42. From the point of view of the revenue authorities in the developed countries, however, the level of the withholding rate remains important. Taking into account all relevant circumstances, the rate must be a fair average rate and in many developed countries the considered conclusion may well be that the OECD's recommended rates cannot be exceeded without their constituting aid rather than a proper allocation of tax revenue.

## K – CONCLUSIONS

43. In line with previous studies and the further considerations described in this report, the ICC reaches the following conclusions:

- That there are unsatisfactory features in the tax treatment of foreign income in the laws of many countries and these tend to be perpetuated by the OECD model agreement. In particular:
  (a) Retention of the tax credit system rather than exemption as the method of relieving double taxation in the business sector. This bears especially unfairly on income from less developed countries which seek to encourage economic development *either* by maintaining relatively low rates of corporate tax *or* by offering special development reliefs which effectively reduce corporate taxes on income at the source.
  (b) Failure to provide a satisfactory measure of relief in the investor's country of residence for source taxes on dividends, or on profits accruing directly to companies, even where the title to impose such taxes is recognised and controlled by treaty provisions.
- That the OECD model agreement is only a basic guide in relation to such matters as the scope and application of the permanent establishment concept and the allocation of taxing rights over royalties, interest and dividends. But, variations from the model must safisfy certain criteria.
- The main criteria governing any wider interpretation of the principle of priority for the source country are:
  (a) that double taxation be avoided;
  (b) that the taxation procedures are not so complex themselves as to deter trade, investment and the application of skills and know-how in the developing countries.
- That, in general, neither the pressing

revenue needs of developing countries nor the willingness of developed countries to contribute to those needs is a sound basis for varying the standard provisions of double taxation agreements in relation to taxation at the source.

## L – RECOMMENDATIONS

44. The ICC therefore recommends:
(a) that developing countries should in the main accept the terms of the OECD model agreement;
(b) that, in any future revision of the OECD model agreement, provision be made for exemption from corporation taxes for profits of foreign permanent establishments and foreign dividends received, and for credit to be given to eventual individual shareholders in respect of foreign taxes imposed on or deducted from such dividends;
(c) the withholding taxes imposed at the source under an agreement on any income be treated as equivalent to domestic taxes of the country affording relief and credited or repaid accordingly;
(d) that at least in agreements with less developed countries, the developed countries should, up to the level of their own taxes, give relief for the permissible taxes at the source whether or not such power to tax is fully utilised.

**The International Chamber of Commerce**

Founded in 1919, the ICC brings together producers and consumers, manufacturers and traders, bankers and insurers, carriers and transport users, and legal and economic experts from more than 80 countries. Extending across political frontiers, the ICC enables them to meet and pool their experience and forge a common policy adapted both to national and to international requirements.
"More than fifty active years", it has been written, "have brought the ICC world-wide recognition as a fully representative body, with realistic and objective methods of work.
Governments and inter-governmental agencies increasingly turn to the ICC for advice and guidance about business requirements. The ICC's recommendations have many times been reflected in official decisions closely affecting international trade and ensuring its expansion."
Some forty international technical commissions and committees composed of businessmen and experts appointed by member countries, with whose activities more than sixty specialized international organizations are associated, help to further the ICC's program of action. This program is divided among four main groups: 1. Economic and Financial Policy; 2. Production, Distribution, Advertising; 3. Transport and Communications; 4. Law and Commercial Practice.
One of the ICC's main activities is to provide, through its arbitration clause, international facilities for avoiding or resolving business disputes.
The ICC arbitration clause states that "All disputes arising in connection with the present contract shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the Rules".
Adding the ICC arbitration clause to all foreign contracts not only guarantees a rapid and effective method of settling a business dispute, but also—as nearly 50 years' experience has proved—has a deterrent effect and tends to prevent such disputes from arising.
The parties can agree to submit a dispute to ICC arbitration even if the contract does not contain the ICC arbitration clause.

# BIBLIOGRAPHY

## BOOKS

### AFRICA

SURVEY OF AFRICAN ECONOMIES, Vol. 2: Kenya, Tanzania, Uganda, and Somalia, published by International Monetary Fund, Washington, 1969, 448 pp.
Second volume of a series of surveys of African economies, containing basic economic and financial information of three countries i.e. Kenya, Tanzania and Uganda, comprising the East African Community, and Somalia.

Library International Bureau of
Fiscal Documentation no. B 5129

TAXATION FOR AFRICAN ECONOMIC DEVELOPMENT, edited by M.C. Taylor, published for the Institute of Administration, University of Ife, Nigeria by Hutchinson Educational Ltd., 178-202 Great Portland Street, London W. 1, 1970. 556 pp.
Selection of readings by various authors, focusing on the problems of public revenue systems in Africa. A selected bibliography is appended.

Library International Bureau of
Fiscal Documentation no. B 5181

### ALGERIA

GUIDE PRATIQUE DES IMPOTS, Vol. 1: Impôt sur les bénéfices industriels et commerciaux, published by Fiduciaire Eurafricaine d'expertise comptable, 4 et 6 Boulevard Mohamed V, Alger 3, 1970.
Vol. I of the series Guide Pratique des Impôts, which explains the tax on industrial and commercial profits for the financial year 1970. The text of the Investment Code of 1966 and the tax convention with France are appended.

Library International Bureau of
Fiscal Documentation no. B 5161

### ARGENTINA

LEGISLACION IMPOSITIVA DE SANTE FE, by M.A. Saccone and A.F. Mogetta, published by Liberia y Editorial Orbir, Córdoba 1078 local 20, Rosario (S. Fe), 2nd edition, 1970. 202 pp.
An annotated text of the tax laws in the province of Santa Fe, with footnotes to court decisions and opinions of tax experts.

Library International Bureau of
Fiscal Documentation no. B 5211

NUEVO DERECHO ACCIONARIO Y DE "KONSERN" DE ALEMANIA: Ley de 1965, by J.M. Semon, published by Editorial Cangallo Saci, Cangallo 362, Piso 1°, Buenos Aires, 1969. 78 pp.
Study of the legal regime of corporations under the 1965 law.

Library International Bureau of
Fiscal Documentation no. B 5018

LA SINDICACION DE ACCIONES, by F.H. Mascheroni, published by Editorial Cangallo Saci, Cangallo 362, piso 1°, Buenos Aires, 1968. 67 pp.
Survey of the voting trusts in Argentina.

Library International Bureau of
Fiscal Documentation no. B 5010

LA VACANCIA DEL DIRECTOR Y LA REINTEGRACION DEL DIRECTORIO, by C. Suarez Anzora, published by Editorial Cangallo Sociedad Anonima, Cangallo 362, Piso 1°, Buenos Aires, 1970. 148 pp.
Discussion of the legal implications of a vacancy in the post of Director (Chairman of the Board of Directors) of a corporation.

Library International Bureau of
Fiscal Documentation no. B 5186

### AUSTRALIA

INCOME TAX FOR PRIMARY PRODUCERS, published by Commonwealth Government. Printing Office, Canberra, 1970, eighth edition. 73 pp.
Eighth edition of a booklet on the taxation requirements applicable and the concessions available to farmers, graziers and fishermen.

Library International Bureau of
Fiscal Documentation no. B 5170

### AUSTRIA

DIE BESTEUERUNG DER FREIEN BERUFE, by B. Schimetschek, published by Grenz-Verlag, Landstrasser Hauptstrasse 67, Wien, 1970. 166 pp.
The first volume of a new series of publications entitled "Steuerfragen des Täglichen Lebens", explaining the taxation of liberal professions with reference to case law.

Library International Bureau of
Fiscal Documentation no. B 5197

UMGRÜNDUNGEN NACH HANDELS-, GESELLSCHAFTS-, GEWERBE- UND STEUERRECHT, AUF DER GRUNDLAGE DES STRUKTURVERBESSERUNGSGESETZES, by F. Helbich, (Schriften zum österreichischen Abgabenrecht: Band 1), published by Wirtschaftsverlag Dr. Anton Orac, Wien, 1970. 389 pp.
Second edition which discusses the Austrian company law and tax law on mergers, contributions of assets and form transformation under the Structural Improvement Law 1969 with references to literature. The text of the laws and decrees related thereto and a bibliography are appended.

Library International Bureau of
Fiscal Documentation no. B 4622

## BELGIUM

L'ENTREPRISE FACE A LA T.V.A., Séminaire organisé à Liège les 13, 14 et 15 novembre 1969, published by Faculté de droit de Liège, Martinus Nijhoff, La Haye, 1970. 269 pp.
Paper of a seminar containing the text of reports on the Belgian Tax on Value Added.

Library International Bureau of
Fiscal Documentation no. B 5153

HOE U DE B.T.W. IN PRAKTIJK BRENGT, by R. Vandelanotte, published by CED Samsom, Brussels, 1970. 213 pp.
Booklet entitled: "How to Apply the Value Added Tax". This work deals with the administrative and accounting methods to be used with the new Value Added Tax, which enters into force on January 1, 1971.

Library International Bureau of
Fiscal Documentation no. B 5121

INVLOED DER GEMEENTELIJKE BOUWBELASTINGEN EN PREMIES OP DE BOUWKOSTEN EN HET ONROERend BEZIT IN WEST-VLAANDEREN, gids voor aannemers, bouwlustigen, gemeentebesturen, by Ph. de Gryse, published by Provinciaal Verbond der Aannemersverenigingen van West-Vlaanderen, 25 Ezelstraat, 8000 Brugge, 1970. 82 pp.
Guide for contractors, prospective builders, and municipal authorities.

Library International Bureau of
Fiscal Documentation no. B 5184

## CANADA

THE TAXING POWERS AND THE CONSTITUTION OF CANADA, by E.J. Benson, published by The Queen's Printer, Ottawa, 1969. 81 pp.
Working Paper containing the texts, both in English and French, of the preliminary views of the Minister of Finance, how the legislative taxing powers should be divided between the federal and the provincial governments of Canada.

Library International Bureau of
Fiscal Documentation no. B 5140

## CHILE

EL IMPUESTO ADICIONAL EN LA NUEVA LEY DE IMPUESTO A LA RENTA, by G. Echeverra Perez, published by Editorial Juridica de Chile, Ahumada 131, Santiago de Chile, 1969. 115 pp.
Survey of the additional income tax (which is a surtax on non-residents' income) and its relation to income taxation.

Library International Bureau of
Fiscal Documentation no. B 5191

EL IMPUESTO A LAS GANANCIAS DE CAPITAL, by M. Leighton Puga, published by Editorial Juridica de Chile, Ahumada 131, Santiago de Chile, 1966. 104 pp.
Survey of the Chilean Capital Gains Tax and its application.

Library International Bureau of
Fiscal Documentation no. B 5193

LEY DE TIMBRES, ESTAMPILLAS Y PAPEL SELLADO, by H. Chadwick Pinera, published by Editorial Juridica de Chile, Ahumada 131, Santiago de Chile, 1969. 143 pp.
Survey on the stamp duties.

Library International Bureau of
Fiscal Documentation no. B 5192

## E.E.C.

DROIT FISCAL-STEUERRECHT, Tome I, Band I, published by C.H. Beck, München, and Editions Techniques Juris-Classeurs, Paris, 1970. (Jura Europae; le droit des pays de la Communauté Economique Européenne).
Volume I of the bilingual publication in French and German on the tax laws in the European Economic Community. This loose-leaf contains a survey of the tax systems in Belgium by E. Bours, France by R. Drago, and E. Langavant, and Germany by G. Rau. The material is up-dated as of July 1969. The chapter on turnover

taxes in the part of Belgium is excluded in view of the introduction of the Tax on Value Added in 1971.

Library International Bureau of
Fiscal Documentation no. B 5183

INTERNATIONAL PERSONALITY AND CAPACITY OF THE EUROPEAN COMMUNITIES TO CONCLUDE TREATIES (in Greek), by Th.E. Christodoulidis, published by Research Publications of the Institute of International Relations, Thessaloniki, Greece, 1968. 286 pp.

Library International Bureau of
Fiscal Documentation no. B 5125

LA REGOLAMENTAZIONI DELLA C.E.E. SULLA CONCORRENZA, by W.N. Apollonio, published by Instituto per l'Economia Europea, Via V. Bellini, 22, Roma, 1970. 512 pp.
Consideration and documentation of EEC competitive regulations.

Library International Bureau of
Fiscal Documentation no. B 5134

## EIRE

ECONOMIC DEVELOPMENT AND PLANNING, by B. Chubb and P. Lynch, published by Institute of Public Administration, 57/61 Lansdoune Road, Dublin 4, 369 pp.
Volume one of the series "Readings in Irish Public Administration". This book is a compilation of published addresses and papers by a number of public servants and economists, and extracts from official publications with respect to documenting the revolution that took place between the middle fifties and the middle sixties in one area of public policy, the development of the economy in Ireland.

Library International Bureau of
Fiscal Documentation no. B 5079

## FRANCE

GUIDE PRATIQUE DE LA T.V.A. DANS LA CONSTRUCTION, published by Editions du Moniteur des travaux publics, 91 rue du Faubourg Saint-Honoré-Paris, 7th edition, 1970. 476 pp.
Seventh revised edition of the publication explaining the Tax on Value Added for the construction industry and related activities. The material is up-dated as of May 1, 1970.

Library International Bureau of
Fiscal Documentation no. B 5194

MEMENTO FISCAL ET SOCIAL 1970, published by Les Editions T.F.J., 27, Rue de l'Echiquier, Paris Xème.
Commentaries to French taxation, labour and national social security regulations.

Library International Bureau of
Fiscal Documentation no. B 5163

LA TRANSPARENCE FISCALE DES SOCIÉTÉS LIÉES, by B. Jadaud, published by Faculté de Droit et de Sciences Economiques, Université de Caen, 1968, 3 volumes. 551 pp.
Thesis on parent-subsidiary income taxation in French law. A supplement updates the 1968 thesis as of March 31, 1970. A bibliography is appended.

Library International Bureau of
Fiscal Documentation no. B 5200

T.V.A. EN AGRICULTURE, published by Ministère de l'Economie et des Finances Imprimerie Nationale, Paris, 1968. 189 pp.
Treatise on the turnover tax on value added liability of agricultural enterprises. A supplement up-dates the material as of January 1, 1970.

Library International Bureau of
Fiscal Documentation no. B 5213

## GERMANY

DIE BESTEUERUNG DER VERBUNDENEN UNTERNEHMEN, Eine Darstellung des geltenden deutschen Konzernsteuerrechts, by H.P. Reuter, published by Verlag C.H. Beck, München, 1970. 588 pp.
Treatise on the taxation of affiliated enterprises as governed by the Company Law 1965 with references to case law, tax administration and literature.

Library International Bureau of
Fiscal Documentation no. B 5123

DAS GEMEINDEFINANZREFORMGESETZ, Einführung in die Gemeindefinanzreform und Erlaüterungen zum Gemeindefinanzreformgesetz, by H. Elsner and M. Schuler, published by Verlag für Literatur und Zeitgeschehen, Hannover, 1970. 158 pp.
Development and explanation of the public revenue system of German municipalities by the new reform law, with a historical introduction. Text of the laws and a bibliography are appended.

Library International Bureau of
Fiscal Documentation no. B 5180

THE GERMAN LAW CONCERNING THE DISTRIBUTION OF FOREIGN INVESTMENT SHARES, by H. Brucher and D. Pulch, published by Fritz Knapp Verlag, Neue Mainzer Strasse 60, 6000 Frankfurt/M. 120 pp.
Bilingual edition with introduction, excerpts from the Governmental Report, summary of tax provisions and regulations for filing registration statement.

Library International Bureau of
Fiscal Documentation no. B 5159

GRUNDSÄTZE ORDNUNGSMÄSSIGER BILANZIERUNG FÜR VERBINDLICHKEITEN, by U. Hutteman, published by Verlagsbuchhandlung des Instituts der Wirtschaftsprüfer GmbH, Postfach 10226, 4000 Düsseldorf, 1970. 158 pp.
Study of sound accounting principles with respect to liabilities.

Library International Bureau of
Fiscal Documentation no. B 5136

HANDBUCH DER STEUERVERANLAGUNGEN, Einkommensteuer, Körperschaftsteuer, Gewerbesteuer, Umsatzsteuer 1969, published by C.H. Beck'sche Verlagsbuchhandlung, München, 1970. 1924 pp.
This work contains the text of laws, regulations and administrative instructions with respect to the individual and corporate income tax, trade tax and turnover tax which are necessary for the filing of 1969 tax returns.

Library International Bureau of
Fiscal Documentation no. B 5128

HANDBUCH ZUR EINKOMMENSTEUERVERANLAGUNG 1969, published by Verlag des wissenschaftlichen Instituts der Steuerbevollmächtigten GmbH, Verlag C.H. Beck, 1970. 807 pp.
Text of the Individual Income Tax, its implementary ordinance and regulations and other provisions as relevant for the assessment year 1969.

Library International Bureau of
Fiscal Documentation no. B 5122

KOMMENTAR ZUM GESETZ ZUR FÖRDERUNG DER STABILITÄT UND DES WACHSTUMS DER WIRTSCHAFT UND ART. 109 GRUNDGESETZ, by A. Möller, published by Verlag für Literatur und Zeitgeschehen, Georgstrasse 50B, 3 Hannover, 1969. 360 pp.
Second revised edition of a publication which explains the background for the establishment of the law of June 8, 1967, allowing the Government to take measures to further economic stability and growth, such as modifying the income tax rates, accelerated depreciation, and investment credit.

Library International Bureau of
Fiscal Documentation no. B 5179

UMWANDLUNGSSTEUERGESETZ 1969, Umwandlung/Fusion/Einbringung, by G. Loos, published by Verlagsbuchhandlung des Instituts der Wirtschaftsprüfer GmbH, Düsseldorf, 2nd edition, 1970. 499 pp.
Second revised edition in loose-leaf edition which deals with the taxation of mergers, transformation of companies and contribution of assets with reference to case law, the material of which is updated as of the end of February 1970. The text of the principal law, by-laws and regulations related thereto is appended.

Library International Bureau of
Fiscal Documentation no. B 5191

DIE VERANLAGUNG ZUR EINKOMMENSTEUER FÜR 1969, Verlagsbuchhandlung des Instituts der Wirtschaftsprüfer GmbH, 4000 Düsseldorf, 1970. 671 pp.
Compilation of the text of the Individual Income Tax Law, as relevant for the assessment year 1969, its implementary decrees, rulings, case laws and other enactments related thereto.

Library International Bureau of
Fiscal Documentation no. B 5150

DIE VERANLAGUNG ZUR GEWERBESTEUER FÜR 1969, published by Verlagsbuchhandlung des Instituts der Wirtschaftsprüfer GmbH, Postfach 10226, 4000 Düsseldorf, 1970. 194 pp.
Compilation of the text of the Business Tax Law, as relevant for the assessment year 1969, its implementary decree, rulings and case law.

Library International Bureau of
Fiscal Documentation no. B 5148

DIE VERANLAGUNG ZUR KÖRPERSCHAFTSTEUER FÜR 1969, published by Verlagsbuchhandlung des Instituts der Wirtschaftsprüfer GmbH, Postfach 10226, 4000 Düsseldorf, 1970. 381 pp.
Compilation of the text of the Corporation Income Tax Law, as relevant for the assessment year 1969, its implementary decree, rulings, case law and related enactments.

Library International Bureau of
Fiscal Documentation no. B 5149

DIE VERANLAGUNG ZUR UMSATZSTEUER (MEHRWERTSTEUER) FÜR 1969, published by Verlagsbuchhandlung des Instituts der Wirtschaftsprüfer GmbH, Postfach 10226, 4000 Düsseldorf, 1970. 1074 pp.
Compilation of the text of the Tax on Value Added Law, its implementary decree, rulings, and case law and other enactments related thereto, as relevant for the assessment year 1969.

Library International Bureau of
Fiscal Documentation no. B 5147

## GREECE

LES SOLUTIONS GRECQUES AU PROBLEME DES DOUBLES IMPOSITIONS LEGALES INTERNATIONALES EN MATIERE D'IMPOTS DIRECTS, by M.L. Theocharopoulos, published by Université de Paris, Faculté de Droit et des Sciences Economiques, Paris, 1969. 237 pp.
Thesis on Greek solutions with respect to the problem arising from the legal imposition of international double taxation on income and death duties as provided for by the Greek Unilateral measures as well as treaty provisions.

Library International Bureau of
Fiscal Documentation no. B 4483

## INTERNATIONAL

INCOME TAXES OUTSIDE THE UNITED KINGDOM, published by Her Majesty's Stationery Office, London, 1969.
Vol. 1: 344 pp. Aden to Burma; Vol. 2: 331 pp. Comeroons to Ellice Islands; Vol. 3: 366 pp. Falklands Island to Hong Kong; Vol. 4: 342 pp. India to Jamaica; Vol. 5: 386 pp. Japan to New Zealand; Vol. 6: 404 pp. Nicobar Islands to St. Helena; Vol 7: 421 pp. St. Lucia to Switzerland; Vol. 8: 360 pp. Tanzania to Zanzibar.
Third edition, in eight volumes, of an amalgamation of income tax laws in 145 countries and territories. This edition has been revised and rewritten where necessary, to bring the material up to date as of December 31, 1969. Details of administrative arrangements for the assessment and collection of taxes have been omitted as being outside the scope of this publication. It is intended to issue an annual reprint of this work, which will bring the summaries up to date as of the end of every year. It should be understood that this work is not an authoritative official exposition of the laws in force in those countries and territories covered.

Library International Bureau of
Fiscal Documentation no. B 4812

INTERNATIONAL IUS GOGENS, a contribution to the study of the nature of International Law Norms (in Greek), by G.B. Zotiades, published by Research Institute of International Public Law and International Relations, Thessaloniki, Greece, 1968. 307 pp.

Library International Bureau of
Fiscal Documentation no. B 5126

MUSTERABKOMMEN ZUR VERMEIDUNG DER DOPPELBESTEUERUNG DER NACHLÄSSE UND DER ERBSCHAFTEN, Bericht des Steuerausschusses der OECD 1966, Übersetzung aus dem Englischen und dem Französischen, published by Deutscher Bundesverlag GmbH, Bonn, 1970. 159 pp.
German text of the OECD Draft Double Taxation Convention on estates and inheritances 1966 from the English and French version. This translation is a result of a co-operation between the tax authorities of Germany, Austria and Switzerland.

Library International Bureau of
Fiscal Documentation no. B 5167

DER STEUERLICHE AUSGLEICH BEIM GRENZÜBERGANG IM INTERNATIONALEN HANDEL, by H. Mesenberg, published by Verlagsgesellschaft "Recht und Wirtschaft" mbH, Postfach 1960, 6900 Heidelberg, 1970. 68 pp. (Schriftenreihe: Steuerrecht und Steuerpolitik Heft 9)
Study on border tax adjustments with respect to international trade.

Library International Bureau of
Fiscal Documentation no. B 5141

STUDIES IN INTERNATIONAL INVESTMENT, by J.H. Dunning, published by George Allen & Unwin Ltd., Park Lane, Hemel Hempstead, Herts, 1970. 400 pp.
Collection of studies on international direct investment with particular attention to the impact made by U.K. and U.S. multi-national companies on the economies of both investing and host countries.

Library International Bureau of
Fiscal Documentation no. B 5196

## IRAN

THE IRANIAN TAX SYSTEM, by T.J. Grove, published by Industrial and Mining Development Bank of Iran, Tehran, 1970. 105 pp.
Short survey of the tax system in Iran with

emphasis on corporate and individual income taxes.

Library International Bureau of
Fiscal Documentation no. B 5168

## ISRAEL

NORMS FOR PUBLIC ADMINISTRATION, based on the state controller's reports during the term of office of Dr. S. Moses, edited and with introductions by Dr. M. Gilon, published by State Controller's Office, Jerusalem, 1969. 308 pp.

Library International Bureau of
Fiscal Documentation no. B 5195

## ITALY

CODICE TRIBUTARIO DEL COMMERCIO. LEGISLAZIONE-GIURISPRUDENZA. DISPOSIZIONI AMMINISTRATIVE., by A. Peluso and G. Giuliani, published by Dott. A. Giuffrè editore, Via Statuto, 2 Milano, 1970. 1893 pp.
Discussion of all the taxes important to commercial enterprises.

Library International Bureau of
Fiscal Documentation no. B 5174

RIFORMA TRIBUTARIA IMPOSTE DIRETTE. Sintesi esplicativa. Published by Casa editrice L. di G. Pirola, 20135 Milano, Via Comelico 24, 1970. 143 pp. (I quaderni del "Finance"; no. 5)
Study on the reform of direct taxes in Italy.

Library International Bureau of
Fiscal Documentation no. B 5209

I.V.A. IL MECCANISMO DI APPLICAZIONE DELL'IMPOSTA SUL VALORE AGGIUNTO. Published by Casa editrice Pirola, Via Comelico 24, Milano, 1970. 178 pp. (I quaderni del "Finance", no. 4).
The principles of the tax on value added explained.

Library International Bureau of
Fiscal Documentation no. B 5208

## JAPAN

PERSONAL SAVINGS AND CONSUMPTION IN POSTWAR JAPAN, by Toshiyuki Mizoguchi. Published by Kinokuniya Bookstore Co., Ltd., Tokyo, 1970. 301 pp.
Study on the personal savings and consumption behaviour of Japanese households in postwar Japan.

Library International Bureau of
Fiscal Documentation no. B 5190

## LUXEMBOURG

CODE DE LA LÉGISLATION FISCALE EN VIGUEUR DANS LE GRAND-DUCHÉ DE LUXEMBOURG. Vol. IV: La taxe sur la valeur ajoutée; situation au 1er juin 1970.
Published by Editions de l'Imprimerie St. Paul, 6-8, rue Origer, Luxembourg, 1970.
Loose-leaf service containing text of the Turnover Tax on Value Added and implementary provisions thereto with some annotations. A German translation of the law is appended.

Library International Bureau of
Fiscal Documentation no. B 5203

## MALAYA

A REPRINT OF PARTS I & II OF PRACTICAL EXERCISES ON INCOME TAX IN SINGAPORE AND THE STATES OF MALAYA. By F.H. Lee. Published by Broadway Music House, 472 North Bridge Road, Singapore 7.

Library International Bureau of
Fiscal Documentation no. B 5172

SOLUTIONS TO PART II OF PRACTICAL EXERCISES ON INCOME TAX IN SINGAPORE AND THE STATES OF MALAYA. By F.H. Lee.
Published by Broadway Music House, 472 North Bridge Road, Singapore 7, 1968.

Library International Bureau of
Fiscal Documentation no. B 5173

## NETHERLANDS

ADVIES INZAKE HET VOORONTWERP VAN WET TOT JAARLIJKSE BIJSTELLING VAN DE TARIEFTABELLEN VAN DE INKOMSTEN- EN LOONBELASTING. UITGEBRACHT AAN DE MINISTER VAN FINANCIEN. Published by Sociaal Economische Raad, 1969. 33 pp.
Advice of the Social Economic Council concerning the draft bill which would authorize the Government to influence the national economy by temporarily increasing or decreasing the rate of tax of the Individual Income Tax and Wage Tax.

Library International Bureau of
Fiscal Documentation no. B 5169

BESPREKING VAN HET RAPPORT VAN DE COMMISSIE TER BESTUDERING VAN VERANDERING VAN REGIME VOOR DEZELFDE BELASTINGPLICHTIGE. Published by N.V. Uitgeversmij.

AE.E. Kluwer, Deventer, 1970. 41 pp. (Geschriften van de Vereniging voor Belastingwetenschap; no. 125)
Publication of discussions held on the meeting of March 22, 1969 on the report of the Commission on changes in the tax treatment of an individual if his circumstances change, e.g. if he contributes a private property into a business enterprise, emigration etc.

Library International Bureau of
Fiscal Documentation no. B 5054a

HET (HER)VERDEELDE INKOMEN, Macht en onmacht van de overheid en fiskus; by N.H. Douben. Published by Uitgeversmaatschappij AE.E. Kluwer, Deventer, 1970. 173 pp.
Study on the (re)distribution of income.

Library International Bureau of
Fiscal Documentation no. B 5185

INLEIDING TOT HET NEDERLANDS BELASTINGRECHT, by H.J. Hofstra. Published by N.V. Uitgeversmij. AE.E. Kluwer, Deventer, 1970. 370 pp.
This work entitled: Introduction to the Dutch Tax Law, describes the general principles of the Dutch tax system.

Library International Bureau of
Fiscal Documentation no. B 5137

OUDE AANDEELHOUDERS AAN NIEUWE BANDEN. Openbare les gegeven bij de aanvaarding van het ambt van buitengewoon lector in het belastingrecht aan de Universiteit van Amsterdam op 10 maart 1970. By F.W.G.M. van Brunschot. Published by N.V. Uitgeverij Fed, Deventer, 1970. 38 pp.
Text of the inaugural speech held on March 10, 1970 on the appointment of the speaker as a lecturer of tax law at the University of Amsterdam. The subject of the speech concerns the position of shareholders under the new Corporate and Individual Income Tax Law.

Library International Bureau of
Fiscal Documentation no. B 5162

WET OP DE INVORDERING VAN 'S-RIJKS DIRECTE BELASTINGEN, by W.P. Erasmus. Published by N.V. Uitgeversmij. W.E.J. Tjeenk Willink, Zwolle, 1970. 173 pp.
Compilation of the legislation concerning the Collection of National Direct Taxes.

Library International Bureau of
Fiscal Documentation no. B 5132

WET OP DE OMZETBELASTING 1968, by C.P. Tuk. Published by Uitgeversmaatschappij AE.E. Kluwer, 1970. 398 pp.
Commentary to the Dutch TVA tax.

Library International Bureau of
Fiscal Documentation no. B 5091

## NEW ZEALAND

TAXATION TABLES 1969-70. Incorporating Land and Income Tax, Company taxation, Depreciation Allowances, Estate and Gift Duties and Social Security Monetary Benefits. Published by Sweet & Maxwell (N.Z.) Ltd. Wellington, N.Z., 26th ed. 1970. 282 pp.

Library International Bureau of
Fiscal Documentation no. B 5210

## NORWAY

SKATTELOV FOR LANDET, by J.E. Thomle. Published by Sem & Stenerson a/s, Oslo, 16th ed. 1970. 902 pp.
Amended text of the Rural Tax Law of 1911 with annotated comment thereto. The material of this 16th edition includes the amending law of March 13, 1970.

Library International Bureau of
Fiscal Documentation no. B 5146

## PHILIPPINES

ELEVENTH ANNUAL REPORT 1969, published by Joint legislative-executive Tax Commission, Shurdut Building, Manila, 1970. 142 pp.

Library International Bureau of
Fiscal Documentation no. B 5212

## SPAIN

DICCIONARIO DE LEGISLACION ADMINISTRATIVA Y FISCAL DE NAVARRA. Published by Editorial Aranzadi, Apartado 111, Pamplona, 1969. 1912 pp.
Alphabetically arranged as a dictionary this work contains the text of administrative and fiscal laws, decrees, decisions etc. pertaining to the Province of Navarra from 1558 to 1968.

Library International Bureau of
Fiscal Documentation no. B 5198

INFLUENCIA DEL SISTEMA TRIBUTARIO SOBRE LAS DIMENSIONES DE LAS EMPRESAS ESPAÑOLAS. Edited by L. Beltran and A. Oliart.

Published by Editorial Moneda Y Credito, Modesto Lafuente 68, Madrid 3, 1966. 253 pp.
The influence of the tax system on the size of enterprises in Spain.

Library International Bureau of
Fiscal Documentation no. B 5175

MANUAL DE PROCEDIMIENTOS TRIBUTARIOS. By N. Carral Larrauri and J. Arias Velasco. Published by Ediciones Santilla, S.A., Elfo. 32, Madrid 17, 1967. 592 pp.
A handbook of tax procedure in Spain.

Library International Bureau of
Fiscal Documentation no. B 5182

REFORMA TRIBUTARIA, by E. Aranzadi. Published by Ed. Aranzadi, Apto III, Carlos III, Pamplona 32, 1968. 1926 pp.
Text of the direct and indirect Tax Laws; cross references are made from one article to other articles. An extensive index is appended.

Library International Bureau of
Fiscal Documentation no. B 5124

## SWITZERLAND

KOMMENTAR ZUM ZÜRCHER STEUERGESETZ. Band III: Vermögenssteuer natürlicher Personen, Besteuerung juristischer Personen, Verfahren Steuerbezug und Steuererlass sowie Inventarisation (§§ 33-134 StG). By A. Reimann, F. Zuppinger and E. Schärrer. Published by Verlag Stämpfli & Cie, Bern, 1969. 766 pp.
Explanation to §§ 33-134 of the Tax Law of Zürich which includes subjects like net wealth tax, corporate income tax, tax appeal procedures and organization of the tax administration. The material covered in this volume states the law as of January 1, 1969.

Library International Bureau of
Fiscal Documentation no. B 5178

INTERNATIONALES STEUERRECHT DER SCHWEIZ, Sammlung schweizerischer Abkommen und Ausführungsvorschriften. Published by Eidgenössische Steuerverwaltung, Bundesgasse 32, Bern, 1970. 2 Volumes.
Loose-leaf publication, containing the text of the tax conventions concluded with other countries, with respect to taxes on Income, Capital and Inheritances, as well as on profits derived from shipping and aircraft enterprises. Relevant implementary decrees to the conventions are appended. This publication exists also in French.

Library International Bureau of
Fiscal Documentation no. B 5087

## THAILAND

FINANCE AND DEVELOPMENT IN THAILAND, by A.A. Rozental. Published by Praeger Publishers, New York, 1970. 370 pp.
Study giving a description and an analysis of the financial structure in Thailand. The author recommends modifications and reforms therein, stressing that in the future greater emphasis must be placed on developing a viable Thai manufacturing base with less stress on the financing of trade.

Library International Bureau of
Fiscal Documentation no. B 5142

## UNITED KINGDOM

BETTERMENT LEVY- AN EXPLANATION MEMORANDUM IN PART III OF THE LAND COMMISSION ACT 1967, published by Her Majesty's Stationery Office, 49 High Holborn, London W.C.1, 1967. 51 pp.
This memorandum is designed to help practitioners studying the Land Commission Act. It is restricted to Part III and Schedules 4 to 13 of the act, which contain all the provisions relating to betterment levy.

Library International Bureau of
Fiscal Documentation no. B 4644

TAXATION KEY TO INCOME TAX AND SURTAX 1970-71 Finance Act 1970, by P.F. Hughes and J.M. Cooper, published by Taxation Publishing Company Ltd., 98 Park Street, London W 1, 1970. 247 pp.

Library International Bureau of
Fiscal Documentation no. B 5166

## U.S.A.

THE ANTITRUST LAWS OF THE UNITED STATES OF AMERICA; A STUDY OF COMPETITION ENFORCED BY LAW. By A.D. Neale. Published by Cambridge University Press, London, 2nd edition, 1970. 527 pp.

Library International Bureau of
Fiscal Documentation no. B 5170

ESTATE PLANNING. Quick reference outline. By W.R. Spinney. Published by Commerce

Clearing House, Inc., Chicago, 17th edition, 1970. 112 pp.
This booklet aims to be an aid to property owners and their advisors in both income tax and death tax planning. The Tax Reform Act of 1969 is included.

Library International Bureau of
Fiscal Documentation no. B 5160

GUIDEBOOK TO FEDERAL WAGE-HOUR LAWS 1970. Published by Commerce Clearing House, Inc., Chicago. 328 pp.

Library International Bureau of
Fiscal Documentation no. B 5164

THE INCOME TAX: HOW PROGRESSIVE SHOULD IT BE? By Ch.O. Galvin and B.I. Bittker. Published by American Enterprise Institute for Public Policy Research, Washington, 1969. 184 pp.
Text of lectures and discussions held during the Rational Debate Seminars.

Library International Bureau of
Fiscal Documentation no. B 5187

INTERNAL REVENUE BULLETIN. Cumulative bulletin 1969-3, July-December. Federal Tax Law and Committee Reports. Published by Department of Treasury, Internal Revenue Service, Washington 1970. 694 pp.
Consolidation of the text of tax legislation enacted on or after June 30, 1969 by the Congress, and the Committee and Conference Reports related thereto.

Library International Bureau of
Fiscal Documentation no. B 5131

NEW 1970 FEDERAL GRADUATED WITHHOLDING TAX TABLES EFFECTIVE JANUARY 1, 1970. Published by Commerce Clearing House, Inc., Chicago, 1969. 36 pp.

Library International Bureau of
Fiscal Documentation no. B 4654a

SOME PROBLEMS OF EQUITY AND ADEQUACY IN KENTUCKY'S STATE-LOCAL TAXATION. By M. Soule and S.E. Lile. Published by The Center for the Study of Economics of State and Local Government, Office of Development Services and Business Research, University of Kentucky, Lexington, KY 40506, 1970. 66 pp.

Library International Bureau of
Fiscal Documentation no. B 5188

UNITED STATES EXCISE TAX GUIDE 1970. Published by Commerce Clearing House, Inc., Chicago, 1970. 462 pp.

Library International Bureau of
Fiscal Documentation no. B 5189

UNITED STATES INCOME TAXATION OF PRIVATE INVESTMENTS IN DEVELOPING COUNTRIES. Published by United Nations. New York, 1970. 146 pp.
Study concerning United States taxation of foreign source income, preferential treatment of income from developing countries and the interaction between United States and developing country tax systems. In this consideration is given to the existing statutes up to January 1, 1970.

Library International Bureau of
Fiscal Documentation no. B 5114

## LOOSE-LEAF SERVICES

Releases from July 1 – August 31, 1970

### AUSTRIA

DIE EINKOMMENSTEUER, RECHTSPRECHUNG
Teil III: release 12.
Wirtschaftsverlag Dr. Anton Orac, Wien.

### BELGIUM

BELASTING OVER DE TOEGEVOEGDE WAARDE, release 21.
C.E.D. Samsom N.V., Brussels.

DOORLOPENDE DOCUMENTATIE INZAKE B.T.W. / LE DOSSIER PERMANENT DE LA T.V.A., releases 15, 16.
Editions Service, Brussels.

FISCALE DOCUMENTATIE VANDEWINCKELE BOEK DER BAREMA'S.
Tome II, release 10.
Tome VII, release 10.
Tome VIII, releases 98, 99.
E.K. Vandewinckele, Brugge/C.E.D. Samsom N.V., Brussels.

HANDLEIDING DER INKOMSTENBELASTING, release 32.
C.E.D. Samsom N.V., Brussels.

IMPÔTS ET TAXES, releases 194-196.
C.E.D. Samsom N.V., Brussels.

TRAITÉS DES IMPÔTS SUR LES REVENUES, release 37.
C.E.D. Samsom N.V., Brussels.

## BENELUX

BENELUX PUBLICATIEBLAD, release 3.
Staatsuitgeverij, Den Haag.

## CANADA

CANADA ESTATE TAX SERVICE, release 50.
Richard de Boo, Toronto.

CANADA TAX SERVICE-LETTER, releases 150-152.
Richard de Boo, Toronto.

CANADA TAX SERVICE-RELEASES, releases 299-304.
Richard de Boo, Toronto.

BUTTERWORTHS CURRENT TAXATION, releases 18-30.
Butterworth & Co., Toronto.

PROVINCIAL TAXATION SERVICE, releases 252-254.
Richard de Boo, Toronto.

## DENMARK

SKATTEBESTEMMELSER
- SKATTEBESTEMMELSER, release 50
- SKATTENYTT, release 47.
- SKATTEBESTEMMELSER - OMSÆTNINGS-AFGIFT, release 22.

A.S. Skattekartoteket Informationskontor, Copenhagen.

## E.E.C.

HANDBOEK VOOR DE EUROPESE GEMEENSCHAPPEN
- VERDRAGSTEKSTEN EN AANVERWANTE STUKKEN, releases 75-77.
- TARIEFLIJSTEN, releases 101, 102.

N.V. Uitgeversmij. AE.E. Kluwer, Deventer, Netherlands.

## FRANCE

BULLETIN DE DOCUMENTATION PRATIQUE DE TAXES SUR LE CHIFFRE D'AFFAIRES ET CONTRIBUTIONS INDIRECTES, releases 2-5.
Editions F. Lefebvre, Paris.

CODE ANNOTE DES TAXES SUR LE CHIFFRE D'AFFAIRES, release 42.
Editions Seteca, Paris.

DICTIONNAIRE FISCAL PERMANENT, releases 17-27.
Editions Législatives et Administratives, Paris.

DROITS DES AFFAIRES, releases 9-14.
Editions Législatives et Administratives, Paris.

JURIS CLASSEUR FISCAL: IMPÔTS DIRECTS, release 160.
Editions Techniques, Paris.

MEMENTO LAMY
- FISCAL, releases F, G, I, J.
- SOCIAL, releases F, G, H.

Services Lamy, Paris.

## GERMANY

ABC FÜHRER LOHNSTEUER, release 72.
Fachverlag für Wirtschafts- und Steuerrecht, Schäffer & Co., Stuttgart.

A.O. KOMMENTAR - Hubschmann-Hepp-Spitaler, release 65.
Verlag Dr. Otto Schmidt KG, Köln-Mariënburg.

DEUTSCHE STEUERPRAXIS, NACHSCHLAGWERK PRAKTISCHER STEUERFÄLLE: releases 13, 14.
Verlag Dr. Otto Schmidt KG, Köln-Mariënburg.

DOPPELBESTEUERUNG, release May 1970.
Verlag C.H. Beck, München.

FORMULARBUCH DER STEUER- UND WIRTSCHAFTSPRAXIS, release 7.
Erich Schmidt Verlag, Bielefeld.

HANDBUCH DER EINFUHRNEBENABGABEN, releases 3-5.
V.d. Linnepe Verlagsgesellschaft KG, 58 Hagen.

HANDBUCH DER GMBH, release 2.
Verlag Dr. Otto Schmidt KG, Köln-Mariënburg.

KOMMENTAR BEWERTUNGSGESETZ-VERMÖGENSSTEUERGESETZ, release 31.
Verlag Dr. Otto Schmidt KG, Köln-Mariënburg.

KOMMENTAR ZUR EINKOMMENSTEUER EINSCHL. LOHNSTEUER UND KÖRPERSCHAFTSTEUER, releases 89, 90.
Verlag Dr. Otto Schmidt KG, Köln-Mariënburg.

KOMMENTAR ZUM MEHRWERTSTEUERGESETZ, releases 19–21.
Hermann Luchterhand, Neuwied.

LASTENAUSGLEICH – Kommentar von R. Harmening, release 44.
C.H. Becksche Verlagsbuchhandlung, München.

PRAKTISCHER FÜHRER DURCH DAS STEUERRECHT, release 44.
Verlag Dr. Otto Schmidt KG, Köln-Mariënburg.

RWP. RECHTS- UND WIRTSCHAFTS PRAXIS STEUERRECHT, releases 107–112.
Forkel Verlag, Stuttgart-Degerloch.

SCHNELLKARTEI DES DEUTSCHEN RECHTS, releases 152, 153.
Verlag Dr. Otto Schmidt, Köln-Mariënburg.

STEUERERLASSE IN KARTEIFORM, release 105, 106.
Verlag Dr. Otto Schmidt, Köln-Mariënburg.

STEUERGESETZ, release May.
C.H. Becksche Verlagsbuchhandlung, München.

STEUERRECHTSPRECHUNG IN KARTEIFORM, releases 220–222.
Verlag Dr. Otto Schmidt, Köln-Mariënburg.

STEUERRICHTLINIEN, release June.
C.H. Becksche Verlagsbuchhandlung, München.

UMSATZSTEUERGESETZ (MEHRWERTSTEUER), Rau, Dürrwachter, release 7.
Verlag Dr. Otto Schmidt, Köln-Mariënburg.

UMSATZSTEUERGESETZ (MEHRWERTSTEUER), Hartmann, Metzenmacher, releases 12, 13.
Erich Schmidt Verlag, Bielefeld.

## LUXEMBOURG

CODE FISCAL LUXEMBOURGEOIS, releases 7, 8.
Armand Pfeiffer, Luxembourg.

## NETHERLANDS

BELASTINGWETGEVINGSERIE
– Zegelwet, release 13.
– Inkomstenbelasting 1969, releases 13, 14.
– Wet op de Vennootschapsbelasting 1969, release 2.
J. Noorduyn en Zn. N.V., Groningen.

BELASTINGWETTEN, releases 26, 27.
D. Brouwer en Zn., Arnhem.

FED'S FISCAAL REGISTER, releases 32–34.
N.V. Uitgeverij FED., Amsterdam.

FED'S LOSBLADIGE FISCALE WETTEN, releases 1256–1268.
N.V. Uitgeverij FED., Amsterdam.

FISCALE WETTEN, releases 34, 35.
N.V. Uitgeverij FED., Amsterdam.

DE GEMEENTELIJKE BELASTINGEN.
A.M. Dijk, G. Jansen, J.C. Schroot enz., releases 95–97.
Vuga Boekenrij, Arnhem.

HANDBOEK VOOR IN- EN UITVOER.
– BELASTINGHEFFING BIJ INVOER, releases 112–114.
– 1 + 2 TARIEF VAN INVOERRECHTEN, releases 136–141.
N.V. Uitgeversmij. AE.E. Kluwer, Deventer.

KLUWER'S FISCAAL ZAKBOEK, releases 36, 37.
N.V. Uitgeversmij. AE.E. Kluwer, Deventer.

LEIDRAAD BIJ DE BELASTINGSTUDIE. Mr. C. van Soest en A. Meering, release 14.
S. Gouda Quint enz., Arnhem.

NEDERLANDSE BELASTINGWETTEN. W.E.G. de Groot, releases 63–65.

NEDERLANDSE REGELINGEN VAN INTERNATIONAAL BELASTINGRECHT, releases 17-19.
N.V. Uitgeversmij., AE.E. Kluwer, Deventer.

REGELINGEN EUROMARKT, releases 92, 93.
Vermande en Zonen, IJmuiden.

STAATS- EN ADMINISTRATIEFRECHTELIJKE WETTEN, releases 100-102.
N.V. Uitgeversmij. AE.E. Kluwer, Deventer.

DE SOCIALE VERZEKERINGSWETTEN, releases 40, 41.
N.V. Uitgeversmij. AE. E. Kluwer, Deventer.

VADEMECUM VOOR IN- EN UITVOER, releases 423-425.
N.V. Uitgeversmij. AE. E. Kluwer, Deventer.
N. Samsom N.V., Alphen a.d. Rijn.

DE VAKSTUDIE: FISCALE ENCYCLOPEDIE.
- INKOMSTENBELASTINGEN 1964, releases 71-74.
- LOONBELASTINGEN 1964, releases 44-46.
- VENNOOTSCHAPSBELASTINGEN 1942, releases 72, 73.
- OMZETBELASTING 1968, releases 24, 25.
- SUCCESSIEWET, releases 27, 28.
N.V. Uitgeversmij. AE. E. Kluwer, Deventer.

VENNOOTSCHAPPEN, VERENIGINGEN EN STICHTINGEN
Algemeen Deel releases 3-5.
Band C, release 4.
N.V. Uitgeversmij. AE. E. Kluwer, Deventer.

## NEW ZEALAND

NEW ZEALAND TAXATION BOARD OF DECISIONS REVIEW, release 33.
Butterworth & Co. Wellington, New Zealand.

## NORWAY

SKATTENYTT, releases 22-30.
Norsk Skattebetalerforening Huitfeldts, Oslo.

## SPAIN

CIRCULARES – BOLETINES DE INFORMACION, release 1.
Gabinette de Estudios (T.A.L.E.), Madrid:

## SWITZERLAND

DIE STEUERN DER SCHWEIZ – LES IMPÔTS DE LA SUISSE
Teil I, releases 43, 44.
Teil II, release 40.
Teil III, release 40.
Teil IV, release 18.
Verlag für Recht und Gesellschaft, Basel.

## SYRIA

CODE FISCAL SYRIEN PERMANENT RECUEIL DES LOIS SYRIENNES ET DE LEGISLATION FINANCIERE, release 38.
Boîte Postale 539, Damascus.

## U.S.A.

FEDERAL TAX GUIDE REPORTS, releases 35-47.
Commerce Clearing House Inc., Chicago.

FEDERAL TAXES REPORT BULLETIN, releases 20-31.
Prentice Hall, Inc., Englewood Cliffs.

FEDERAL TAXES REPORT BULLETIN – TREATIES
releases 23, 24
Vol. VI, release 1.
Prentice Hall, Inc., Englewood Cliffs.

STATE TAX GUIDE, releases 455-461.
Commerce Clearing House Inc., Chicago.

TAX IDEAS – REPORT BULLETIN, releases 6-13.
Prentice Hall, Inc., Englewood Cliffs.

TAX TREATIES, releases 218-222.
Commerce Clearing House Inc., Chicago.

# Books of the series "Afrika-Studien" Economics

edited by the Ifo-Institute of Economic Research, Munich

Heinz-Günter Geis

## DIE GELD- UND BANKSYSTEME DER STAATEN WESTAFRIKAS

(The Monetary and Banking Systems of the Countries of West Africa)

Afrika-Studien Nr. 20

428 Seiten, 50 Tabellen, 2 Schaubilder und 1 Übersichtskarte. Steifband, DM 54,—, US $ 13,50.

A study of the present state of the West African monetary and banking systems — including the operational channels, agricultural and co-operative credits and all other institutions with banking functions — their development since World War II and their various problems. A comparative, critical analysis. The author is an assistant lecturer at the Institute for Banking and Credit Economy of the Free University of Berlin.

Ernst-Josef Pauw

## DAS BANKWESEN IN OSTAFRIKA

(Money and Banking in East Africa) Afrika-Studien Nr. 35

2784 Seiten, 37 Tabellen im Text, 8 Tabellen im Anhang. Steifband, DM 44,—, US $ 11,—,.

Presentation and analysis of the development, structure and functions of the East African banking system (Kenya, Tanzania, Uganda); critical discussion of recent banking policy. The author is a specialist in banking and financial affairs.

**African Studies — Special Series "Information and Documentation"**

## AFRIKA-VADEMECUM

Grunddaten zur Wirtschaftsstruktur und Wirtschaftsentwicklung Afrikas (Basic data on the economic structure and development of Africa), bearbeitet von F.H. Betz (prepared by F.H. Betz)

African Studies — Special Series „Information and Documentation" (with English and French headings).

163 Seiten, 81 Tabellen, 12 Schaubilder und 8 Karten. Flexibler Balacronband, DM 16,—, US $ 4,—.

Clearly arranged summary of economic data on Africa which are not always easily available emphasizing population structure, gross national product, centres of production, industrialisation, transport and communication, export trade, and development assistance. Focus on Africa's position in the world economy. The compiler worked for the Bayerische Statistische Landesamt (Bavarian Statistical Office), the former Statistische Reichsamt (Statistical Office of the German Reich) and in the statistical department of the former League of Nations at Geneva.

---

## ENTWICKLUNGSBANKEN UND -GESELLSCHAFTEN IN AFRIKA

bearbeitet von H. Harlander/D. Mezger (Development Banks and Institutions in Africa, prepared by H. Harlander/D. Mezger)

211 Seiten, flexibler Balacronband, ca. DM 26,—, US $ 6,50.

Reference book covering approximately 100 African development finance institutions, arranged in order of countries, with concise information on functions, capital, organisation, operating policies, investments etc. Hildegard Harlander is assistant to the President at the Ifo Institute for Economic Research, Munich. Dorothea Mezger is a member of the scientific staff of the African Studies Centre of the Ifo Institute for Economic Research, Munich.

---

Write for comprehensive Prospectus

**WELTFORUM VERLAG, 8 München 19, Hubertusstrasse 22**

Sole Distributor in the UK: C. Hurst & Co.,
13 James Street, Covent Garden, London W.C.2.

---

# CUMULATIVE INDEX 1970

Nos. 1, 2, 3, 4, 5, 6, 7, 8, and 9

## V. SUPPLEMENTS

Supplement to no. 1 (A 1970) Convention entre la République Fédérale d'Allemagne et l'Empire de l'Iran en vue d'éviter la double imposition en matière d'impôts sur le revenu et sur la fortune

Supplement to no. 3 (B 1970) Convention between the Government of Ceylon and the Government of Japan for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income

Supplement to no. 5 (C 1970) Convention between the Government of Japan and the Government of the Kingdom of the Netherlands for the avoidance of double taxation with respect to taxes on income.

# CONTENTS

of the November 1970 issue

# * * * * ARTICLES * * * *

J. W. HARDIMAN:

## INCOME TAX INCENTIVES IN NEW ZEALAND

1. New Zealand like many other countries uses income tax measures as one of the instruments for influencing and stimulating economic development. The Land and Income Tax Act contains a wide range of incentive provisions or concessions which are aimed at encouraging increased capital investment, greater production and the expansion of export outlets. These incentives include accelerated depreciation allowances, a deduction for expenditure on scientific research, a special deduction related to increases in export sales, an additional deduction for expenditure on tourist promotion and the development of export markets and a deduction for certain capital expenditure on farms. This article sets out to briefly review the main incentives in force as at 31 March 1970.

### 2. ACCELERATED DEPRECIATION ALLOWANCES

Before reviewing the accelerated depreciation allowances, it is appropriate to first look quickly at the general treatment of depreciation for income tax purposes. The consumption or wastage of the capital invested in fixed assets is accepted as one of the costs of operating a business or commercial enterprise. This is recognised in the Land and Income Tax Act which authorizes the Commissioner of Inland Revenue "to allow such deduction as he thinks just" for depreciation. Acting under this authority, the Commissioner has prescribed rates of ordinary depreciation. In fixing these rates, the Commissioner has regard to

(a) the estimated useful life of an asset,

(b) the estimated residual value of the asset at the end of its useful life.

The accelerated or incentive depreciation allowances discussed in the succeeding three paragraphs are allowed in addition to ordinary depreciation.

### 3. SPECIAL DEPRECIATION

A special depreciation allowance of 20% is allowable on the following assets:-

(a) Plant and machinery generally—the legislation specifically excludes motor cars and station wagons unless they are passenger service vehicles.

(b) Buildings acquired or erected for the purpose of providing employee accommodation.

(c) New farm buildings, other than residences; and extensions to existing farm buildings.

(d) Private bathrooms, showers and water closets installed in licensed hotels for the exclusive use of guests.

(e) New hotels (including extensions to existing hotels) erected for the purpose of providing tourist accommodation and which are approved by the Minister of Finance.

(f) Cool stores erected or extended by companies, engaged in the killing and processing of livestock for export from New Zealand, for the purpose of providing cool storage facilities.

The general position is that the 20% allowance may, at the option of the taxpayer, be spread over 4 or 5 years on the following basis:—

| | | | | | |
|---|---|---|---|---|---|
| *4 Year Spread:* | 1st year | 10% | *5 Year Spread:* | 1st year | 6% |
| | 2nd year | 5% | | 2nd year | 5% |
| | 3rd year | 3% | | 3rd year | 4% |
| | 4th year | 2% | | 4th year | 3% |
| | | | | 5th year | 2% |
| | | 20% | | | 20% |

There are some exceptions to the above and the following should be noted:

| | |
|---|---|
| Employee accommodation<br>New farm buildings<br>Assets costing up to $2000 | The 20% allowance may be claimed in full in the year the asset is first used. |
| Assets costing over $2000 but not more than $4,000 | 10% may be claimed in each of the first and second years. |
| New hotels providing tourist accommodation (item (e) above) | The 20% allowance can only be spread over 4 years. |

The 20% special depreciation allowance is subject to legislative renewal each year. Under the legislation in force at 31 March 1970 the allowance is due to expire on 31 March 1971. This means that unless it is renewed or extended in the meantime, assets acquired, installed or extended on or after 1 April 1971 will not qualify for the allowance. New hotels and cool stores (items (e) and (f) above) are an exception. In the case of these two classes of assets the current expiry date for the special depreciation allowance is 31 March 1973.

It will be appreciated that the 20% depreciation allowance can be a significant factor taken into account in planning the establishment or expansion of a business. With the allowance being subject to legislative renewal each year, there is no guarantee that it will be continued. This creates an undesirable element of uncertainty. To meet this situation, the legislation now provides that taxpayers may claim the allowance on assets acquired or installed under a "development plan" even though the allowance may have been discontinued before the development project is completed.

## 4. SUPPLEMENTARY DEPRECIATION

A supplementary depreciation allowance which is in addition to both ordinary and special depreciation can be claimed on "new" hotel and motel buildings and "new" farm buildings (other than those used as residences or for employee accommodation). "New", for the purpose of the supplementary depreciation allowance, has been defined as "not having previously been used by any person". Supplementary depreciation is allowable only to the original owner. Once a building has been sold or otherwise disposed of, it ceases to qualify for the supplementary depreciation allowance.

Supplementary depreciation is an annual allowance which may be claimed each year until the aggregate of all depreciation allowances equals the cost of the building. It

is allowable at the following rates:—

(a) *Hotels and Motels*
The supplementary allowance is 1% of the cost price of the building.
*Note:* the allowance for hotels and motels is confined to buildings erected wholly or substantially to provide accommodation for the travelling public.

(b) *Farm Buildings*
The maximum supplementary depreciation allowance is 6% of the cost of the building subject to the proviso that the combined allowance for ordinary and supplementary depreciation is not to exceed 10%. This means that the amount of the supplementary allowance can vary according to the rate of ordinary depreciation.

| *Examples:* | *Rate of ordinary depreciation* | *Supplementary Allowance* | *Total* |
|---|---|---|---|
| Shearing shed—wooden framed | 2½% | 6% | 8½% |
| Fowl house—wooden framed | 5 % | 5% | 10 % |

## 5. BUILDINGS USED IN THE MEAT EXPORT AND FISHING INDUSTRIES

An additional depreciation allowance is allowable on the cost of altering, extending or erecting—

(a) meat export slaughter houses and meat packing houses where the expenditure is incurred to satisfy the hygiene and inspection standards required for meat and meat products exported from New Zealand, and
(b) buildings used for the purpose of processing or storing fish and which meet the hygiene and inspection standards required for fish and fish products exported from New Zealand.

In both cases the additional allowance which is in addition to ordinary depreciation is 30% of the cost of new buildings or the cost of extending or altering existing buildings. The 30% allowance is generally allowed on the following basis—
20% in the year the expenditure is incurred
10% in the following year.

## 6. RESEARCH EXPENDITURE CONCESSIONS

(a) *Cost of scientific research*
The expenditure incurred by a taxpayer in scientific research directly related to his business may be claimed as a deduction. The deduction permitted does not extend to the cost of equipment and other assets on which depreciation is allowable. For example, the salary of a chemist engaged on research work would be deductible but the plant and equipment he uses would be depreciated or written off over 5 years (see (b) below). It is not necessary for the research to be undertaken directly by the taxpayer. The research may be carried out by an independent organization and gifts or donations to an outside scientific or research organization are deductible if that organization is directly concerned with research that is of particular interest or assistance to the taxpayer's business.

(b) *Accelerated Depreciation on Research Equipment*

In addition to ordinary and special depreciation (see paragraphs 2 and 3), a further deduction for depreciation is permitted so that the cost of assets used exclusively for research directly related to the taxpayer's business may be completely written off over five years. This generally means 20% of the cost price is written off each year but taxpayers may claim ordinary and special depreciation in the initial years if this gives them a greater benefit.

(c) *Gifts by companies for education or research*—

Companies are entitled to a deduction for cash donations to

i) any New Zealand university,
ii) the Medical Research Council of New Zealand,
iii) an "approved" research society, institute or association,
iv) an "approved" institution providing specialized commercial or technological education or training.

"Approved" for the purpose of the deduction means approved by the Minister of Finance.

The deduction is subject to the following conditions—

- the donation or gift must be in cash and be at least $2
- the maximum deduction is 5% of the company's assessable income
- the prior approval of the Minister of Finance is required before a deduction can be allowed for individual gifts to any one donee in excess of $5000.

## 7. EXPORT MARKET DEVELOPMENT

A special deduction is allowable for expenditure incurred in promoting the export of New Zealand goods and services, and the overseas use of New Zealand trade marks, patents designs and copyrights. The special deduction for export promotion expenditure is an additional 50% of the costs directly concerned with the development of export markets. This means that for every $1 of qualifying expenditure, a taxpayer is entitled to a deduction of $1.50–$1 as the normal deduction for business operating costs and 50 cents as a special export development incentive.

To qualify for the additional 50% deduction the expenditure must—

(a) Be ordinarily deductible under the general income tax law. Items of capital expediture and other expenditure not necessarily incurred in carrying on a business would not qualify.
(b) Be a "prescribed outgoing", that is, be expenditure directly concerned with export market development and belong to one or more of the following categories
   i) advertising or other means of securing business or soliciting business;
   ii) carrying out market research or obtaining market information;
   iii) supplying free samples or technical information to persons outside New Zealand;
   iv) tendering for the overseas sale of goods of a class or specification not normally produced or supplied;
   v) tendering for the prospective supply of services outside New Zealand in relation to construction projects, educational training or the rendering of technical advice or assistance.
(c) Have been incurred primarily and principally for the purpose of seeking opportunities for, or creating or increasing the demand for
   i) the export of goods that have been manufactured, produced, assembled,

processed, packed or graded and sorted in New Zealand; or

ii) the supply, for reward, of services outside New Zealand in relation to construction projects, educational training courses, or the furnishing of technical advice or assistance; or

iii) the sale of the overseas rights to use patents, trade marks, designs or copyright.

## 8. INCREASED EXPORTS INCENTIVE

The exporters of certain New Zealand goods are entitled to a deduction of 15% of a qualifying increase in export sales. A qualifying increase in exports is the difference between the value of export sales (on an F.O.B. basis) in a particular income year and the average of the export sales in the first three of the five preceding income years.

The deduction which is only allowable to the owner of the goods at time of export is in addition to the deductions ordinarily allowable for income tax purposes and to the special deduction for export market development expenditure.

Certain goods do not qualify for the increased exports incentive deduction. The range of goods excluded from the concession include New Zealand's traditional exports of farm produce, newsprint and minerals, and goods imported and subsequently exported after processing, packing, etc. unless the selling price is 15% higher than the landed price.

Prior to 1969 exporters did not know, during the income year, the value of the benefit they would gain from the increased exports incentive deduction. This was because the deduction allowable depended on the final level of their export sales for the year. An element of uncertainty was therefore involved in pricing goods for export. To meet this situation the legislation now provides for a guaranteed minimum deduction and the allowance to which exporters are entitled is the *greater* of

(a) An amount equal to 15% of the increase in export sales for the year. This is the *normal* deduction.

or

(b) An amount calculated in accordance with the following formula:

$$\frac{\text{Value of Export sales for current year}}{\text{Value of export sales for previous year}}$$

of 15% of the increase in export sales for the previous year

This is the guaranteed minimum deduction. It ensures that the rate of the deduction for each dollar of export sales is no less than the rate (based on the "normal" deduction—(a) above) for the previous year.

## 9. FARM DEVELOPMENT EXPENDITURE

Taxpayers engaged in farming or agricultural businesses are entitled to a deduction for most types of farm developmental expenditure incurred. This is a valuable encouragement for farmers to bring marginal land into full production and to increase the productivity of existing farms. Under this farm development incentive concession capital expenditure incurred in the following is deductible:

- Clearing land of timbers, stumps, scrub and undergrowth.
- Eradicating and/or exterminating pests.
- Preparing land for farming.
- Draining swamps and low-lying land.
- Constructing access roads or tracks.
- Constructing dams, stopbanks, irrigation or stream diversion channels and similar improvements.
- Sinking bores and wells.

- Constructing aeroplane landing strips to facilitate aerial topdressing.
- Constructing fences including making existing fences rabbit-proof.
- Erecting electric power lines or telephone lines.
- Constructing feeding platforms, feeding yeards, plunge sheep dips and self-feeding ensilage pits.

The deduction allowable to farmers under the above headings may be—

(a) claimed in the year in which the expenditure is incurred, or, on election be—

(b) spread over the year of expenditure and not more than nine subsequent years.

Where a farmer who has been allowed a deduction for farm development expenditure sells his farm at a profit within five years from the date of acquisition, any of the development expenditure is treated as assessable income of the year of sale, or alternatively, at the farmer's request, as income of the years in which the development costs were allowed as a deduction.

10. In the 1970 Budget the Minister of Finance announced the proposed reintroduction of the 10% investment allowance on new plant and machinery which was suspended in 1966.

J.S. MACLEOD*:

# FISCAL JURISDICTION IN THE UNITED KINGDOM

Jurisdiction is as fundamental in U.K. tax law as it is in any other fiscal system, but although the subject has concerned the U.K. legislature for over 150 years, it nevertheless lacks both precision and clarity.

Three concepts are involved in determining the jurisdiction of the U.K. taxes. These are, residence, ordinary residence, and domicile. The way in which these concepts, or a combination of them, operate, depends, in part, upon whether the income stems from a U.K. or overseas source, or whether property is situated in the U.K. or abroad. In addition, cognisance must be taken of international double taxation conventions, which, of course, takes precedence over national tax laws. This paper is written, however, without regard to double taxation agreements, which should be consulted whenever a particular problem arises.

## RESIDENCE AND ORDINARY RESIDENCE

The way in which residence and ordinary residence are determined depends upon the facts of each case, and so it is not possible to set out a comprehensive list of principles governing all cases. However, by combining the statute and case law on the subject, a number of conclusions emerge.

### (a) *Individuals*

Residence means physical presence, and so an individual who is physically absent from the U.K. for an entire fiscal year (i.e. a year ending on 5th April) is not resident for that year.

Physical presence in the U.K. for periods which in aggregate exceed six months in any fiscal year will result in residence for that year. The six month period is an aggregate of all visits, and in one case the Inland Revenue counted the hours to determine the total (I.R.C. v. Wilkie).

Visits to the U.K. of less than six months can nevertheless result in residence where:—

(1) The visits are regular, year after year, so as to become habitual, and are for substantial periods. The Inland Revenue regard visits totalling three months in any fiscal year as being substantial, and consider these visits as habitual after four consecutive years, or

(2) A place of abode is maintained in the U.K. for the individual's use. In such a case the individual is treated as resident for any year in which he pays a visit to the U.K., of whatever length. It must be emphasised that maintenance, not ownership of the place of abode, is the criterion, and it is understood that the Inland Revenue consider that mere presence in the U.K., without actually residing in the place of abode, is sufficient to establish residence.

It should be noted, however, that where an individual works full time in a trade, profession or employment, the duties of which are performed outwith the U.K., residence is determined without regard of a place of abode maintained in the U.K. for that individual's use.

The ordinary residence of an individual can be regarded as his habitual residence, and apart from accidental or temporary residence. It is provided by statute that a British subject, or citizen of Eire, who has been

* Lecturer – Department of Accountancy and Finance, Heriot-Watt University, Edinburgh, Scotland.

ordinarily resident in the U.K. shall continue to be ordinarily resident here if absent from the U.K. for the purpose of occasional residence abroad. Generally it is difficult to distinguish between residence and ordinary residence although such a distinction undoubtedly exists and has important consequences, e.g. in relation to Capital Gains Tax.

(b) *Partnerships*

The residence of a partnership is defined by statute as being wherever the "control and management" of the business is carried on. This is so irrespective of where the actual trading operations take place, or where the partners themselves are resident. Where, by virtue of this rule, a partnership is not resident in the U.K., but carries on trading operations there, the question arises as to whether the partnership is trading within the U.K., or merely trading with the U.K. This is a difficult problem which has important repercussions, since if the former case applies, any profits will be treated as arising in the U.K., and will be taxed as such. The solution of this problem depends mainly upon the location of the several operations from which profits arise. Purchase and sale is not of itself trading and if the majority of operations, e.g. acceptance of orders, despatch, and general management are performed abroad, then profits arising out of U.K. operations can be regarded as arising from trade with, but not within, the U.K. Where, however, a trade is carried on *both* within the U.K. and abroad, *all* profits will be treated as arising within the U.K. and will be taxable as such.

It is not clear whether or not ordinary residence and domicile have any application in partnership taxation. There is judicial authority for the view that ordinary residence is appropriate to natural, but not to legal persons, and there is some doubt as to the precise nature of a partnership in U.K. tax law. However, while regarding a partnership as being a unit of assessment for tax purposes, the legislature nevertheless measures the liability by reference to the circumstances of the individual partners, and so it is thought that the ordinary residence and domicile of the partnership itself are irrelevant.

(c) *Companies*

It is now established beyond doubt that the residence of a company is where the control and management are exercised, irrespective of where the trading operations are carried on. This view was accepted as early as 1920, by the Royal Commission on Income Tax, which reported in that year, and is now written into most Double Taxation Agreements.

The place where control and management is exercised depends on the facts of each case, but generally it is the place where day to day management is exercised, i.e. where the directors are accustomed to meet. It is possible for a company to have dual residence, i.e. control divided between the U.K. and an overseas state, but since this would result in the company being excluded from the benefit of Double Taxation Treaties, such a situation is normally avoided. Residence is of particular importance in company taxation since a U.K. resident company cannot become non-resident without the consent of the U.K. Treasury.

(d) *Trusts*

It is a curious feature of U.K. tax law that the residence of a trust may vary according to the tax which is being imposed. For the purposes of Capital Gains Tax, including the Short-Term "Speculative" Capital Gains Tax, a trust will be regarded as resident abroad only if the trust funds are administer-

ed outwith the U.K. and at least a majority of the trustees are resident outwith the U.K. The income tax liability depends on whether the beneficiary has an absolute interest in income, or if his interest is contingent. In the latter case, residence is where the fund is managed. In the former case, residence of the trust depends upon the location of the assets.

## DOMICILE

(a) *Individuals*

Domicile is a complex subject with implications far outwith the scope of Tax Law, and although there is no satisfactory definition of the term, its effect is clear. Domicile establishes a legal relationship between an individual and the legal system to which he regards himself as being legally bound in the last resort. Since the legal systems of the constituent countries in the U.K. differ in certain respects it is not possible for an individual to be domiciled in the U.K. He may, however, have a Scottish, or English, domicile.

The general features of domicile, and its basic legal principles, are common to all the legal systems within the U.K. and may be summarised as follows:—

1. An individual cannot be without a domicile, but he cannot acquire dual domicile.
2. A domicile once acquired is retained until changed.
3. Every individual acquires, at birth, a domicile of origin. This is normally the domicile of his father, but may be the domicile of his mother in certain cases.
4. A person who is legally independent may acquire a domicile of choice by:—
   (a) Residing in the country in which he wishes to establish domicile.
   (b) Demonstrating that he intends residing there indefinitely.
   (c) Demonstrating an intention of abandoning his former domicile.

   Each of these conditions must be complied with before a domicile of choice can be acquired.
5. A person who is not legally independent takes the domicile of the person upon whom he is dependent. In consequence a dependent person cannot acquire a domicile of choice. For this purpose "dependent persons" include married women, children under the age of majority and lunatics. When a dependent person becomes independent his last domicile remains until he changes it.

(b) *Companies*

The domicile of origin of a company is its place of incorporation, and it has been legally established that a company cannot acquire a domicile of choice. The only instance in which domicile is of importance in company taxation is in relation to the prevention of avoidance of tax through the transfer of income abroad. Here it is provided by statute that a company not domiciled in the U.K. will be regarded as resident outwith the U.K. also.

## THE APPLICATION OF FISCAL JURISDICTION

(a) *Individuals*

The basic principle of jurisdiction was expressed in one case in the following way:— "What is taxed can only be either (1) income which is here, or (2) income of a person resident here."

In other words, the U.K. fiscal authorities regard as subject to U.K. taxation all income arising in the U.K. irrespective of its ultimate destination, and all income arising outwith the U.K., which belongs to a person resident within the U.K., whether or not it is actually

brought into the country.

It follows therefore that income of a non-resident, arising from a foreign source can never be subject to U.K. taxation, even if the income is remitted to the U.K., and there are a number of provisions in the U.K. legislation specifically excluding such income from tax. In addition, however, there are a number of exceptions to the general rules outlined above. Normally, the foreign income of a U.K. resident individual is taxable on what is called the "arising" basis, i.e. as soon as the income arises, and whether or not it is received in the U.K. In certain cases, however, the arising basis does not apply, and foreign income is only taxable if it is remitted to the U.K. The remittance basis applies to:—

1. Income earned abroad, in a trade, profession or vocation, or from foreign employment.
2. Any income from a foreign source derived by an individual not domiciled in the U.K., or by a British subject not ordinarily resident in the U.K.
3. Foreign capital gains of a non-U.K. domiciled individual (which will not be subject to U.K. capital gains tax until remitted). As a corollary, foreign capital losses of such an individual do not qualify for tax relief.

There are a number of important exceptions to the rule that income arising in the U.K. is subject to U.K. tax. Interest arising from certain U.K. government securities is exempt from U.K. income tax where the securities are held by an individual not ordinarily resident in the U.K. An individual will be exempt from tax on "short-term" capital gains if he is either non-resident, or not ordinarily resident in the U.K. To be exempt from tax on U.K. long term gains, however, the individual must be neither resident nor ordinarily resident.

As a general rule, the foreign property of an individual not domiciled in the U.K. is exempt from U.K. Estate Duty on his death. The U.K. taxing authorities have power to tax a non-resident person through an agent, branch manager, trustee, etc. resident in the U.K., but wherever possible, collection is effected by deducting tax at source. Normally the non-resident's income would be reduced by a proportion of his U.K. personal reliefs, in the ratio which his U.K. income bears to his world income.

(b) *Companies*

Unlike individuals, who may transfer residence at will, a U.K. resident company may not transfer its residence abroad without the consent of the U.K. Treasury. In addition, it may not cause to have issued or transferred share or debentures in a non-resident subsidiary, or transfer part of its trade abroad, without prior Treasury consent. However, while there are heavy penalties for infringement of these rules, the Treasury will usually grant consent where genuine commercial motives are involved.

Non-residence of a company confers a number of benefits, and imposes a number of disadvantages.

The disadvantages normally consist of the withdrawal of privileged tax treatment, for example, the preferential treatment afforded to groups of companies is not extended to non-resident members of a group. The benefits, however, are substantial. They are:—

(a) exemption from U.K. Corporation Tax, except on the profits of a U.K. branch or agency;
(b) exemption from tax on Capital Gain, except in respect of assets used in a U.K. branch or agency;
(c) exemption from U.K. withholding tax on dividends.

In addition a non-resident company which is

closely controlled is not subject to the stringent provisions applicable to a U.K. resident "close" company.

It should be pointed out that there are a number of far reaching provisions in the U.K. fiscal code, designed to prevent the avoidance of U.K. tax by the transfer of assets out of the U.K. In addition, if it is proposed to transfer funds outwith the Sterling Area, difficulties may be experienced with U.K. Exchange Control regulations.

## CONCLUSION

This paper has dealt in outline only with the highly technical problems arising out of tax jurisdiction in the U.K. If it has indicated the problem areas, it will have achieved its purpose.

DR. ERWIN SPIRO:

# 1970 BUDGET OF SOUTH AFRICA (INCOME TAX)

The 1970 Budget again aims at curbing inflation which seems to be the challenge of the nineteen-seventies and, therefore, to use the words of the Minister of Finance, Dr. Diederichs, calls for the oldfashioned virtues of thrift, hard work and enterprise on the part of the taxpayer.

## EXEMPTIONS

The exemption limit from income tax will in the case of individuals over the age of sixty years be increased from R1200 to R 1350 for married and from R750 to R925 for unmarried taxpayers. As Dr. Diederichs pointed out in his speech, since a married person is also entitled to a medical allowance of R150 and an unmarried person to a medical allowance of R75, this concession will in effect exempt from income tax every married person over sixty years with a taxable income of R1500 and less and every unmarried person over sixty years with a taxable income of R1000 or less.

## DEDUCTIONS

*Export Allowances.* In order to provide still greater encouragement to exporters, the proposal is to increase the allowance for those exporters who succeed in increasing their exports by more than 10 per cent.

The present position is that those exporters who increase their export turnover by between 10 and 25 per cent are allowed an additional deduction of 62½ per cent of market development expenditure while those who increase their exports by more than 25 per cent are allowed an additional deduction of 75 per cent. The additional deduction allowed in these two cases will be increased to 75 per cent and 100 per cent respectively. Those exporters who do not succeed in increasing their exports by 10 per cent or more, are still entitled to the additional deduction of 50 per cent of market development expenditure.

Increases in export turnover will be calculated on the basis of the average of the three preceding years instead of on the preceding year only.

*Investment Allowances.* Investment allowances were introduced in the early 1960s when investment was sluggish, but were abolished, except in certain special cases, a few years ago as conditions had changed and inflationary pressures were building up. A temporary encouragement to investment in manufacturing industries is, according to Dr. Diederichs, again justified. Manufacturers will, therefore, be allowed to deduct from their taxable income 15 per cent of the cost of new machinery or plant brought into use after the 13th August, 1970 (the day of the Budget speech), and 10 per cent of the cost of any new factory building or of new additions to an existing factory building, the erection of which is commenced again after the 13th August, 1970. These allowances will not be taken into account in determining the depreciation on machinery and buildings in subsequent years. The allowances will apply to machinery, plant and buildings brought into use up to 30th June, 1973.

*Concessions in respect of Donations to Universities.* In view of the shortage of trained personnel and the vital importance of higher education for the future of South Africa the

concessions in respect of donations to universities are to be considerably extended. The purpose for which donations may be made under the concession will be broadened to include training and research in the humanities and the natural sciences and to cover the acquisition of laboratory equipment and technical literature, the appointment of research personnel and the acquisition of fixed property and the erection of buildings for the generally recognized purposes of the university. Further, the allowable deduction will be raised from 2 per cent to 5 per cent of the taxable income in the case of companies. The allowance will also be extended to individual donors up to a maximum of R500 per annum or 2 per cent of the taxable income, whichever is the greater.

The concessions will apply to donations to universities and to colleges for advanced technical education and to donations to the National Study Loans and Bursaries Fund.

## ADDITIONAL LOAN LEVIES

In view of the need to restrain expenditure a small additional loan levy on individuals has been introduced. The present position is that a taxpayer who pays income tax of R100 or more to the Central Government is subject to a loan levy of 5 per cent of the basic tax before adding the surcharge. There will be now a further loan levy of 5 per cent on the same conditions.

There will also be a loan levy upon companies. Because of the importance that the Budget should be financed from non-inflationary sources, Dr. Diederichs considered a small levy to be justified, particularly in view of the re-introduction of the investment allowance. Companies, other than gold- and diamond-mining companies which already pay loan levy, will, therefore, be required to contribute a loan levy of 2½ per cent of the amount of normal income tax payable (which latter is 40 per cent).

## INCOME TAX BILL

The Income Tax Bill which is usually being passed without any further amendments implements the above Budget Proposals, but also provides for some additional minor exemptions and a few textual clarifications of controversial provisions.

# FRANCE:

## LES ORIENTATIONS PERMANENTES DE LA POLITIQUE FISCALE DU GOUVERNEMENT

### Communiqué du Ministère de l'Economie et des Finances du septembre 1970

PRESENTATION GENERALE

En matière fiscale, comme dans les autres domaines de l'activité politique, il nous faut savoir tirer les conséquences heureuses de la stabilité gouvernementale.

Jadis, en quelques mois de gestion, un gouvernement n'avait guère le temps que de déposer hâtivement un projet modifiant certaines dispositions du Code général des Impôts, projet immédiatement qualifié de «réforme fiscale».

Aujourd'hui, assuré de la permanence de son action, ce que le Gouvernement doit définir, ce sont *les orientations permanentes* de sa politique.

Il convient, de ce point de vue, de rectifier une inexactitude et de dissiper une illusion.

*L'inexactitude* c'est de confondre la structure de la fiscalité et le poids de l'impôt. Réformer la fiscalité, c'est agir sur le premier point; modifier le poids de l'impôt, ce n'est pas faire une réforme fiscale, mais faire un acte de politique conjoncturelle. C'est ainsi que les Etats-Unis, lorsqu'ils ont, il y a quelques années, diminué massivement leurs impôts, et l'Allemagne Fédérale, lorsqu'elle a récemment annoncé une augmentation des siens, n'ont pas présenté leur action comme constituant une réforme fiscale.

*L'illusion* à dissiper, c'est celle qui consiste à croire que, dans quelque nouvelle nuit du 4 août, la fiscalité puisse être bouleversée de fond en comble. La modification de la fiscalité suppose non seulement l'élaboration de nouveaux textes, ce qui peut être rapide, mais aussi une action administrative et le changement des comportements, et notamment l'évolution de l'attitude des Français devant l'impôt, ce qui demande davantage de temps.

Ainsi, *la communication d'aujourd'hui* a-t-elle pour objet d'examiner *les orientations permanentes de la politique fiscale du Gouvernement.*

Il est souhaitable que s'engage une *réflexion collective* sur ces orientations. Aussi le Gouvernement se propose-t-il, après avoir informé, comme cela est normal, les Commissions des Finances du Parlement, de convier, dans un esprit de concertation les organisations syndicales et professionnelles et en particulier celles de ces organisations qui ont manifesté le désir de débattre de ces problèmes, à présenter leurs observations, leurs suggestions et leurs critiques.

*Les orientations permanentes*

Notre système fiscal présente 3 caractéristiques qui le distinguent malheureusement de celui des autres pays industriels:

a) Il n'est pas admis par la communauté nationale comme devant faire partie des nécessités de la vie en société, au même titre que le droit civil ou le code de la route.

b) Il fait l'objet d'une fraude importante, au détriment de l'ensemble des Français de bonne foi dont les charges sont indirectement majorées d'autant.

c) Il suscite entre catégories socio-professionnelles des antagonismes qui empoisonnent, au sens littéral du terme, les rapports sociaux.

En conséquence, *les objectifs généraux* de la politique fiscale à conduire sont les suivants:
a) Créer les conditions non seulement d'un apaisement fiscal, mais d'un *acquiescement fiscal*, l'impôt cessant d'être une contrainte à laquelle on s'efforce de se soustraire et devenant aux yeux de chacun le moyen normal de contribuer aux charges collectives.
Nous vivons encore trop souvent sur l'idée que l'impôt sur le revenu est une pénalisation qui ne doit frapper que les très hauts revenus. Cette conception alimente le débat désuet sur la déduction, des bases de l'impôt, de l'impôt payé l'année précédente, comme s'il s'agissait d'une charge anormale. Nos voisins anglo-saxons ont de la fiscalité une conception plus conforme aux conditions de la vie en commun dans une société moderne: l'impôt est un devoir naturel, et il est normal que, dans l'utilisation par un individu de son revenu, il y ait deux parts: ses dépenses personnelles et sa part des dépenses collectives.
b) *Eliminer la fraude comme phénomène social,* en la ramenant aux proportions d'un phénomène isolé, anormal, réprimé et réprouvé par l'opinion.
Cette élimination de la fraude devra permettre de modifier, dans un sens plus agréable, les rapports des Français avec leur administration fiscale. Tout sera mis en oeuvre pour que les conditions de l'accueil et du dialogue, qui sont déjà en amélioration sensible à mesure que se construisent des centres des impôts modernes, soient chaque année plus conformes aux souhaits légitimes des contribuables.
c) *Supprimer les antagonismes* entre catégories socio-professionnelles, en établissant entre toutes une véritable équité fiscale qu'elles reconnaissent comme telle.
Le climat général de l'action gouvernementale doit être la *recherche de la clarté*. La chose fiscale est souvent entourée en France d'un halo de mystère dont on aperçoit mal les motifs. Il faut démystifier l'impôt, pour dépassionner les débats auxquels il donne lieu. Nos deux règles seront: *égalité et vérité*.

## L'IMPOT SUR LE REVENU

Il concentre sur lui la plupart des critiques. On lui reproche:
- de frapper inégalement les Français.
- d'être d'année en année plus lourd,
- de constituer un souci permanent pour la trésorerie des ménages, particulièrement quand leurs revenus sont modestes.

En conséquence, trois directions d'action:
- le rapprochement des conditions d'imposition des différentes catégories de revenus,
- l'aménagement dans le temps du barème de l'impôt,
- la réforme du recouvrement de l'impôt.

### A. – *Le rapprochement des conditions d'imposition*

a) *Le problème tel qu'il se pose actuellement*
Ce qui caractérise malheureusement l'impôt sur le revenu, c'est le climat de guerre de religion dans lequel il entretient les Français en les divisant en «salariés» et «non salariés».
Comme toutes les guerres de religion, celle-ci entraîne des alliances arbitraires et quelque peu contre nature. Les employés et ouvriers sont plus proches des petits commerçants et des artisans qu'ils ne le sont des cadres moyens et supérieurs. Ces derniers ont des affinités de toute nature avec les professions libérales. Et cependant, c'est ce critère de salaire qui divise la France en deux chaque fois qu'il est question d'impôt sur le revenu.
Ce phénomène, unique dans les pays industrialisés contemporains, est dû à deux graves défauts de notre impôt sur le revenu; l'absence d'égalité et l'absence de vérité.
Ces défauts nourrissent les griefs réciproques des travailleurs indépendants et des titulaires de traitements et de salaires. Les travailleurs

indépendants se plaignent du traitement fiscal privilégié des revenus salariaux, et il n'est pas douteux que certains y voient un prétexte ou une justification à la dissimulation de leurs revenus au fisc. Les titulaires de traitements et de salaires constatent que c'est parmi les autres catégories de contribuables que la fraude fiscale est la plus répandue, et ils justifient ainsi la différence de traitement fiscal qui sépare les revenus salariaux des autres.

b) *Le moyen de résoudre le problème*

Pour amener l'apaisement, il convient de rapprocher les conditions d'imposition des travailleurs indépendants de celles des titulaires de traitements et salaires. Le rapprochement doit porter tant sur le barème de l'impôt, pour éliminer tout prétexte à la fraude, que sur les conditions dans lesquelles sont connus les revenus, pour rendre sans objet le maintien d'un régime légal particulier pour quelque type de revenu que ce soit. *A revenu égal connu, impôt égal.*

● *En matière de barème,* l'objectif est de faire disparaître progressivement les discriminations qui pénalisent certains revenus.

Le cheminement de cette action serait le suivant:

(a) *Premier effort de rapprochement:* 1971 et 1972.

Après l'élimination définitive des résidus d'impôts constitués par la taxe complémentaire et ce qui subsiste des majorations instituées en 1968, *diminution de 5 points de toutes les tranches du barème de l'impôt* par généralisation à tous les revenus de la réduction d'impôt dont ne bénéficient actuellement que les traitements et salaires.

Conséquences: le barème de l'impôt contiendra une première tranche à taux 0, comme il convient dans un système fiscal moderne; la barème de l'impôt ira de 0 à 60%, au lieu de 5% à 65%.

Dans une seconde phase, le mécanisme compliqué de la limite d'exonération et de la décote sera supprimé, par incorporation directe dans le barème, ce qui permettra non seulement de simplifier l'impôt, mais encore d'accorder *un allègement d'impôt aux titulaires de revenus modestes, principalement quand* ils sont salariés et quand ils sont chargés de famille.

(b) *Les étapes ultérieures*

Avant d'aller plus loin, il est nécessaire de parvenir à une connaissance exacte et objective de la répartition de la charge fiscale entre catégories socio-professionnelles. Cette connaissance est actuellement très imparfaite.

A cette fin, le Gouvernement annonce la création d'une *Chambre des Impôts,* organisme indépendant de l'Administration, qui serait présidée par un magistrat de la Cour des Comptes et qui fonctionnerait auprès de cette haute juridiction.

La Chambre des impôts disposera librement des statistiques et des rapports de toute nature rendant compte de l'activité des services fiscaux.

*Son rôle sera triple:*

- Constater l'évolution des revenus imposables par catégorie de contribuables;
- Interpréter cette évolution en fonction de l'évolution démographique et économique générale et par catégorie socio-professionnelle;
- Vulgariser ces travaux sous la forme d'un rapport annuel qui sera joint au rapport public de la Cour des Comptes, de sorte que chacun puisse en prendre connaissance. C'est au vu des travaux de la Chambre des impôts que le Gouvernement appréciera l'opportunité de procéder à une unification totale du barème de l'impôt sur le revenu.

Cette unification résiderait dans l'extension par étape à tous les revenus de l'abattement d'assiette de 20% dont ne bénéficient actuellement que les traitements et salaires. Chacune de ces étapes serait franchie lorsqu'une amélioration de la connaissance des revenus aurait été constatée effectivement.

● *En matière d'application de l'impôt, l'objectif est, dans un délai de cinq ans,* d'éliminer la fraude en tant que phénomène social, et de la ramener aux proportions d'un phénomène isolé.
Pour réaliser cet objectif, un ensemble de mesures sera proposé au Parlement dans la prochaine Loi de Finances. Les principales mesures envisagées sont les suivantes:
*Les très grandes exploitations agricoles,* qui ont un caractère, véritablement industriel, seront, en matière fiscale, assimilées à des entreprises industrielles et commerciales. Elles seront passibles du régime du bénéfice réel, et non du régime du forfait départemental.
*Les professions libérales* verront leurs obligations comptables rapprochées de celles des commerçants et artisans. Comme pour ces derniers, au-delà d'un certain chiffre d'affaires, leur régime sera obligatoirement celui de la déclaration contrôlée, c'est-à-dire du bénéfice réel.

B. – *La modération du barème*

Le rapprochement des conditions d'imposition des divers types de revenus sera réalisé dans une période où le Gouvernement veillera à la modération de l'impôt sur le revenu.
En même temps que seront rapprochées les conditions d'imposition des divers revenus, *le barème de l'impôt lui-même devra être allégé.*
a) *Pour la généralité des contribuables, les tranches du barème évolueront dans les mêmes proportions que l'indice des prix de détail.* Ainsi sera-t-il mis fin au débat permanent dont l'impôt est l'objet, sous le prétexte que la croissance du rendement de l'impôt résulte d'une diminution des revenus réels des ménages.
Ainsi, à revenu réel inchangé, la part de l'impôt dans le revenu restera constante. Si cette part augmente, ce ne peut être qu'en conséquence d'un accroissement des revenus réels. Cet objectif répond à la préoccupation essentielle des cadres.
Cet élargissement des tranches du barème est un objectif à moyen terme. Il pourra se produire, certaines années, que, pour des nécessités conjoncturelles, le rythme des allègements s'éloigne momentanément, dans un sens ou dans l'autre, de celui de l'évolution des prix. Les écarts se compenseront sur une moyenne période.
b) *En outre, des allègements supplémentaires seront institués au profit des ménages dont les revenus se situent en-dessous du centre d'équité fiscale,* c'est-à-dire en-dessous de la moyenne des revenus. Ces allègements auront pour effet de diminuer l'impôt payé par les catégories sociales les plus dignes d'intérêt.

C. – *Réforme du recouvrement de l'impôt*

1) Le Gouvernement annonce son intention de procéder à un meilleur étalement du recouvrement de l'impôt, visant à alléger les formalités des redevables, à leur éviter des charges excessives de trésorerie, et à rapprocher le paiement de l'impôt de la réalisation du revenu correspondant.
L'inspection Générale des Finances a été chargée de conduire une enquête sur ce problème. Son rapport sera publié sous la forme d'un livre blanc ouvert avant la fin de l'année. Ce livre blanc sera soumis aux diverses organisations professionnelles et syndicales, pour recueillir leurs observations, avant l'élaboration d'un projet de loi.
*L'objectif du Gouvernement est de mettre en place à partir du 1er janvier 1972 un système simple de paiement mensuel de l'impôt sur le revenu.*
2) Enfin, à partir du 1er janvier 1971, sera mis en place un *régime dit de «réel simplifié»* pour le paiement de la T.V.A. et des bénéfices industriels et commerciaux, au profit des commerçants dont le chiffre d'affaires ne dépasse pas le double des limites actuelles du forfait. Les textes réglementaires sont déjà soumis à l'examen du Conseil d'Etat. Cette formule est certainement promise à un grand développement.

## LA TAXE SUR LA VALEUR AJOUTEE

I. – *Rappel des mérites de la T.V.A.*

La taxe à la valeur ajoutée est un bon impôt. Elle est neutre sur le plan économique, c'est-à-dire qu'elle s'applique indifféremment à toutes les formes de production et à tous les circuits de commercialisation. Elle est relativement indolore car elle n'astreint pas l'ensemble des consommateurs à des obligations particulières. Elle est d'un rendement élevé, puisqu'elle représente en 1970 plus de la moitié des recettes fiscales de l'Etat.

Les mérites de cet impôt lui valent d'avoir été imité dans de nombreux pays et particulièrement, dans la Communauté Economique Européenne où l'Allemagne et les Pays-Bas l'appliquent déjà, les autres Etats s'étant engagés à faire de même avant 1972. Hors d'Europe, l'intérêt soulevé par la T.V.A. n'est pas moins grand. C'est ainsi qu'une mission japonaise est récemment venue en France étudier le fonctionnement de cet impôt.

II. – *Les améliorations à apporter à la T.V.A.*

Si, dans le cas particulier de la France, la taxe sur la valeur ajoutée appelle certaines critiques, ce n'est donc pas pour des raisons de principe, mais:

- du fait de certaines imperfections qui subsistent dans les modalités d'imposition,
- du fait des taux trop élevés.

a) *L'amélioration de l'assiette de la T.V.A.*

Certaines imperfections qui demeurent dans l'assiette de la T.V.A. et qui constituent une entrave à l'accroissement de la productivité dans l'industrie devront être supprimées.

C'est d'abord le cas des créances d'impôts non remboursables qui sont actuellement à la charge de certaines entreprises, notamment lorsqu'elles ont fait des investissements importants (phénomène dit du «butoir financier»). Ces créances d'impôts *devront être remboursées par l'Etat.* Cette mesure sera réalisée par étapes.

C'est également le cas de la double imposition qui frappe les contribuables d'origine pétrolière. Actuellement la T.V.A. grevant les transactions portant sur certains de ces combustibles n'est pas récupérable par l'acheteur assujetti à la T.V.A., de sorte que ces produits sont taxés deux fois:

- au moment de leur achat,
- au moment de leur incorporation dans les prix de revient.

Cette rémanence d'impôt doit être supprimée. Elle l'a déjà été l'année dernière pour le fuel-oil lourd.

Cette politique sera poursuivie: en 1971, la rémanence sera supprimée pour les gaz liquéfiés.

b) *Diminution des taux*

Les taux de T.V.A. sont plus lourds en France que dans tous les autres pays industriels ayant adopté cet impôt.

Sans doute l'impôt, du fait de son caractère territorial, est-il en principe exactement compensé dans les transactions commerciales avec l'étranger. Mais il est impossible d'éviter toute importation clandestine, et il en résulte des distorsions de concurrence au détriment des commerçants français, notamment dans les régions frontalières.

Sur le plan social, la taxe sur la valeur ajoutée est un impôt peu nuancé, sauf au prix d'une multiplication du nombre des taux et des régimes qu'il convient d'éviter pour ne pas compliquer les obligations des redevables. Un allègement des taux de la T.V.A. profiterait donc en tout premier lieu aux familles aux revenus modestes, en diminuant la charge fiscale sur leurs achats.

Enfin, pour notre économie dont la croissance et la modernisation reposent sur le développement industriel, il n'est pas sain que ces actes essentiels que sont la production et la vente soient grevés d'un prélèvement fiscal aussi lourd. Si le phénomène de la vente sans facture, qui est le moyen de survie des

producteurs inefficaces et des commerçants sans talent, est malheureusement plus répandu en France que dans les autres grands pays industriels, la lourdeur des taux de la T.V.A. y est pour beaucoup. Diminuer le taux de l'impôt, c'est réduire l'incitation à la fraude. En conséquence, les objectifs du Gouvernement sont les suivants:

– dans un proche avenir, ramener l'ensemble des produits alimentaires solides au taux réduit,

– par la suite, tendre à fusionner le taux intermédiaire et le taux normal de l'impôt à un niveau proche de l'actuel taux intermédiaire. Cette évolution qui devra nécessairement tenir compte, en raison de son coût considérable, des données de la conjoncture, pourra être réalisée en ramenant des groupes de produits du taux normal au taux intermédiaire:

## LA FISCALITE LOCALE

Le problème le plus urgent qui se pose en matière de fiscalité locale est celui de la patente.

Le Gouvernement a réuni, pour étudier les réformes à apporter à cet impôt, une Commission composée de représentants des collectivités locales et des organisations professionnelles. Le rapport de cette commission a été remis au Gouvernement le 2 septembre, il sera rendu public dans quelques semaines.

Dans la loi de Finances pour 1971, conformément aux suggestions exprimées par la Commission de réforme de la patente, le Gouvernement déposera deux articles:

– Le premier aura pour objet de *réduire la charge des petits patentés*. Pour les détaillants et artisans employant au plus deux salariés, les bases de la patente seront réduites de 15%. Il en résultera pour ces catégories de contribuables un allègement sensible de l'impôt;

– Le second aura pour objet de supprimer les exonérations dont bénéficient actuellement certains organismes, notamment dans le secteur bancaire.

Les autres propositions de la Commission sont en cours d'examen.

Telles sont les mesures et les orientations sur lesquelles le Gouvernement entend recueillir les avis des organisations syndicales et professionelles avec lesquelles, sur la base de la présente communication, il va ouvrir le dialogue.

# GERMANY:

# STAND DER STEUERREFORM

## Bericht des Bundesministers der Finanzen an den Deutschen Bundestag vom 16. September 1970*

### A. ALLGEMEINES

I. *Vorbemerkung*

Dem Deutschen Bundestag wird hiermit der in der Regierungserklärung vom 28. Oktober 1969 angekündigte Bericht über den Stand der Arbeiten an der Steuerreform vorgelegt.

Eine Aussage über Inhalt und Ausmaß der angestrebten Steueränderungen kann zum gegenwärtigen Zeitpunkt noch nicht gemacht werden. Das ist schon deshalb nicht möglich, weil das von der Steuerreform-Kommission zu erstattende Gutachten, das die Grundlage für die Reformarbeiten darstellen soll, voraussichtlich erst Ende dieses Jahres vorliegen wird. In diesem Bericht werden der bisherige Ablauf und die weitere Planung der Reformarbeiten dargelegt; ferner wird bei einzelnen Steuern eine Übersicht über wichtige zur Lösung anstehende Probleme gegeben. Der Deutsche Bundestag soll durch ihn diejenigen Informationen über den Stand der Arbeiten erhalten, die im gegenwärtigen Zeitpunkt möglich sind.

II. *Ziele der Steuerreform*

In der Regierungserklärung hat die Bundesregierung zu den Zielen der Steuerreform folgendes ausgeführt:

„Die in der vorigen Legislaturperiode angekündigte Steuerreform wird die Bundesregierung verwirklichen.

Wir erfüllen damit auch das Verfassungsgebot zur Schaffung des sozialen Rechtsstaates.

Wir haben nicht die Absicht bestehende Vermögen durch konfiskatorisch wirkende Steuern anzutasten. Wir wollen auch in der Steuerpolitik die Voraussetzungen für eine breitere Vermögensbildung schaffen.

Zunächst werden wir den Bericht der Steuerreform-Kommission abzuwarten haben.

Unser Ziel ist es, ein gerechtes, einfaches und überschaubares Steuersystem zu schaffen. Die Vorlage einer reformierten Abgabenordnung muß beschleunigt werden.

Bei einer rationellen Bewirtschaftung und bei Verwendung moderner, kostensparender Methoden können die öffentlichen Haushalte die in den nächsten Jahren entstehenden Finanzierungsaufgaben erfüllen, ohne daß die Steuerlastquote des Jahres 1969 erhöht wird."

III. *Steuerreform-Kommission*

Zur Vorbereitung der Steuerreform wurde Ende 1968 vom Bundesminister der Finanzen eine unabhängige Kommission berufen. Die Einsetzung einer solchen Kommission war bereits 1967 im Deutschen Bundestag beantragt worden (BT-Drucksache V/2164). Die Kommission besteht aus Vertretern der Wissenschaft, der Wirtschaft, der steuerberatenden Berufe und anderer am Steuerrecht besonders interessierter Kreise der Bevölkerung. Angehörige der Finanzverwaltung gehören ihr nicht an; sie werden von der Kommission als Sachverständige gehört. Im einzelnen setzt sich die Kommission wie folgt zusammen:

Dr. h. c. Eberhard – Vorsitzender – .
Präsident der Bayerischen Staatsbank,
Staatsminister a. D.

---

* Drucksache VI/1152.

Dr. Dr. h. c. Troeger – stellv. Vorsitzender –
Vizepräsident der Deutschen Bundesbank i. R., Staatsminister a. D.
H. Fredersdorf
Bundesvorsitzender des Bundes Deutscher Steuerbeamten
Dr. Hörstmann
Steuerberater, ehemaliger Präsident der Bundessteuerberaterkammer
Dr. Köppen
Steuerberater
Dr. Kuhn
Generalbevollmächtigter der August Thyssen-Hütte AG
Dr. Mertens
ehemaliger Geschäftsführer der Arbeitsgemeinschaft selbständiger Unternehmer
K. H. Mittelsteiner
Steuerbevollmächtigter, 1. Vizepräsident der Bundeskammer der Steuerbevollmächtigten
Dr. Muthesius
Präsident des Bundes der Steuerzahler
Prof. Dr. Dr. Pagenkopf
Honorarprofessor für Kommunalwissenschaften an der Universität Münster, ehemaliges Vorstandsmitglied des Instituts Finanzen und Steuern in Bonn
Dr. Schäfer
Staatsminister, ehemaliges Mitglied des Sachverständigenrats zur Begutachtung der gesamtwirtschaftlichen Entwicklung
R. Wiethüchter
1. Bundesvorsitzender des Bundes der Deutschen Zollbeamten
Prof. Dr. Wöhe
Ordinarius für Betriebswirtschaftslehre an der Universität des Saarlandes
Prof. Dr. Zeitel
Ordinarius für Volkswirtschaftslehre an der Universität Mannheim (Wirtschaftshochschule)

Der Kommission gehörte zunächst auch Professor Dr. Haller an, der mit seiner Berufung zum Staatssekretär im Bundesministerium der Finanzen am 15. April 1970 ausgeschieden ist.

In ihrer konstituierenden Sitzung am 17. Dezember 1968 ist der Kommission vom Bundesminister der Finanzen der folgende Auftrag erteilt worden:

„Die Kommission erhält den Auftrag, ein Gutachten zur Vorbereitung einer umfassenden Steuerreform auszuarbeiten, das sowohl die direkten Steuern als auch die indirekten Steuern sowie die Prämiengesetze behandelt. Nach Möglichkeit soll das Gutachten spätestens Mitte 1970 vorgelegt werden.

Für die Ausarbeitung der Reformvorschläge stehen der Kommission das Gutachten des Wissenschaftlichen Beirats beim Bundesministerium der Finanzen, die Vorschläge der Einkommensteuer-Kommission, des Bundes Deutscher Steuerbeamten, des Bundes der Steuerzahler, die Denkschrift des Bundesverbandes der freien Berufe und andere wichtige Vorschläge zur Auswertung zur Verfügung.

Die Vorschläge der Kommission sollen zu einem Steuerrecht führen, das – ohne Aufgabe der allgemein gültigen Grundsätze des Steuerrechts – insbesondere den Zielsetzungen einer modernen Finanzpolitik entspricht sowie den Grundsatz der Gleichmäßigkeit und sozialen Gerechtigkeit der Besteuerung berücksichtigt. Dabei sollen auch Möglichkeiten zum weiteren Abbau von Steuervergünstigungen eingehend untersucht werden. Ganz besonderer Wert ist auf eine Vereinfachung des Steuerrechts zu legen. Es werden schließlich die Harmonisierungsbestrebungen innerhalb der EWG berücksichtigt werden müssen, wobei u. a. auch das Verhältnis zwischen den direkten und den indirekten Steuern von Bedeutung sein wird.

Durch die Steuerreform soll das Volumen der Steuereinnahmen gegenüber dem jetzigen Rechtszustand einschließlich der Zuwachsquoten nicht verändert werden."

Der Kommission wurde vom Bundesminister der Finanzen ein Sekretariat zur Verfügung gestellt, das zunächst aus je einem Beamten des höheren und des gehobenen Dienstes bestand. Am 8. Dezember 1969 wurde ein verstärktes Sekretariat eingesetzt, dessen Leitung Ministerialdirektor a. D. Dr. Falk übertragen wurde und dem zwei weitere Beamte des höheren sowie vier Beamte des gehobenen Dienstes zugeteilt sind. Durch diesen vermehrten Personaleinsatz, der auf einen ausdrücklichen Wunsch der Kommission nach organisatorischer Unterstützung zurückgeht, wurde der technische Ablauf der Beratungen (Vorbereitung der Sitzungen, Aufbereitung von Material, Anfertigung von Niederschriften, Vorbereitung der Berichte der Unterkommissionen und der Vollkommission) wesentlich erleichtert.
Aus dem ihr erteilten umfassenden Auftrag hat die Kommission im Einvernehmen mit dem Bundesministerium der Finanzen von vornherein diejenigen Rechtsgebiete ausgeklammert, die bereits in den letzten Jahren größeren Reformen unterworfen worden waren. Sie hat insbesondere von einer eingehenden Beratung des Bewertungsgesetzes und des Umsatzsteuergesetzes abgesehen, weil beide Gesetze erst 1965 bzw. 1967 grundlegend umgestaltet worden sind. Ausserdem hat sie von einer Erörterung der Reichsabgabenordnung Abstand genommen, weil zur Vorbereitung der Reform des gesamten Verfahrensrechts bereits eine eigens zu diesem Zweck eingesetzte Kommission tätig war, die dann im November 1969 ein Gutachten vorgelegt hat.
Trotz dieser Beschränkung erwies es sich für die Kommission als unmöglich, den Auftrag mit der gebotenen Gründlichkeit bis Mitte 1970 durchzuführen. Mit dem Bundesminister der Finanzen ist daher in einer gemeinsamen Sitzung am 13. Februar 1970 vereinbart worden, daß der abschließende Bericht möglichst bis Ende 1970 vorgelegt wird.
Die Kommission läßt ihre Sachentscheidungen weitgehend durch Unterkommissionen vorbereiten. Insgesamt sind 6 Unterkommissionen gebildet worden, und zwar:
die Unterkommission „Einkommensteuer"
die Unterkommission „Körperschaftsteuer"
die Unterkommission „Gemeindesteuern"
die Unterkommission „Verbrauch- und Verkehrsteuern"
die Unterkommission „Gewinnermitlung"
die Unterkommission „Vermögen- und Erbschaftsteuer".
Diese Unterkommissionen haben bisher insgesamt über 60 in der Regel zweitägige Sitzungen abgehalten. Zu den Sitzungen sind regelmäßig als Sachverständige Beamte von Bundes- und Landesministerien hinzugezogen worden; darüber hinaus auch gelegentlich zu einzelnen Fragen weitere Sachverständige, soweit sich dafür ein Bedürfnis ergeben hatte. Die Unterkommissionen werden in ihren Arbeiten nicht nur von dem Sekretariat der Steuerreform-Kommission, sondern auch durch die hierfür in Frage kommenden Abteilungen des Bundesministeriums der Finanzen unterstützt. Bisher wurden insbesondere Angaben über quantitative Auswirkungen einzelner Steuerrechtsänderungen zur Verfügung gestellt.
Die Beratungsergebnisse in den Unterkommissionen werden der Vollkommission jeweils in Form von Zwischenberichten vorgelegt, die die Grundlage für die abschließende Meinungsbildung abgeben. Die Vollkommission ihrerseits hat inzwischen insgesamt 13 Sitzungen abgehalten.
Mit der Vorlage des Gutachtens der Steuerreform-Kommission dürfte nach dem gegenwärtigen Sachstand im Dezember 1970 gerechnet werden können.

IV. *Arbeiten im Bundesfinanzministerium*

Im Dezember 1969 wurde in der Abteilung

„Besitz- und Verkehrsteuern" des Bundesministeriums der Finanzen eine Reformgruppe gebildet, die nunmehr aus fünf Referaten besteht, in denen die zu reformierenden Steuern wie folgt zusammengefaßt sind:

- Reform der Abgabenordnung
- Reform der Einkommen- und Lohnsteuer sowie der Prämiengesetze
- Reform der Körperschaft- und Gewerbesteuer
- Reform der Steuern vom Vermögen
- Reform der Verkehr- und Verbrauchsteuern.

Seit dem 15. April 1970 werden die Arbeiten zur Vorbereitung der Steuerreform im Bundesministerium der Finanzen durch Staatssekretär Professor Dr. Haller geleitet, der eigens für diese Aufgabe in das Bundesministerium der Finanzen berufen wurde. Ihm untersteht der Leiter der Abteilung „Besitz- und Verkehrsteuern" mit der Steuerreformgruppe.

Außerdem haben ihn alle Fachbereiche des Ministeriums zu unterstützen, die sachlich von der Reform betroffen sind. Insbesondere wurde in der Abteilung „Grundsatzfragen der Finanzpolitik" ein Arbeitsstab „Steuerreform" bei dem für volkswirtschaftliche und finanzpolitische Fragen der Steuerpolitik zuständigen Referat gebildet. Dieser Arbeitsstab hat die Aufgabe, die aufkommensmäßigen Auswirkungen von Reformmaßnahmen zu untersuchen und bei der Bearbeitung bestimmter Reformprobleme unter besonderer Berücksichtigung der volkswirtschaftlichen Gesichtspunkte mitzuwirken. Durch diese organisatorischen Maßnahmen wird eine weitestgehende Koordinierung der Reformarbeiten gewährleistet. Im übrigen ist durch eine laufende Abstimmung mit dem Bundesministerium für Wirtschaft sichergestellt, daß die wirtschaftspolitischen Gesichtspunkte der Steuerreform rechtzeitig und ausreichend berücksichtigt werden.

Die Steuerreformgruppe arbeitet parallel zur Reformkommission an den zur Lösung anstehenden Problemen. Sie ist angewiesen, den Vorschlägen der Reformkommission nicht vorzugreifen. Durch ihre vorbereitenden Arbeiten soll sichergestellt werden, daß der Bericht der Reformkommission unverzüglich ausgewertet und die Zeitspanne zwischen der Berichtsvorlage und der Verabschiedung der Reformgesetzentwürfe durch die Bundesregierung, soweit die Sache es zuläßt, abgekürzt wird. Die Reformgruppe verfolgt zu diesem Zweck den Fortgang der Beratungen in der Kommission und ihren Unterkommissionen und bezieht etwaige Zwischenergebnisse in ihre Überlegungen ein. Zugleich beschäftigt sie sich mit solchen Fragen, die von der Reformkommission nicht aufgegriffen werden. Das gilt sowohl für größere Teile des Reformwerks, die durch die Arbeiten der Reformkommission überhaupt nicht berührt werden (z.B. die Reform der Abgabenordnung), als auch für Einzelprobleme im Rahmen von Sachkomplexen, die von der Reformkommission nicht erschöpfend behandelt werden können. Es gehört auch zur Aufgabe der Reformgruppe, in einem möglichst frühen Stadium in die Sachdiskussion mit den in Betracht kommenden Bundesressorts und den Ländern einzutreten, um die dort vorhandenen Erfahrungen und Kenntnisse für die Gesetzgebung nutzbar zu machen. In vielen Fällen werden außerdem noch Wirtschafts- und Berufsverbände insbesondere im Interesse einer besseren Sachaufklärung eingeschaltet werden müssen. Schließlich wird die Reformgruppe die Entwicklung der Steuerharmonisierung innerhalb der Europäischen Gemeinschaft verfolgen müssen, um eine größtmögliche Koordinierung der innerstaatlichen Reformbestrebungen mit den Harmonisierungstendenzen der Gemeinschaft zu verwirklichen.

V. *Durchführungsplan der Reform*

Es ist geplant, die Steuerreform in drei Teilen durchzuführen und die beabsichtigten Steueränderungen in drei Gesetzentwürfen zusammenzufassen.

Die Steuerreform sollte möglichst zu einem einheitlichen Zeitpunkt in Kraft treten. Als Termin hierfür ist der 1. Januar 1974 in Aussicht genommen. Die Einhaltung dieses Termins setzt jedoch voraus, daß die Verabschiedung der Gesetze bis Anfang 1973 erfolgt ist. Für die parlamentarischen Beratungen würden danach die Jahre 1971 und 1972 zur Verfügung stehen. Während des Jahres 1973 könnten sich dann Wirtschaft und Verwaltung auf die neuen Steuergesetze vorbereiten.

Zum Inhalt und zum Zeitplan der einzelnen Steuerreformgesetze wird in Abschnitt B Stellung genommen.

## B. ZU DEN EINZELNEN STEUERREFORMGESETZEN

I. *Erstes Steuerreformgesetz*

Reform der Reichsabgabenordnung

Der Deutsche Bundestag hat die Bundesregierung am 13. März 1963 aufgefordert, eine Reform des allgemeinen Abgabenrechts vorzubereiten. Zu diesem Zweck wurde Ende 1963 vom Bundesminister der Finanzen ein *unabhängiger Arbeitskreis* aus Vertretern der Wissenschaft, der Rechtsprechung, der steuerberatenden Berufe, der gewerblichen Wirtschaft, der Finanzverwaltung sowie der Organisation der Steuerzahler und derjenigen der Steuerbeamten berufen, der seine Arbeiten Ende November 1969 beendet hat. Er hat zusammen mit seinem Tätigkeitsbericht den Entwurf einer neuen Abgabenordnung vorgelegt. Diese soll die Reichsabgabenordnung ersetzen, die Ende 1919 in Kraft getreten ist und bis zum heutigen Tage mehr als 60 Novellierungen erlebt hat. Der Tätigkeitsbericht des Arbeitskreises ist zusammen mit dem Gesetzentwurf und seiner Begründung in der Schriftenreihe des Bundesministeriums der Finanzen veröffentlicht worden, um eine weite Verbreitung der Vorschläge des Arbeitskreises sicherzustellen.

Im Bundesministerium der Finanzen ist seit Anfang 1970 auf der Grundlage des Entwurfes des Arbeitskreises mit größter Beschleunigung an dem Entwurf einer neuen Abgabenordnung gearbeitet worden, die als erstes Steuerreformgesetz die in dieser Legislaturperiode durchzuführende Steuerreform einleiten soll. In kleinen Arbeitsgruppen ist der Entwurf in den ersten Monaten dieses Jahres intensiv mit den obersten Finanzbehörden der Länder erörtert worden. Diesen Sitzungen schloß sich eine große Klausurtagung in Freiburg in der Zeit vom 20. bis 24. April 1970 an, an der auch Vertreter des Bundesjustizministeriums, des Bundesinnenministeriums, des Bundeswirtschaftsministeriums sowie der Innenministerien der Länder teilnahmen.

Den Verbänden wurde Gelegenheit gegeben, sich zu dem Entwurf des Arbeitskreises zu äußern. Von dieser Gelegenheit haben zahlreiche Verbände Gebrauch gemacht.

Inzwischen ist unter Berücksichtigung der bisherigen Arbeitsergebnisse der *Referentenentwurf einer neuen Abgabenordnung* erstellt und Mitte Juli 1970 den Ressorts, den obersten Finanzbehörden der Länder und den Verbänden zugeleitet worden, die damit nochmals Gelegenheit zu Stellungnahme erhalten, ehe der Referentenentwurf Ende September 1970 mit den Ressorts und den obersten Finanzbehörden der Länder mündlich erörtert wird. Abschrift dieses Referentenentwurfs hat die vom Finanzausschuß des Deutschen Bundestages gebildete Arbeitsgruppe „AO-Reform" erhalten. Außerdem ist ein Anhörungstermin für die Verbände vorgesehen. Daran anschließend wird

der Regierungsentwurf ausgearbeitet, der im Dezember dieses Jahres dem Kabinett vorliegen soll. 1971 werden die parlamentarischen Gremien mit der Beratung des Entwurfs beginnen können.

Die neue Abgabenordnung soll zusammen mit den übrigen Teilen der Steuerreform am 1. Januar 1974 in Kraft treten. Gleichzeitig werden die Reichsabgabenordnung, das Steueranpassungsgesetz, das Steuersäumnisgesetz, das Gesetz über die Kosten der Zwangsvollstreckung nach der Reichsabgabenordnung, die Gemeinnützigkeitsverordnung, die Wareneingangsverordnung, die Warenausgangsverordnung, die Verordnung über landwirtschaftliche Buchführung und weitere Vorschriften aufgehoben werden können. Damit wird das allgemeine Abgabenrecht – das Bewertungsrecht ausgenommen – nach Jahrzehnten wieder in einem Gesetz zusammengefaßt sein.

Im Laufe des Jahres 1971 wird das Einführungsgesetz zur neuen Abgabenordnung auszuarbeiten sein, das die zahlreichen Folgeänderungen enthalten wird, die durch die neue Abgabenordnung ausgelöst werden. Hinzu kommen die erforderlichen Übergangsvorschriften, die das Recht der Reichsabgabenordnung auf das Recht der neuen Abgabenordnung überleiten sollen.

Wenn auch der Regierungsentwurf der neuen Abgabenordnung noch einige Zeit zu seiner Fertigstellung benötigt, so läßt sich bereits jetzt übersehen, daß der vom Arbeitskreis vorgelegte Entwurf im wesentlichen erhalten bleiben wird. Die neue Abgabenordnung wird ein *modernes Verfahrensrecht* schaffen, das einen gerechten Ausgleich zwischen den Belangen der Verwaltung und denen der Steuerzahler herbeiführen soll.

Wichtig ist auch der Gesichtspunkt der Vereinheitlichung des allgemeinen Verwaltungsrechts. Dieser Gesichtspunkt wurde bereits vom Arbeitskreis gebührend berücksichtigt. Der Arbeitskreis hat seinen Entwurf in zahlreichen Punkten dem Entwurf eines Verwaltungsverfahrensgesetzes angepaßt, der inzwischen von der Bundesregierung den parlamentarischen Körperschaften zugeleitet worden ist. Der Regierungsentwurf wird diesem Ziel unter Beachtung der Besonderheiten des Steuerrechts und seiner bisherigen eigenständigen Entwicklung Rechnung tragen.

Wie im Entwurf des Arbeitskreises so wird auch im Regierungsentwurf die *Steuerfestsetzung unter Vorbehalt der Nachprüfung* an zentraler Stelle stehen. Durch diese Institution soll die weitere Rationalisierung des Besteuerungsverfahrens gesichert werden. Von besonderer Bedeutung werden ferner die gesetzliche Regelung der Außenprüfung, die Anpassung der Buchführungsvorschriften an die Entwicklung der Automation sowie die Unterscheidung zwischen der Festsetzungsverjährung und der Erhebungsverjährung sein.

Gegen die vom Arbeitskreis vorgeschlagene *Verkürzung der Frist für die Verjährung* nichttitulierter Ansprüche bei den Besitz- und Verkehrsteuern von 5 auf 3 Jahre sind bei den bisherigen Beratungen mit den Ländern aus der Verwaltungspraxis heraus erhebliche Bedenken geltend gemacht worden. Die ohnehin überlastete Finanzverwaltung sei nicht in der Lage, diese Verkürzung zu verkraften, ohne daß – nicht unerhebliche – Steuerausfälle einträten. Als Kompromißlösung käme eine Verjährungsfrist von 4 Jahren in Betracht.

Die außerordentlich wichtige Frage der Selbstberechnung der Steuern (*„Selbstveranlagung"*) wird nicht durch die neue Abgabenordnung gelöst werden können. Das erscheint sachgerecht. Entsprechend der bisherigen Gesetzgebungspraxis wird über diese Frage im Rahmen der Reform der Einzelsteuern zu entscheiden sein. So ist z. B. auch

bisher die Selbstberechnung bei der Umsatzsteuer im Umsatzsteuergesetz geregelt.
Über die Frage einer *Reform des Zinsrechtes* hat der Arbeitskreis ausführlich diskutiert. Er hat sich jedoch für den gegenwärtigen Zeitpunkt nicht für eine umfassende Reform des Zinsrechtes in Richtung auf eine Vollverzinsung ausgesprochen. Die Beratungen mit den Ländern haben eindeutig gezeigt, daß eine derartige Reform noch nicht entscheidungsreif ist. Sie setzt eine vollintegrierte Datenverarbeitung in der Finanzverwaltung voraus, die bis 1974 nicht erreicht sein wird. Es dürfte deshalb im Rahmen der Reform der Abgabenordnung die beste Lösung sein, möglichst wenig in das gegenwärtige Zinsrecht einzugreifen. Die Frage der Einführung der Vollverzinsung ist aber weiter zu prüfen und nach Vorliegen der technischen Voraussetzungen in der Verwaltung zu entscheiden. Das bedeutet zunächst auch Abstandnahme von einer besonderen Erstattungszinsregelung.
Besondere Beachtung im Arbeitskreis hat auch die Frage der gesetzlichen Regelung von *Steuerklauseln* gefunden. Es handelt sich hierbei um rechtsgeschäftliche Bedingungen, nach denen das Rechtsgeschäft ganz oder teilweise als aufgehoben oder als überhaupt nicht abgeschlossen angesehen werden soll, falls das Finanzamt das Geschäft steuerlich abweichend von den Vorstellungen der Parteien beurteilt. Der Arbeitskreis hat die Bundesregierung gebeten, sich dieser Frage weiter anzunehmen. Die bisherigen Erörterungen hierzu haben gezeigt, daß die Steuerklauseln vor allem auf dem Gebiet der verdeckten Gewinnausschüttungen von Bedeutung sind. Die Reform der Körperschaftsteuer würde dies ändern, falls die Doppelbelastung der ausgeschütteten Gewinne beseitigt werden sollte. Im übrigen ist darauf hinzuweisen, daß die Rechtsprechung die Steuerklauseln bereits anerkannt hat. Das alles läßt es fraglich erscheinen, ob wirklich jetzt zwingende Gründe für eine gesetzliche Festschreibung dieses noch in vieler Hinsicht umstrittenen Rechtsinstitutes bestehen. Hier sollte vielmehr, wie es im deutschen Verwaltungsrecht üblich ist, der Rechtsprechung noch Zeit gelassen werden, das Institut weiter zu entwickeln, bevor es kodifiziert wird.
Starkem Interesse in der Öffentlichkeit begegnet die Frage einer gesetzlichen Regelung der *verbindlichen Auskunft*. Zwei Gesetzesvorlagen der Regierung haben dem Bundestag in der vierten und fünften Legislaturperiode vorgelegen. Der Arbeitskreis hat sich nach ausgiebiger Erörterung der hiermit zusammenhängenden Fragen nur auf die gesetzliche Regelung einer verbindlichen Zusage nach einer Außenprüfung einigen können. Es spricht vieles dafür, erst einmal auf diesem eingeschränkten Gebiet Erfahrungen mit einer gesetzlichen Regelung zu sammeln und im übrigen wie bisher verbindliche Auskünfte auch ohne besondere gesetzliche Regelung zu erteilen.
Mit dem *Steuerstrafrecht* und dem *Steuerbußgeldrecht* hat sich der Arbeitskreis nicht befaßt. Diese Rechtsgebiete sind erst kürzlich reformiert worden. Zur Anpassung an die Änderungen, die die am 1. Oktober 1973 in Kraft tretende große Strafrechtsreform mit sich bringt, war jedoch eine Überarbeitung der Vorschriften erforderlich.

II. *Zweites Steuerreformgesetz*

Der Entwurf dieses Reformgesetzes, in dem die Steuern vom Einkommen, Ertrag und Vermögen sowie die Prämiengesetze zusammengefaßt sind, soll nach den derzeitigen Planungen von der Bundesregierung so rechtzeitig verabschiedet werden, daß die Beratungen im Deutschen Bundestag nach der Sommerpause 1971 beginnen können. Die folgenden Ausführungen zu diesem Reformgesetz müssen sich aus den in der Vor-

bemerkung angegebenen Gründen auf die Darstellung einiger besonders wichtiger Probleme beschränken.

1. *Reform des Einkommensteuerrechts und des Lohnsteuerrechts*

a) Einkommensteuertarif

Eine wesentliche Aufgabe des 2. Steuerreformgesetzes wird die Neugestaltung des Einkommensteuertarifs unter besonderer Berücksichtigung der Leistungsfähigkeit und sozialen Gerechtigkeit sein. Dieser Neugestaltung, zu der auch eine Überprüfung der geltenden Freibeträge gehört, kommt sowohl wegen ihrer Ausstrahlung auf breite Bevölkerungskreise als auch wegen ihres finanziellen Gewichts für die Einnahmen der öffentlichen Haushalte eine entscheidende Bedeutung zu.

Zunächst erscheint es geboten, den Grundfreibetrag, der letztmalig 1958 geändert wurde, an die derzeitigen Verhältnisse anzupassen. Des weiteren ist zu prüfen, ob nicht eine gerechtere Belastung in den unteren Einkommensstufen dadurch herbeigeführt werden kann, daß in der bisherigen Proportionalzone ein leicht ansteigender Tarif verwendet wird, der unter dem derzeitigen Proportionalsteuersatz beginnt. Grundfreibetrag und unterer Tarifabschnitt müssen zusammen gesehen werden in ihrer Entlastungswirkung für die einkommensschwachen Schichten. Für die Tarifsgestaltung im oberen Bereich stellt sich die Frage, ob die Steuergerechtigkeit es nicht gebietet, die Steuerprogression über den heutigen Umfang hinauszuführen durch Erweiterung der Progressionszone und Ansteigenlassen des Spitzensteuersatzes um einige Prozent. Hierbei ist jedoch zu beachten, daß auch der Körperschaftsteuersatz entsprechend anzuheben wäre und daß weder die internationale Wettbewerbsfähigkeit noch die wirtschaftliche Initiative beeinträchtigt werden dürfen. Ob im mittleren Bereich des Einkommensteuertarifs Korrekturen erforderlich sein werden, hängt davon ab, welches Gewicht der Einkommensteuer insgesamt zufallen soll.

b) Familienbesteuerung und Familienlastenausgleich

Bei der Reform der Familienbesteuerung sollten die familienbedingten Belastungen in angemessener Weise berücksichtigt werden. Hierbei wird zu beachten sein, daß aus verfassungsrechtlichen Gründen die Möglichkeit der getrennten Veranlagung zwischen den Ehegatten untereinander sowie die getrennte Veranlagung zwischen Eltern und Kindern beibehalten werden muß. Bei dem Ehegattensplitting wird zu prüfen sein, ob es unverändert beibehalten werden soll.

Der Familienlastenausgleich, der einerseits bei der Einkommensteuer durch den Abzug von Kinderfreibeträgen und andererseits durch direkte Kindergeldzahlungen vorgenommen wird, muß daraufhin überprüft werden, ob dieses dualistische System durch ein einheitliches Verfahren mit gleichen Leistungen ersetzt werden kann. Hierbei ist zu berücksichtigen, daß die Einkommensteuer an die finanzielle Leistungsfähigkeit des einzelnen Steuerbürgers anknüpft, die durch den Unterhalt der Kinder vermindert wird.

c) Sonderausgabenabzug

Eine Neuregelung des Sonderausgabenabzugs sollte ihren Schwerpunkt in der Berücksichtigung der Beiträge für die langfristige Altersvorsorge haben.

d) Steuervergünstigungen

Das geltende, in seiner Grundkonzeption aus dem Jahre 1934 stammende Einkommensteuerrecht ist in der Nachkriegszeit in starkem Maße durch außerfiskalische Ziele beeinflußt worden. Dabei sind aus unterschied-

lichen Gründen zahlreiche Steuervergünstigungen, insbesondere auch Sonderabschreibungen geschaffen worden, die in der Aufbauphase nach dem 2. Weltkrieg gerechtfertigt werden konnten oder die später aus sonstigen, insbesondere strukturpolitischen Gründen notwendig erschienen. Ihr Fortbestehen muß im Interesse einer gleichmäßigen und gerechten Besteuerung überprüft werden. Diese Steuervergünstigungen führen je nach der Einkommenshöhe und dem entsprechend anzuwendenden Steuersatz zu sehr unterschiedlichen Entlastungen. Sollte das Beibehalten von Vergünstigungen in bestimmten Fällen zu rechtfertigen sein, so ist zu prüfen, ob sie nicht durch gleichmäßig wirkende Prämien oder Zulage zu ersetzen sind.

e) Besteuerung von Grundstücksgewinnen

Die Bundesregierung ist der Auffassung, daß Gewinne aus der Veräußerung von Grundstücken in größerem Umfang als bisher steuerlich erfaßt werden müssen. Derartige Gewinne werden teilweise erst durch die Erschließungsaufwendungen der öffentlichen Hand – und damit durch die Gemeinschaft der Steuerbürger – möglich. Es erscheint deshalb gerechtfertigt, diese Gewinne zu besteuern. Hierin sieht sich die Bundesregierung durch einen kürzlich ergangenen Beschluß des Bundesverfassungsgerichts bestärkt, nach dem die steuerliche Freistellung von Gewinnen aus der Veräußerung von Grundstücken für bestimmte Einkunftsarten im Einkommensteuergesetz zu beseitigen ist. Insoweit wird bereits vor dem Inkrafttreten des 2. Steuerreformgesetzes eine Neuregelung erforderlich werden.

f) Lohnsteuerverfahren

Zu den vordringlichsten Aufgaben im Rahmen der Einkommensteuerreform gehört eine Reform des Lohnsteuerverfahrens. Für das gegenwärtige Lohnsteuerverfahren ist kennzeichnend, daß für annähernd 25 Millionen Arbeitnehmer z.Z. jährlich etwa 3 Millionen Einkommensteuerveranlagungen, 6 Millionen Lohnsteuer-Ermäßigungsanträge und 12 Millionen Lohnsteuer-Jahresausgleichsanträge bearbeitet werden müssen. Die damit verbundene Belastung der Lohnsteuerpflichtigen und der Finanzverwaltung ist auf die Dauer nicht tragbar. Sie hat ihren Ursprung darin, daß das bisherige System der Arbeitnehmerbesteuerung, welches auf einer pauschalen Abgeltung der bei Arbeitnehmern regelmäßig berücksichtigungsfähigen Aufwendungen beruht, den heutigen Lebensverhältnissen nicht mehr gerecht wird, weil die Pauschbeträge für Werbungskosten und Sonderausgaben in ihrer derzeitigen Höhe vielfach nicht mehr ausreichen, um die erstrebte Vereinfachung zu erzielen. Es ist zu prüfen, wie durch eine Verfahrensänderung erreicht werden kann, daß die Ermäßigungsanträge im Normalfall überflüssig werden und die Finanzämter nur nach Ablauf des Steuerjahres tätig werden müssen. Bei einer solchen Lösung wäre es vermutlich auch möglich, das Lohnsteuerverfahren mehr als bisher zu automatisieren und die Verwaltungsbelastung gleichmäßiger über ein Kalenderjahr zu verteilen.

2. *Reform der Sparförderung*

Die vorgesehene Reform der staatlichen Sparförderung sollte nach Auffassung der Bundesregierung zu einer Vereinfachung und Harmonisierung der stark zersplitterten und ungenügend aufeinander abgestimmten Regelungen führen und die Wirksamkeit der Förderungsmaßnahmen im Hinblick auf die gesellschaftspolitische Zielsetzung verbessern.

Als Vereinfachungsmaßnahme bietet sich unter anderem an, das Spar- und das Woh-

nungsbau-Prämiengesetz zu einem Gesetz zu vereinigen und die Vorschriften materiell und verfahrensrechtlich zu vereinheitlichen. Eine solche Maßnahme ist allerdings wegen der Vereinheitlichung des Auszahlungsverfahrens nicht ohne erhebliche zeitliche Belastungsverschiebungen im Haushalt möglich. Im übrigen wird es erforderlich sein, derartige Förderungsmaßnahmen künftig an eine Einkommensgrenze zu binden, weil nur so ihr Wirkungsbereich auf die förderungsbedürftigen Bevölkerungsschichten begrenzt werden kann.

3. *Reform des Körperschaftsteuerrechts*

Bei der Reform des Körperschaftsteuerrechts steht die Frage im Vordergrund, ob die sogenannte Doppelbelastung (durch Körperschaftsteuer einerseits und Steuer auf ausgeschüttete Gewinne bei den Anteilseignern andererseits) beseitigt werden soll. Dabei geht es darum, die Unternehmergewinne unabhängig von der betrieblichen Rechtsform möglichst einheitlich zu belasten und im Interesse einer breiteren Vermögensstreuung die Steuerbelastung der Gewinne oder zumindest der ausgeschütteten Gewinne von der proportionalen Körperschaftsteuer ganz auf die progressive Einkommensteuer zu verlegen. Damit entfiele auch der sogenannte „Großaktionärseffekt": Nach geltendem Recht ist es für einkommensstarke Anteilseigner von Vorteil, wenn die Gewinne im Unternehmen belassen werden; das beeinträchtigt die Interessen der einkommensschwächeren Anteilseigner an einer höheren – und für sie steuergünstigen – Ausschüttung. Zugleich würde der bestehenden Belastungsdifferenzierung zwischen den Erträgen des Eigenkapitals und denen des Fremdkapitals entgegenwirkt, die eine Erschwernis der Eigenkapitalfinanzierung mit den vermutlich ungünstigen Auswirkungen auf die Kapitalstruktur unserer Körperschaften zur Folge hat.

Die Vorarbeiten zur Reform gelten diesen Zusammenhängen. Dabei wird im einzelnen untersucht, ob man durch Aufhebung oder weitere Milderung der Doppelbelastung einen günstigen Einfluß auf die Streuung des Eigentums am Produktionsvermögen, auf die Kapitalstruktur der Gesellschaften und damit wiederum auf Wachstum und Stabilität ausüben kann. Zugleich wird geprüft, ob es geboten und möglich ist, einen höheren Grad steuerlicher Wettbewerbsneutralität zwischen inländischen und ausländischen Unternehmen herzustellen.

Die Untersuchungen legen im wesentlichen drei Modelle zugrunde: Im ersten werden die Anteilseigner als Teilhaber betrachtet. Der besteuerte Unternehmensgewinn wird diesen ohne Rücksicht auf seine Ausschüttung als steuerpflichtiger Teilhaberertrag zugerechnet. Die bei der Körperschaft erhobene Steuer wird bei der Besteuerung der Teilhabererträge angerechnet. Das zweite Modell beruht ebenfalls auf dem Prinzip der Steueranrechnung, beschränkt sich aber auf den Abbau der Doppelbelastung. Die Entlastung soll nur insoweit eintreten, als die Körperschaft den besteuerten Gewinn an ihre Anteilseigner ausschüttet. Das dritte Modell schließlich möchte die schon heute bestehende Tarifspaltung dadurch erweitern, daß auf ausgeschüttete Gewinne überhaupt keine Körperschaftsteuer mehr erhoben wird.

Jedes dieser Modelle würde neue Ausgangslagen für Finanzierungspolitik und Wettbewerb schaffen. Das bedingt sorgfältige – bereits eingeleitete – Untersuchungen. Darüber hinaus befassen sich die Vorarbeiten mit den außersteuerlichen Folgewirkungen der genannten Lösungsvorschläge, darunter mit ihrem Einfluß auf den internationalen Kapitalverkehr. Ferner wird die verfahrenstechnische Praktikabilität der einschlägigen Reformprojekte geprüft, insbesondere der Umfang der zur Anpassung erforderlichen Maß-

nahmen im Bereich von Wirtschaft und Verwaltung.

4. *Reform des Gewerbesteuerrechts*
Die Gewerbesteuer ist in enger Verbindung mit einkommen-, körperschaft-, vermögen- und grundsteuerlichen Belastungen zu sehen und gehört bereits deswegen zum zweiten Teil der Steuerreform. Zur Zeit werden die während der letzten Jahre zunehmend erhobenen Einwände geprüft, nämlich die Gewerbesteuer sei im Gegensatz zu der ursprünglich mit ihr verbundenen Intention keine beitragsähnliche Gemeindeabgabe mehr, sie verzerre die Finanzkraft der Gemeinden, sie sei in hohem Maße konjunkturempfindlich und trage weder dem Ziel außenwirtschaftlicher Wettbewerbsneutralität noch dem Gedanken einer europäischen Steuerharmonisierung Rechnung. Praktische Folgerungen daraus stoßen allerdings auf finanzpolitische Schwierigkeiten. Einmal geht es annähernd um 10 v.H. des Steueraufkommens. Zum zweiten ist der überwiegende Teil dieses Betrages fest im Gefüge der Gemeindefinanzen verankert. Erst wenn es mit Hilfe weiter anzustellender Untersuchungen gelänge, eine Gemeindesteuer zu schaffen, die mit den betriebsbedingten Gemeindelasten auch nach der Höhe des Aufkommens in Zusammenhang steht, und den verbleibenden Teil des bisherigen Aufkommens möglichst in sozial gerechter und wirtschaftlich tragbarer Weise zu verlagern, ohne die kommunalen Finanzen in Mitleidenschaft zu ziehen, stände ein tragfähiges Reformmodell zur Verfügung. Zu beachten ist schließlich auch hier der Zusammenhang mit der Harmonisierung im Rahmen der EWG.

5. *Reform des Vermögen- und Erbschaftsteuerrechts*
Auf dem Gebiet der Vermögen- und Erbschaftsteuer sind die Arbeiten zunächst auf die Probleme konzentriert worden, die eine realistische und zeitnahe Bewertung der Vermögensgegenstände aufwirft. Im Mittelpunkt der Überlegungen steht dabei die Untersuchung über die Möglichkeiten einer angemessener erscheinenden Bewertung des Grundbesitzes mit dem Ziel, die bisherige Unterbewertung gegenüber dem Kapitalvermögen und die daraus resultierende Ungleichmäßigkeit der Besteuerung weitgehend zu beseitigen. Von Interesse ist auch die Frage, ob und inwieweit sich die Feststellung der Einheitswerte des Betriebsvermögens vereinfachen läßt.
Mit den sich ergebenden Neubewertungen verbunden ist die auf jeden Fall erforderliche Überprüfung des Tarifs und der Freibeträge bei den beiden Steuern. Besondere Beachtung kommt in diesem Zusammenhang der Rücksichtnahme auf eine angemessene Alters- und Hinterbliebenenversorgung sowie auf die Erhaltung des mittelständischen Betriebsvermögens zu.
Bei sämtlichen Reformüberlegungen auf diesem Gebiet ist die Aufmerksamkeit vor allem auf die sich aus Vermögensteuer und Erbschaftsteuer ergebende Gesamtbelastung gerichtet. Die Untersuchungen beschränken sich hier nicht auf den nationalen Bereich; vielmehr ziehen sie auch die vergleichbare Belastung auf internationaler Ebene in Rücksicht.

6. *Reform des Aussensteuerrechts*
Vor allem im Rahmen des 2. Steuerreformgesetzes stellen sich vielfältige Aufgaben auch auf dem Gebiet des deutschen Außensteuerrechts. Die zunehmende internationale Orientierung der deutschen Wirtschaft verstärkt und aktualisiert die internationalen Aspekte des deutschen Steuersystems. Die Reform muß mit dem Blick über die Grenze betrieben werden.

Das zeigt sich sehr deutlich schon bei der Reform der Körperschaftsteuer, die gerade auch den außensteuerlichen Gesichtspunkten Rechnung tragen und den Zusammenhang zur europäischen Steuerharmonisierung wahren muß. Gleiches gilt für andere Reformgebiete.

Im eigentlichen Außensteuerrecht stehen im Vordergrund der Ausbau des unilateralen Schutzes gegen die doppelte Belastung mit deutscher und ausländischer Steuer, die Überprüfung bereits bestehender außensteuerlicher Erleichterungs- und Förderungsmaßnahmen und schließlich die Straffung der deutschen beschränkten Steuerpflicht nach Anknüpfungspunkt, Umfang und Erhebung.

Ihr besonderes Augenmerk wird die Reform auf wirkungsvolle Maßnahmen dagegen zu richten haben, daß der deutschen Steuer durch Vermögens- und Einkommensverlagerungen nach dem Ausland ausgewichen wird. Dies ist ein Gebot der Steuergerechtigkeit, das zu sehr differenzierten Fragestellungen führt. Der Kern der Überlegung richtet sich auf gesetzliche Regelungen, die den deutschen Steueranspruch in den für berechtigt zu erachtenden Bereichen durch klare Abgrenzungs-, Zurechnungs- und Nachweisregelungen sichern und der deutschen Steuerverwaltung auf diesem schwierigen Feld eine zuverlässige Arbeitsgrundlage geben.

7. *Reform des Grundsteuerrechts*

Hier sind die Arbeiten bereits weiter fortgeschritten. Im Zusammenwirken mit den Ländern ist eine erste Unterlage für den Entwurf eines neuen Grundsteuergesetzes erarbeitet worden. Diese Arbeitsunterlage beschränkt sich in ihrem gegenwärtigen Stadium jedoch im wesentlichen auf eine Konzeption des Gesetzes in rechtstechnischer Hinsicht, d. h. auf seinen Aufbau und seine Systematik, auf Fragen also, die den Entscheidungen der Steuerreformkommission weder vorgreifen noch sie präjudizieren. Hierzu gehört u. a. die Einarbeitung von Vorschriften des Einführungsgesetzes zu den Realsteuergesetzen von 1936, das im Zusammenhang mit dem Erlaß des geltenden Grundsteuergesetzes erging.

Offen ist noch die wichtige Frage der Festsetzung neuer Steuermeßzahlen. Die erstmalige Anwendung der Einheitswerte auf den 1. Januar 1964 bedingt hier notwendigerweise Korrekturen zunächst der absoluten Höhe. Darüber hinaus wird auch zu prüfen sein, ob für bestimmte Grundstücksarten Differenzierungen der Meßzahlen angebracht sind. Der Arbeitsunterlage liegen vorläufige Ergebnisse der Neubewertung zugrunde. Die abschließende Entscheidung über diesen Problemkreis, der auch eine ggf. sich als notwendig erweisende maßvolle Anhebung der Grundsteuer B umfaßt, kann jedoch erst erfolgen, wenn die endgültigen Ergebnisse der Einheitsbewertung 1964 vorliegen. Von besonderem Gewicht bei der Neugestaltung des Grundsteuerrechts ist ferner die Frage einer Abgeltung der Kosten gemeindlicher Entsorgungsleistungen, das Problem der sog. Grundsteuermehrbelastung. Hier sind noch weitere Überlegungen erforderlich – insbesondere aus verfassungsrechtlicher und verwaltungstechnischer Sicht.

III. *Drittes Steuerreformgesetz*

Reform der Verkehr- und Verbrauchsteuern

Für die Verwirklichung der Reform der Verkehr- und Verbrauchsteuern ist das 3. Steuerreformgesetz vorgesehen, das im Anschluß an das 2. Steuerreformgesetz eingebracht und beraten werden soll. Die Bundesregierung würde es im Interesse eines einheitlichen Inkrafttretens der gesamten Steuerreform zum 1. Januar 1974 begrüßen,

wenn auch dieses Reformgesetz noch in der laufenden Legislaturperiode vom Deutschen Bundestag verabschiedet werden könnte; sie wird ihre Arbeiten danach ausrichten. Sie ist sich andererseits bewußt, welches Ausmaß an Arbeit auf die Ausschüsse des Deutschen Bundestages, vor allem den Finanzausschuß, bereits mit den ersten beiden Steuerreformgesetzen zukommt, so daß sie hilfsweise eine Verabschiedung unmittelbar zu Beginn der Legislaturperiode des 7. Deutschen Bundestages in Betracht zieht. Außerdem behält sich die Bundesregierung vor, Einzelteile dieses Reformkomplexes in das 2. Steuerreformgesetz vorzuziehen, wenn sie sich im Laufe der weiteren Untersuchungen als besonders dringlich herausstellen sollten, oder später durch Gesetze außerhalb der Steuerreform zu regeln, falls sich dies insbesondere im Interesse einer sachgerechten Berücksichtigung der Steuerharmonisierung als zweckmäßig erweisen sollte.

Die *Grunderwerbsteuer* fiel bisher in die ausschließliche Gesetzgebungszuständigkeit der Länder. Das hat dazu geführt, daß dieses Rechtsgebiet in Teilbereichen von Land zu Land unterschiedlich geregelt ist. Die Bundesregierung hält es zur Wahrung der Rechts- und Wirtschaftseinheit, insbesondere zur Wahrung der Einheitlichkeit der Lebensverhältnisse im gesamten Bundesgebict für erforderlich, daß der Bund von seinem ihm ab 1. Januar 1970 zustehenden Gesetzgebungsrecht nach Artikel 105 Abs. 2 des Grundgesetzes bei dieser Steuer Gebrauch macht. Ein wesentliches Ziel der Reform wird die Vereinheitlichung des Grunderwerbsteuerrechts, vor allem der Befreiungsvorschriften sein. Dabei wird sich auch das Problem stellen, wie einerseits die große Zahl der Steuerbefreiungen verringert und andererseits der Forderung nach einer Erleichterung der Mobilität insbesondere der Arbeitnehmer Rechnung getragen werden kann. Inwieweit darüber hinaus Änderungen am System und bei den Steuersätzen erforderlich sind, werden die weiteren Untersuchungen zur Besteuerung von Grundstücksveräußerungen im Gesamtzusammenhang der Steuerreform zeigen müssen.

Bei der Reform der *Kraftfahrzeugsteuer* sind sowohl die verkehrspolitischen Belange als auch die Gesichtspunkte der Steuerverwaltung zu beachten. Dabei ist insbesondere die Vereinfachung des Erhebungsverfahrens ein vordringliches Anliegen der Reform, zumal die Zahl der Steuerfälle bei der Kraftfahrzeugsteuer von Jahr zu Jahr erheblich ansteigt. Hinsichtlich der Art und Höhe der Besteuerung wird sich die Kraftfahrzeugsteuer voraussichtlich mehr nach den Wegekosten orientieren. Das zeichnet sich bereits bei den Nutzfahrzeugen ab, deren Besteuerung entsprechend dem Vorschlag einer EWG-Richtlinie (Drucksache V/3206) nach diesem Gesichtspunkt ausgerichtet werden soll. Das Problem einer wegekostenorientierten Kraftfahrzeugbesteuerung bedarf allerdings wegen seiner weitreichenden Auswirkungen, insbesondere haushaltsmäßiger Art, noch einer grundlegenden Klärung.

Bei den *kleineren Verkehrsteuern* werden sich die Untersuchungen darauf erstrecken, ob sie aufgehoben werden sollen und ob gegebenenfalls die von ihnen erfaßten Tatbestände mit der Umsatzsteuer belegt werden sollen. Hierbei ist der Stand der Harmonisierungsarbeiten auf dem Gebiet der Verkehrsteuern zu beachten. So ist die Harmonisierung der Gesellschaftsteuer bereits durch die Richtlinie des Rates der Europäischen Gemeinschaften vom 17. Juli 1969 betreffend die indirekten Steuern auf die Ansammlung von Kapital festgelegt worden. Danach muß als Vorstufe für eine endgültige einheitliche Regelung bis zum 1. Januar 1972 u. a. der Steuersatz der Gesellschaftsteuer von zur Zet 2,5 auf 1 bis 2 v. H. gesenkt werden.

Die *Verbrauchsteuergesetze* werden mit dem Ziel überprüft, die Systeme zu modernisieren und zu vereinheitlichen und kleinere Verbrauchsteuern aufzuheben. Das Ausmaß der Änderungen wird in erheblichem Maße auch davon abhängen, wie sich die Harmonisierung der Verbrauchsteuern innerhalb der Europäischen Wirtschaftsgemeinschaft entwickelt.

IV. *Gesamtzusammenhang der Steuerreform und Steueraufkommen*

Da das Steueraufkommen angesichts der in der Finanzplanung vorgesehenen Aufwendungen nicht vermindert werden kann, ergibt sich das Problem, für reformbedingte Steuerausfälle einen Ausgleich an anderen Stellen zu finden. In diesem Zusammenhang ist es erforderlich, die Gewichtsverteilung auf die einzelnen Steuern im Gesamtsystem zu überprüfen. Eine aufkommensmäßige Kompensation innerhalb ein und derselben Steuer wird häufig nicht möglich sein, so daß auf jeden Fall Strukturänderungen im System vorgenommen werden müssen. Infolge dieser Beziehungen ist es unerläßlich, die zur Lösung der aufgezeigten Probleme zu erarbeitenden Reformmaßnahmen im Zusammenhang zu sehen.

# * * * * BIBLIOGRAPHY * * * *

## BOOKS

### AFRICA

EAST AFRICAN COMMUNITY, published by E.A. Community Printer (CPS), Nairobi. 11 pp.
East African Income Tax Department. Report for the period 1st July 1968 to 30th June 1969.

Library International Bureau of
Fiscal Documentation no. B 10002

### ARGENTINA

EL IMPUESTO A LOS REDITOS, estudio teórico-práctico del gravamen argentino dentro de la teorí general del impuesto, published by Ediciones Contabilidad Moderna, Entre Ríos 633, Buenos Aires, 5a. Edición: Mayo de 1970, 896 pp.
A systematic study of Argentine income taxation. Discussion of both theory and practice.

Library International Bureau of
Fiscal Documentation no. B 5260

### AUSTRIA

STEUERFREI? ABZUGSFÄHIG? BEGÜNSTIGT? DAS BUCH EINKOMMENSTEUER- UND LOHNSTEUERBEGÜNSTIGUNGEN, by F. Weiler, published by Industrieverlag Peter Linde GmbH. Dominikanerbastei 10, 1010 Wien 1970 fourth edition, 116 pp.
Fourth revised edition of a tax guide arranged as a dictionary explaining tax concepts in alphabetical order with respect to the individual income tax (income wage tax) such as personal allowances, deductible expenses, special treatments with reference to case law.

Library International Bureau of
Fiscal Documentation no. B 5238

### BELGIUM

DE BELASTING OVER DE TOEGEVOEGDE WAARDE EN DE BOUW, DE VERVREEMDING EN LEASING VAN ONROERENDE GOEDEREN by J. Ottevaere, published by Universitaire Faculteiten Sint-Ignatius, Antwerpen, 1970, 158 pp.
Thesis dealing with the introduction of the tax on value added on construction works and its impact on these prices.

Library International Bureau of
Fiscal Documentation no. B 5255

PRINCIPES DE L'IMPOSITION DES SOCIETES EN BELGIQUE by I. Claeys Bouuaert and published by Maison Ferdinand Larcier, S.A. Bruxelles, 1970, 259 pp.
General principles governing the taxation of income of companies and entities in Belgium.

Library International Bureau of
Fiscal Documentation no. B 5288

### BRAZIL

AS FISÇOBS JURIDICAS NO DIREITO TRIBUTARIE BRASILEIRO, by L.C. Calral Nogueira. Published by Fundação Getúlio Vargas, Av. Brig-Luiz Antonio 290-10°, São Paulo, Brazil.
An examination of legal fictions as they exist in Brazilian Tax Law.

Library International Bureau of
Fiscal Documentation no. B 5223

DA INTERPRETAÇAO E DA APLICAÇAO DAS LEIS TRIBUTARIAS, published by Ed. "Revista dos Tribunais" Ltds, Rua Conde de Sarzedas, 38, São Paulo, 1965. 138 pp.
A study of Brazilian taxation, from the point of view both of theory and of practice. Included are an examination of Constitutional norms, principle of interpretion, and economic consideration.

Library International Bureau of
Fiscal Documentation no. B 5221

DIREITO TRIBUTARIO by R.B. Nogueira. Published by José Bushatsky, Rua Riachuelo, 195, São Paulo, 1969, 483 pp.
A study of Brazilian tax law, including cases, used as a Textbook in the Universidade de São Paulo.

Library International Bureau of
Fiscal Documentation no. 5219

A REFORMA TRIBUTARIA E SUA MAIS IMPORTANTE INOVAÇAO: I.C.M. by P.R.C. Nogueira. Published by Fundaçao Getúlio Vargas, Av. Brigadeiro Luiz Antônio, 290-10°. 37 pp.
An examination of Brazilian tax reforms, with particular emphasis on the I.C.M.

Library International Bureau of
Fiscal Documentation no. B 5222

## CANADA

REPORT OF PROCEEDINGS OF THE TWENTY-SECOND TAX CONFERENCE convened by the Canadian Tax Foundation at the Queen Elizabeth Hotel and Hotel Bonaventura Montreal, March 23-24, published by Canadian Tax Foundation, 100 University Avenue, Toronto 1, Canada 1970.
Text of 1970 conference on the White paper on Proposals for Tax Reform.

Library International Bureau of
Fiscal Documentation no. B 5224

## EEC

ETUDES ET ENQUETES STATISTIQUES, published by the Statistical Office of the European Communities, P.O. Box 130, Luxembourg, 1969. 71 pp.
The tax receipts in the six EEC countries from 1958-1967.

Library International Bureau of
Fiscal Documentation no. B 5225

REGIMES FISCAUX APPLICABLES AUX FUSIONS DE SOCIETES, DANS LES ETATS MEMBRES DE LA C.E.E. ET PERSPECTIVES COMMUNAUTAIRES, by J.Y. Roelans. Published by Etabl. Emile Bruylant, Brussels, 1970. 124 pp.
Study on the taxation of mergers between national entities effective in the member countries of the Common Market and of mergers between entities of member countries of the Common Market.

Library International Bureau of
Fiscal Documentation no. B 5271

DIE STEUERHOHEIT IN DEN MITGLIEDSTAATEN DER GEMEINSCHAFT. Sammlung Studien, Reihe Wettbewerb Nr. 8, Brüssel, 1969. 76 pp.
Study on the tax sovereignty in the Common Market member countries Belgium, France, Germany, Italy, Luxembourg and the Netherlands.

Library International Bureau of
Fiscal Documentation no. B 5273

## FRANCE

RECUEIL DES DECISIONS DU CONSEIL D'ETAT STATUANT AU CONTENTIEUX DU TRIBUNAL DES CONFLICTS ET DES JUGEMENTS DES TRIBUNAUX ADMINISTRATIFS, published by Collection Lebon, Librairie Sirey, Paris, 1969. 324 pp.
Compilation of the decisions made by the Conseil d'Etat (Council of State) in administrative cases in 1969.

Library International Bureau of
Fiscal Documentation no. B 5228

## GERMANY

DIE BESTEUERUNG DER GESELLSCHAFTEN, DES GESELLSCHAFTERWECKSELS UND DER UMWANDLUNGEN, by H. Brönner. Published by Fachverlag Schäffer & Co. GmbH, Stuttgart, 1343 pp.
Revised 12th edition of the authoritative work dealing with all the tax aspects with regard to partnerships, corporations and other entity forms including merger and take-over aspects, with reference to case law.

Library International Bureau of
Fiscal Documentation no. B 5244

BESTEUERUNG DER UNTERNEHMENSZUSAMMENFASSUNGEN. KONZERNE, INTERESSENGEMEINSCHAFTEN, KARTELLE UND SYNDIKATE, by H. v.Wallis. Published by Verlag Neue Wirtschafts-Briefe GmbH, Herne-Berlin, fourth edition. 1970, 197 pp.
Fourth revised edition of a work dealing with the taxation of associated enterprises.

Library International Bureau of
Fiscal Documentation no. B 5254

CORPORATION TAX AND INCOME TAX UPON COMPANY DISTRIBUTIONS, by J.E. Talbot and G.S.A. Wheatcroft. Published by Sweet and Maxwell Limited, London. 1968. 401 pp.
Comprehensive textbook on the corporation tax stating the law and practice as of May 1, 1968. This main work will be updated by supplements.

Library International Bureau of
Fiscal Documentation no. B 5278

DIE EXTERNE RECHNUNGSLEGUNG DER AKTIENGESELLSCHAFTEN IN DER BUNDESREPUBLIK DEUTSCHLAND UND IN DEN VEREINIGTEN STAATEN VON NORDAMERIKA, by W. Lück. Published by Verlagsbuchhandlung des Instituts der Wirtschaftsprüfer GmbH, Postfach 10226, 4 Düsseldorf, 1970, 202 pp.
Comparative study on the accounting principles governing annual reports of companies in the Federal German Republic and the United States of America.

Library International Bureau of
Fiscal Documentation no. B 5237 A.

GRUNDERWERBSTEUERGESETZ, by E.P. Boruttau, O. Klein, H. Egly, H. Sigloch. Published by Verlag C.H. Beck, München, 1970. Revised edition containing text and explanation of the tax on transfer of real estate. A supplement updates the material as of January 1, 1970.

Library International Bureau of
Fiscal Documentation no. B 5226

DIE GRUNDSÄTZE ORDNUNGSMÄSSIGER BUCHFÜHRUNG. GRUNDSÄTZE FÜR BUCHUNG UND JAHRESABSCHLUSS, by U. Leffson. Published by Verlagsbuchhandlung des Instituts der Wirtschaftsprüfer GmbH, 4 Düsseldorf, Postfach 10226, 1970, 436 pp.
Second extended edition of a study dealing with the generally accepted accounting principles for business enterprises.

Library International Bureau of
Fiscal Documentation no. B 5233

HANDBUCH ZUR LOHNSTEUER 1970, Published by C.H. Beck'sche Verlagsbuchhandlung, Wilhelmstrasse 9, München, 1970, 609 pp.
Guide containing text of legislation regulations and administrative instructions and related provisions regarding wage taxation of employees the material of which is updated as of August 1, 1970.

Library International Bureau of
Fiscal Documentation no. B 5235

STEUERLICHE FOLGEN DER BETRIEBSVERÄUSSERUNG UND BETRIEBSAUFGABE, by O. Sauer. Published by Erich Schmidt Verlag, Herforderstrasse 10, Bielefeld, 208 pp.
Taxation arising from the transfer, liquidation, change into another entity form etc. of a commercial business.

Library International Bureau of
Fiscal Documentation no. B 5252

UNILATERALE MASSNAHMEN GEGEN DIE INTERNATIONALE DOPPELBESTEUERUNG BEI DEN STEUERN VOM ERTRAG, by K. Ebling. Published by Johannes Gutenberg-Universität, Mainz 1969, 178 pp.
Thesis devoted to the developments of unilateral relief measures against international double taxation on income with emphasis on German tax law. A list of literature is appended.

Library International Bureau of
Fiscal Documentation no. B 5278

## INTERNATIONAL

ASIAN TAXATION 1969, published by Japan Tax Association, Tokyo. 228 pp.
Annual publication of short survey of taxation in Cambodia, Ceylon, China (Taiwan), India, Indonesia, Japan, Korea, Malaysia, Pakistan, Philippines, Singapore and Thailand. The publication covers not only income taxes, individual and corporate, but also indirect taxes and the inheritance tax.

Library International Bureau of
Fiscal Documentation no. B 5259

CONVENTION ENTRE LES PAYS-BAS ET LA SUISSE EN VUE D'EVITER LES DOUBLES IMPOSITIONS DANS LE DOMAINE DES IMPOTS SUR LE REVENU ET SUR LA FORTUNE, by W. Dirksen and G. Muller. Published by Bureau International de Documentation Fiscale, Muiderpoort, Sarphatistraat 124, Amsterdam. 1970. 100 pp.
The tax treaty between the Netherlands and Switzerland of November 12, 1951, as amended, for the avoidance of double taxation on income and capital, considered by the co-authors from the national and convention point of view. The text of the convention is appended.

Library International Bureau of
Fiscal Documentation no. 5284

INCOME TAXES OUTSIDE THE UNITED KINGDOM, published by Her Majesty's Stationery Office, London 1969. Third edition.
Vol. 1: 344 pp. Aden to Burma
Vol. 2: 331 pp. Cameroons to Ellice Islands
Vol. 3: 366 pp. Falkland Islands to Hong Kong
Vol. 4: 342 pp. India to Jamaica
Vol. 5: 386 pp. Japan to New Zealand
Vol. 6: 404 pp. Nicobar Islands to St. Helena
Vol. 7: 421 pp. St. Lucia to Switzerland
Vol. 8: 360 pp. Tanzania to Zanzibar.
Third edition in eight volumes (see 3562) of an amalgamation of income tax laws in 145 countries and territories. This edition has been revised and rewritten where necessary, to bring the material up-to-date as of December 31, 1968. Details of administrative arrangements for the assessment and collection of the taxes have been omitted as being outside the scope of this publication. It is intended to issue an annual reprint of this work, which will bring the summaries up-to-date as of the end of every year. It should be understood that this work is not an authoritative

official exposition of the laws in force in those countries and territories covered.

Library International Bureau of
Fiscal Documentation no. B 5086

PROBLEMES FISCAUX DE LA COOPERATION ENTRE ENTREPRISES INDEPENDANTES DE PAYS DIFFERENTS, published by Etablissements Emile Bruylant, Bruxelles, 1970, 395 pp.
Documentation of the general report and the text by the national contributors and the debate followed held at the European Seminar on Fiscal Law 1969 on the subject fiscal problems of cooperation between independent enterprises of different countries. The countries dealt with are Belgium, France, Germany, Italy, Netherlands, Luxembourg, Switzerland, U.K. and U.S.A.

Library International Bureau of
Fiscal Documentation no. B 5272

SKATTEAVTALE MELLOM NORGE OG BELGIA, published by Det Kongelige Finans- of Tolldepartment Skattelovavdelingen. 116 pp.
Text in Norwegian, French and Dutch of the 1967 income and net worth tax treaty between Norway and Belgium, with official commentary in Norwegian.

Library International Bureau of
Fiscal Documentation no. B 5286

STEUERNORM UND STEUERWIRKLICHKEIT, Band I. STEUERTECHNIK UND STEUERPRAXIS IN FRANKREICH, GROSSBRITANNIEN, ITALIEN UND DEUTSCHLAND, by J. Daviter, J. Könke, O. Schwerin. Published by Westdeutscher Verlag, P.O. Box 1620, Opladen/Rhld. 1969. 314 pp.
Comparative study of methods of imposing taxes in theory and practice as well as the legislative intent of tax law and the taxpayer's attitude to pay tax in France, Germany, Italy and the United Kingdom in view of tax harmonization in order to neutralize competition within EEC member countries.

Library International Bureau of
Fiscal Documentation no. B 4544

DIE STEUERPOLITIK DER INTERNATIONALEN UNTERNEHMUNG, by H. Kormann. Published by Verlagsbuchhandlung des Instituts der Wirtschafsprüfer GmbH Düsseldorf, 1970, second edition, 213 pp.
Revised edition of a study which focusses on the tax policy of international operating business enterprises. A bibliography is appended.

Library International Bureau of
Fiscal Documentation no. B 5254

TREATY SERIES
Treaties and international agreements filed and recorded with the Secretariat of the United Nations. United Nations, New York 1967. Vol. 603, I Nos. 8719–8737.
This volume contains, inter alia, the Protocol amending the convention between the United Kingdom of Great Britain and Northern Ireland and the Swiss Confederation for the Avoidance of Double Taxation with respect to taxes on income. Signed at London, on 30 September 1954. Authentic text of the Protocol of June 14, 1968 amending the existing Convention of September 30, 1954 between the United Kingdom and Switzerland for the avoidance of double taxation of income.

Library International Bureau of
Fiscal Documentation no. B 5236A

Idem, Vol 614, I nos. 8860–8875.
This volume contains, inter alia, the Convention between the United Kingdom of Great Britain and Northern Ireland and the Federal Republic of Germany for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion. Signed at Bonn, on 26 November 1964.
Authentic text in the English and German languages of the convention and a French translation thereof.

Library International Bureau of
Fiscal Documentation no. B 5236C

Idem, Vol 606, I Nos. 8770–8791.
This volume contains, inter alia, the Agreement between the Government of India and the Government of Greece for the Avoidance of Double Taxation of Income. Signed at New Delhi, on February 11, 1965.
Authentic English text and French translation of the Convention of February 11, 1965 between India and Greece for the avoidance of double taxation of income.

Library International Bureau of
Fiscal Documentation no. B 5236B

Idem, Vol. 614, I. Nos 8860–8875
This volume contains, inter alia, the Protocol amending the Convention between Japan and New Zealand for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income. Signed in Wellington, on 30 January 1963.
Authentic text and translation into French of the Protocol between Japan and New Zealand sign-

ed on March 22, 1967 amending the existing Convention of January 30, 1963 for the avoidance of double taxation of income.

Library International Bureau of
Fiscal Documentation no. B 5236C

## ISRAEL

LAWS OF THE STATE OF ISRAEL, Vol. 22 (5728-1967/B), Published by Government Printer, Jerusalem. 315 pp.
This volume contains authorized translations from the Hebrew into English of all laws passed by the Knesset (parliament) between October 30, 1967 and August 14, 1968. Tax laws are published under no. 14 (Property and Compensation Fund (Temporary Provision) Law; 3 sections), no. 16 (Encouragement of Capital Investments (Amendment no. 5) Law; 3 sections), no. 19 (Property Tax and Compensation Fund (Amendment no. 4) Law; 23 sections) no. 20 (Income Tax Ordinance (Amendment no. 12) Law; 8 sections), no. 36 (Indirect Taxes (overpayments and underpayments) Law; 9 sections), no 45 (Income Tax Ordinance (Amendment no. 13) 48 sections). Prepared at the Ministry of Justice.

Library International Bureau of
Fiscal Documentation no. B 5253.

## ITALY

LE IMPOSTE COMUNALI DI CONSUMO, by E. Righi, published by Cedam-Casa Editrice Dott. Antonio Milani, Via Jappelli 5, 35100 Padova, 1970; Serie 1, Volume XXXIII, 627 pp.
Extensive and practical handbook on the local consumption tax with references to administrative rulings, case law and literature.

Library International Bureau of
Fiscal Documentation no. B 5256

## JAPAN

STRUCTURAL CHANGES IN JAPAN'S ECONOMIC DEVELOPMENT, by M. Shinohara, published by Kinokuniya Bookstore Co., Ltd., Tokyo, Japan, 1970, 445 pp.
Study which attempts, as far as possible, to delineate in quantitative terms the structural changes in Japan's economic growth during the pre and post World War II periods.

Library International Bureau of
Fiscal Documentation no. B 5275

## LATIN AMERICA

EXTERNAL FINANCING IN LATIN AMERICA, published by United Nations 1965, New York, 1965, 247 pp.
Study which aims to estimate capital flows between Latin America and the rest of the world from the end of the Second World War.

Library International Bureau of
Fiscal Documentation no. B 5266

THE LATIN AMERICAN ECONOMY IN 1968, published by United Nations, March, 1969, 30 pp.

Library International Bureau of
Fiscal Documentation no. B 5267

EL PROCESO DE INDUSTRIALIZACION EN AMERICA LATINA, published by Banco Interamericano de Desarrollo, Guatemala, 1969, 332 pp.
Comments and articles related to industrialization in Latin America, including an article on the role of non-banking financial insitutions in Brazil's industrial development.

Library International Bureau of
Fiscal Documentation no. B 5083

PROGRESO SOCIO-ECONOMICO EN AMERICA LATINA, Fondo Fiduciario de Progreso Social Noveno Informe Anual, 1969, published by Banco Interamericano de Desarrollo, Washington D. C. 20577, 1969.
Description of the socio-economic development in Latin-America in general and per country.

Library International Bureau of
Fiscal Documentation no. B 15000

## LIECHTENSTEIN

DAS PERSONEN- UND GESELLSCHAFTSRECHT UND DAS TREUUNTERNEHMEN, vom 10. April 1928 (Art. 932a), published by Verlag der Regierungskanzlei, Vaduz, 1963, 617 pp.
Text of the Civil law and Trust law.

Library International Bureau of
Fiscal Documentation no. B 5283

## LUXEMBOURG

LES SOCIETES HOLDING EN GRAND-DUCHE DE LUXEMBOURG, by B. Delvaux and E. Reiffers, published by Caisse d'Epargne de l'Etat; 1, Place de Metz, Luxembourg, 1969, 461 pp.
Fifth revised edition of the study dealing with

the legislation of Luxembourg governing holding companies including its taxation, the material of which states the law as of September 1, 1969. Text of the relevant laws, regulations and case law relating thereto are appended.

Library International Bureau of
Fiscal Documentation no. B 5239

## MEXICO

CODIGO FISCAL DE LA FEDERACION, COMENTADO Y ANOTADO, by F. Lerdo de Tejada, published by Centro de Investigación Tributaria Filial de la Confederación Patronal de la República Mexicana, Mexico, 1970. 359 pp.
This book contains the complete tax code of Mexico, annotated and comments by the author.

Library International Bureau of
Fiscal Documentation no. B 5247

## NETHERLANDS

BEKNOPTE BELASTINGGIDS, 10e druk, by M.J.H. Smeets and J.H. Meihuizen, published by Gouda/Quint, Bakkerstraat 17, Arnhem, 1970.
Tenth edition of a loose leaf service in three volumes containing a short explanation of taxes levied in the Netherlands. The texts of the laws are appended.

Library International Bureau of
Fiscal Documentation no. B 5257

FUSIES VAN ONDERNEMINGEN, FISCAAL- EN CIVIELRECHTELIJK BEZIEN, by M.V.M. van Leeuwe and W.C.L. van der Grinten, published by Uitgeverij AE.E. Kluwer, Deventer 1970.
Loose-leaf service on taxation aspects arising from mergers, takeovers and other forms of business concentrations with references to international aspects and case law.

Library International Bureau of
Fiscal Documentation no. B 5229

STAKEN, by Th. Lancée, published by N.V. Uitgeverij Fed. Deventer, First edition 1970, 43 pp. FED's Fiscale Brochures.
Booklet which treats the income tax aspects arising from the termination of a business (incl. free professions)

Library International Bureau of
Fiscal Documentation no. 4587

DE AANMERKELIJK-BELANGREGELING, by J. E.A.M. van Dijck. Published by Uitgeverij Fed, N.V. Deventer, 1st edition 1970. 92 pp.
Treatise on the individual taxpayer's participation in a company's capital by individual taxpayers.

Library International Bureau of
Fiscal Documentation: Fed's Fiscale Brochures

DE BESTENDIGE GEDRAGSLIJN, by M. de Vries. Published by Uitgeverij Fed, Deventer, 2nd edition 1970. 52 pp.
Second edition of a booklet treating the concept "consistent practice" with respect to the determination of profit for tax purposes with references to case law.

Library International Bureau of
Fiscal Documentation: Fed's Fiscale Brochures

## NEW ZEALAND

A GUIDE TO NEW ZEALAND INCOME TAX PRACTICE 1969–1970, by C.A. Staples. Published by Sweet & Maxwell (NZ) Ltd., Wellington, 1970. 30th Edition. 591 pp.
Guide to the Land and Income Tax 1964 incorporating changes made by the Land and Income Tax Amendment Act 1969 and the Law and Income Tax Amendment Act (No. 2) 1969.

Library International Bureau of
Fiscal Documentation no. B 5230

## OECD

TAXES ON THE ISSUE AND NEGOTIATION OF SECURITIES, by E.B. Nortcliffe. Published by Organisation for Economic Co-operation and Development, August 1970. 54 pp.
Study of the taxes on the issue and negotiation of securities in the OECD member countries. The same published in French is entitled: Impôts frappant l'émission et la négociation des valeurs mobilières.

Library International Bureau of
Fiscal Documentation no. B 5277

## SPAIN

IMPUESTO SOBRE LOS RENDIMIENTOS DEL TRABAJO PERSONAL, by J. Gutièrrez del Alamo. Published by Ediciones Deusto, Barraincúa 14, Bilbao, 1968. 145 pp.
Explanation to the tax on earned income e.g. income from employment, income from free professions and income of the active individual members of a partnership other than a partnership limited by shares.

Library International Bureau of
Fiscal Documentation no. B 5268

## SWITZERLAND

STEUERBELASTUNG IN DER SCHWEIZ, CHARGE FISCALE EN SUISSE, 1969. Statistische Quellenwerke der Schweiz / Heft 456. Published by Eidgenössisches Statistisches Amt, Bern, April 1970. 89 pp.
Statistical surveys of the taxes levied in the various cantons.

Library International Bureau of
Fiscal Documentation no. B 5285

## UNITED KINGDOM

CORPORATION TAX AND INCOME TAX UPON COMPANY DISTRIBUTIONS, by J.E. Talbot, G.S.A. Wheatcroft. 1970. Published by Sweet and Maxwell, London, and W. Green and Son, Edinburgh, 1970.
This second cumulative supplement brings the main work up-to-date as of August 1, 1970.

Library International Bureau of
Fiscal Documentation no. B 5279

WHEATCROFT ON CAPITAL GAINS TAXES, by G.S.A. Wheatcroft, A.E.W. Park and P.G. Whiteman. Published by Sweet & Maxwell, London and W. Green and Son, Edinburgh, 1967. 633 pp.
Explanation to the capital gains taxes as stated by law as of August 1, 1966. This main work on the subject will be supplemented to bring this work up-to-date.

Library International Bureau of
Fiscal Documentation no. B 5280

## U.S.A.

CITIZENS AND RESIDENT ALIENS EMPLOYED ABROAD, by R.P. Hoff. Published by Tax Management Inc. 1231 25th Street, N.W. Washington D.C. 20037, 1970. 155 pp.
Analysis of the United States tax law rules which apply to United States Citizens and resident aliens employed in foreign countries, whether by a US corporation, a foreign corporation or self-employed. Appended are the applicable statutes, regulations, instructions and other relevant issues. Later developments will be reported in a supplement.

Library International Bureau of
Fiscal Documentation no. B 5274

FEDERAL ESTATE AND GIFT TAXES – CODE AND REGULATIONS –. Published by Commerce Clearing House, Inc. Chicago, August 15, 1970. 295 pp.

Library International Bureau of
Fiscal Documentation no. B 5264

INCOME TAX REGULATIONS as of July 7, 1970, "Final and Proposed" under Internal Revenue Code vol. 1 CCH Current Law Handbook Edition.
Published by Commerce Clearing House, Inc. Chicago, 1970. Included in these two volumes of the Income Tax Regulations are all Temporary Regulations issued to date under the Tax Reform Act of 1969.

Library International Bureau of
Fiscal Documentation no. B 5258

# LOOSE-LEAF SERVICES

Releases from September 1 - September 30, 1970

## BELGIUM

BELASTING OVER DE TOEGEVOEGDE WAARDE, release 23
C.E.D. Samsom N.V., Brussels

DOORLOPENDE DOCUMENTATIE INZAKE B.T.W. / LE DOSSIER PERMANENT DE LA T.V.A., release 17
Editions Service, Brussels

FISCALE DOCUMENTATIE VANDEWINCKELE BOEK DER BAREMA'S
Tome X, release 17
Tome IV, release 15
Tome XIII, release 11
E.K. Vandewinckele, Brugge/C.E.D. Samsom N.V., Brussels

## CANADA

CANADA ESTATE TAX SERVICE, release 52
Richard de Boo, Toronto

CANADA TAX SERVICE-LETTER, releases 153, 154
Richard de Boo, Toronto

CANADA TAX SERVICE-RELEASES, release 306
Richard de Boo, Toronto

BUTTERWORTHS CURRENT TAXATION, releases 31-34
Butterworth & Co., Toronto

## DENMARK

SKATTEBESTEMMELSER
– SKATTEBESTEMMELSER, release 51
A.S. Skattekartoteket Informationskontor, Copenhagen

## E.E.C.

HANDBOEK VOOR DE EUROPESE GEMEENSCHAPPEN
– VERDRAGSTEKSTEN EN AANVERWANTE STUKKEN, release 78
N.V. Uitgeversmij. AE.E. Kluwer, Deventer

## FRANCE

DICTIONNAIRE FISCAL PERMANENT, releases 28-30
Editions Législatives et Administratives, Paris

DROITS DES AFFAIRES, releases 15, 16
Ed. Législatives et Administratives, Paris

JURIS CLASSEUR FISCAL: CHIFFRE D'AFFAIRES, release 6072
Editions Techniques, Paris

JURIS CLASSEUR FISCAL: IMPOTS DIRECTS, release 161
Editions Techniques, Paris

MEMENTO LAMY - FISCAL, releases K, L
Services Lamy, Paris.

## GERMANY

ABC FÜHRER LOHNSTEUER, release 73
Fachverlag für Wirtschafts- und Steuerrecht, Schäffer & Co. Stuttgart

HANDBUCH DER EINFUHRNEBENABGABEN, release 6
V.d. Linnepe Verlagsgesellschaft KG, 58 Hagen

HANDBUCH DER MEHRWERTSTEUER, release 5
Richard Hermesverlag AG, Hamburg

RWP. RECHTS- UND WIRTSCHAFTS PRAXIS STEUERRECHT, releases 113, 114
Forkel Verlag, Stuttgart-Degerloch

STEUERN UND ZÖLLE IM GEMEINSAMEN MARKT, release 19
Nomos Verlagsgesellschaft GmbH, Baden-Baden

UMSATZSTEUERGESETZ (Mehrwertsteuer)
Kommentar von Dr. G. Rau, Dr. E. Dürrwachter, release 14
Verlag Dr. Otto Schmidt, Köln-Marienburg

## NETHERLANDS

BEKNOPTE BELASTINGGIDS, releases 62-69
L.J. Veen, Amsterdam

BELASTINGWETGEVINGSERIE,
– LOONBELASTING, release 10
– ALGEMENE WET INZAKE RIJKSBELASTINGEN, release 2
J. Noorduyn en Zn. N.V. Gorinchem

BELASTINGWETTEN, release 28
D. Brouwer en Zn., Arnhem

B.T.W. EN BEDRIJF, release 33
N. Samsom N.V., Alphen a.d. Rijn

FED'S LOSBLADIGE FISCALE WETTEN, releases 1269–1273
N.V. Uitgeverij Fed, Amsterdam

FISCALE WETTEN, release 36
N.V. Uitgeverij Fed., Amsterdam

DE GEMEENTELIJKE BELASTINGEN – A.M. Dijk, G. Jansen, J.C. Schroot enz., release 98
Vuga-Boekenrij, Arnhem

GUIDE TO THE ESTABLISHING OF INDUSTRIAL OPERATIONS IN THE NETHERLANDS, release 4
Staatsuitgeverij, Den Haag

HANDBOEK VOOR IN- EN UITVOER
– BELASTINGHEFFING BIJ INVOER, release 115
– TARIEF VAN INVOERRECHTEN, release 142
N.V. Uitgeversmij. AE.E. Kluwer, Deventer

KLUWER'S TARIEVENBOEK, releases 85-88
N.V. Uitgeversmij. AE.E. Kluwer, Deventer

NEDERLANDSE WETBOEKEN, releases 107, 108
N.V. Uitgeversmij. AE.E. Kluwer, Deventer

STAATS- EN ADMINISTRATIEFRECHTELIJKE WETTEN, release 103
Uitgeversmij. AE.E. Kluwer N.V., Deventer

VADEMECUM VOOR IN- EN UITVOER, releases 427, 428
N.V. Uitgeversmij. AE.E. Kluwer, Deventer
N. Samsom N.V., Alphen a.d. Rijn

DE VAKSTUDIE: FISCALE ENCYCLOPEDIE
- WET OP DE VERMOGENSBELASTING 1964, releases 15, 16
N.V. Uitgeversmij AE.E. Kluwer, Deventer

## SWITZERLAND

DIE PRAXIS DER BUNDESSTEUERN von K. LOCHER, release 16
Verlag für Recht und Gesellschaft AG., Basel

## U.S.A.

FEDERAL TAX GUIDE REPORTS, releases 48-51
Commerce Clearing House Inc., Chicago

FEDERAL TAXES REPORT BULLETIN, releases 32-37
Prentice Hall, Inc., Englewood Cliffs

FEDERAL TAXES REPORT BULLETIN . TREATIES, release 2
Prentice Hall, Inc., Englewood Cliffs

STATE TAX GUIDE, releases 462, 463
Commerce Clearing House, Inc., Chicago

TAX IDEAS . REPORT BULLETIN, releases 14, 15
Prentice Hall Inc., Englewood Cliffs

TAX TREATIES, release 223
Commerce Clearing House Inc., Chicago

# PUBLIC FINANCE/FINANCES PUBLIQUES

INTERNATIONAL QUARTERLY JOURNAL
founded by J.A. Monod de Froideville

REVUE TRIMESTRIELLE INTERNATIONALE
fondée par J.A. Monod de Froideville

PUBLISHER/EDITEUR
Foundation Journal for Public Finance/Fondation Revue de Finances Publiques
(Stichting Tijdschrift voor Openbare Financiën)



Vol. XXV 1970 No. 3



In No. 2 of every volume, PUBLIC FINANCE/FINANCES PUBLIQUES publishes the papers and proceedings of the Congress of the International Institute of Public Finance held the preceding year. The articles published in Nos. 1, 3, and 4 in English, French or German are followed by summaries in the two other languages. Please address all correspondence to Dr. Dieter Biehl, Universität des Saarlandes, D 66 Saarbrücken 11. Annual subscription rate (4 numbers): Dfl. 45.—, US $ 12.50, £ 5/4/—. Orders may be sent to your local bookseller or directly to the Administration of PUBLIC FINANCE/FINANCES PUBLIQUES, Postbus 2853, The Hague, Netherlands.

# CUMULATIVE INDEX 1970

Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10

II. DEVELOPMENTS IN INTERNATIONAL TAX LAW

## III. DOCUMENTS



## IV. BIBLIOGRAPHY



## V. SUPPLEMENTS

Supplement to no. 1 (A 1970) Convention entre la République Fédérale d'Allemagne et l'Empire de l'Iran en vue d'éviter la double imposition en matière d'impôts sur le revenu et sur la fortune

Supplement to no. 3 (B 1970) Convention between the Government of Ceylon and the Government of Japan for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income

Supplement to no. 5 (C 1970) Convention between the Government of Japan and the Government of the Kingdom of the Netherlands for the avoidance of double taxation with respect to taxes on income.

Supplement to no. 10 (D 1970) Convention between Japan and the United Arab Republic for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income.

# CONTENTS

of the December 1970 issue

*Articles*



I.F.A.



BIBLIOGRAPHY

ANNOUNCEMENT OF PUBLICATION

# AFRICAN TAX SYSTEMS

• loose-leaf • 500 quarto pages • in English • up-dated quarterly
A project of the International Bureau of Fiscal Documentation, Amsterdam.
By Robert C. Hammond, B.A. and Dr. Marc. J. Van Den Abeelen
Prepared at the request of The United Nations Economic Commission for Africa.

*After five years of exhaustive research, the International Bureau of Fiscal Documentation is proud to make a major contribution to the better understanding of the tax systems of the developing African countries by publishing AFRICAN TAX SYSTEMS which presents, for the first time, a detailed comparative survey, following common outlines, of the direct and indirect taxation in these countries of both corporations and individuals.*

*Contents*



The Country Surveys and Documentation Sections are organised following common outlines

Common Outline for the English-speaking countries (and for Ethiopia and Somalia)

I. DIRECT TAXES
- Individuals
  - Income Tax
  - Other Income Taxes/ Personal Taxes
  - Death Duties
- Companies
  - Income Tax/Company Tax
  - Other Direct Taxes

II. INDIRECT TAXES
- Customs Duties
- Other Taxes Levied at Importation and Exportation
- Excise Duties
- Stamp Duties
- Consumption/Sales Taxes
- Other Indirect Taxes

Common Outline for the French-speaking countries

I. DIRECT TAXES
- Individuals
  - Schedular Income Taxes
  - General Income Taxes
  - Other Direct Taxes/Duties
- Companies
  - Income Taxes
  - Other Direct Taxes/Duties
  - Tax Incentives

II. INDIRECT TAXES
- Turnover, etc. Taxes
- Registration and Stamp Duties
- Other Indirect Taxes/Duties

**Normal price:** **US$ 75 / Dfl. 270,** with postage including up-dating supplements for one calendar year
**Renewal price:** **US$ 35 / Dfl. 126,** (supplement subscription only)

*For residents of The Netherlands: prices exclusive BTW (TVA)*

# ★ ★ ★ ★ ARTICLES ★ ★ ★ ★

RICHARD L. GOLDMAN★:

## FOREIGN INVESTMENT AND TAXES IN THE UNITED STATES

### INTRODUCTION

This article attempts to give a picture of tax considerations in the United States which affect the foreign investor.

There are three tax needs, broadly speaking, which have to be taken into account in planning investment in the United States:

1. To avoid death taxes.
2. To avoid, or perhaps more realistically to reduce to the minimum, tax on ordinary income during the period of investment.
3. To avoid capital gain tax upon disinvestment.

However, it is important to keep in mind also the common desire to avoid legal proceedings—especially in connection with estate administration when the investor has died and his investment must pass to someone else—and the desire for privacy.

"*Foreigners.*" In this article, the term "foreigners" or "foreign investors" is used to refer to individuals who are, in the words of the Federal tax laws, "nonresident aliens"—that is, nonresident noncitizens of the United States[1]—and also, where appropriate in the context, to foreign corporations.

By "foreign corporations" is meant corporations and also other forms of organization outside the United States but analogous to corporations formed under laws prevailing therein.

### ESTATE TAXES

Investing in the United States through a foreign corporation, rather than directly as an individual, should be considered for estate tax reasons alone.

The Federal estate tax law involves filing tax returns in the United States and suffering the procedures of tax administration. The tax itself may or may not be a burden, depending on the amount of tax and whether it can be credited against tax in the decedent's own country. The first $30,000 is exempt—so that the small holder is saved from tax unless his United States property increases in value beyond $30,000 during his lifetime—and the balance is taxable as follows:

| *If the taxable estate is* | *Tax* |
|---|---|
| Not over $ 100,000: | 5% of entire taxable estate |
| $ 100,000 but not over $ 500,000: | $ 5,000 + 10% of excess over $ 100,000 |
| $ 500,000 but not over $1,000,000: | $ 45,000 + 15% of excess over $ 500,000 |
| $1,000,000 but not over $2,000,000: | $120,000 + 20% of excess over $1,000,000 |
| $2,000,000 or more: | $320,000 + 25% of excess over $2,000,000 |

★ The author practices law with the firm of Corbin, Gordon & Goldman in New York City. He was formerly with the Office of Chief Counsel of the U.S. Internal Revenue Service in Washington, D.C.

1. Resident aliens are not dealt with herein, because, by reason of their residence in the United States, they are subject to the full reach of the country's income, estate and gift tax laws. See, for example, Internal Revenue Code, Sec. 1(d).

References to Sections are to sections of the Code unless stated otherwise.

The resultant tax has been called comparable to the tax imposed on Americans' estates eligible for the marital deduction (allowable on amounts passing to a surviving spouse, up to one-half of the gross estate after certain adjustments). But this may not be acceptable to a foreigner if he can avoid the tax. He may take the view that on $2,000,000 of investment, he would be mortgaging $320,000 or, in effect, be giving up his net income before even earning it to the extent of $320,000 plus 25% of unrealized appreciation and of actual income if re-invested in the United States (for example, where gains on shares of a domestic mutual fund are applied automatically to buy more shares which also are exposed to eventual estate tax).

Also, State death taxes may apply. New York State taxes real and tangible personal property within the State though not securities or other intangibles.[2]

Moreover, share certificates or other property physically in the United States at the owner's death would require a court proceeding to be transferred to the beneficiary. It is true, however, that property could be given to a bank or other person as trustee under directions to distribute the property after the investor's death to his beneficiary; and the distribution could be made without a court proceeding against a receipt and relcase of the trustee from possible liability.

In one instance, a foreign corporation permitted foreign employees to use salary to purchase shares of the corporation. The shares were deposited with a bank in the United States as custodian for the employee-owners. Because the shares were in the United States at death, a court proceeding was necessary there for transfer of the shares. Worse, the foreign corporation was taken over by a domestic corporation so that the foreign employees gave up their shares of the foreign corporation for domestic shares, deemed situated in the United States and therefore taxable at the time of death.[3] A foreign holding company could have been set up for the foreign employees to avoid both problems.

Estate tax treaties, which may restrict taxability, also provide for the United States to exchange tax information with the investor's own country. Most treaties appear to prevent United States estate taxation of bonds or other debt claims of foreign decedents.

Also, the estate tax return may bring to light any gifts made by the investor during life which may have been subject to Federal gift tax,[4] and income subject to income tax in the United States. It is important to note that although the law limits the time within which the tax authorities must assess a tax deficiency, if at all, the limitation does not apply if a return has not been filed.

The estate tax applies only to property "situated within the United States," which includes:

(1) Shares of a domestic corporation, but not of a foreign corporation.

(2) Real estate or other tangible property situated within the United States.

(3) Bonds or other evidences of in-

---

2. New York Tax Law, Sec. 960 (a).

3. Of course, estates still were saved from tax by the $30,000 exemption—provided their shares and other property in the United States did not grow in value to more than $30,000 during the rest of the owner's lifetime.

4. Gift tax applies to completed gifts made during life, in the case of foreign donors limited to property "situated within the United States", Sec. 2511(a), which includes real estate but not securities or other "intangible property," Sec. 2501(a) (2). Gifts to each donee (except of a "future interest" in property) are excluded as to the first $3,000 worth each year (so that if there are, for example, five donees then $15,000 could be given to them each year).

debtedness of a "United States person" (including, for example, a Delaware international finance subsidiary) unless any interest, in the case of a domestic corporation as debtor, would be considered as derived from non-United States sources for income tax purposes because less than 20% of the corporation's gross income came from such sources (which would cover most international finance subsidiaries).

(4) Deposits with a United States branch of a foreign corporation conducting a commercial banking business within the United States (but not deposits with a foreign branch of a domestic commercial banking corporation or partnership).

Not included are:

(1) Deposits in the United States with banks, savings and loan associations, or amounts left with an insurance company at interest in connection with a policy (not on securities issued by the company), all unless effectively connected with trade or business conducted within the United States, and at least through 1975.

(2) Debt certificates of a foreign corporation or other non-United States debtor (including an international finance company incorporated outside the United States, even if it lends to American enterprises). This exclusion does not extend to a debt claim against an American individual though he may reside abroad.

(3) Proceeds of life insurance on the foreign decedent's life, even if paid to a beneficiary in the United States.

(4) Works of art loaned for exhibition to a public gallery or museum in the United States not operated for profit. Mention of art works is perhaps permissible here since there is increasing investment in art works.

In principle, property is no less taxable because held by a foreign bank as nominee. Property transferred during life can be subject to estate tax if the effect is to keep benefits or control until death.[5] Such property need only be situated within the United States at the time of gift even if not there at the time of death. For example, jewelry, in the United States when added to the trust fund, would be subject to estate tax at the grantor's death even if removed from the United States before then.[6]

Deductions are pro-rated to the United States portion of the estate. Therefore, property all over the world has to be reported if deductions are to be obtained. One deduction is for amounts left to an American charity, even if it might use the funds in the decedent's own country. This can open the door to interesting estate planning.

Since foreign shares are not subject to Federal estate tax,[7] and if not held in the United States (or if held there in trust) can avoid a court-supervised estate administration, it often is better to invest in the United States through a foreign corporation—in particular, one formed in a tax-haven country if that will help to avoid death taxes in the investor's own country. For example, non-Hong Kong shares can be used to avoid Hong Kong estate duty. Court proceedings in the investor's country, and the latter's laws on forced heirship, may be avoidable by creating a trust in a tax-haven country—particularly one with English-type trust laws such as Bermuda or The Bahamas—for the eventual beneficiaries, subject to a power in the investor to take

---

5. And the grantor may be taxed on the income. Secs. 871-878 and Regs. Sec. 1.1441-3(g).
6. Credit is allowed for any gift tax paid. The payment if from U.S. assets also depletes the estate subject to tax, of course.
7. Even if the foreign corporation's assets are entirely in the United States.

back the securities during life.[8]

Holding property jointly is another way of causing transfer at death. Title is in the investor and some other person, with a right to complete ownership in the survivor. However, this does not avoid estate tax in the United States. Also, the arrangement does not offer the flexibility of a trust, and it leads the individual to believe that all possible situations have been provided for, when in fact the contrary is true. (For example, his co-owner may die before him.) The American bar has increasingly warned against this form of ownership. Also, a German decedent's jointly-held property may not only be subject to German death taxes but be "corrected" under German law by distributions made out of their assets because joint ownership is not familiar to German law.

The foreign corporation can be a holding or active-business company owned by the investor alone, or can be a medium for collective investment by many investors as, for example, an offshore fund. In the former case, the investor must treat the corporation as really being in existence and treat the investments as owned by it, not by himself. In every case, the organization must have the characteristics of corporations formed in the United States, to be regarded as a corporation for Federal tax purposes. The basic characteristics of corporations in the United States include: a purpose or at least a power on the part of the body to enable investors to associate (though there need not be more than one shareholder in the case of a company) for a profit-making purpose through a central management, continuity of life of the entity beyond the investor's death, transferability of shares, and limited liability of the investors. Foreign organizations should be planned carefully if United States corporate tax treatment is important—for example, in forming a German *Kommandit-gesellschaft* and the Latin American *Sociedad de Responsabilidad Limitada*.[9]

## INCOME TAXATION, IN BRIEF

Basically, income is taxable to foreigners as follows:

1. Passive or investment income from United States sources is taxed at 30% (or lower treaty rate) on the gross amount unless it is "effectively connected with the conduct of a trade or business within the United States."
2. Capital gain from United States sources is treated specially. Generally, it is exempt unless the foreigner (if not a foreign corporation) is physically present in the Unied States 183 days of the year, in which case it is taxed at 30% (unless saved by a treaty) after deducting capital losses from United States sources.

But this does not apply to capital gain if it is "effectively connected."

3. Like other income, if passive or investment income or capital gain is "effectively connected with the conduct of a trade or business within the United States," it is taxed on the net income after deductions and certain foreign tax credits,[10] at the graduated rates applicable to American taxpayers (up to 70% for individuals, and in the case of corporations 22% of the first $25,000 and 48% of any

8. But retaining such control, with resultant taxability on income as if the owner of the property in the trust fund, may be unattractive unless only tax-free income is expected.

9. See Margolin, "United States Tax Identity of Foreign Limited Liability 'Companies,'" 44 Taxes (Sept. 1966) 604.

10. Secs. 871; 881, 882; 901, 906. State income tax, which is much less significant than Federal tax, would be among the deductions.

excess).[11] This can be true of United States source income, and of three limited kinds of income derived from foreign sources.

Withholding tax at the source is, generally, not required in the case of income which is effectively connected with conduct of a trade or business in the United States. This is the rule also for "effectively connected" income for services performed in the United States by a foreign corporation or partnership but not by an individual (who, however, also can avoid withholding at source if he is subject to the graduated withholding applicable to American employees).[12]

Instead, returns are to be filed by the foreigner, and taxes paid, virtually as if he were an American taxpayer.

If the foreigner engages in trade or business within the United States, then all his income derived from United States sources *except passive or investment income, and capital gains,* is automatically taxable as being effectively connected with conduct of that trade or business. For example, a foreign manufacturing company may market electronics equipment in the United States, through its own sales office or through an independent agent there. As a result of its being thus engaged in business there, the company's income from an entirely different line of products (wine) if sold in the United States would be taxable as "effectively connected"—even though sold from an office outside the United States.

A foreigner would be considered as being engaged in business within the United States if either—

(1) a member of a partnership, or

(2) a beneficiary of a trust, which is so engaged.[13]

Special rules tend to keep United States-source passive or investment income, and capital gain, from being effectively connected with conduct of the trade or business within the United States, if any. If they fail to do so, such income, and gain, would be subject to the usual graduated rates, and could be reduced by deductions. This is discussed in more detail hereinafter.

In addition, three kinds of income from foreign sources are taxable if "effectively connected" with conduct of a trade or business within the United States—which means that the foreign investor must be doing business there in the first instance:[14]

1. Rents or royalties for use of patents or other intangible property outside the United States, and gain from sale thereof, if derived in the "active conduct" of such a business in the United States. Losses from such sales would be allowed.

2. Dividends, interest, and gain (with allowance of losses) from securities derived in the active conduct of a banking, finance or similar business in the United States or if received by a corporation having as its "principal business" the trading of stock or securities for its own account. Merely "sporadic" sales by what is "primarily a holding company," "holding significant percentages" of other corporations' issues of securities would be taken as showing that securities trading was not the principal business.[15]

---

11. Ignoring the 5% temporary surcharge, which expired June 30, 1970.

12. Regulations, Sec. 1.1441-4(a).

13. Sec. 875.

14. Sec. 864(c) (4).

15. Proposed Regulations, Sec. 1.864-5(b) (2) (ii). But the corporation is not taxable (because such trading would not amount to a business within the United States) if, as in the case of an offshore fund, its 'principal office' is in another country, or if it is a "personal holding company" or would have been such if not owned by foreign investors, Sec. 864(b) (2) (A). The requirements for a "personal holding company" are

3. Income and gain (loss being allowed) from sale abroad of inventory property except real property, through an office or fixed place of business within the United States unless a branch abroad participated materially in the sale (or if it did not participate materially, then with a part of income earned by the branch not being subject to United States tax) and the sale was for a foreign destination.[16]

Taxability of sales of export inventory could be largely avoided, or more exactly deferred, if the sales are made by a Domestic International Sales Corporation ("DISC"), under the pending DISC proposal. The proposal has been reported to the House of Representatives where opposition is unlikely, and now is to be considered by the Senate Committee on Finance where there have been signs of approval. The U.S. Treasury is committed to pressing the concept forward.

### PASSIVE OR INVESTMENT INCOME

Unless effectively connected with a trade or business in the United States, ordinary income of a passive or investment type is subject to withholding of tax at the source, at a fixed rate instead of graduated rates, on the gross instead of net income after deductions (and with a special exemption for capital gains, discussed in detail below). The intention is to provide a simple set of rules, making it easy for the foreigner to comply and for the officials to administer.

Withholding at the source makes it largely unnecessary for returns to be filed.

*Rate of tax.* The withholding rate of 30% unless reduced by treaty is likely to be more than would be paid by Americans at graduated rates on net income, or than the 22% rate imposed on the first $25,000 of net income of a domestic corporation. Sometimes, the 30% rate will be less costly than the 48% rate applicable to a domestic corporation's net income in excess of $25,000. But even this would not be true of a high-expense investment which, therefore, tends to be undesirable. For example, a foreign corporation paying 10% interest for money invested in the United States at 14% would find itself losing money after tax (14% gross less 10% actual expense and 4.2% effective tax).

Thus, the 30% rate tends to turn foreign investment money into capital gain channels. In fact, however, interest is exempt from United States tax under some 12 treaties (including with the Netherlands) and taxed at a reduced rate under other treaties (5% as to Switzerland, 15% as to Belgium, France, Canada and Japan). In the past, the Treasury has resisted reducing the rates as to less-developed countries in the belief that this would limit the outflow of investment money from such countries; critics have replied that the money flows out anyway, so that the 30% rate merely turns the money away from the United States to some other

---

that ownership of stock worth most of the total equity must be in five or fewer individuals (directly or indirectly) and at least 60% of the company gross income with certain adjustments must consist of qualified passive or investment income. Sec. 542(a).

16. The taxable "reach" in the case of foreign-source income is restricted by several rules: (1) that there be an office or other fixed place of business within the United States to which the sale is "attributable"; (2) that no independent agent acting in the ordinary course of his business—nor any agent—be considered as such a place of business unless it has authority to negotiate and conclude contracts and regularly does so or regularly fills orders from an inventory maintained in the United States; (3) that the particular sale not be "attributable" to the United States place of business unless it is a "material factor" in producing the income and "regularly" carries on the activity. Sec. 864 (c) (4), (5).

country, probably a developed one. Also, the Treasury has favored retaining the 30% rate in order to have some bargaining power when negotiating further treaties and treaty changes.

Similarly, dividend tax has been widely reduced by treaty, to 15% under some 19 treaties (including with the Netherlands). In some cases, the 15% rate is made inapplicable if substantial tax is not collected by the other country (for example, Luxembourg and the Netherlands Antilles). Tax is reduced to 5% in some treaties (including with the Netherlands, in spite of the *Deelneming* privilege of tax-free receipt) in the case of dividends paid to a parent company.

*Types of investment income.* The 30% or lower treaty rate applies to the following:

(A) Interest, dividends, rents and royalties in addition to consulting fees or other compensation at least when paid to independent contractors (and some employees) for services rendered in the United States, premiums, annuities, and "other fixed or determinable annual or other periodical gains, profits, and income."

(B) Employee retirement-plan payments including lump-sum payments though normally regarded in whole or part as capital gains; and also timber, coal and iron ore royalties obtaining capital gain treatment.

(C) Certain original-issue discount (when regarded as noncapital) in connection with debt securities.

(D) Gains from sale or exchange of an interest in a patent, copyright, trademark, franchise or other like (intangible) property to the extent based on either productivity, use or disposition—or the whole of such gains if most of the year's amount is so based.

But the foregoing applies only, as already stated, to income from United States sources and not effectively connected with conduct of a trade or business within the United States.[17]

Interest includes the portion of sale proceeds paid in instalments which is considered as being interest (at 5% compounded semiannually) if at least 4% simple interest is not provided.[18]

Interest on State (or political subdivision) bonds is not subject to withholding because tax-exempt to all, including Americans as well as foreigners.

Dividends subject to withholding of tax include corporate distributions even if they actually are a return of capital and then capital gain for tax purposes, there being no current or accumulated "earnings or profits" in the tax accounts of the paying corporation.[19] A refund can be claimed, but that involves delay and trouble. This is one reason why offshore estate funds formed subsidiaries in the Netherlands Antilles to operate the real estate in the United States: distributions from the subsidiary company are not really dividends for tax purposes because of the offsetting deductions for depreciation, and they are saved from withholding tax by the U.S.-Netherlands treaty as applicable to the Netherlands Antilles.[20]

---

17. Secs. 871, 881, 1441, 1442.

18. Sec. 483. Accrued interest on bonds, when paid by a buyer, need not result in tax being withheld by him. But tax may still be owing. Regulations, Sec. 1.1441-4(h).

19. Regulations, Sec. 1.1441-3(b); and see also Regs. Sec. 1.4141-3(c) (3).

20. Ordinarily, a foreign corporation must withhold tax on dividends paid, to the extent paid from United States sources. Regulations, Sec. 1.1441-3(b) (2). The dividends would not be regarded as from United States sources unless at least 50% of the foreign corporation's gross income has been effectively connected with conduct of a United States trade or business, Sec. 861(a) (2) (B) (and then a *pro rata* part of the

*Source of income*. Passive or investment income is saved from withholding tax if it is not derived from United States sources,[21] with limited exceptions discussed below.

Source is a matter of the activity generating the money (further modified for reasons of tax policy).

Thus, rent for the use of property in the United States is income from a United States source,[22] even if paid by a foreigner. Compensation for services has its source where the services are performed, generally without regard to the payor's country or the place of payment.[23] Interest received from an American individual is from a United States source even if he is in another country.[24] Generally, but not universally, the same is true of interest and dividends from domestic corporations and the opposite is true as to foreign corporations. Here, the question of tax policy plays a role. It can be argued that amounts from a corporation derive from the corporations's own source of income, and perhaps a corporation should not be used to change the tax result by changing the source. Thus:[25]

1. A dividend from a foreign corporation is taxable as being from a United States source if 50% or more of its gross income has been effectively connected with conduct of a trade or business within the United States (or a pro rata part is so taxable if only part of the corporation's gross income was effectively connected). *This means that a dividend from a foreign investment company or other foreign corporation not in business in the United States can be received free of United States tax by foreign shareholders, even if the corporation had investment income from the United States.*[26]
2. Interest from a foreign corporation is so taxable if 50% or more of the corporation's gross income was effectively connected (subject to pro-ration).
3. A dividend from a domestic corporation is taxable as from a United States source if at least 20% of its gross income was from such sources (with no pro-ration).
4. Interest from a domestic corporation (or a resident foreigner) is so taxable if at least 20% of its gross income was from such sources (with no pro-ration).
5. At least through 1975, interest on deposits in United States banks, savings and loan associations, and insurance companies under agreements to pay interest in connection with insurance policies (but not on their bonds or similar debts) is taxable, as being from United States sources, only if effectively connected with the recipient's United States business, if any. The same is true of interest from a foreign commercial bank's branch in the United States (instead of rule (2)).

---

dividend would be taxable). But of course the subsidiary's income would be effectively connected with conduct of a business of actively managing rental properties in the United States. Therefore, only the treaty saves the dividend from withholding tax.

21. Secs. 871, 881.
22. Sec. 861(a)(4).
23. Thus, a British subject in the United Kingdom might receive compensation for services rendered in the United States and in Canada. The compensation would be from United States and Canadian sources, respectively, even if paid entirely by an American or entirely by a Canadian. Limited exception is made for short-term employment in the United States by a foreign employer.
24. Sec. 861(a)(1).
25. Sec. 861.
26. And, it follows, the corporation is not subject to penalty tax on surplus accumulated to save the foreign shareholders from dividend tax. Gross income is examined for the three-year period prior to the dividend or interest year (or the period of the payor's existence if less than three years).

6. Interest from a foreign branch of a domestic corporation or partnership, if the branch is engaged in commercial banking, is not taxable; regardless of the source of branch income, the interest is regarded as not from United States sources.

## CAPITAL GAINS

A foreign investor's capital gain is treated specially, though subject to a 30% or lower treaty rate when applicable.[26]

On liquidation of his investment, even if short-term (not longer than six months), the gain normally is not taxable to the foreign investor unless it is effectively connected with the conduct of a trade or business within the United States.[27] This is true also of foreign trusts.

Exceptionally, the gain if from United States sources is taxable if the foreign investor is an individual physically present in the United States at least 183 days during the year, whether or not at the time of sale.[28]

Being physically present does not require being a resident of the United States, which implies an intention to remain there indefinitely.

The rule on physical presence does not apply to foreign corporations. These, therefore, can be useful as holding companies for diplomats or other foreign individuals who expect to be present in the United States most of the time. The corporation would not be disregarded so as to treat the shareholder as the person realizing the gain, if he honors the existence of the corporation consistently so that it cannot be dismissed as a mere sham or nominee with the shareholder as real owner of the property.

Diplomatic immunity, though it can save the individual from arrest or other enforcement, does not mean that capital gain tax is considered inapplicable to foreign diplomats in spite of their physical presence for most of the year. Loss of post in the United States has resulted and even refusal for reassignment in Washington as being *persona non grata*.

A personal holding company would be unnecessary, of course, if the individual owned his investment in the United States through an offshore fund. The fund's gains would not be attributed to him in spite of his *pro rata* indirect interest in them.[29]

A few treaties honor the physical presence test of taxing capital gains to foreign investors,[30] and a number preserve the right of the United States to tax gains from sale of real property having a situs there.[31]

But otherwise the treaties commonly exempt gains if not effectively connected with a permanent establishment in the United

26. And after deduction of capital losses.

27. Such income, being from sale of property, is not subject to withholding tax though derived from United States sources. Regulations, Sec. 1.1441-2(a) (3). There is no withholding tax on income from foreign sources. Regs. Sec. 1.1441-3(a).

28. Sec. 871(a) (2). The calendar year is used unless, as is common, the investor has not established a different taxable year for some prior period. *Ibid.*

29. Fund dividends, if any, would not be taxable unless most of the fund's United States source income was effectively connected with conduct of a United States business, which should not be the case.

Of course, offshore funds commonly pay no dividends, so the investor avoids tax in his own country. Exceptionally, a Netherlands investor would be regarded by his country as receiving a 3.6% yield on current share value unless he could show lesser income on the part of the fund.

30. Belgium, Finland (as to presence if "exceeding" 183 days), Germany and the Netherlands (both of them only as to assets held 6 months or less), and the United Kingdom. (No attempt at a complete study of treaty countries is intended in this article.)

31. Belgium, Finland, France, Germany, Honduras, Italy, Japan, Luxembourg, Netherlands, Norway, Philippines, Sweden.

States[32] or, in some cases, only if there is no permanent establishment there at all.[33] However, where the gains are not effectively connected with conduct of trade or business in the United States, it is presumed for this purpose that there is no permanent establishment in the United States so that the treaty exemption can be enjoyed.[34]

If the gain is effectively connected, then it is taxable at the usual rates applicable to Americans, and on the basis of net income. The usual rate of tax on a long-term capital gain from sale or exchange of "capital assets" held for more than six months—is 30% in the case of a corporation. The individual rate is up to 70% on one-half the gain—effectively, up to 35%—but not more than 25% of the first $50,000 of gain.[35] In either case, this is the result unless the ordinary rate is less costly (for example, because of offsetting operating losses).

In addition, the new 10% "minimum tax" (enacted in 1969) applies to so-called tax preference items—on only one-half of net gains if long-term—except for an allowance equal to $30,000 plus taxes paid. Thus, on $100,000 of gains there should be no minimum tax: $30,000 exempt, $50,000 of gain disregarded, and capital gain income tax of $21,030 would total $101,030 and more than offset the gain.

In any case, the 10% tax is regarded officially as being inapplicable to foreigners' gains if not effectively connected with a United States business.[36]

## "EFFECTIVELY CONNECTED" INVESTMENT INCOME

Withholding tax would apply to gross investment income (and exemption would apply in appropriate cases to capital gains) even if derived from United States sources, unless effectively connected with conduct of a trade or business within the United States by the foreign investor.

Merely being derived from United States sources is not enough for investment income to be classed automatically as effectively connected with that trade or business, even though it would be enough for non-investment income. Investment income normally is intended to be treated separately even if the investor is in business in the United States; thus, a foreign corporation generally is barred from taking the 85% intercorporate dividends-received deduction.

In other words, the so-called "force of attraction" doctrine has been greatly limited since the Foreign Investors Tax Act of 1966. This is done in part by limiting the concept of "trade or business within the United States."

Trading in securities can be done through a broker or other agent—even an employee—given authority to invest or disinvest in his own discretion, and this would not constitute "trade or business within the United States" except if the foreign investor is a dealer in securities.[37] The same is true as to trading in

---

32. Belgium (or if connected with a "fixed base"), Finland (also using a "fixed base" test but only for an individual), Germany, Netherlands, United Kingdom.

33. Canada, France (as to stocks, securities and commodities), Sweden.
Denmark, Ireland, Switzerland, and South Africa have treaties which are essentially silent in this connection.

34. Sec. 894.

35. Ignoring the temporary surcharge expiring in 1970.

36. This limitation, on the 25% rate to the first $50,000 of gain each year, enacted in 1969, tends to encourage receiving payment in instalments over several years.

37. That is, someone acting for profit through regular sales to customers, not mainly for investment or speculation. Regulations, Sec. 1.864-2(c) (1) (iv).

commodities, such as cotton or grain futures, on a commodities exchange (or in similar transactions) except if the foreign investor is a dealer in commodities.[38]

Another exception, in the case of discretionary trading in the United States in securities, is for a foreign corporation—

(1) having its "principal office" in the United States, and

(2) having as its "principal business" trading in securities for its own account.[39]

Thus, an investment company could not have a discretionary agent in the United States without being regarded as being in business there if, but only if, its "principal office" is in the United States. Then its investment income including capital gains could be considered "effectively connected" with conduct of the United States business and be subject not to withholding but to the usual rates of tax on net income, including capital gains. This is avoidable, however, by having the management office in another country with sufficient head-office activities there, even if the investments are managed by someone in the United States who is authorized to act in his own discretion. Offshore funds avoid United States taxation in this manner.

The investment company can even have its principal office in the United States[40] if it is a personal holding company, or would have been such except for being owned entirely by foreigners.[41] Thus a personal holding company, incorporated abroad, could have its head office with legal or financial counsel in the United States. It would be helpful in countries which do not impose company tax unless "mind and management" is there.

In any event, a company trading for its own account could do so through a resident broker, commission agent, custodian or other independent agent if not given discretionary authority.[42] This is true if the foreigner is an investment company, also if it is a broker or dealer. In either case, however, the transactions must not be effected at the direction of the investor's office or other fixed place of business in the United States, or it could be regarded as being in business there.[43]

Under these rules, the foreign investor often will not be considered as engaged in business in the United States in connection with his investment activities. If there is no other business at all there, then the foreign investor could not have any "effectively connected" income:[44] investment income would be taxable only under the withholding rules, and capital gains would be exempt as to foreign corporations and even as to individuals who are not physically present for 183 or more days during the year.

If actually engaged in the United States in some other business, such as sale of goods made abroad, the investment income including gains still can avoid being effectively connected with that business. Whether such income *from United States sources* is effectively connected will depend[45] on whether it is derived from assets having a "direct relationship" to that business (for example, interest

---

38. Sec. 864(b) (2) (A), (B).

39. Sec. 864(b) (2) (A) (ii). There is no similar rule for a company trading in commodities.

40. Sec. 864(b) (2) (A) (ii) referring to Secs. 542(c) (7), 543(b) (1) (C).

41. And assuming it does not receive its income from contracts for personal services by substantial (25% or more) shareholders. See Sec. 543(a) (7).

42. Sec. 864(b) (2) (A) (as to securities), (B) (as to commodities).

43. Sec. 864(b) (2) (C). Thus, an investment company not a holding company tends to be forced to have its "principal office" elsewhere to enable it to use the discretionary agent rule.

44. Sec. 864(c) (1) (B). An exception, available by election as to real estate, is discussed later herein.

45. Sec. 864(c) (2) (A), (B).

on working capital held in Government bills or bank deposits pending seasonal use in the business,[46] shares acquired to assure a source of supply to the business, or accounts receivable)[47] or derived from activities of the business itself as a material factor in realizing the income (royalties from an active patent-licensing business, interest income in active conduct of a banking or financing business).[48] Accounting through the business would be given due regard,[49] but is not necessarily controlling.[50]

Rents or royalties are included among the three kinds of foreign-source income which could be taxed as effectively connected with business in the United States, but only for use of *in*tangible property. Thus, it appears that the United States could be used as a favorable base from which the foreign investor could lease equipment or other tangible property to foreign places.

## REAL ESTATE

Capital gain from sale of real estate having a situs in the United States can be exempt from tax, if it is not effectively connected with business conducted during the same year. If there is sufficient activity to amount to doing business, then deductions can be taken against rental income; the resultant gain could nevertheless avoid being effectively connected and taxable, if it is taken in later years (in instalments electively reported as received) after ceasing to do business. Instead, the investor could incorporate the property and sell the shares. Where the activity is too little to amount to doing business,[51] expenses will not be deductible. The investor still could file an election to be regarded as being in business, but the election would make eventual capital gain on sale taxable as effectively connected—even on amounts received in years after giving up the property.[52] Revocation of the election probably would not obtain Treasury consent (as required) if requested merely to avoid tax on gain; as much has been indicated, though informally. However, a similar election to be taxed on a net-income basis after deductions is afforded by treaties (for example, with Switzerland) on a year-to-year basis. The owner would fail to renew his election when he expected to sell the property, and by hypothesis there would be too little activity to constitute doing business.[53]

Income properties have received most attention lately, largely because of offshore

---

46. Proposed Regulations, Sec. 1.864-4(c) (2) (iv).

47. Proposed Regulations, Sec. 1.864-4(c) (2) (ii). But not an asset held to provide for future diversification by entry into a different business, or expanding activities outside the United States, or future plant replacement or future business contingencies. Regs. Sec. 1.864-4(c) (2) (iii). An investment company with its principal office in the United States, and not saved as a personal holding company, would be in danger of full tax on investment income as effectively connected. Proposed Regs. Sec. 1.864-4(c) (3) (ii).

48. Proposed Regulations, Sec. 1.864-4(c) (3) (i). But not securities purchased on an exchange, at least unless connected with some further activity. Proposed Regs. Sec. 1.864-4(c) (5).

49. Sec. 864(c) (2).

50. Proposed Regs. Sec. 1.864-4(c) (4).

51. For example, in the case of a "net lease" requiring the lessee to do everything and remit a net rent to the landlord.

Notice that expenses such as real estate taxes paid for the landlord's account are subject to withholding if not effectively connected with U.S. business. Regs., Sec. 1.1441-2(a) (2).

52. Secs. 871(d), 882(d).

53. It should be added that gain may be classified as ordinary income in part, to the extent of deductible depreciation regarded as "recaptured" on the sale. Secs. 1245, 1250. This should not be the case, however, if the investor being taxed on the gross did not have the benefit of depreciation deductions.

real estate funds. However, it is possible to invest in vacant land—especially when American development companies are having difficulty finding funds for their operations. The investment could be made simply by lending to the development company, but the interest even if saved by treaty from United States tax would in most cases be taxed by the investor's own country. Instead, he could buy parcels of real estate and sell them to the company; capital gain might be tax-free both in the United States and his own country. A tax-haven company could be used if appropriate. Filing income tax returns might be avoidable. In contrast, an income property usually provides a flow of cash income for several years protected from tax by deductions, especially for depreciation; but returns have to be filed to claim the deductions—unless they are filed by someone else, such as an offshore real estate fund or personal investment company.

*Oil and gas.* The real estate election also can be made for oil and gas investments, or in connection with earning rents and royalties from other wells, or mines or natural deposits; and it could be made for gains from sale of timber, coal and iron ore if an economic interest is retained in the underlying property. The consequent loss of capital gain exemption may not be so dangerous in these cases. For example, the oil investor seeks not so much eventual capital gain as the right to receive 22% of the gross income free of tax because of a deduction allowed for depletion of the oil deposit.[54]

## CONCLUSION

Evidently, many forms of investment are available in the United States. In choosing among them the investor must take into account taxes as well as other factors.

Moreover, as in other countries, United States taxes are imposed essentially on transactions. By changing the transaction, it is possible to change the tax result: to obtain exemption, or reduce the effective rate, or defer the tax, or cause deductions to be of help.

There is no duty under United States tax law to plan a transaction so as to incur the maximum tax. On the contrary, it is recognized that two situations, almost exactly the same economically, may have entirely different tax results and the unwary investor may learn this to his unhappiness if he does not plan properly before investing.

---

54. And also the right to reinvest the balance of the income tax-free because almost entirely deductible in the year of reinvestment.

TORAO AOKI:

# DOUBLE TAXATION CONVENTIONS OF JAPAN
## (Part II)*

### 3. INCOME FROM INVESTMENTS

1. *Dividends*

a. Domestic legislation

Dividends paid to either a resident or a non-resident are normally subject to withholding income tax at a rate of 20 per cent. As temporary measures, however, the following concessions are granted to the dividends other than distributions of gains from securities investment trusts which receive the same treatment as interest income until the end of 1975. The reduced rate of 15 per cent applies to the dividends which are payable to a resident or a domestic corporation or to those dividends which are payable to a non-resident or a foreign corporation having a permanent establishment in Japan and are attributable to its business here on or before December 31, 1975.

At the recipient's option, dividends receivable by a resident or non-resident having a permanent establishment in Japan on or before December 31, 1972 may be withheld at a rate of 20 per cent, and those receivable in 1973 through 1975 at a rate of 25 per cent, under "separate income taxation."[1] The individual recipient may elect such "separate income taxation" if he owns less than 5 per cent of the total capital shares of the domestic corporation paying the dividends and the amount of the dividends paid by that corporation is less than 250,000 yen or, in case the accounting period of the corporation is one year, 500,000 yen. In the case of a non-resident or a foreign corporation which carries on its business through a special type of permanent establishment such as a construction site, or agent mentioned in II 2. above[2] without any branch, office, factory or other fixed place of business in Japan, the reduced rate or "separate income taxation" applies only to such dividends as are attributable to its business in Japan. Dividends receivable on or before December 31, 1975 may be excluded from taxable income in filing a return if the amount of dividends receivable from one corporation is not more than 25,000 yen or, in case the accounting period of the corporation is one year, 50,000 yen.

If an individual taxpayer elects the "aggregate income taxation"[3], 15 per cent of dividends receivable on or before December 31, 1970 (12.5 per cent in 1971 and 1972 and 10 per cent thereafter) may be credited against income tax. When ordinary taxable income, including dividends, exceeds 10 million yen, a tax credit of half the above percentage applies to any excess of that amount. The income tax withheld on dividends payable to a foreign corporation is not credited against its corporate tax.

Parenthetically, in the case of distributions of gains from securities investment trusts, 7.5 per cent of such distributions receivable on or before December 31, 1970 may be credited against income tax, but there will be no tax credit from 1971 to 1975.

---

* The first part of this article has been published in the October 1970 issue of the *Bulletin*, pp. 435 ff.

1. See October 1970 issue of the *Bulletin*, p. 438.
2. The October 1970 issue of the *Bulletin*, p. 438.
3. See *op. cit.*, p. 439.

b. Treatment under the tax conventions

Like the OECD Model, most of the double taxation conventions which Japan has concluded divide the right to tax dividends between the State of the recipient's residence and the State in which the dividends arise but only give the latter State of source a right to levy at a restricted rate. The rate of tax imposed by the State in which the distributing corporation is located should not exceed 15 per cent of the gross amount of the dividends in the ordinary case. However, as stated before[4], Japan reserves its position regarding the 5 per cent maximum tax rate on dividends from a subsidiary to its parent company as provided for in Article 10 of the OECD Model, usually setting such upper limit at 10 per cent. It is designed to provide neutrality between the branch and the subsidiary methods of conducting business abroad under the Japanese corporate tax system, since the rate of the corporate tax for distributed profits, at 26 per cent, is lower than that for undistributed profits, which is currently 36.75 per cent. For corporations with capital of 100 million yen or less and annual income not exceeding 3 million yen, the tax rates on distributed and retained profits are 22 per cent and 28 per cent, respectively.

The rules on the taxation of dividends under the conventions are varied and complex because of the difference in the domestic legislation of the countries involved with regard to the relationship between a corporation and its shareholders. Nearly half of the conventions of Japan have a provision with respect to the definition of the term "dividends". Only seven of them, concerning mostly members of the OECD, include income from "jouissance" shares or "jouissance" rights, or mining rights, which do not exist in Japan. Since it is impossible to give a full and exhaustive definition of "dividends", all of the conventions defining the term use as a secondary reference the national laws, by including "income from other corporate rights assimilated to income from shares by the taxation law of the State of which the company making the distribution is a resident".

The Conventions with the United States, Sweden, New Zealand, Pakistan, India, Thailand and the Republic of Korea have a source rule with respect to dividends under which dividends are treated as income from sources within the contracting State of residence of the corporation paying such dividends.

Not subscribing to the "force of attraction of the permanent establishment" doctrine, all of the conventions of Japan stipulate that, in the State of source the dividends are taxable as part of the business profits of the permanent establishment there owned by the recipient residing in the other State, if such dividends are paid with respect to the holdings effectively connected with that establishment. All the conventions of Japan, with the exception of those with France, the Republic of Korea and Brazil, have special provisions intended to prohibit extraterritorial taxation of dividends and taxation of non-resident corporations with respect to their undistributed profits.

The Convention with Austria limits the rate of tax on dividends, in the general case, to 20 per cent; while the Convention with the Republic of Korea limits such rate to 12 per cent. Under the Convention with Thailand, the rate of tax on dividends shall not exceed 20 per cent if they are paid by a corporation engaged in an industrial undertaking such as manufacturing, ship-building, a public utility, agriculture or a fishery. Although the

4. The October issue of the *Bulletin*, p. 437.

maximum rate on dividends paid by a company resident in Japan to a company resident in Ceylon is 20 per cent, dividends paid by a company resident in Ceylon to a company resident in Japan are subject to Japanese income tax and the additional tax of Ceylon which shall not exceed 6 per cent. By the same token, the Malaysian tax on the dividends chargeable in addition to the tax on income of the company are exempted while the Japanese tax on dividends is reduced to 15 per cent or 10 per cent. The Convention which Japan has concluded with India contains no specific article concerning dividends, nor do the Conventions with Pakistan and Brazil contain provisions on the tax rates on dividends in the general case.

With regard to the intercompany dividends, as referred to before, the principle of Japan is that the Japanese tax on the dividends paid from a Japanese domestic corporation to its parent corporation in another contracting State shall not exceed 10 per cent instead of 5 per cent as provided for in the OECD Model, while the maximum rates in the other contracting State may be set otherwise such as at 25 per cent in the Federal Republic of Germany and 5 per cent in the Netherlands. The Convention with Thailand restricts the rate of tax on dividends to 15 per cent if the subsidiary company paying such dividends is engaged in an industrial undertaking as specified above, and to 25 per cent if it is not. The Convention with Pakistan is somewhat unique in that it reduces the Pakistani tax on dividends paid to the Japanese parent corporation by 6.25 per cent while it limits to 15 per cent the Japanese tax on dividends paid to the Pakistani parent corporation. The Conventions with Canada, France, Belgium, New Zealand, Australia, Ceylon, the Republic of Korea and the United Arab Republic have no specific provisions regarding intercorporate dividends.

The test for a parent and subsidiary relationship is usually the ownership of at least 25 per cent of the capital of the company paying the dividends as set forth in the OECD Model and, in addition, the Conventions with Italy, the Netherlands, Thailand, Malaysia, Singapore and Brazil require a holding of such portion of shares for a period of six months or more and those with the United States, Sweden, Austria, the Federal Republic of Germany, Denmark, Norway and the United Kingdom require 12 months or more, to insure a genuine parent-subsidiary relationship. Under the Conventions with Sweden, Austria and Norway the ownership of more than 50 per cent of the corporation's entire shares is needed to be entitled to the reduced tax rate. In the Convention between Japan and Pakistan the holding of not less than one-third of the voting shares and the engagement of the subsidiary Pakistani company in an industrial undertaking such as manufacturing, shipbuilding, a public utility, mining, or printing are necessary for parent-subsidiary treatment.

2. *Interest*

a. Domestic legislation

Like dividends, interest on bonds, debentures, deposits with banks, etc., paid to either a resident or non-resident is normally subject to withholding income tax at a rate of 20 per cent. As a temporary measure, however, the interest payable to a resident or domestic corporation, or the interest which is payable to a non-resident or foreign corporation having a permanent establishment in Japan and is attributable to its business here on or before December 31, 1970 is subject to "separate income taxation" at the reduced rate of 15 per cent. This reduced rate is applicable to interest on bonds or debentures issued by the Japanese national or local

governments or domestic corporations, deposits with banking institutions in Japan, profits derived from joint operation trusts and distributions of profits from securities investment trusts. In the case of a non-resident or foreign corporation which carries on its business through a special type of permanent establishment in Japan, as described above in connection with "dividends", the reduced rate applies only to such interest which is attributable to its business in Japan. During the period from 1971 to 1975, with respect to interest on bonds or debentures, time deposits, profits derived from joint operation trusts and distributions of profits on securities investment trusts, a resident or non-resident having a permanent establishment in Japan may elect either of the following two methods: (i) all income of this type is subject to withholding income tax at a rate of 15 per cent and then also to "aggregate income taxation" with the tax withheld at the source being deducted from the tax at the normal graduated tax rates on the taxpayer's entire taxable income, or (ii) such income is subject only to the "separate income taxation" to be withheld at a rate of 20 per cent, if payable in 1971 and 1972, and at a rate of 25 per cent, if payable from 1973 to 1975. Also from 1971 to 1975, interest on demand deposits is subject to withholding tax at a rate of 15 per cent and a resident or non-resident having a permanent establishment in Japan is not required to include such interest in his taxable income when he files an income tax return.

Some Japanese banking institutions and government corporations issue at discount debentures bearing no interest with maturity of one year or more. Income from the difference between the amount actually paid and the amount expected to be received by the purchaser of these debentures issued on or before December 31, 1970 is subject to a withholding tax of 5 per cent at the time of issue. This reduced rate will be raised to 8 per cent on the debentures to be issued in 1971 and 1972 and then to 10 per cent during the period from 1973 to 1975.

A non-resident or foreign corporation having a permanent establishment in Japan is exempted from withholding tax on the interest on loans extended for the use of business carried on in Japan on the condition that such interest income is taxable together with its income from business in Japan. If a non-resident or foreign corporation carries on its business through a special type of permanent establishment in Japan, the exemption of withholding tax applies only to such interest as is attributable to its business in Japan. Interest or similar payments on shippers' usance bills and banks' import usance bills, the term of which is not more than six months, is treated as business income.

Interest payable on or before March 31, 1971 on foreign currency loans extended by foreign banking institutions to residents or domestic corporations is taxable at the reduced rate of 10 per cent if it is not attributable to any business which such institutions carry on in Japan. Non-residents or foreign corporations are exempted from income tax on their income from interest on bonds or debentures with a maturity of five years or more issued by a domestic corporation in foreign currencies between May 1, 1970 and March 31, 1972 or from the difference between the issuing price and the redemption price of interest-bearing foreign currency debentures issued on or before March 31, 1972 at a discount or redeemable at a premium by a domestic corporation. However, if a non-resident or foreign corporation has a permanent establishment in Japan, this tax exemption does not apply to such income as is attributed to its business

carried on in Japan. Interest paid to non-residents or foreign corporations on bonds issued in foreign currencies by the Japanese national or local governments or other public entities is usually exempted from the Japanese income tax.

b. Treatment under the tax conventions

Most of the double taxation treaties of Japan conform to the OECD Model with respect to the taxation of interest. They divide the right to tax interest between the State of the recipient's residence and the State in which the interest arises and give the latter source State a right to levy tax at a limited rate, usually not exceeding 10 per cent of the gross amount of the interest in view of the cost and expenses incurred by the lender. Abandoning the "force of attraction of the permanent establishment "concept, the conventions set an exception to the above principle. Thus, if the debt from which such interest arises is derived through, or effectively connected with, the permanent establishment situated in the State of source, the interest in question is taxed as business profits of the establishment there owned by the creditor residing in the other State.

Defining the source of the interest, the conventions provide that the source is placed at the State in which the debtor resides. However, the exception to this rule is that if the loan is contracted for the permanent establishment and the interest on this loan is borne by that establishment, the source of the interest is in the State where the establishment is located regardless of the place of residence of the owner of that establishment. The conventions have a safeguard clause against excessive payments of interest owing to a special relationship between the payer and the recipient or between both of them and some other person.

The Conventions with Canada, Belgium and Singapore limit the rate of tax on interest to 15 per cent and the one with Korea to 12 per cent. No maximum rate is specified in the Convention with the United Arab Republic for any interest and in those with Thailand, Ceylon and Malaysia for ordinary interest. Also there are no particular provisions on the taxation of interest in the Conventions with New Zealand and India. Under the Convention with Pakistan, although the maximum rate is 30 per cent, interest on bonds issued by the national or local governments and interest on debentures issued by or on loans made to an enterprise is exempted from tax, certain conditions being attached to the Pakistani enterprises paying interest. Some of the conventions with the developing countries give special treatment such as a reduced rate of 10 per cent (with Thailand and Malaysia) and a tax exemption (with Pakistan for the interest paid by the Pakistani enterprises and Singapore) for interest only on debentures issued by or loans made to an enterprise engaged in an industrial undertaking which includes manufacturing, shipbuilding, construction, power and water supply, mining, and agriculture. Under the Conventions with the United States, the Federal Republic of Germany, the Netherlands and most of the developing countries, interest paid to the government (under some of the conventions), to the central bank, or to financial institutions owned by the government is generally exempt from tax.

About half of the conventions have the subsidiary reference to national laws for the definition of interest, including "all other income assimilated to income from money lent by the taxation law of the Contracting State in which the income arises". Premiums attaching to bonds and debentures as well as the difference between the amount paid and the amount to be received on non-interest

bearing debentures issued by some financial institutions and government corporations previously mentioned[5] are regarded as interest under the phrase "any excess of the amount repaid in respect of such debt-claims over the amount lent" in the Conventions with Sweden, Canada, Denmark, the United Kingdom, Italy and Zambia.

3. *Royalties*

a. Domestic legislation

Royalties, in lump sum or periodical payments, for the use of, or for the right to use patents, know-how, copyrights, including the rights to use motion picture films, television films or video-tapes, or equipment used for business carried on in Japan which are payable to a non-resident or foreign corporation are subject to withholding income tax at a rate of 20 per cent. If the recipient of such royalties is a non-resident or foreign corporation having a permanent establishment in Japan, exemption from withholding tax is granted on condition that such income is taxable together with the taxpayer's income from business in Japan. In the case of a non-resident or foreign corporation which carries on its business through a special type of permanent establishment as mentioned in the sections on "dividends" and "interest", the exemption with repect to withholding taxes is applicable only to such royalties as are attributable to the taxpayer's business in Japan.

In the case of a non-resident carrying on his business through a special type of permanent establishment, such part of the income from royalties which is not attributable to his business is subject only to "separate income taxation" at the above-mentioned flat rate. And in the case of a non-resident having no permanent establishment, of the ordinary or special type, the income from royalties is always subject to the same "separate income taxation." The income tax, withheld at the source, except on the income that is subject only to the "separate income taxation", is credited against the income tax of a non-resident or corporation tax of a foreign corporation.

b. Treatment under the tax conventions

The OECD Model attributes the exclusive right to tax royalties to the State of residence of the recipient of the royalties. However, Japan reserves the right of the source country to tax royalties as well as gains from the alienation of rights or property giving rise to royalties. The conventions with all the developed countries but Canada, and with Malaysia, Brazil and Zambia assign the taxing right on royalties, at the restricted rate of 10 per cent to the State in which such royalties arise. The maximum rates are set at 15 per cent and 12 per cent in the Conventions with Canada, Thailand and the United Arab Republic and with the Republic of Korea, respectively. The Convention between Japan and Ceylon grants an exemption of tax on royalties with respect to licences to use copyrights or cinema films and the reduction by half the normal tax rate on royalties for other property or rights both in the source State. The Conventions with Pakistan and Singapore grant an exemption of the tax on royalties at the source and the conventions with New Zealand and India have no specific articles on royalty income. As in the case of other types of income, if the recipient of the royalties has a permanent establishment in the source country with which the right or property giving rise to the royalties is effectively connected, the royalties are taxed as business profits in that country. As opposed to the OECD Model, the term

5. See p. 539.

"royalties" includes any gains from the alienation of rights to copyrights, motion picture films, patents, trade marks, plans, secret formulas or processes, etc., under the Conventions with almost all developed countries and Singapore, Thailand, Malaysia, and the Republic of Korea. However, between the Federal Republic of Germany, Belgium and the Netherlands and Japan, it is understood that the article on capital gains applies only to the gains from a genuine alienation of a patent or similar property without leaving the alienator any right to that property. It is also to be noted that the Conventions with Sweden, France, Denmark, Norway, Belgium, and the Republic of Korea include receipts from a bare boat charter of ships or aircraft as royalties while the conventions with Malaysia, Singapore, Thailand, Brazil and the United Arab Republic exclude rents from cinema films (copyrights of literary or artistic work and trade marks, also, under some of these Conventions) from royalties. The Conventions with Sweden, Austria, Australia, Thailand, Malaysia and the Republic of Korea expressly stipulate that the term "royalties" does not include payments from the operation of a mine, or any other places of extraction of natural resources, which are treated as income from immovable property[6].

Following the OECD Model, most of the conventions of which Japan is a signatory have a safeguard clause against excessive payments of royalties due to a special relationship between the payer and the recipient or between both of them and some other person.

## 4. INCOME FROM IMMOVABLE PROPERTY

### 1. *Domestic legislation*

Rent or other compensation from the use of immovable property, including rights thereon, located in Japan and rental from a bare boat charter of a ship or aircraft in which the lessee is a Japanese resident or a domestic corporation is treated as income from sources within Japan. Any initial lump sum payment received for rented land is treated as capital gain when it exceeds half of the value of land. The income from immovable property, except rent or similar consideration from house or land used for residential purposes, is subject to the withholding tax at a rate of 20 per cent. However, a non-resident or foreign corporation having a permanent establishment in Japan is exempted from the withholding tax on the condition that such income is taxable together with the taxpayer's income from business in Japan. The tax withheld at the source may be credited against the Japanese income tax or corporation tax.

### 2. *Treatment under the conventions*

In view of the close economic relationship between the source of income and the State of the source, the double taxation treaties of Japan, like the OECD Model, give the right to tax income from immovable property to the State in which such property is located. The Conventions with Canada, Australia, Ceylon, Malaysia and the Republic of Korea have no particular article on income from immovable property and those with the United States, Sweden, New Zealand, India and Thailand simply state that income from immovable property shall be treated as income from sources within the contracting State in which such property is situated.

With respect to the provisions on income from immovable property, the Conventions with France, the Federal Republic of Germany, Denmark, Norway, Belgium, the

6. See p. 543.

United Kingdom, Italy, the Netherlands, Singapore, Brazil, the United Arab Republic and Zambia generally follow the OECD Model in which the term "immovable" is defined by reference to the laws of the State of situs and ships and aircraft are not regarded as immovable property. The Conventions with Austria and Pakistan as well as those following the OECD Model fairly closely and those prescribing the source rule on income from immovable property treat variable or fixed payments from the working of mineral deposits, or other natural resources as income from immovable property or as income derived from sources in the country where such mines or places are located. The above rule concerning income from immovable property applies to income from immovable property of an industrial or commercial enterprise and to income from property used for the performance of professional services.

## 5. CAPITAL GAINS

### 1. *Domestic legislation*

With respect to individual taxpayers, income from the sale or disposal of assets situated in Japan, including income from the following sales, is treated as income from sources within Japan: (a) the sale of rights or license granted under the Japanese laws, (b) the sale of securities in Japan under "continuous trading", which comprises 50 or more transactions involving 200,000 or more shares per year, (c) the sale of forestalled shares of a domestic corporation for the purpose of raising their price, (d) the sale of substantial participation in a domestic corporation, or the sale of 10 per cent or more in one year and 25 per cent or more within the preceding three years of the capital stock of the domestic corporation by an individual who owns together with his immediate relatives not less than 50 per cent of the capital stock of such corporation and (e) the sale of rights to business carried on in Japan. A non-resident having a permanent establishment, of the ordinary or special type, is subject to the "aggregate income taxation" on the above income while a non-resident having no permanent establishment is subject to the "aggregate income taxation" on his income from the sale or disposal of immovable property, including rights thereto, located in Japan, the sale of forestalled shares of, or substantial participation in, a domestic corporation and the disposition of other assets in Japan while staying here.

For taxation purposes, a distinction is drawn between long-term and short-term capital gain depending on whether or not the property giving rise to capital gains was owned for a period of more than five years. In computing the amount of taxable income from short-term capital gains on property other than land or buildings, the standard deduction of 300,000 yen as wel as costs incurred for the acquisition, improvement and disposal of the assets may be deducted from gross receipts. Half of the amount thus obtained is the taxable income from long-term capital gains on the property of the same kind.

Special taxation measures introduced last year are applicable to the capital gains on land and buildings from the beginning of 1969 to the end of 1975. A flat rate of 10 per cent is applied to the taxable amount, after deducting the special deduction of one million yen, of long-term capital gains on land or building. This rate is scheduled to be increased to 15 per cent in 1972 and 1973 and then to 20 per cent in 1974 and 1975. The short-term capital gains tax on land or buildings, including the tax on the alienation of land or buildings acquired on or after January 1, 1969, is the following (a) or (b), whichever is

larger, under the "separate income taxation": (a) 40 per cent of the taxable amount of such capital gains, or (b) 110 per cent of the marginal tax amount which is due from the taxable amount of such capital gains, when included in the ordinary taxable income, under the "aggregate income taxation".

For the purposes of the corporation tax, the income from the following sales of securities is treated as income from sources within Japan:

(a) the sale of any securities in the security exchange market or through a stock dealer or broker in Japan, (b) the sale of forestalled shares of a domestic corporation, (c) the sale of a substantial interest in a domestic corporation, i.e., the sale of 5 per cent or more of the shares of a domestic corporation within one taxable year by a foreign corporation and its subsidiaries which have held not less than 25 per cent of such shares at any time during the taxable year of such sale or during the preceding two years. A foreign corporation having a permanent establishment, of the ordinary or special type, is subject to corporate tax on its total income including capital gains, while corporate tax on capital gains of a foreign corporation having no permanent establishment is imposed only for the sale or disposal of immovable property, including rights thereto, located in Japan, the cutting or sale of timber situated in Japan, the sale of the forestalled shares of, or substantial interest in, a domestic corporation.

Special taxation measures are granted on capital gains from expropriation, sales to government agencies and other special alienations. No tax is imposed on capital appreciation and revaluation of assets not associated with the alienation of capital assets.

2. *Treatment under the tax conventions*

Although none of the double taxation conventions to which Japan is a party has an article on the taxation of capital, as mentioned earlier, they generally follow the principle of the OECD Model as far as the taxation of capital gains is concerned. Income from the alienation of immovable property or of certain movable property may be taxed in the State in which such property is situated in parallel with the provisions concerning the taxation of income from immovable property. Capital gains from the alienation of movable property of a permanent establishment or fixed base used for its business or professional service may be taxed in the State where such an establishment or base is located.

Generally, as in the case of income from immovable property described above, ships and aircraft are not regarded as immovable property for the purpose of the taxation of capital gains. Most of the Conventions with the developed countries and a few of those with developing countries expressly stipulate that gains from the alienation of ships and aircraft operated in international traffic shall be taxable only in the State of which the enterprise is a resident instead of the State in which the effective management of the enterprise is situated as set forth in the OECD Model. Under the Conventions with Sweden and India, gains from the sale, transfer or exchange of ships or aircraft are treated as income from sources within the contracting State where such ships or aircraft are registered. Gains from the alienation of any other property are taxable only in the State in which the alienator is resident.

It should be noted that since the taxation of capital gains varies from one country to another, the conventions leave it to the domestic law of each contracting State to decide whether capital gains should be

taxed, and if taxable, how they are to be taxed. The Conventions which Japan has concluded with the United States, Sweden, India and Thailand provide for the source rule on capital gains, while the conventions with Canada, New Zealand, Australia, Pakistan, Singapore, Malaysia and the Republic of Korea have no particular article concerning capital gains.

The Conventions with Austria, France, Denmark, Norway, the United Kingdom and Italy have provisions on the substantial participation in a corporation, under which gains from the alienation of shares of a corporation may be taxed in the contracting State of the residence of the corporation if the alienator and other related persons own at least 25 per cent of all the shares of such corporation and the total number of the shares alienated during the taxable year amounts to 5 per cent or more of all the shares. Japan has concluded with Sweden a Convention which treats gains from the alienation of shares, bonds, debentures and similar assets as derived from sources within the contracting State where such assets are sold. According to the Convention with Ceylon, a contracting State reserves the right to tax the gains from the sale, transfer or exchange of stocks, shares, bonds and debentures which takes place in its territory. As explained in 2 (3) "Royalties" b., it is understood with some countries that the article on the capital gains applies only to gains from a genuine alienation of a patent or similar property without leaving the alienator any right to that property.

## 6. INCOME FROM PERSONAL SERVICES

### 1. *Domestic legislation*

A non-resident having a permanent establishment in Japan is subject to the "aggregate income taxation" on the taxpayer's entire income of all types which includes salaries, wages or similar remunerations as an employee for his personal services performed in Japan, pensions or retirement allowances for past personal services rendered in Japan, remuneration for independent personal services furnished in Japan, remuneration for providing personal services such as public entertainers' or athletes' performances, or professional or technical services in Japan, prizes or other benefits derived from advertisements in Japan, annuity payments on life insurance or similar contracts concluded through a place of business located in Japan. A non-resident who carries on his business through a special type of permanent establishment is subject to the "aggregate income taxation" on all of (i) the income from business carried on in Japan and from the sale or the holding of assets situated in Japan, (ii) the remunerations for providing personal services mentioned above, and (iii) the rent from immovable property, including rights thereto, located in Japan and he is taxed on such part of the other above-mentioned income as is attributable to his business in Japan and he is subject only to the "separate income taxation" on the remaining part of the income. Generally however, a non-resident is subject to the "aggregate income taxation" only on a part of his income from (i) and the total of his income from (ii) and (iii) of the above and he is always subject to the "separate income taxation" on all his other income. Incidentally, services in his capacity as a member of the board of directors of a domestic corporation and services on board a ship or aircraft operated by a resident or a domestic corporation are deemed to be performed in Japan, regardless of where such services are actually rendered.

The income tax on payments to a non-resident is usually withheld at a flat rate of 20 per cent. A non-resident having a

permanent establishment in Japan may be exempted from withholding tax with respect to remunerations for independent personal services, for furnishing performances by public entertainers, for professional or technical services, and annuity payments on life insurance or similar contracts mentioned above on the condition that such income is taxable together with the taxpayer's income from business in Japan. For retirement income, a non-resident has the option to pay either 20 per cent of the gross amount of the retirement income from sources in Japan or an amount computed in the same way as a resident is taxed on the basis of the entire retirement income including that from sources abroad. The withholding tax on income from a business which primarily provides personal services is based on the gross receipts of the non-resident or foreign corporation who carries on such busines. If such withholding has been made, the non-resident operator of such business is not required to withhold income tax on payments made out of his receipts to each of the non-residents actually performing such personal services.

2. *Treatment under the tax conventions*

a. Independent personal services

In conformity with the OECD Model, the Conventions concluded by Japan ordinarily confer the right to tax income from professional services and other independent activities on the contracting State in which such personal services are performed. In the case of independent personal services, as distinguished from industrial or commercial activities, professional services rendered in employment or performances by public entertainers and athletes, the term "fixed base", meaning, for instance, a clinic or a lawyer's office, has been introduced as a counterpart of the permanent establishment for activities giving rise to business profits. If a person performing independent personal services has a center of activity regularly available to him in another contracting State, then that other State may tax such activities to the extent that the income from the services is attributable to the fixed base.

Under the Conventions with Sweden, Canada, New Zealand, Singapore, Thailand, Ceylon and Malaysia, remuneration for professional services is included in income from ordinary personal services which is taxable in the host country if the stay of the person performing the services there exceeds a limited period, usually six months, as will be explained later. The Convention between the United Arab Republic and Japan gives the taxing right to the contracting State in which a person renders professional services if he has a fixed base or is present for more than 183 days there. According to the Conventions with Pakistan and the Republic of Korea, a person performing professional services is exempt from the tax of the host country if his stay there does not exceed 90 days and the remuneration paid to him is not above a specified amount. Under the Convention with the United States, persons rendering services, professional or dependent, are exempt from tax if their stay in the host country does not exceed 183 days or they meet the same requirement as prescribed in the above Conventions with Pakistan and the Republic of Korea.

b. Dependent personal services

Salary, wages and other similar remuneration of an employee are taxable in the State wherein the services are actually performed. For employment of short duration abroad, however, the State of source of such income waives its right of taxation if the taxpayer's presence in that State does not exceed in the aggregate 183 days during the taxable year

and the following two additional conditions are satisfied:
(i) the employer paying the remuneration is not a resident of that State, and (ii) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in that State. Under the Conventions with Sweden, Austria, Canada, New Zealand, Pakistan (ii) is not required. With India, Thailand, Ceylon, Malaysia and the Republic of Korea, the former of the above two additional restrictions is substituted by the one that the services are performed for or on behalf of a resident of the contracting State in which the person rendering such services is a resident. The alternative for the latter of the above two requirements is that the remuneration is not deductible in determining taxable profits of a permanent establishment or a fixed base which the employer has in the source country under the Conventions with Austria, Australia, India, Thailand, Malaysia and the Republic of Korea, or that the remuneration is subject to tax in the contracting State of the residence of the employee under the Conventions with New Zealand and Ceylon. As stated in the preceding section, the rule on the taxation of dependent personal services also governs the taxation of independent professional services in some Conventions.
The Conventions which Japan has so far concluded with countries other than the United States, New Zealand, Pakistan, Singapore and Malaysia have provisions concerning the remunerations to crews of ships or aircraft in international traffic, under which they are taxed by the contracting State of which the enterprise operating ships or aircraft is a resident as compared with by the contracting State in which the place of effective management of the enterprise is situated under the OECD Model.

c. Directors' fees
Like the OECD Model, about two-thirds of the conventions which Japan has signed give to the contracting State of which a corporation is a resident the taxing right on the remuneration received by an individual in his capacity as a member of the board of directors of a corporation. This is intended to obviate the difficulty to decide where the services are performed. On the contrary, the Conventions with Australia and Ceylon explicity apply the rule on dependent personal services also to the remuneration of a director of a company.

d. Public entertainers
In order to avoid the practical difficulties in taxing public entertainers and athletes performing abroad, the OECD Model provides that they may be taxed in the contracting State where the activities are performed, whether these are for salaries or wages or on their own account. All the Conventions of Japan, except the one with India, either have the same provisions as the OECD Model or exclude the application of the exemption of temporary visitors from tax in the country wherein performances take place. The Conventions with Malaysia and Singapore apply the rule on dependent personal services to public entertainers whose visit to the host country is supported from the public funds of their own country. The Convention with the Republic of Korea grants the tax exemption to public entertainers unless their income in the country wherein such services are rendered exceeds a specified amount.
As mentioned earlier, in acceding to the OECD Model, Japan reserves the right to tax profits derived from a business providing the services of public entertainers whether or not the business is conducted through a permanent establishment. Thus some con-

ventions maintain equality of taxation between services performed by a public entertainer or athlete himself and those provided by an enterprise which the same entertainer or athlete, directly or indirectly, controls. According to the Conventions with the Federal Republic of Germany, Belgium, Italy, the Netherlands, Singapore and Malaysia, the income from those services provided by such an enterprise may be taxed in the country wherein such services are rendered. In order to attain the same objective, under the Conventions with Sweden, Canada, France, Denmark, Norway, the United Kingdom, Australia, Thailand, Malaysia, the Republic of Korea and Brazil, the enterprise of this sort is deemed to have a permanent establishment in the country where it carries on the business of providing the services of public entertainers.

e. Pensions

In view of their nature and the amounts usually involved, pensions and other similar remunerations, except those covered by the Article on governmental functions below, paid in consideration of past employment, wherever rendered, are taxable, primarily for administrative convenience, only in the contracting State of which the recipient is a resident. However, the Conventions which Japan has concluded with the United States, Sweden, Canada, Pakistan, India and Thailand have no specific provisions concerning pensions. The Conventions with the United Kingdom, Australia, Malaysia and Brazil also include the annuity which is periodically payable under an obligation to make the payments in return for adequate and full consideration.

f. Governmental functions

All the conventions to which Japan is a signatory provide that wages, salaries and pensions, to the exclusion of any other income, paid to an individual with respect to services of a governmental nature for a contracting State may be taxed in that State. This rule does not apply to the services performed in connection with trade or business, for the purposes of profit, carried on by the State paying the remuneration.

One additional conditon for this tax exemption in the host country as laid down in the OECD Model is that an individual should be a national of the country to which his services are rendered under the Conventions with 14 countries—the United States, Sweden, Canada, France, the Federal Republic of Germany, Denmark, Norway, Belgium, Italy, the Netherlands, Pakistan, India, Thailand and Brazil. Or the alternate condition is that an individual should not be a national (or a permanent resident under some of the Conventions) of the contracting State in which his services are performed under the Conventions with Austria, Canada, the United Kingdom, New Zealand, Australia, Pakistan, India, Singapore, Ceylon, Malaysia, the Republic of Korea, the United Arab Republic and Zambia. Parenthetically, the Netherlands and New Zealand, in their Conventions with Japan, do not require nationality of the country paying the remuneration for this tax exemption in the country wherein the services are rendered.

The above rule is also applicable to the remuneration paid by the local governments under all the Conventions of Japan except those with the United States, New Zealand and Pakistan, while the Conventions with Austria and the Federal Republic of Germany apply this rule to the remunerations or pensions paid by the public corporations such as the national railways and telegraph and telephone services.

g. Students or business apprentices

The OECD Model provides that the payments which students or business apprentices receive for the purposes of their maintenance, education or training abroad are exempt from tax in the country where they are temporarily staying if such payments are made from sources outside that country. With some variations, all the conventions of which Japan is a party ordinarily follow this principle. The conventions of Japan with all the developing countries extend a tax exemption in the country where a student or apprentice is visiting to remuneration for personal services in that country subject to limitation on the amount. This exemption is applicable only for a limited period of residence under the Conventions with the Republic of Korea and Brazil. The Convention between Austria and Japan allows tax exemption of payments solely for the maintenance, education or training wherever such payments are made and also income from employment in the host country for the purposes of practical training for not longer than six months in a taxable year.

The Conventions with the United States, France and the United Kingdom and developing countries except Brazil and Zambia provide for a tax exemption on grants for students or apprentices. According to the Conventions with the United States, France, Pakistan, India, Singapore, Thailand, Ceylon, Malaysia and the Republic of Korea, a person temporarily visiting the other contracting State as an employee of an enterprise of his own country for training or study is exempt from tax by that other country for one year on his income from services performed there or remittance from abroad up to a specified amount. The conventions with the above developing countries extend the tax exemption of the host country to a participant in the training or research program sponsored by the government with or without limitations on the period of residence and the amount of remuneration received.

h. Professors and teachers

With a view to promoting cultural exchange, all the double taxation treaties Japan has signed exempt professors and teachers from tax on their income from services for teaching in the country where they visit for a period not exceeding two years, although the OECD Model contains no provisions of this kind. The Conventions with Denmark, Norway, Belgium, Italy, Australia and the developing countries, excluding Pakistan, allow the same tax exemption for the income from research activities. Under the Conventions with the United States, India, Singapore, Thailand, Ceylon, Malaysia, the Republic of Korea and the United Arab Republic, such tax exemption is conditioned on the invitation of the government or an educational institution of the host country, which makes such visit of professors and teachers possible, while the Convention with the Republic of Korea adds that a tax exemption is not granted to the research which is undertaken primarily for the private benefit of specific persons.

## 7. METHODS FOR AVOIDANCE OF DOUBLE TAXATION

1. *Domestic legislation*

Any foreign income tax, national or local, which is similar in nature to the Japanese income tax, excluding delinquency tax, is creditable against the Japanese income tax of a resident subject to the following over-all limitation:

$$\text{Japanese income tax} \times \frac{\text{total income from sources outside Japan}}{\text{entire income subject to Japanese income tax}}$$

For this purpose, income from sources within any foreign country which has no income tax system is not included in the "total income from sources outside Japan", nor is a net loss incurred in such a country taken into account. The excess of the foreign tax over the above limitation may be carried forward for five succeeding years and the unused part of the above limitation exceeding the foreign tax paid may be carried forward to increase the limitation for five succeeding years. A taxpayer may elect to deduct the foreign income tax from gross income as a necessary expense instead of using the foreign tax credit.

Any foreign tax imposed on the income of a domestic corporation, which has a nature similar to the Japanese corporate tax may be credited against the Japanese corporate tax subject to the same rules and conditions as described above in the case of income tax.

A domestic corporation receiving dividends from a foreign subsidiary corporation is deemed to have itself paid the foreign taxes levied on the subsidiary and such taxes are creditable against the Japanese tax on the domestic corporation on the assumption that such dividends are paid after the payment of foreign taxes. This indirect tax credit is allowed if (i) not less than 25 per cent of the total shares or capital, or of the shares or capital with voting powers, of the foreign subsidiary are owned by the domestic corporation for a period of six months or more before the decision to pay and (ii) the foreign subsidiary has been established for the purpose of carrying on business in that foreign country and not for any tax considerations. The amount of the foreign corporate tax which is creditable as the foreign tax on the dividends of the foreign subsidiary is calculated as follows:

$$\text{Foreign corporation tax on the subsidiary} \times \frac{\text{dividends received by the parent corporation from the subsidiary}}{\text{income of the subsidiary} - \text{foreign corporation tax on the subsidiary}}$$

2. *Treatment under the tax conventions*

As a necessary measure to eliminate or mitigate double taxation, the OECD member countries are left free to choose between the exemption method and the tax credit method. One is not to take into account the income in question in computing the total income and the other is to take such income or capital into account but to deduct from the total tax which would otherwise be charged an amount equal to the tax paid on the income in question in the other State. In view of the domestic legislation as described above, in her conventions Japan always uses the ordinary credit method under which the deduction against the tax is restricted to an amount equal to the tax in Japan which is appropriate to the income with respect to which a right to tax is given to the other State. As for the other contracting States with Conventions with Japan, the United States, Austria, Canada, Denmark, the United Kingdom, Italy, New Zealand, Australia and all the developing countries, exclusive of the United Arab Republic, for income other than investment income,

employ the tax credit system and the rest of the States use the exemption system. In the latter conventions, however, the countries have logically adopted the ordinary credit method in the case of various types of investment income on which the right to tax is shared between two countries and, therefore, the exemption method is not usable. Also governed by the credit method are gains from the alienation of shares of a corporation in France and profits derived by an enterprise for providing the services of public entertainers and remuneration, including pensions, for government functions in the Federal Republic of Germany.

Under the Conventions with Belgium, the United Kingdom, Australia, Singapore, Thailand, Ceylon, Malaysia and Zambia, an "indirect" or "deemed paid" foreign tax credit is given for taxes payable with respect to the profits of foreign subsidiaries paying dividends to their parent domestic companies which own at least 25 per cent (in some conventions, e.g., with Australia and Ceylon, 10 per cent) of the shares of such subsidiaries. Developing countries grant whole or partial tax exemptions or rate reductions, as special incentive measures designed to promote economic development, especially to encourage private investment from abroad. In support of the desire and efforts for the economic development of these countries which forgo tax revenues through tax concessions, Japan, under the conventions with all the developing countries except the United Arab Republic, allows as a deduction from its own tax an amount corresponding to the tax which would have been paid to these developing countries if no concession had been granted by these countries. Japan applies the tax-sparing credit not only to the foreign taxes spared by domestic incentive laws of these countries but also to those which would have been imposed were it not for the exemptions or reductions of tax rates granted by the source countries in whole or partially on income from investments under most of these conventions. However, it is not always necessary to accommodate the tax-sparing device for all the types of investment income under certain conventions; thus it is granted only for interest in Pakistan, Singapore and Thailand, for royalties in Ceylon and Singapore, and for dividends in Thailand.

## 8. OTHER PROVISIONS

Like the OECD Model, the Conventions which Japan has concluded with France, the Federal Republic of Germany, Denmark, Norway, Belgium, the United Kingdom, Italy, the Netherlands and Zambia provide that the items of income which are not expressly mentioned in the Convention are taxable only in the State of residence. Under the Conventions with Sweden, Malaysia, the Republic of Korea and Brazil, such items of income may be taxed in each of the contracting States in accordance with its own law, and other Conventions have no article on "Income not expressly mentioned".

Unlike the OECD Model, the Conventions with the United States, Sweden, India, and Thailand have a separate article on the source rule concerning various classes of income while under the Conventions with some other countries such as New Zealand, Australia, Pakistan and the Republic of Korea, the source rule is provided in various articles on the different types of income concerned.

The Conventions of Japan except those with New Zealand and Australia have the provision that the nationals of a contracting State must not be less favorably taxed by the other contracting State than the nationals of the latter State in the same circumstances. It is to be noted that the criterion employed in

the non-discrimination clause is nationality while most other articles of the conventions are applicable to residents without distinction of nationality and that the taxes covered are not limited to the tax on income except in the Conventions with Malaysia and Singapore. However, none of the Japanese conventions have a provision giving the same taxation treatment as nationals to stateless persons as the OECD Model does. The Conventions, excluding those with Canada, Pakistan and India, also prohibit tax discrimination against a permanent establishment owned by an enterprise of a contracting State in the other contracting State as well as against enterprises of one country which are controlled by residents of the other country.

Although the Conventions with France and the Netherlands have no specific article on the exchange of information between the tax administrations of the two contracting States, it is expected that the information necessary for the correct application and for the prevention of abuses of the convention can be sufficiently exchanged within the existing framework of its mutual agreement procedure and other provisions. On the other hand, the Conventions with the United States, Sweden, Austria, the United Kingdom, New Zealand, Australia, Pakistan, Singapore, Thailand, Ceylon, Malaysia and the Republic of Korea go further and definitely include the prevention of fraud or fiscal evasion within the scope and purpose of the exchange of information. Most of the above Conventions as well as some other conventions expressly state that the information so exchanged may be disclosed to a court, as suggested in the commentary on the OECD Model, and in addition to the persons or authorities concerned with the assessment or collection of tax.

As part of administrative cooperation between the two contracting States, the Conventions which Japan has concluded with the United States, Pakistan, Thailand and the Republic of Korea have introduced provisions on reciprocal administrative assistance in tax collection which are missing in the OECD Model.

The Japanese conventions, with the exception of those with Austria, the United Kingdom, Australia, India and Malaysia, contain the conventional article to secure the fiscal privileges of diplomatic or consular officials under the general rule of international law or special international agreements.

*Note:* Of the list of the conventions signed by Japan which appeared in the October issue of the *Bulletin* (p. 436), those with the following countries came into force as from the date mentioned: The Netherlands, October 23, 1970; The Republic of Korea, October 29, 1970; and India (revision), November 15, 1970.

# INTERNATIONAL FISCAL ASSOCIATION (I.F.A.)

## Resolution on the first subject of the XXIVth Congress held in Brussels from 7th to 11th September 1970

*Subject:* "The multiple burden on dividends and shares by taxation on income and capital of both corporations and shareholders; possibilities of modification."

1. Countries employ widely different methods for the taxation of corporations and their shareholders, particularly as regards "imported and exported" dividends. These divergencies are apparently due not essentially to differences of fiscal technique but to political and economic considerations which in their turn reflect the diversity of internal and external features of the national economies.
   In these circumstances it would be utopian to recommend the immediate and general adoption of any unique system in the hope of solving all the problems posed by this multiplicity of fiscal techniques.
2. However the different consequences of the present situation for the total tax burden on imported and exported dividends may disturb the international flow of capital and affect the harmonious development of investment, which is a necessary condition of economic and social progress.
   In 1955, at the Amsterdam Congress, IFA expressed the wish that corporate income should not be overtaxed and that if so required the "economic double taxation of dividends" should be mitigated.
   Since then the problem has become more acute with the increase of international capital investments, with the growing interdependence of national economies and with the general increase of tax burdens. This is now one of the major problems to be solved on an international level in order to adapt tax policy to the requirements of modern economies.
3. Solutions acceptable for a large number of countries would be easier to find if, initially, a specific doctrine could be adopted on a number of issues, for example:
   - is it or is it not necessary to have fiscal systems different for partnerships and corporations and should not more attention be given to the concept of the firm?
   - is it suitable to apply widely different tax regimes to dividend income and debt interest?
   - is it appropriate to tax a corporation on dividends—which have already been taxed—and which are only "in transit" below the minimum level laid down for participations?
4. The solutions to be considered should be as simple as possible and sufficiently flexible both to satisfy the requirements of internal policy and to fit in with the variety of international relations in which the states are engaged.
   The problem appears in different forms, firstly in relations between countries of comparable economic power whose inward and outward capital movements are more or less in balance, secondly in countries whose capital movements are structurally out of balance, for example developing countries, and thirdly in the special case of a far reaching process of economic integration as in the European Economic Community.

5. a) *In relations between countries at comparable economic levels* it is highly desirable that the solutions adopted eliminate all discrimination between domestic and foreign investors and investments.
   b) *In relations with developing countries* it should be possible to modify these solutions so as to take account of their special requirements for economic and social progress and in particular not to frustrate the growth incentive measures of these countries.
   c) *In areas moving towards far reaching economic integration* it seems necessary, at least gradually, to adopt a harmonized common system which would open up the national capital markets.

## Resolution on the second subject of the XXIVth Congress held in Brussels from 7th to 11th September 1970

*Subject:* "The national and especially international tax problems arising from the merger of enterprises"

The following resolution applies to the fusion of two or more companies into one company where all but at least one of the companies concerned loses its legal independance.

1. Every national and international tax system must be so designed as to ensure that no tax advantage is conferred by mergers of companies either for the Revenue on one hand or for the company concerned on the other hand or for the shareholders.
2. For mergers within a country, it follows that:
   a) progress already made in the field of income and profit taxes should be extended toward reducing or even exempting other types of taxes levied on mergers;
   b) no tax exemption granted in connection with mergers could be subject to a time limit.
3. For international mergers, it is proposed that:
   a) a model bilateral agreement be formulated to provide the neutral tax treatment of profits arising from mergers across frontiers; it is recommended that this problem be submitted to the fiscal committee of the OECD:
   b) the draft directive on a tax system for mergers proposed by the European Economic Community be examined with a view to its applicability to international areas outside the European Economic Community;
   c) pending the conclusions of satisfactory international arrangements, national tax legislation should provide machinery to allow international mergers to take effect consistent with safeguards necessary for the protection of national revenue.
4. A future Congress of the IFA should examine the possibilities of extending these principles to other operations leading to reorganisation, for example mergers of partnerships, acquisition of part of the operations of one company in exchange for shares of the acquiring company, exchanges of shares, creation of common subsidiaries, or other cases of a partial concentration.

# BIBLIOGRAPHY

## BOOKS

### EEC

JURISTISCHE VERÖFFENTLICHUNGEN ÜBER DIE EUROPÄISCHE INTEGRATION. Published by Service de Documentation de la Cour de Justice des Communautés Européennes, Nachlieferung 3. November 1969, Brussel. 254 pp.
Supplementary bibliography on juridical publication concerning the European integration.

Library International Bureau of
Fiscal Documentation no. B5301

### FRANCE

LES IMPOTS EN FRANCE. Traité Pratique de la fiscalité française, et plus particulièrement des impôts dus par les entreprises. 2e édition. Published by Edition Francis Lefebvre, Paris, 1970. 367 pp.
Second edition of a publication which explains the tax system in France, with emphasis on the taxation of businesses.

Library International Bureau of
Fiscal Documentation no. B5294

### GERMANY

DIE STIFTUNG ALS TRÄGERIN VON UNTERNEHMEN UND UNTERNEHMENSTEILEN, by H. Vinken. Published by Nomos Verlagsgesellschaft GmbH & Co. KG. Baden-Baden, 1970. 184 pp.
Thesis on foundations with emphasis on those which are, directly or indirectly, engaged in business enterprise.

Library International Bureau of
Fiscal Documentation no. B5291

### GERMANY/SWITZERLAND

DOPPELBESTEUERUNGSABKOMMEN DEUTSCHLAND-SCHWEIZ, by H.J. Meyer-Marsilius, 3. neubearbeitete Auflage. Published by Handelskammer Deutschland-Schweiz, Talacker 41, Zürich I, 1970. 318 pp.
Texts of implementary decrees, rulings, case law etc. both from the German and the Swiss angle compiled and arranged per article of the tax treaty of 1931, as amended.

Library International Bureau of
Fiscal Documentation no. B5248

### LUXEMBOURG

PROJET DE LOI CONCERNANT LE BUDGET DES RECETTES ET DES DEPENSES DE L'ETAT POUR L'EXERCICE 1971, Volume I. Exposé introductif au projet de budget 1971. Published by Imprimerie Saint-Paul, Luxembourg, 1970. 422 pp.
Budget Law for 1971.

Library International Bureau of
Fiscal Documentation no. B5293

### UNITED KINGDOM

REVENUE LAW, by B. Pinson. Fourth edition 1970. Published by Sweet & Maxwell Ltd, London, 702 pp.
Handbook of which the main object is to state the principles of income and capital gains taxation, estate duty, betterment levy and stamp duties. The law is stated as of July 1, 1970.

Library International Bureau of
Fiscal Documentation no. B5298

BUTTERWORTHS TAX HANDBOOK, covering Income Tax, Corporation Tax, Capital Gains Tax. 1970–1971.
Published by Butterworth & Co. Ltd., London, 1970. 978 pp.
Annual publication setting out the plain amended text of the income tax, corporation tax and capital gains tax laws as of August 1, 1970.

Library International Bureau of
Fiscal Documentation no. B5298

EFFECTS OF THE SELECTIVE EMPLOYMENT TAX. First report on the distributive trades. By W.B. Reddaway. Published by Her Majesty's Stationery Office, 1970. 316 pp.
First report designed to examine the effects of the Selective Employment Tax on prices, margins and productivity in industries on which the tax falls as a net burden and the consequent effects on the economy generally.

Library International Bureau of
Fiscal Documentation no. B5292

WHEATCROFT ON CAPITAL GAINS TAXES. Fourth Cumulative Supplement, August 1, 1970. By G.S.A. Wheatcroft, A.E.W. Park, and P.G. Whiteman. Published by Sweet and

Maxwell, London and W. Green and Son, Edinburgh, 1970.
This fourth supplement brings the main work up-to-date.

Library International Bureau of
Fiscal Documentation no. B5281

## U.S.A.

CITIZENS AND RESIDENT ALIENS EMPLOYED ABROAD, by R.P. Hoff. Published by Tax Management Inc., 1231 25th Str., N.W. Washington D.C., 1970. 155 pp.
Analysis of the United States tax law rules which apply to United States citizens and resident aliens employed in foreign countries, whether by a US corporation, a foreign corporation or self-employed. Appended are the applicable statutes, regulations, instructions and other relevant issues. Later developments will be reported in a supplement.

Library International Bureau of
Fiscal Documentation no. B5074

# LOOSE-LEAF SERVICES

## Releases from October 1 – October 31, 1970

## BELGIUM

FISCALE DOCUMENTATIE VANDEWINCKELE BOEK DER BAREMA'S
– Tome 9A, release 18
– Tome I, release 25
E.K. Vandewinckele, Brugge/C.E.D. Samsom N.V., Brussels.

IMPOTS ET TAXES, release 197.
C.E.D. Samsom N.V., Brussels

## BENELUX

BENELUX PUBLICATIEBLAD, release 42.
Staatsuitgeverij, Den Haag.

## CANADA

CANADA TAX SERVICE-RELEASES, releases 307-309.
Richard de Boo, Toronto.

CANADIAN INCOME TAX. J.G. McDonald, release 44.
Butterworth & Co., Toronto.

BUTTERWORTHS CURRENT TAXATION, releases 35-40.
Butterworth & Co., Toronto.

PROVINCIAL TAXATION SERVICE, releases 255-257.
Richard de Boo, Toronto.

## EEC

DROITS DES AFFAIRES DANS LES PAYS DU MARCHE COMMUN, release 50.
E.D. Jupiter, Paris.

HANDBOEK VOOR DE EUROPESE GEMEENSCHAPPEN.
– VERDRAGSTEKSTEN EN AANVERWANTE STUKKEN, releases 79, 80.
– EUROPEES MEDEDINGINGS- EN KARTELRECHT, releases 27, 28.
– TARIEFLIJSTEN, release 103.
N.V. Uitgeversmij. AE.E., Kluwer, Deventer.

## FRANCE

DICTIONNAIRE FISCAL PERMANENT, releases 31-34.
Editions Législatives et Administratives, Paris.

DROITS DES AFFAIRES, release 17.
Ed. Législatives et Administratives, Paris.

MEMENTO LAMY-FISCAL, releases M, N, O.
Services Lamy, Paris.

## GERMANY

A.O. KOMMENTAR – Hubschmann – Hepp – Spitaler, release 66.
Verlag Dr. Otto Schmidt KG, Köln-Marienburg.

BECKSCHE STEUERKOMMENTARE, release 2.
Verlag C.H. Beck, München.

DEUTSCHES HANDELSARCHIV, releases 1-20.
Bundesanzeiger, Köln.

DEUTSCHE STEUERPRAXIS. Nachschlagwerk praktischer Steuerfälle, release 15.
Verlag Dr. Otto Schmidt KG, Köln-Marienburg.

HANDBUCH DER EINFUHRNEBENABGABEN, release 7.
V.d. Linnepe Verlagsgesellschaft KG, 58 Hagen.

RWP. RECHTS- UND WIRTSCHAFTS PRAXIS STEUERRECHT, releases 115-117.
Forkel Verlag, Stuttgart-Degerloch.

STEUERERLASSE IN KARTEIFORM, releases 107, 108.
Verlag Dr. Otto Schmidt, Köln-Marienburg.

STEUERRECHTSPRECHUNG IN KARTEIFORM, releases 223-225.
Verlag Dr. Otto Schmidt, Köln-Marienburg.

UMSATZSTEUERGESETZ (MEHRWERTSTEUER).
Kommentar von Dr. G. Rau, Dr. E. Dürrwachter, releases 8, 9.
Verlag Dr. Otto Schmidt, Köln-Marienburg.

WORLD TAX SERIES – GERMANY REPORTS, releases 13, 14.
Commerce Clearing House, Inc., Chicago.

## IRELAND

THE INCOME TAX ACTS, release 4.
Government Publications, Dublin.

## MOROCCO

CODES MAROCAINS, release 1.
Fiduciaire Marocaine d'Editions Techniques, Casablanca.

## NETHERLANDS

BEKNOPTE BELASTINGGIDS, 'release 70.
L.J. Veen, Amsterdam.

BELASTINGBERICHTEN
- LOONBELASTING, release 88.
- VENNOOTSCHAPSBELASTING, release 16.
- INKOMSTENBELASTING, releases 189-191.
- BELASTING TOEGEVOEGDE WAARDE, releases 62, 63.

N. Samsom N.V., Alphen a.d. Rijn.

BELASTINGWETGEVINGSERIE.
- OMZETBELASTING III, release 8.

J. Noorduyn & Zn. N.V., Gorinchem.

B.T.W. EN BEDRIJF, release 34.
N. Samsom N.V., Alphen a.d. Rijn.

FED'S FISCAAL REGISTER, release 35.
N.V. Uitgeverij Fed, Amsterdam.

FED'S LOSBLADIG FISCAAL WEEKBLAD, releases 1267, 1277.
N.V. Uitgeverij Fed, Amsterdam.

DE GEMEENTELIJKE BELASTINGEN – A.M. Dijk, G. Jansen, J.C. Schroot enz. releases 99, 100.
Vuga Boekenrij, Arnhem.

HANDBOEK VOOR IN- EN UITVOER.
— 1 + 2 TARIEF VAN INVOERRECHTEN, releases 143, 144.
N.V. Uitgeversmij. AE.E. Kluwer, Deventer.

KLUWER'S FISCAAL ZAKBOEK, release 38.
N.V. Uitgeversmij. AE.E. Kluwer, Deventer.

NEDERLANDSE REGELINGEN VAN INTERNATIONAAL BELASTINGRECHT, release 20.
N.V. Uitgeversmij., AE.E. Kluwer, Deventer.

OMZETBELASTING (BTW) IN BEROEP EN BEDRIJF, releases 11, 12.
N.V. Uitgeversmij. S. Gouda Quint enz., Arnhem.

STAATS- EN ADMINISTRATIEFRECHTELIJKE WETTEN, release 104.
N.V. Uitgeversmij. AE.E. Kluwer, Deventer.

DE SOCIALE VERZEKERINGSWETTEN, releases 42, 43.
N.V. Uitgeversmij. AE.E. Kluwer, Deventer.

VADEMECUM VOOR IN- EN UITVOER, releases 429, 430.
N.V. Uitgeversmij. AE.E. Kluwer, Deventer.
N. Samsom N.V., Alphen a.d. Rijn.

DE VAKSTUDIE: FISCALE ENCYCLOPEDIE.
– VENNOOTSCHAPSBELASTINGEN 1942 releases 74, 75; 1969 release 8.
N.V. Uitgeversmij. AE.E. Kluwer, Deventer.

VENNOOTSCHAPPEN, VERENIGINGEN EN STICHTINGEN.
– Algemeen deel, release, 6.
– Band B, release 19.
N.V. Uitgeversmij. AE.E. Kluwer, Deventer.

## NORWAY

SKATTELOVSAMLINGEN, release 32.
Jacob Jaroy, Skien.

SKATTENYTT – A, releases 8-11.
Norsk Skattebetalerforening Huitfeldts, Oslo.

## SOUTH AFRICA

LEGISLATION SERVICE OF JUTA'S SOUTH AFRICAN INCOME TAX SERVICE – Dr. A. Silke, release 6.
Juta & Co., Capetown.

LEGISLATION SERVICE OF THE RHODESIAN INCOME TAX SERVICE, release 4.
Juta & Co., Capetown.

## SWITZERLAND

HANDBUCH UND PRAXIS DER SCHWEIZERISCH-AMERIKANISCHEN DOPPELBESTEUERUNGSABKOMMEN, release: August.

## U.S.A.

FEDERAL TAX GUIDE REPORTS, releases 52 and 1-4.
Commerce Clearing House, Inc., Chicago.

FEDERAL TAXES REPORT BULLETIN, releases 38-42.
Prentice Hall, Inc., Englewood Cliffs.

FEDERAL TAXES REPORT BULLETIN-TREATIES, release 3.
Prentice Hall, Inc., Englewood Cliffs.

STATE TAX GUIDE, releases 464-466.
Commerce Clearing House, Inc., Chicago.

TAX IDEAS – REPORT BULLETIN, releases 16, 17.
Commerce Clearing House, Inc., Chicago.

TAX TREATIES, releases 224, 225.
Commerce Clearing House, Inc., Chicago.

*With the close cooperation of a network of expert correspondents in each of the Latin American countries, coordinated by Bomchil, Pinheiro, Claro, Lavalle & Bado, the International Bureau of Fiscal Documentation has filled a significant gap in international tax literature by producing —*

# CORPORATE TAXATION IN LATIN AMERICA

**edited by**
**Dr. N. Chedufau**
– Partner of M. & M. Bomchil,
Buenos Aires – Paris

**Original Editors-**
**Dr. Néstor Chadufau,** Buenos Aires
**Lic. Sergio García Granados,** Guatemala
**assisted by Robert C. Hammond, B.A.,**
London

**Current Editor-**
**Pablo J. Drobny, J.D.,** Amsterdam
– Research Associate at the International Bureau
of Fiscal Documentation

**● loose-leaf ● quarterly up-dating supplements ● approx. 750 large-format pages**

CONTENTS

**Section A – Introduction, Introductory Notes**
**Section B – Summaries of Corporate Taxation in Latin American Countries**
**Section C – Surveys of Corporate Taxation in Latin American Countries**
**Section D – Effective tax treaties on income and/or capital signed by Latin American Countries**
**Section E – Current annotated bibliography of the publications acquired by the I.B.F.D.**
**Section F – English/Spanish – Spanish/English Glossary of Tax Terminology of Tax Terminology (about 900 entries)**

*Section B provides a country-by-country comparative summary of the basic provisions of the Latin American tax law.*

*Section C amplifies the summaries in Section B, following the same per country outline.*

Part 1 – TAXATION OF INCOME
A. General Income Taxation
B. Taxation of Particular Types of Income
Part 2 – TAXATION OF DIVIDENDS, INTEREST, ROYALTIES AND BRANCH PROFITS
A. Dividends, Interest and Royalties Paid to Residents
B. Dividends, Interest and Royalties Paid to Non-Residents
C. Taxation of Branch Profits
Part 3 – TAXATION OF CAPITAL
A. General Net Worth Taxes
B. Taxes on Particular Types of Capital or Property
Part 4 – TAXES ON GOODS, SERVICES AND TRANSACTIONS
A. Turnover or Sales Taxes
B. Taxes on Production and Consumption
C. Transaction Taxes
Part 5 – OTHER FISCAL CHARGES PAYABLE BY CORPORATIONS
Part 6 – MISCELLANEOUS TAX PROVISIONS

**Price: US$ 75.00 – £ 31.2s. (£ 31.10)– *Dfl. 270.00 – DM 275.00**
(including supplements for 1971)

**• For residents of The Netherlands: the prices quoted are exclusive of TVA (BTW)**

**INTERNATIONAL BUREAU OF FISCAL DOCUMENTATION**
Muiderpoort – Sarphatistraat 124 – Amsterdam-C. – The Netherlands

# Books of the series "Afrika-Studien" Economics

edited by the Ifo-Institute of Economic Research, Munich

Heinz-Günter Geis

**DIE GELD- UND BANKSYSTEME DER STAATEN WESTAFRIKAS**

(The Monetary and Banking Systems of the Countries of West Africa)

Afrika-Studien Nr. 20

428 Seiten, 50 Tabellen, 2 Schaubilder und 1 Übersichtskarte. Steifband, DM 54,—, US $ 13,50.

A study of the present state of the West African monetary and banking systems — including the operational channels, agricultural and co-operative credits and all other institutions with banking functions — their development since World War II and their various problems. A comparative, critical analysis. The author is an assistant lecturer at the Institute for Banking and Credit Economy of the Free University of Berlin.

---

Ernst-Josef Pauw

**DAS BANKWESEN IN OSTAFRIKA**

(Money and Banking in East Africa) Afrika-Studien Nr. 35

2784 Seiten, 37 Tabellen im Text, 8 Tabellen im Anhang. Steifband, DM 44,—, US $ 11,—,.

Presentation and analysis of the development, structure and functions of the East African banking system (Kenya, Tanzania, Uganda); critical discussion of recent banking policy. The author is a specialist in banking and financial affairs.

---

---

# LIST OF AUTHORS 1970



Bulletin Vol. XXIV, December/décembre no. 12, 1970 563

# INDEX 1970

SUPPLEMENT TO NO. 10 (D 1970)

Convention between Japan and the United Arab Republic for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income.

SUPPLEMENT TO NO. 11 (E 1970)

Convention between Japan and the Republic of Korea for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income

SUPPLEMENT TO NO. 12 (F 1970)

Convention between Japan and the Republic of Zambia for the Avoidance of Double Taxation with respect to Taxes on Income.

*Supplement* **A**
1970

# Convention entre la République Fédérale d'Allemagne et l'Empire de l'Iran en vue d'éviter la double imposition en matière d'impôts sur le revenu et sur la fortune

SUPPLEMENT TO THE BULLETIN FOR INTERNATIONAL FISCAL DOCUMENTATION
AU BULLETIN DE DOCUMENTATION FISCALE INTERNATIONALE

Vol. XXIV, No 1, January/janvier 1970

INTERNATIONAL BUREAU OF FISCAL DOCUMENTATION

Muiderpoort – 124 Sarphatistraat – Amsterdam

## TEXT

LE PRÉSIDENT DE LA RÉPUBLIQUE FÉDÉRALE D'ALLEMAGNE
et
SA MAJESTÉ LE CHAH-IN-CHAH DE L'IRAN

Désireux de consolider les relations d'amitié entre les deux pays ont décidé de conclure une convention en vue d'éviter la double imposition en matière d'impôts sur le revenu et sur la fortune et ont designé à cet effet pour leurs plénipotentiaires:

Le Président de la République Fédérale d'Allemagne:

Monsieur Georg Ferdinand Duckwitz,
Secrétaire d'Etat des Affaires étrangères,
Monsieur Walter Grund,
Secrétaire d'Etat du Ministère fédéral des Finances,

Sa Majesté le Chah-In-Chah de l'Iran:

Général de corps d'armée Mozaffar Malek,
Ambassadeur de l'Empire d'Iran à Bonn.

Lesquels, après avoir échangé leurs mandats de pleins pouvoirs trouvés en bonne et due forme, sont convenus des dispositions suivantes:

### *Article 1er*

(1) La présente Convention s'applique aux personnes qui sont des résidents d'un Etat contractant ou de chacun des deux Etats.
(2) La présente Convention ne s'applique pas aux revenus de toute sorte provenant d'une activité exercée en Iran qui est approuvée par la législation particulière iranienne concernant les contrats en matière petrolifère et de ses dérivés; il en est de même pour la fortune engagée à l'exercice d'une telle activité.

### *Article 2*

(1) La présente Convention s'applique aux impôts sur le revenu et sur la fortune perçus pour le compte de chacun des Etats contrac-

tants, de ses «Länder», de ses subdivisions politiques et de ses collectivités locales, quel que soit le système de perception.

(2) Sont considérés comme impôts sur le revenu et sur la fortune les impôts perçus sur le revenu total, sur la fortune totale, ou sur des éléments du revenu ou de la fortune, y compris les impôts sur les gains provenant de l'aliénation de biens mobiliers ou immobiliers, les impôts sur le montant des salaires payés par les entreprises, ainsi que les impôts sur les plus-values.

(3) Les impôts actuels auxquels s'applique la Convention sont notamment:

1. En ce qui concerne la République Fédérale d'Allemagne:

a) l'impôt sur le revenu des personnes physiques (Einkommensteuer) ou des sociétés (Körperschaftsteuer),
b) l'impôt sur la fortune (Vermögensteuer),
c) la contribution des patentes (Gewerbesteuer)

(ci-après denommés «impôt allemand»);

2. En ce qui concerne l'Empire de l'Iran:

l'impôt sur le revenu, y compris les impôts additionnels (Mozoué ghanouné maleiat bar daramad)

(ci-après denommés «impôt iranien»).

(4) La Convention s'appliquera aussi aux impôts futurs de nature identique ou analogue qui s'ajouteraient aux impôts actuels ou qui les remplaceraient.

*Article 3*

(1) Au sens de la présente Convention, à moins que le contexte n'exige une interprétation différente:

(a) Le terme «République Fédérale d'Allemagne», désigne le territoire d'application de la Loi Fondamentale pour la République Fédérale d'Allemagne.
(b) Le terme «l'Iran» désigne le territoire de l'Empire de l'Iran.
(c) Les expressions «un Etat contractant» et «l'autre Etat contractant» désignent, suivant le contexte, la République Fédérale d'Allemagne ou l'Iran.
(d) Le terme «personne» comprend les personnes physiques, les sociétés et tous autres groupements de personnes.
(e) Le terme «société» désigne toute personne morale ou toute entité qui est considérée comme une personne morale aux fins d'imposition.
(f) Les expressions «entreprise d'un Etat contractant» et «entreprise de l'autre Etat contractant» désignent respectivement une entreprise exploitée par un résident d'un Etat contractant et une entreprise exploitée par un résident de l'autre Etat contractant.
(g) Le terme «nationaux» désigne
(aa) en ce qui concerne la République Fédérale d'Allemagne, tous les allemands au sens de l'article 116, paragraphe 1, de la Loi Fondamentale pour la République Fédérale d'Allemagne et toutes les personnes morales, sociétés de personnes et associations constituées conformément à la législation en vigueur dans la République Fédérale d'Allemagne;
(bb) en ce qui concerne l'Iran toutes les personnes physiques qui possèdent la nationalité iranienne et toutes les personnes morales, sociétés de personnes et associations constituées conformément à la législation en vigueur en Iran.
(h) L'expression «autorité compétente» désigne:
(aa) en ce qui concerne la République Fédérale d'Allemagne le Ministre Fédéral des Finances;
(bb) en ce qui concerne l'Iran le Ministre des Finances.

(2) Pour l'application de la Convention par un Etat contractant, toute expression qui n'est pas autrement définie dans cette Conven-

tion a le sens qui lui est attribué par la législation dudit Etat régissant les impôts faisant l'objet de la Convention, à moins que le contexte n'exige une interprétation différente.

*Article 4*

(1) Au sens de la présente Convention, l'expression «résident d'un Etat contractant» désigne 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 de nature analogue.
(2) Lorsque, selon la disposition du paragraphe 1, une personne physique est considérée comme résident de chacun des Etats contractants, le cas est résolu d'après les règles suivantes:
(a) Cette personne est considérée comme 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);
(b) Si l'Etat contractant où cette personne a le centre de ses intérêts vitaux ne peut pas être déterminé, ou qu'elle ne dispose d'un foyer d'habitation permanent dans aucun des Etats contractants, elle est considérée comme résident de l'Etat contractant où elle séjourne de façon habituelle;
(c) Si cette personne séjourne de façon habituelle dans chacun des Etats contractants ou qu'elle ne séjourne de façon habituelle dans aucun d'eux, elle est considérée comme résident de l'Etat contractant dont elle possède la nationalité;
(d) Si cette personne possède la nationalité de chacun des Etats contractants ou qu'elle ne possède la nationalité d'aucun d'eux, les autorités compétentes des Etats contractants tranchent la question d'un commun accord.
(3) Lorsque, selon la disposition du paragraphe 1, une personne autre qu'une personne physique est considérée comme résident de chacun des Etats contractants, elle est réputée résident de l'Etat contractant où se trouve son siège de direction effective.

*Article 5*

(1) Au sens de la présente Convention, l'expression «établissement stable» désigne une installation fixe d'affaires où l'entreprise exerce tout ou partie de son activité.
(2) L'expression «établissement stable» comprend notamment:
a) un siège de direction;
b) une succursale;
c) un établissement de vente;
d) un bureau;
e) une usine;
f) un atelier;
g) une mine, une carrière ou tout autre lieu d'extraction de ressources naturelles;
h) un chantier de construction ou de montage dont la durée dépasse six mois.
(3) On ne considère pas qu'il y a établissement stable si:
a) il est fait usage d'installations aux seules fins de stockage, d'exposition ou de livraison de marchandises appartenant à l'entreprise;
b) des marchandises appartenant à l'entreprise sont entreposées aux seules fins de stockage, d'exposition ou de livraison;
c) des marchandises appartenant à l'entreprise sont entreposées aux seules fins de transformation par une autre entreprise;
d) une installation fixe d'affaires est utilisée aux seules fins d'acheter des marchandises ou de réunir des informations pour l'entreprise;

e) une installation fixe d'affaires est utilisée, pour l'entreprise, aux seules fins de publicité, de fourniture d'informations, de recherches scientifiques ou d'activités analogues qui ont un caractère préparatoire ou auxiliaire.

(4) 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 au paragraphe 5 – 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 ne soit limitée à l'achat de marchandises pour l'entreprise.

(5) On ne considère pas qu'un entreprise d'un Etat contractant a un établissement stable dans l'autre Etat contractant du seul fait qu'elle y exerce son activité par l'entremise d'un courtier, d'un commissionnaire général ou de toute autre intermédiaire jouissant d'un statut indépendant, à condition que ces personnes agissent dans le cadre ordinaire de leur activité.

(6) Le fait qu'une société qui est un résident d'un Etat contractant contrôle ou est contrôlée par une société qui est un résident de l'autre Etat contractant ou qui y exerce son activité (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 sociétés un établissement stable de l'autre.

*Article 6*

(1) Les revenus provenant de biens immobiliers sont imposables 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 tous cas les accessoires, le cheptel mort ou vif des exploitations 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 fixes pour l'exploitation ou la concession de 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 du paragraphe 1 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.

(4) Les dispositions des paragraphes 1 et 3 s'appliquent également aux revenus provenant des biens immobiliers d'une entreprise ainsi qu'aux revenus des biens immobiliers servant à l'exercice d'une profession libérale.

*Article 7*

(1) Les bénéfices d'une entreprise d'un Etat contractant ne sont imposables que dans cet Etat, à moins que l'entreprise n'exerce son activité dans l'autre Etat contractant par l'intermédiaire d'un établissement stable qui y est situé. Si l'entreprise exerce son activité d'une telle façon, les bénéfices de l'entreprise sont imposables dans l'autre Etat mais uniquement dans la mesure où ils sont imputables audit établissement stable.

(2) Lorsqu'une entreprise d'un Etat contractant exerce son activité dans l'autre Etat contractant par l'intermédiaire d'un établissement stable qui y est situé, il est imputé, dans chaque Etat contractant, è 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 établissement stable, soit ailleurs.
(4) Aucun bénéfice n'est imputé à un établissement stable du fait que cet établissement stable a simplement acheté des marchandises pour l'entreprise.
(5) Lorsque les bénéfices comprennent des éléments de revenu traités séparément dans d'autres articles de la présente Convention, les dispositions de ces articles ne sont pas affectées par les dispositions du présent article.

*Article 8*

(1) Les bénéfices provenant de l'exploitation, en trafic international, de navires ou d'aéronefs ne sont imposables que dans l'Etat contractant où le siège de la direction effective de l'entreprise est situé.
(2) Si le siège de la direction effective d'une entreprise de navigation maritime est à bord d'un navire ou d'un bateau, ce siège est réputé situé dans l'Etat contractant où se trouve le port d'attache de ce navire ou de ce bateau, ou à défaut de port d'attache, dans l'Etat contractant dont l'exploitant du navire ou du bateau est un résident.

*Article 9*

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 diffèrent de celles qui seraient conclues entre les 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 10*

(1) Les dividendes payés par une société qui est un résident d'un Etat contractant à un résident de l'autre Etat contractant sont imposables dans cet autre Etat.
(2) Toutefois, ces dividendes peuvent être imposés dans l'Etat contractant dont la société qui paie les dividendes est un résident, et selon la législation de cet Etat, mais l'impôt ainsi établi ne peut excéder:
a) 15 pour cent du montant brut des dividendes si le bénéficiaire des dividendes est une société qui dispose directement d'au moins 25 pour cent du capital assorti d'un droit de vote de la société qui paie les dividendes;
b) 20 pour cent du montant brut des dividendes, dans tous les autres cas.
(3) Par dérogation au paragraphe 2, aussi longtemps que dans la République Fédérale d'Allemagne le taux de l'impôt des sociétés pour les bénéfices distribués reste inférieur de 20 points au moins au taux fixé pour les bénéfices non distribués, l'impôt imposé sur les dividendes dans la République Fédérale d'Allemagne pourra s'élever à 25 pour cent du montant brut des dividendes, si

a) les dividendes proviennent d'une société de capitaux (Kapitalgesellschaft) résidente de la République Fédérale d'Allemagne et sont recueillis par une société résidente de l'Iran, et si
b) la société résidente de l'Iran dispose directement ou indirectement d'au moins 25 pour cent du capital assorti d'un droit de vote de la société de capitaux (Kapitalgesellschaft) résidente de la République Fédérale d'Allemagne.

(4) Le terme «dividendes» employé dans cette Convention désigne les revenus provenant d'actions, actions ou bons de jouissance, parts de mine, parts de fondateur ou autres parts bénéficiaires à l'exception des créances, ainsi que les revenus d'autres parts sociales assimilés aux revenus d'actions par la législation fiscale de l'Etat dont la société distributrice est un résident.

(5) Les dispositions des paragraphes 1 à 3 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 les dividendes est un résident, un établissement stable auquel se rattache effectivement la participation génératrice des dividendes. Dans ce cas, les dispositions de l'article 7 sont applicables.

(6) Lorsqu'une société qui est un résident d'un Etat contractant tire des bénéfices ou des revenus de l'autre Etat contractant, cet autre Etat ne peut percevoir aucun impôt sur les dividendes payés par la société aux personnes qui ne sont pas des résidents de cet autre Etat, ni prélever aucun impôt, au titre de l'imposition des bénéfices non distribués, sur les bénéfices non distribués de la société, même si les dividendes payés ou les bénéfices non distribués consistent en tout ou en partie en bénéfices ou revenus provenant de cet autre Etat.

*Article 11*

(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, ces intérêts peuvent être imposés dans l'Etat contractant d'où ils proviennent, et selon la législation de cet Etat, mais l'impôt ainsi établi ne peut excéder 15 pour cent du montant brut des intérêts.

(3) Les intérêts provenant de la République Fédérale d'Allemagne et reçus par la Banque Markazie de l'Iran dans le cadre de sa fonction publique sont exonérés de l'impôt allemand. Les intérêts provenant de l'Iran et reçus par la Deutsche Bundesbank ou par la Kreditanstalt für Wiederaufbau, dans le cadre de leurs fonctions publiques, sont exonérés de l'impôt iranien.

(4) Le terme «intérêts» employé dans cette Convention désigne les revenus des fonds publics, des obligations d'emprunts, 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 aux revenus de sommes prêtées par la législation fiscale de l'Etat d'où proviennent les revenus.

(5) Les dispositions des paragraphes 1 à 3 ne s'appliquent pas lorsque le bénéficiaire des intérêts, résident d'un Etat contractant, a, dans l'autre Etat contractant d'où proviennent les intérêts, un établissement stable auquel se rattache effectivement la créance génératrice des intérêts. Dans ce cas, les dispositions de l'article 7 sont applicables.

(6) Les intérêts sont considérés comme provenant d'un Etat contractant lorsque le débiteur est cet Etat lui-même, un «Land», une subdivision politique, une collectivité locale ou un résident de cet Etat. Toutefois, lorsque le débiteur des intérêts, qu'il soit ou non résident d'un Etat contractant, a dans un

Etat contractant un établissement stable pour lequel l'emprunt générateur des intérêts a été contracté et qui supporte la charge de ces intérêts, lesdits intérêts sont réputés provenir de l'Etat contractant où l'établissement stable est situé.

(7) 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 des intérêts payés, compte tenu de la créance pour laquelle ils sont versés, 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 des paiements reste imposable conformément à la législation de chaque Etat contractant et compte tenu des autres dispositions de la présente Convention.

*Article 12*

(1) Les redevances provenant d'un Etat contractant et payées à un résident de l'autre Etat contractant sont imposables dans cet autre Etat.

(2) Toutefois, ces redevances peuvent être imposées dans l'Etat contractant d'où elles proviennent, et selon la législation de cet Etat, mais l'impôt ainsi établi ne peut excéder 10 pour cent du montant brut des redevances.

(3) Le terme «redevances» employé dans cette Convention désigne les rémunérations de toute nature payées pour l'usage ou la concession de l'usage d'un droit d'auteur sur une oeuvre littéraire, artistique ou scientifique, y compris les films cinématographiques, d'un brevet, d'une marque de fabrique ou de commerce, d'un dessin ou d'un modèle, d'un plan, d'une formule ou d'un procédé secrets, ainsi que pour l'usage ou la concession de l'usage d'un équipement industriel, technique, commercial, agricole ou scientifique et pour des informations ayant trait à une expérience acquise dans le domaine industriel, technique, commercial, agricole ou scientifique.

(4) Les dispositions des paragraphes 1 et 2 ne s'appliquent pas lorsque le bénéficiaire des redevances, résident d'un Etat contractant, a, dans l'autre Etat contractant d'où proviennent les redevances, un établissement stable auquel se rattache effectivement le droit ou le bien générateur des redevances. Dans ce cas, les dispositions de l'article 7 sont applicables.

(5) Les redevances sont considérés comme provenant d'un Etat contractant lorsque le débiteur est cet Etat lui-même, un «Land»,une subdivision politique, une collectivité locale ou un résident de cet Etat. Toutefois, lorsque le débiteur des redevances, qu'il soit ou non résident d'un Etat contractant, a dans un Etat contractant un établissement stable pour lequel l'obligation génératrice des redevances a été contractée et qui supporte la charge de ces redevances, lesdites redevances sont réputées 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 des redevances payées, compte tenu de la prestation pour laquelle elles sont versées, 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 des paiements reste imposable conformément à la législation de chaque Etat contractant et compte tenu des autres dispositions de la présente Convention, toutefois, si les redevances sont calculées sur la base du bénéfice du débiteur, la partie excédentaire établie suivant les dispositions précédentes est considérée comme provenant d'un établissement

stable du créancier dans l'Etat contractant d'où les redevances proviennent, et dans ce cas les dispositions de l'article 7 sont applicables.

*Article 13*

(1) Les gains provenant de l'aliénation des biens immobiliers, tels qu'ils sont définis au paragraphe 2 de l'article 6, sont imposables dans l'Etat contractant où ces biens sont situés.
(2) Les gains provenant de l'aliénation de biens mobiliers faisant partie de l'actif d'un établissement stable qu'une entreprise d'un Etat contractant a dans l'autre Etat contractant, ou de biens mobiliers constitutifs d'une base fixe dont dispose un résident d'un Etat contractant dans l'autre Etat contractant pour l'exercice d'une profession libérale, y compris de tels gains provenant de l'aliénation globale de cet établissement stable (seul ou avec l'ensemble de l'entreprise) ou de cette base fixe, sont imposables dans cet autre Etat. Toutefois, les gains provenant de l'aliénation des biens mobiliers visés au paragraphe 3 de l'article 23, ne sont imposables que dans l'Etat contractant où les biens en question eux-mêmes sont imposables en vertu dudit article.
(3) Les gains provenant de l'aliénation de tous biens autres que ceux qui sont mentionnés aux paragraphes 1 et 2 ne sont imposables que dans l'Etat contractant dont le cédant est un résident.

*Article 14*

(1) Les revenus qu'un résident d'un Etat contractant tire 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, les revenus sont imposables dans l'autre Etat mais uniquement dans la mesure où ils sont imputables à ladite base fixe.
(2) L'expression «professions libérales» comprend en particulier les activités indépendantes d'ordre scientifique, littéraire, artistique, éducatif ou pédagogique, ainsi que les activités indépendantes des médecins, avocats, ingénieurs, architectes, dentistes et comptables.

*Article 15*

(1) Sous réserve des dispositions des articles 16, 18 et 19, 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, les rémunérations qu'un résident d'un Etat contractant 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; et
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) la charge des rémunérations n'est pas supportée par un établissement stable ou une base fixe que l'employeur a dans l'autre Etat.
(3) Nobobstant les dispositions précédentes du présent article, les rémunérations au titre d'un emploi salarié exercé à bord d'un navire ou d'un aéronef en trafic international sont imposables dans l'Etat contractant où le siège

de la direction effective de l'entreprise est situé.

*Article 16*

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 un résident de l'autre Etat contractant sont imposables dans cet autre Etat.

*Article 17*

Nonobstant les dispositions des articles 14 et 15, 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 18*

Sous réserve des dispositions du paragraphe 1 de l'article 19, les pensions et autres rémunérations similaires, versées à un résident d'un Etat contractant au titre d'un emploi antérieur, ne sont imposables que dans cet Etat.

*Articles 19*

(1) Les salaires, traitements et autres rémunérations similaires, ainsi que les pensions de retraite, versés par un Etat contractant, par un «Land» ou par une de ses subdivisions politiques ou collectivités locales, soit directement, soit par prélèvement sur des fonds qu'ils ont constitués, à une personne physique résident de l'autre Etat au titre de services rendus sont imposables dans le premier Etat. Ces rémunérations et pensions sont exonérées de l'impôt de l'autre Etat dont le bénéficiaire est résident lorsqu'il possède la nationalité du premier Etat sans avoir en même temps la nationalité de cet autre Etat.
(2) Les dispositions des articles 15, 16 et 18 s'appliquent aux rémunérations ou pensions versées au titre de services rendus dans le cadre d'une activité commerciale ou industrielle exercée par l'un des Etats contractants, par un «Land» ou une de ses subdivisions politiques ou collectivités locales.
(3) Nonobstant les dispositions du paragraphe 2, tombent sous l'application du paragraphe 1 les rémunérations et pensions allouées à leur personnel par les organismes dont les recettes et les dépenses sont inclues dans le budget général de l'Etat contractant auquel ils appartiennent, y compris, en ce qui concerne la République Fédérale d'Allemagne, la Deutsche Bundesbank, la Deutsche Bundesbahn et la Deutsche Bundespost.
(4) Les indemnités attribuées sous forme de pensions, rentes viagères et autres prestations, périodiques ou non, par un Etat contractant, par un «Land» ou par une personne morale de droit public de cet Etat en raison de dommages subis du fait des hostilités ou de persécutions politiques sont exonérées de l'impôt de l'autre Etat contractant.

*Article 20*

(1) Les sommes qu'un étudiant ou un stagiaire qui est, ou qui était auparavant, un résident d'un Etat contractant et qui séjourne 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 sont exonérées de l'impôt de cet autre Etat, à condition qu'elles proviennent de sources situées en dehors de cet autre Etat.
(2) Les étudiants qui sont, ou qui étaient auparavant, résidents d'un Etat contractant et

qui séjournent dans l'autre Etat contractant à seule fin d'y poursuivre des études à une université ou autre institution d'enseignement supérieur ou technique sont exonérés de l'impôt de cet autre Etat pour les rémunérations qu'ils y reçoivent à raison d'un emploi au but d'une formation pratique directement liée à leurs études, à condition que la durée dudit emploi ne dépasse pas 183 jours.

*Article 21*

Les rémunérations quelconques des professeurs et autres membres du personnel enseignant, qui sont, ou qui étaient auparavant, résidents d'un Etat contractant et qui séjournent dans l'autre Etat contractant pour y enseigner ou s'y livrer à des recherches scientifiques, pendant une période n'excédant pas trois ans, dans une institution d'enseignement ou de recherche scientifique qui ne poursuit pas de buts lucratifs sont exonérées de l'impôt de cet autre Etat, si les rémunérations sont payées par le premier Etat ou par une institution qui est subventionnée d'au moins de 50 pour cent de ses dépenses annuelles par ce premier Etat et qui ne poursuit pas de buts lucratifs.

*Article 22*

Les éléments du revenu d'un résident d'un Etat contractant qui ne sont pas expressément mentionnés dans les articles précédents de la présente Convention ne sont imposables que dans cet Etat.

*Article 23*

(1) La fortune constituée par des biens immobiliers, tels qu'ils sont définis au paragraphe 2 de l'article 6, est imposable dans l'Etat contractant où ces biens sont situés.
(2) La fortune constituée par des biens mobiliers faisant partie de l'actif d'un établissement stable d'une entreprise ou par des biens mobiliers constitutifs d'une base fixe servant à l'exercice d'une profession libérale est imposable dans l'Etat contractant où est situé l'établissement stable ou la base fixe.
(3) Les navires et les aéronefs exploités en trafic international ainsi que les biens mobiliers affectés à leur exploitation ne sont imposables que dans l'Etat contractant où le siège de la direction effective de l'entreprise est situé.
(4) Tous les autres éléments de la fortune d'un résident d'un Etat contractant ne sont imposables que dans cet Etat.

*Article 24*

(1) En ce qui concerne des résidents de la République Fédérale d'Allemagne, la double imposition est évitée de la manière suivante:
a) Les revenus provenant de l'Iran – à l'exclusion des revenus visés aux alinéas b à d – et les éléments de la fortune situés dans l'Iran, qui sont imposables dans cet Etat en vertu des articles précédents, sont exonérés de l'impôt allemand. Cette règle ne limite pas le droit de la République Fédérale d'Allemagne de tenir compte, lors de la détermination du taux de ses impôts, des revenus et des éléments de la fortune ainsi exonérés. Dans le cas des dividendes la première phrase s'applique seulement, lorsque les dividendes sont payés par une société par actions résidente de l'Iran à une société de capitaux (Kapitalgesellschaft) résidente de la République Fédérale d'Allemagne, qui dispose directement d'au moins 25 pour cent du capital assorti d'un droit de vote de la première société. Les actions ou parts de la société résidente de l'Iran sont, aux mêmes conditions, exonérées de l'impôt sur la fortune perçu dans la République Fédérale d'Allemagne.

b) Est imputé sur l'impôt allemand afférent aux revenus suivants qui proviennent de l'Iran l'impôt iranien perçu conformément aux dispositions des articles précédents sur

aa) les dividendes non mentionnés à l'alinéa a;

bb) les intérêts;

cc) les redevances;

dd) les rémunérations et pensions visées au paragraphe 1 de l'article 19 qui, selon cette disposition, ne sont pas exonérées de l'impôt allemand.

Le montant imputable ne peut pas excéder la partie de l'impôt allemand, calculé avant l'imputation, qui correspond aux revenus provenant de l'Iran.

c) Toutefois, si les dividendes ou les redevances mentionnés à l'alinéa b sont exonérés de l'impôt iranien, ou imposés en Iran à un taux réduit, en vertu de mesures spéciales prévues par les lois iraniennes en vue d'encourager le développement de l'économie iranienne, il sera imputé sur l'impôt allemand sur ces dividendes ou ces redevances l'impôt iranien qui serait payable en l'absence de ces mesures spéciales, précision faite que le montant ainsi imputable ne peut pas excéder le montant qui peut être prélevé comme impôt iranien selon les dispositions de l'alinéa b du paragraphe 2 de l'article 10 ou du paragraphe 2 de l'article 12, respectivement. Les autorités compétentes des Etat contractants s'entendent selon l'article 26 pour constater quelles sont les dispositions de la loi iranienne prévoyant les mesures spéciales au sens de la disposition précédente.

d) Les dispositions de l'alinéa a ne s'appliquent pas aux dividendes distribués par une société, si les revenus de ladite société ne sont pas tirés exclusivement ou presque exclusivement de la production ou de la vente de biens ou marchandises, de location ou d'affermage, de prestations de services ou d'opérations bancaires ou d'assurance, ou d'intérêts ou de dividendes provenants de l'Iran, pourvu que – dans le cas de dividendes distribués par une ou plusieurs sociétés résidentes de l'Iran dont plus que 25 pour cent du capital sont détenus par la première société – les revenus de la deuxième société proviennent exclusivement ou presque exclusivement des activités énumerées ci-dessus.

Dans ce cas, l'impôt iranien sur les dividendes est imputé sur l'impôt allemand, selon les dispositions de l'alinéa b.

(2) En ce qui concerne les résidents de l'Iran, la double imposition est évitée de la manière suivante:

L'impôt perçu dans la République Fédérale d'Allemagne conformément aux dispositions de cette Convention sur les revenus provenant de la République Fédérale d'Allemagne, y compris les rémunérations et pensions visées au paragraphe 1 de l'article 19 qui, selon cette disposition, ne sont pas exonérées de l'impôt iranien, est imputé sur l'impôt iranien afférent à ces mêmes revenus. Le montant imputable ne peut pas excéder la partie de l'impôt iranien, calculé avant l'imputation, qui correspond aux revenus provenant de la République Fédérale d'Allemagne.

*Article 25*

(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 celle à laquelle sont ou pourront être assujettis les nationaux de cet autre Etat se trouvant dans la même situation.

(2) 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.
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.
(3) 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 celle à laquelle sont ou pourront être assujetties les autres entreprises de même nature de ce premier Etat.
(4) Le terme «imposition» désigne dans le présent article les impôts de toute nature ou dénomination.

*Article 26*

(1) Lorsqu'un résident d'un Etat contractant estime que les mesures prises par un Etat contractant ou par chacun des deux Etats entraînent ou entraîneront 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 paraît 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 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 Convention. Elles peuvent aussi se concerter en vue d'éviter la double imposition dans les cas non prévus par la Convention.
(4) Les autorités compétentes des Etats contractants peuvent communiquer directement entre elles en vue de parvenir à un accord comme il est indiqué aux paragraphes précédents.

*Article 27*

(1) Les autorités compétentes des Etats contractants échangeront les renseignements nécessaires pour appliquer les dispositions de la présente Convention. Tout renseignement ainsi échangé sera tenu secret et ne pourra être communiqué qu'aux personnes ou autorités chargées de l'établissement ou du recouvrement des impôts visés par la présente Convention.
(2) Les dispositions du paragraphe 1 ne peuvent en aucun cas être interprétées comme imposant à l'un des Etats contractants l'obligation:
a) de prendre des dispositions administratives dérogeant à sa propre législation ou à sa pratique administrative ou à celle de l'autre Etat contractant;
b) de fournir des renseignements qui ne pourraient être obtenus sur la base de sa propre législation ou dans le cadre de sa pratique administrative normale ou de celles de l'autre Etat contractant;
c) de transmettre des renseignements qui révéleraient un secret commercial, industriel, professionnel ou un procédé commercial ou des renseignements dont la communication serait contraire à l'ordre public.

*Article 28*

Les dispositions de la présente Convention ne portent pas atteinte aux privilèges fiscaux dont bénéficient les fonctionnaires diplomatiques ou consulaires en vertu soit de règles générales du droit des gens, soit des dispositions d'accords particuliers.

*Article 29*

Cette Convention s'appliquera également au Land Berlin, sauf déclaration contraire faite par le Gouvernement de la République Fédérale d'Allemagne au Gouvernement de l'Empire de l'Iran dans les trois mois qui suivent l'entrée en vigueur de la présente Convention.

*Article 30*

(1) Cette Convention sera ratifiée et les instruments de la ratification seront échangés le plus tôt possible à Teheran.★

(2) La Convention entrera en vigueur un mois après la date de l'échange des instruments de ratification et elle s'appliquera pour la première fois aux impôts perçus

a) en République Fédérale d'Allemagne:
pour l'année d'imposition qui commence le 1er janvier de l'année suivant celle de son entrée en vigueur;

b) en Iran:
pour l'année d'imposition qui commence le 1er janvier de l'année suivant celle de son entrée en vigueur, ou, si l'année d'imposition ne commence pas au 1er janvier, pour l'année d'imposition qui suit ce 1er janvier.

*Article 31*

(1) Cette Convention restera en vigueur pendant une durée indéterminée.

(2) A partir du 1er janvier de la cinquième année suivant celle de sa ratification, chacun des Etats contractants pourra notifier à l'autre Etat dans le courant des six premiers mois d'une année civile, par écrit et par voie diplomatique, son intention d'y mettre fin. Dans ce cas, la Convention cessera de s'appliquer aux impôts perçus

1. en République Fédérale d'Allemagne:
pour l'année d'imposition qui commence le 1er janvier de l'année suivant celle de la notification;
2. en Iran:
pour l'année d'imposition qui commence le 1er janvier de l'année suivant celle de la notification ou, si l'année d'imposition ne commence pas au 1er janvier, pour l'année d'imposition qui suit ce 1er janvier.

En foi de quoi les plénipotentiaires des deux Etats ont signé la présente Convention et y ont apposé leurs sceaux.

Fait à Bonn le 20 décembre 1968 en six exemplaires dont deux en langue allemande, deux en langue persane et deux en langue française, chacun des six textes faisant foi. En cas de divergences dans l'interprétation du texte allemand et du texte persan, le texte français prévaudra.

Pour la République Fédérale d'Allemagne:
G. F. Duckwitz
Grund

Pour l'Empire de l'Iran:
M. Malek

---

★ 30 novembre 1969.

*Supplement* **B**
1970

# Convention between the Government of Ceylon and the Government of Japan for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income

TO THE BULLETIN FOR INTERNATIONAL FISCAL DOCUMENTATION
SUPPLEMENT
AU BULLETIN DE DOCUMENTATION FISCALE INTERNATIONALE

Vol. XXIV, No 3, March/mars 1970

INTERNATIONAL BUREAU OF FISCAL DOCUMENTATION

Muiderpoort – 124 Sarphatistraat – Amsterdam

## TEXT

The Government of Ceylon and the Government of Japan,

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 (hereinafter referred to as "Japanese tax");

(b) in Ceylon:
the income tax
(hereinafter referred to as "Ceylon 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 Japan or Ceylon subsequently to 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 terms "one of the territories" and "the other territory" mean Japan or Ceylon, as the context requires;

(c) the term "Contracting State" means Japan or Ceylon, as the context requires;

(d) the term "tax" means Japanese tax or Ceylon tax, as the context requires;

(e) the term "person" includes any body of persons, corporate or not corporate;

(f) the term "company" means any body corporate and any entity which is treated as a body corporate for tax purposes;

(g) the terms "resident of Japan" and "resident of Ceylon" mean respectively any person who is resident in Japan for the purposes of Japanese tax and not resident

in Ceylon for the purposes of Ceylon tax, and any person who is resident in Ceylon for the purposes of Ceylon tax and not resident in Japan for the purposes of Japanese tax. A company shall be regarded as resident in Japan if it has its head or main office in Japan and is not managed and controlled in Ceylon and is not incorporated under the laws of Ceylon; a company shall be regarded as resident in Ceylon if either it is incorporated under the laws of Ceylon or its business is managed and controlled in Ceylon, and in either case it does not have its head or main office in Japan;

(h) the terms "Japanese enterprise" and "Ceylon enterprise" mean respectively an industrial or commercial enterprise or undertaking carried on by a resident of Japan and an industrial or commercial enterprise or undertaking carried on by a resident of Ceylon; and the terms "enterprise of one of the territories" and "enterprise of the other territory" mean a Japanese enterprise or a Ceylon enterprise, as the context requires;

(i) the term "industrial or commercial profits" includes profits from the business of agriculture, fishing, mining, banking, insurance, dealing in investments, and profits from rents or royalties in respect of cinematograph films, but does not include income in the form of dividends, interest, rents, royalties (other than rents or royalties in respect of cinematograph films), management charges, or remuneration for personal services;

(j) the term "permanent establishment" when used with respect to an enterprise of one of the territories means a branch, management, factory or other fixed place of business, an agricultural or farming estate, a mine, quarry or any other place of natural resources subject to exploitation, and a construction or assembly project or the like the duration of which exceeds 183 days; it does not include an agency unless the agent has, and habitually exercises, a general authority to negotiate and conclude contracts on behalf of the enterprise or has a stock of merchandise from which he regularly fills orders on its behalf.

In this connection—

(aa) an enterprise of one of the territories shall not be deemed to have a permanent establishment in the other territory merely because it carries on business dealings in that other territory through a bona fide broker, general commission agent or any other agent of a genuinely independent status, where such persons are acting in the ordinary course of their business as such;

(bb) the fact that an enterprise of one of the territories maintains in the other territory a fixed place of business or any agent exclusively for the purchase of goods or merchandise shall not of itself constitute that fixed place of business or that agent a permanent establishment of the enterprise;

(cc) the fact that a company which is a resident of one of the territories has a subsidiary company which is a resident of the other territory or which carries on a trade or business in that other territory (whether through a permanent establishment or otherwise) shall not of itself constitute that subsidiary company a permanent establishment of its parent company.

(k) the term "competent authorities" means in the case of Japan the Minister of Finance or his authorised representatives; and in the case of Ceylon the Commissioner of Inland Revenue.

(2) In the application of the provisions of the

present Convention in one of the territories any term not otherwise defined in the present Convention shall, unless the context otherwise requires, have the meaning which it has under the laws in force in that territory relating to the taxes which are the subject of the present Convention.

*Article III*

(1) The industrial or commercial profits of an enterprise of one of the territories shall not be subject to tax in the other territory unless the enterprise carries on a trade or business in that other territory through a permanent establishment situated therein. If it carries on a trade or business in that other territory through a permanent establishment situated therein, tax may be imposed on those profits in that other territory but only on so much of them as is attributable to that permanent establishment; provided that nothing in this paragraph shall affect the ascertainment of profits from the business of insurance in accordance with the provisions of the law of Ceylon at the date of signature of the present Convention.

(2) Where an enterprise of one of the territories carries on a trade or business in the other territory through a permanent establishment situated therein, there shall be attributed to that permanent establishment the industrial or commercial profits which it might be expected to derive in that other territory if it were an independent enterprise engaged in the same or similar activities under the same or similar conditions and dealing at arm's length with the enterprise of which it is a permanent establishment; provided that nothing in this paragraph shall affect the computation of the profits derived by a Japanese enterprise from the production of tea or other agricultural product in Ceylon in accordance with the provisions of the law of Ceylon at the date of signature of the present Convention.

(3) No portion of any profits arising to an enterprise of one of the territories shall be attributed to a permanent establishment situated in the other territory by reason of the mere purchase of goods or merchandise within that other territory by the enterprise.

*Article IV*

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 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) When a resident of Japan, operating ships or aircraft, derives profits from Ceylon through such operations carried on in Ceylon, such profits may be subject to tax in Japan as well as in Ceylon; but the tax so chargeable in Ceylon shall be reduced by an amount equal to 50 per cent thereof.

(2) When a resident of Ceylon, operating ships or aircraft, derives profits from Japan through such operations carried on in Japan,

such profits may be subject to tax in Ceylon as well as in Japan; but the tax so chargeable in Japan shall be reduced by an amount equal to 50 per cent thereof.

*Article VI*

(1) Dividends paid by a company resident in Ceylon to a company resident in Japan shall be exempt from all Ceylon tax other than the Ceylon income tax on the company which pays the dividends and other than the additional tax referred to in sub-section (4) of section 26 of the Ceylon Inland Revenue Act on companies whose shares are not movable property situated in Ceylon for the purposes of the law of Ceylon relating to Estate Duty; but the rate of this last-mentioned additional tax shall not, in the case of companies resident in Japan, exceed 6 per cent.

(2) The rate of Japanese tax on dividends which are paid by a company resident in Japan to a company resident in Ceylon shall not exceed 20 per cent.

(3) The amount of tax which a company resident in Ceylon is authorized to deduct by virtue of sub-section (1) of section 27 of the Ceylon Inland Revenue Act from any dividends paid shall be refunded to a company resident in Japan in the case where such dividends are paid by a company referred to in sub-section (1) of section 6 of the said Act and such dividends are paid out of the taxable income of that company of any of the five years immediately subsequent to the period for which profits are exempted under sub-section (2) of section 6 of the said Act, provided that not less than 10 per cent of the shares of the company which pays the dividends are held by one or more residents of Japan.

(4) The provisions of paragraphs (1), (2) and (3) of this Article shall not apply where a resident of one of the territories has a permanent establishment in the other territory, and the dividends are attributable to that permanent establishment; in such event the provisions of Article III of the present Convention shall be applicable.

(5) Where a company which is a resident of one of the territories derives profits or income from sources within the other territory, there shall not be imposed in that other territory any form of taxation on dividends paid by the company to persons not resident in that other territory, or any tax in the nature of an undistributed profits tax on undistributed profits of the company, whether or not those dividends or undistributed profits represent, in whole or in part, profits or income so derived.

*Article VII*

(1) Interest received by any banking institution which is a resident of one of the territories shall be exempt from tax in the other territory.

(2) Interest receivable on bonds, debentures, deposits or loans may be subject to tax in the territory in which the debtor resides, provided that profits and income derived by the Government of Japan, either directly or through any agency of that Government, or by any such body of persons or company resident in Japan as may be approved by the Government of Ceylon from aid granted in money, goods or services or any other form by the Government of Japan or that body or company to the Government of Ceylon shall be exempt from Ceylon tax.

(3) The provisions of this Article shall not apply where a resident of one of the territories has a permanent establishment in the other territory, and such items of income as are dealt within this Article are attributable to that permanent establishment; in such event the provisions of Article III of the present Convention shall be applicable.

*Article VIII*

(1) Any royalty or other amount which is payable as consideration for the use of, or for the right to use, any copyright or cinematograph films and which is derived from sources within one of the territories by a resident of the other territory shall be exempt from tax in that first-mentioned territory.

(2) Any royalty or other amount which is payable as consideration for the use of, or for the right to use, any patents, designs or models, plans, secret processes or formulae, trade marks and other like property and rights, and which is derived from sources within one of the territories by a resident of the other territory may be subject to tax in the first-mentioned territory, but the tax so chargeable shall be reduced by an amount equal to 50 per cent thereof. There shall be treated as royalties all rents and similar payments received as consideration for the use of, or for the right to use, industrial, commercial or scientific equipment.

(3) The provisions of this Article shall not apply where a resident of one of the territories has a permanent establishment in the other territory, and such items of income as are dealt with in this Article are attributable to that permanent establishment; in such event the provisions of Article III of the present Convention shall be applicable.

*Article IX*

(1) Except on gains derived from the sale, transfer or exchange of immovable property, a resident of one of the territories shall be exempt in the other territory from any tax on gains from the sale, transfer or exchange of capital assets (including the sale, transfer or exchange of patent rights).

(2) The provisions of paragraph (1) of this Article shall not apply to the gains derived from the sale, transfer or exchange of stocks, shares, bonds and debentures.

(3) The provisions of paragraph (1) of this Article shall not apply where a resident of one of the territories has a permanent establishment in the other territory and such gains are attributable to that permanent establishment; in such event the provisions of Article III of the present Convention shall be applicable.

*Article X*

(1) Remuneration, including pensions, paid by the Government (including any local government) of Japan, or paid out of funds created by such Government or to which such Government contributes, to any individual for services rendered shall be exempt from tax in Ceylon, if the individual is not resident in Ceylon or (where the remuneration is not a pension) is resident in Ceylon solely for the purposes of rendering those services.

(2) Remuneration, including pensions, paid by the Government (including any local government) of Ceylon, or paid out of funds created by such Government or to which such Government contributes, to any individual for services rendered shall be exempt from tax in Japan, unless the individual is a national of Japan or is admitted to Japan for permanent residence therein.

(3) The provisions of this Article shall not apply to payments in respect of services in connection with any trade or business carried on for purposes of profit.

*Article XI*

(1) Profits or remuneration from professional services (including services as a director) or an employment, earned by an individual who is a resident of one of the territories, may also be taxed in the other territory, but only if

the activities are performed in that other territory.

(2) An individual who is a resident of Japan shall be exempt from Ceylon tax on profits or remuneration in respect of personal (including professional services performed within Ceylon in any year of assessment, if

(a) he is present within Ceylon 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 Japan, and

(c) the profits or remuneration are subject to Japanese tax.

(3) An individual who is a resident of Ceylon shall be exempt from Japanese tax on profits or remuneration in respect of personal (including professional) services performed within Japan in any taxable year, if

(a) he is present within Japan 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 Ceylon, and

(c) the profits or remuneration are subject to Ceylon tax.

(4) Where an individual permanently or predominantly performs services in ships or aircraft operated by an enterprise of one of the territories such services shall be deemed to be performed in that territory.

(5) The provisions of paragraphs (2) and (3) of this Article shall not apply to the profits or remuneration of public entertainers such as theatre, motion picture, radio or television artistes, musicians and professional athletes.

*Article XII*

Any pension and other similar remuneration (other than those to which Article X of the present Convention applies), derived from sources within one of the territories by an individual who is a resident of the other territory in respect of past employment shall be exempt from tax in the first-mentioned territory.

*Article XIII*

A professor or teacher from one of the territories, who visits the other territory at the invitation for a period not exceeding two years of a recognised university, college, school or other educational institution in the other territory for the purposes of teaching or engaging in research at such educational institution, shall not be subject to tax for a period not exceeding two years in that other territory in respect of remuneration for such teaching or research.

*Article XIV*

(1) An individual from one of the territories who is temporarily present in the other territory solely

(a) as a student at a recognised university, college or school in that other territory,

(b) as a business apprentice, or

(c) as the recipient of a grant, allowance or award for the primary purpose of study or research from a religious, charitable, scientific or educational organisation

shall be exempt from tax in that other territory in respect of

(i) remittances from abroad for the purposes of his maintenance, education, study, research or training;

(ii) the grant, allowance or award; and

(iii) remuneration for personal services in that other territory not exceeding the sum of 360,000 Yen or its equivalent sum in Ceylon currency, during any year of assessment or taxable year, as the case may be.

(2) An individual from one of the territories who is temporarily present in the other

territory for a period not exceeding one year, as an employee of, or under contract with, an enterprise of the former territory or an organisation referred to in sub-paragraph (c) of paragraph (1) of this Article solely to acquire technical, professional or business experience from a person other than such enterprise or organisation, shall not be subject to tax in that other territory in respect of remuneration for such period for his services directly related to the acquisition of such experience unless the amount thereof exceeds 1,000,000 Yen or its equivalent in Ceylon currency.

(3) An individual from one of the territories temporarily present in the other territory under arrangements with the Government of that other territory or any agency or instrumentality thereof solely for the purpose of training, research or study shall not be subject to tax in that other territory in respect of remuneration received on account of such training, research or study.

*Article XV*

(1) The laws in force in either of the territories shall continue to govern the taxation of income in the respective territories except where express provisions to the contrary are made in the present Convention.

(2) (a) Subject to the provisions of the law of Japan regarding the allowances as a credit against Japanese tax of tax payable in any country other than Japan, Ceylon tax payable under the law of Ceylon and in accordance with the provisions of the present Convention, whether directly or by deduction, in respect of income derived from Ceylon shall be allowed as a credit against Japanese tax. Where a resident of Japan receives dividends paid by a company resident in Ceylon, Ceylon tax deductible under the provisions of sub-section (4) of section 26 and sub-section (1) of section 27 of the Ceylon Inland Revenue Act shall be treated as tax payable by such a resident of Japan in respect of such dividends.

(b) For the purposes of credit referred to in sub-paragraph (a) of this paragraph,

(i) there shall be deemed to have been paid by a company resident in Japan, in respect of dividends received by that company from a company resident in Ceylon, as is referred to in sub-section (1) of section 6 of the Ceylon Inland Revenue Act and not less than 10 per cent of the shares of which are held by one or more residents of Japan, the amount of Ceylon tax that would be payable if the provisions of sub-section (3) of section 6 of the said Act did not apply;

(ii) there shall be deemed not to have been refunded in respect of dividends to which the provisions of paragraph (3) of Article VI of the present Convention apply, the amount of Ceylon tax refunded under the said provisions of the present Convention;

provided that amount of the Ceylon tax deemed to have been paid or deemed not to have been refunded shall not exceed the amount of Japanese tax payable in respect of such dividends by the company resident in Japan less the amount of the Ceylon tax payable.

(c) For the purposes of credit referred to in sub-paragraph (a) of this paragraph, in addition to the reduced amount of Ceylon tax payable on royalties under the provisions of paragraph (2) of Article VIII of the present Convention, there shall be deemed to have been paid by a resident of Japan in respect of such royalties 25 per cent of the amount of Ceylon tax that would be payable if the said provisions did not apply; provided that the amount of Ceylon tax deemed to have been

paid shall not exceed the amount of Japanese tax payable by such a resident of Japan on such royalties less the reduced amount of Ceylon tax payable under the provisions of paragraph (2) of Article VIII of the present Convention.

(d) In the application of the provisions of sub-paragraph (b) of this paragraph, the amount of Ceylon tax that is deemed to have been paid shall not exceed the amount which would be determined as if any amendment to the Ceylon Inland Revenue Act subsequent to the date of signature of the present Convention did not apply.

(3) Subject to the provisions of the Ceylon Inland Revenue Act, Japanese tax payable, whether directly or by deduction, by a person resident in Ceylon in respect of income from sources within Japan shall be allowed as a credit against any Ceylon tax payable in respect of that income.

*Article XVI*

The competent authorities shall exchange such information (being information which is at their disposal under their respective taxation laws in the normal course of administration) as is necessary for carrying out the provisions of the present Convention or for the prevention of fraud or for the administration of statutory provisions against tax avoidance in relation to the taxes which are the subject of the present Convention. Any information so exchanged shall be treated as secret and shall not be disclosed to any person other than those concerned with the assessment and collection of the taxes which are the subject of the present Convention. No information as aforesaid shall be exchanged which discloses any trade, business, industrial or professional secret or trade process.

*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 nationals of one of the territories shall not be subjected in the other territory to any taxation or any requirement connected therewith which is other, higher or more burdensome than the taxation and connected requirements to which the nationals of that other territory are or may be subjected.

(3) In this Article the term "nationals" means:

(a) all individuals possessing the nationality of one of the territories;

(b) all other persons deriving their status as such from the law in force in one of the territories.

(4) The enterprises of one of the territories shall not be subjected in the other territory, in respect of profits attributable to their permanent establishments in that other territory, to any taxation which is other, higher or more burdensome than the taxation to which the enterprises of that other territory are or may be subjected in respect of the like profits.

(5) In this Article the term "taxation" means taxes of every kind and description.

(6) Enterprises of one of the territories, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other territory, shall not be subjected in the first-mentioned territory to any taxation or any requirement connected therewith which is other, higher or more burdensome than the taxation and connected requirements to which other similar enterprises of that first-mentioned territory are or may be subjected.

(7) Nothing in this Article shall be construed as—

(a) obliging either of the Contracting States to grant to persons not resident in its territory, those personal allowances, reliefs and reductions for tax purposes which are, by law, available only to persons who are so resident;

(b) affecting the additional tax referred to in paragraph (1) of Article VI of the present Convention.

*Article XVIII*

(1) Where a resident of one of the territories shows proof that the action of the tax authorities has resulted or will result in double taxation contrary to the provisions of the present Convention, he shall be entitled to present his case to the competent authorities of the Contracting State in which he is resident. Should his claim be deemed worthy of consideration, the competent authorities of the Contracting State to which the claim is made shall endeavour to come to an agreement with the competent authorities of the other Contracting State with a view to avoiding double taxation.

(2) For the settlement of difficulties or doubts in the interpretation of application of the present Convention or in respect of its relation to conventions of the Contracting States with third states the competent authorities shall reach a mutual agreement as quickly as possible.

*Article XIX*

The competent authorities may communicate with each other directly for the purpose of giving effect to the provisions of the present Convention.

*Article XX*

(1) The present Convention shall be ratified and the instruments of ratification shall be exchanged as soon as possible in Tokyo.[1]

(2) The present Convention shall come into force on the thirtieth day after the date of exchange of the instruments of ratification and shall have effect—

(a) in Ceylon: as regards tax for the years of assessment commencing on or after the first day of April of the calendar year in which the present Convention comes into force; and

(b) in Japan: as regards tax for the taxable years commencing on or after the first day of January of the calendar year in which the present Convention comes into force.

*Article XXI*

The present Convention shall continue in effect indefinitely but either of the Contracting States may terminate the present Convention at any time after a period of three years from the date on which the present Convention comes into force, by giving on or before the 30th day of June in any year to the other Contracting State notice of termination, and, in such event the present Convention shall cease to be effective—

(a) in Ceylon: as regards tax for the years of assessment commencing on or after the first day of April of the calendar year next following that in which the notice is given; and

(b) in Japan: as regards tax for the taxable years commencing on or after the first day of January of the calendar year next

1. The instruments of ratification were exchanged on 23rd August 1968.

following that in which the notice is given.

In witness whereof the undersigned only authorized thereto have signed the present Convention.

DONE in duplicate in Colombo on December 12, 1967 in the Sinhala, Japanese and English languages, each text being equally authentic. In case of divergence of interpretation, the English text shall prevail.

## Protocol

At the signing of the Convention between the Government of Ceylon and the Government of Japan for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, the undersigned have agreed upon the following provisions which shall form an integral part of the said Convention:

The provisions of paragraph (2) of Article VIII of the Convention shall be modified if the Government of Ceylon gives any further concession than is provided in the said provisions of the Convention to any other country, so that the same concession as is given to that other country shall be given to Japan and shall have effect from the first day of April of the calendar year in which the concession becomes applicable to that other country:

DONE in duplicate in Colombo on December 12, 1967 in the Sinhala, Japanese and English languages, each text being equally authentic. In case of divergence of interpretation, the English text shall prevail.

*Supplement* **C**
1970

# Convention between the Government of Japan and the Government of the Kingdom of the Netherlands for the avoidance of double taxation with respect to taxes on income

SUPPLEMENT TO THE BULLETIN FOR INTERNATIONAL FISCAL DOCUMENTATION
SUPPLÉMENT AU BULLETIN DE DOCUMENTATION FISCALE INTERNATIONALE

Vol. XXIV, No. 5, May/mai 1970

INTERNATIONAL BUREAU OF FISCAL DOCUMENTATION

Muiderpoort – 124 Sarphatistraat – Amsterdam

## TEXT

The Government of Japan and the Government of the Kingdom of the Netherlands,
Desiring to conclude a Convention for the avoidance of double taxation with respect to taxes on income,
Have agreed as follows:

*Article 1*

This Convention shall apply to persons who are residents of one or both of the countries.

*Article 2*

1. The taxes which are the subject of this Convention are:
(a) In Japan:
(i) the income tax;
(ii) the corporation tax; and
(iii) the local inhabitant taxes
(hereinafter referred to as "Japanese tax").
(b) In the Netherlands:
(i) the income tax;
(ii) the wages tax;
(iii) the company tax; and
(iv) the dividend tax
(hereinafter referred to as "Netherlands tax").
2. This Convention shall also apply to any other taxes of a character substantially similar to those referred to in the preceding paragraph and introduced by either country or by a political subdivision or a local authority thereof after the date of signature of this Convention.

*Article 3*

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 in force;
(b) the term "the Netherlands" means the part of the Kingdom of the Netherlands that is situated in Europe;
(c) the terms "a country" and "the other country" mean Japan or the Netherlands, as the context requires;

(d) the term "tax" means Japanese tax or Netherlands tax, as the context requires;
(e) the term "person" means an individual or a company;
(f) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;
(g) the terms "enterprise of a country" and "enterprise of the other country" mean respectively an enterprise carried on by a resident of a country and an enterprise carried on by a resident of the other country:
(h) the term "competent authority" in relation to a country means the Minister of Finance of that country or his authorized representative.

2. As regards the application of this Convention in a country any term not otherwise defined in this Convention shall, unless the context otherwise requires, have the meaning which it has under the laws of that country relating to the taxes to which this Convention applies.

*Article 4*

1. For the purposes of this Convention, the term "resident of a country" means any person who, under the laws of that country, is liable to taxation therein by reason of his domicile, residence, place of head or main office, place of management or any other criterion of a similar nature but the term does not include any person who is liable to tax in that country only if he derives income from sources therein.

2. Where by reason of the provisions of paragraph 1 a person is a resident of both countries, then the competent authorities shall determine by mutual agreement the country of which that person shall be deemed to be a resident for the purposes of this Convention.

*Article 5*

1. For the purposes of this Convention, 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 establishment" shall include especially:
(a) a place of management;
(b) a branch;
(c) an office;
(d) a factory;
(e) a workshop;
(f) a mine, quarry or other place of extraction of natural resources;
(g) a building site or construction or assembly project which exists for more than twelve months.

3. The term "permanent establishment" shall not be deemed to include:
(a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
(b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
(c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
(d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or for collecting information, for the enterprise;
(e) the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research or for similar activities which have a preparatory or auxiliary character, for the enterprise.

4. An enterprise of a country shall be deemed

to have a permanent establishment in the other country if it carries on supervisory activities in that other country for more than twelve months in connection with a building site or construction or assembly project which is being undertaken in that other country.

5. A person acting in a country on behalf of an enterprise of the other country—other than an agent of an independent status to whom paragraph 6 applies—shall be deemed to be a permanent establishment in the first-mentioned country if

(a) he has, and habitually exercises in that first-mentioned country, 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

(b) he maintains in that first-mentioned country a stock of goods or merchandise belonging to the enterprise from which he regularly fills orders on behalf of the enterprise, consecutive to a contract previously concluded by the enterprise without specifying either the quantity to be delivered, or the date and the place of delivery.

6. An enterprise of a country shall not be deemed to have a permanent establishment in the other country merely because it carries on business in that other country through a broker, general commission agent or any other agent of an independent status, where such persons are acting in the ordinary course of their business.

7. The fact that a company which is a resident of a country controls or is controlled by a company which is a resident of the other country, or which carries on business in that other country (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

*Article 6*

Where under any provision of this Convention income is relieved from tax in a country and, under the laws in force in the other country, an individual, in respect of the said income, is subject to tax by reference to the amount thereof which is remitted to or received in that other country and not by reference to the full amount thereof, then the relief to be allowed under this Convention in the first-mentioned country shall apply only to so much of the income as is remitted to or received in that other country.

*Article 7*

1. Income from immovable property may be taxed in the country in which such property is situated.

2. The term "immovable property" shall be defined in accordance with the laws of the country in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting immovable property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of immovable property.

4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of professional services.

*Article 8*

1. The profits of an enterprise of a country shall be taxable only in that country unless the enterprise carries on business in the other country 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 country but only so much of them as is attributable to that permanent establishment.
2. Where an enterprise of a country carries on business in the other country through a permanent establishment situated therein, there shall in each country 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 country in which the permanent establishment is situated or elsewhere.
4. Insofar as it has been customary in a country to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that country from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles laid down in this Article.
5. 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.
6. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.
7. Where profits include items of income which are dealt with separately in other Articles of this Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

*Article 9*

1. Profits from the operation of ships or aircraft in international traffic carried on by an enterprise of a country shall be taxable only in that country.
2. In respect of the operation of ships or aircraft in international traffic carried on by an enterprise of a country, that enterprise, if an enterprise of the Netherlands, shall also be exempt from the enterprise tax in Japan and, if an enterprise of Japan, shall also be exempt from any tax similar to the enterprise tax in Japan which may hereafter be imposed in the Netherlands.
3. This Convention shall not be construed to affect the arrangement between Japan and the Netherlands providing for relief from double taxation on shipping profits effected by the exchange of notes dated January 26, 1933.

*Article 10*

Where
(a) an enterprise of a country participates directly or indirectly in the management, control or capital of an enterprise of the other country, or

(b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a country and an enterprise of the other country,

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 11*

1. Dividends paid by a company which is a resident of a country to a resident of the other country may be taxed in that other country.
2. However, such dividends may be taxed in the country of which the company paying the dividends is a resident, and according to the laws of that country, but the tax so charged shall not exceed 15 per cent of the gross amount of the dividends.
3. Notwithstanding the provisions of paragraph 2,

(a) Japanese tax on dividends paid by a company which is a resident of Japan to a company which is a resident of the Netherlands shall not exceed 10 per cent of the gross amount of the dividends, if the company receiving such dividends owns, during the period of six months immediately preceding the date when the dividends become payable, 25 per cent or more of the voting shares of the company paying such dividends;

(b) Netherlands tax on dividends paid by a company which is a resident of the Netherlands to a company which is a resident of Japan shall not exceed 5 per cent of the gross amount of the dividends, if the company receiving such dividends owns, during the period of six months immediately preceding the date when the dividends become payable, 25 per cent or more of the voting shares of the company paying such dividends.

4. The provisions of paragraphs 2 and 3 shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.
5. The term "dividends" as used in this Article means income from shares, "jouissance" shares or "jouissance" rights, founders' shares, or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights assimilated to income from shares by the taxation laws of the country of which the company making the distribution is a resident.
6. The provisions of paragraphs 1, 2 and 3 shall not apply if the recipient of the dividends, being a resident of a country, has in the other country, 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, the provisions of Article 8 shall apply.
7. Where a company which is a resident of a country derives profits or income from the other country, that other country may not impose any tax on the dividends paid by the company to persons who are not residents of that other country, 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 that other country.

*Article 12*

1. Interest arising in a country and paid to

a resident of the other country may be taxed in that other country.

2. However, such interest may be taxed in the country in which it arises, and according to the laws of that country, but the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2, the country in which interest arises shall not levy a tax on the interest paid to the Government or the Central Bank of the other country or to any financial institution fully owned by that other country.

4. 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 laws of the country in which the income arises.

5. The provisions of paragraphs 1 and 2 shall not apply if the recipient of the interest, being a resident of a country, has in the other country 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, the provisions of Article 8 shall apply.

6. Interest shall be deemed to arise in a country when the payer is that country itself, a political subdivision, a local authority or a resident of that country. Where, however, the person paying the interest, whether he is a resident of a country or not, has in a country 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 country in which the permanent establishment is situated.

7. 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 laws of each country, due regard being had to the other provisions of this Convention.

*Article 13*

1. Royalties arising in a country and paid to a resident of the other country may be taxed in that other country.

2. However, such royalties may be taxed in the country in which they arise, and according to the laws of that country, but the tax so charged shall not exceed 10 per cent of the gross amount of the royalties.

3. 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.

4. The provisions of paragraphs 1 and 2 shall not apply if the recipient of the royalties, being a resident of a country, has in the other country 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, the provisions of Article 8 shall apply.

5. Royalties shall be deemed to arise in a

country when the payer is that country itself, a political subdivision, a local authority or a resident of that country. Where, however, the person paying the royalties, whether he is a resident of a country or not, has in a country a permanent establishment in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment, then such royalties shall be deemed to arise in the country in which the permanent establishment is situated.

6. 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 laws of each country, due regard being had to the other provisions of this Convention.

*Article 14*

1. Gains from the alienation of immovable property, as defined in paragraph 2 of Article 7, may be taxed in the country in which such property is situated.

2. Gains from the alienation of any property (other than immovable property) forming part of the business property of a permanent establishment which an enterprise of a country has in the other country or of any property (other than immovable property) pertaining to a fixed base available to a resident of a country in the other country 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 that other country.

3. Notwithstanding the provisions of paragraph 2, gains derived by a resident of a country from the alienation of ships and aircraft operated in international traffic and any property (other than immovable property) pertaining to the operation of such ships and aircraft shall be taxable only in that country.

4. Gains derived by a resident of a country from the alienation of any property other than those to which the provisions of paragraphs 1 and 2 of this Article apply shall be taxable only in that country.

5. The provisions of paragraph 4 shall not affect the right of a country to levy according to its own laws a tax on gains from the alienation of shares or "jouissance" rights in a company, the capital of which is wholly or partly divided into shares and which is a resident of that country, derived by an individual who is a resident of the other country and has been a resident of the first-mentioned country at any time during the five years immediately preceding the alienation of the shares or "jouissance" rights.

*Article 15*

1. Income derived by a resident of a country in respect of professional services or other independent activities of a similar character shall be taxable only in that country unless he has a fixed base regularly available to him in the other country for the purpose of performing his activities. If he has such a fixed base, the income may be taxed in that other country but only so much of it as is attributable to that fixed base.

2. The term "professional services" includes especially independent scientific, lite-

rary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

*Article 16*

1. Subject to the provisions of Articles 17, 19, 20 and 21, salaries, wages and other similar remuneration derived by a resident of a country in respect of an employment shall be taxable only in that country unless the employment is exercised in the other country. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other country.
2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a country in respect of an employment exercised in the other country shall be taxable only in the first-mentioned country, if
(a) the recipient is present in that other country for a period or periods not exceeding in the aggregate 183 days in the calendar year concerned, and
(b) the remuneration is paid by, or on behalf of, an employer who is not a resident of that other country, and
(c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in that other country.
3. Notwithstanding the provisions of paragraphs 1 and 2, remuneration in respect of an employment exercised aboard a ship or an aircraft operated in international traffic by an enterprise of a country may be taxed in that country.

*Article 17*

Remuneration derived by a resident of a country in his capacity as a member of the board of directors of a company which is a resident of the other country may be taxed in that other country.

*Article 18*

1. Notwithstanding the provisions of Articles 15 and 16, income derived by public entertainers, such as theatre, motion picture, radio or television artistes, and musicians, and by athletes, from their personal activities as such may be taxed in the country in which these activities are exercised.
2. Notwithstanding anything contained in this Convention, where the services of a public entertainer or an athlete mentioned in paragraph 1 are provided in a country by an enterprise of the other country, the profits derived from providing those services by such enterprise may be taxed in the first-mentioned country if the public entertainer or the athlete performing the services controls, directly or indirectly, such enterprise.

*Article 19*

Subject to the provisions of the paragraphs 1 and 2 of Article 20, pensions and other similar remuneration paid to a resident of a country in consideration of past employment shall be taxable only in that country.

*Article 20*

1. Remuneration, including pensions, paid by, or out of funds to which contributions, in the capacity as an employer, are made by, Japan or a local authority thereof to any individual in respect of services rendered to Japan or a local authority thereof in the discharge of functions of a governmental nature may be taxed in Japan. Subject to the provisions of paragraph 2 of Article 24, such remuneration shall be exempt from Netherlands tax.

2. Remuneration, including pensions, paid by, or out of funds created by, the Netherlands, a political subdivision or a local authority thereof to any individual in respect of services rendered to the Netherlands, a political subdivision or a local authority thereof in the discharge of functions of a governmental nature may be taxed in the Netherlands. Such remuneration shall be exempt from Japanese tax if the recipient is a national of the Netherlands.

3. The provisions of this Article shall not apply to remuneration, including pensions paid in respect of services rendered in connection with any trade or business carried on by either country or a political subdivision or a local authority thereof.

*Article 21*

A professor or teacher who makes a temporary visit to a country for a period not exceeding two years for the purpose of teaching at a university, college, school or other educational institution and who is, or immediately before such visit was, a resident of the other country shall be exempt from tax of the first-mentioned country in respect of remuneration for such teaching.

*Article 22*

Payments received for the purpose of his maintenance, education or training by a student or business apprentice who is present in a country solely for the purpose of his education or training and who is, or immediately before being so present was, a resident of the other country, shall be exempt from tax of the first-mentioned country, provided that such payments are made to him from outside that first-mentioned country.

*Article 23*

Items of income of a resident of a country which are not expressly mentioned in the foregoing Articles of this Convention shall be taxable only in that country.

*Article 24*

1. Where a resident of Japan derives income from the Netherlands and that income may be taxed in both countries in accordance with the provisions of this Convention, the amount of the Netherlands tax payable in respect of that income shall be allowed as a credit against the Japanese tax imposed on that resident. The amount of credit, however, shall not exceed that part of the Japanese tax which is appropriate to that income. The mode of application of giving this credit shall be determined in accordance with the provisions of the laws of Japan regarding the allowance as a credit against Japanese tax of tax payable in any country other than Japan.

2. (a) The Netherlands, when imposing tax on its residents, may include in the basis upon which such tax is imposed the items of income, which according to the provisions of this Convention may be taxed in Japan.

(b) Without prejudice to the application of the provisions concerning the compensation of losses in the unilateral regulations for the avoidance of double taxation, the Netherlands shall allow a deduction from the amount of tax computed in conformity with the provisions of sub-paragraph (a) equal to such part of that tax which bears the same proportion to the aforesaid tax, as the part of the income which is included in the basis meant in the provisions of sub-paragraph (a) and which may be

taxed in Japan according to the provisions of Articles 7 and 8, paragraphs 1 and 2 of Article 14, Article 15, paragraphs 1 and 3 of Article 16, Articles 17 and 18, and paragraph 1 of Article 20 of this Convention bears to the total income which forms the basis meant in the provisions of sub-paragraph (a).

(c) Further the Netherlands shall allow a deduction from the Netherlands tax so computed for such items of income, as are included in the basis meant in the provisions of sub-paragraph (a) and as may be taxed in Japan according to the provisions of paragraph 2 of Article 11, paragraph 2 of Article 12, paragraph 2 of Article 13, and paragraph 5 of Article 14. The amount of this deduction shall be equal to the amount of the Japanese tax. The deduction shall not, however, exceed that part of the Netherlands tax as computed before the deduction is given which is appropriate to the said items of income.

*Article 25*

1. The nationals of a country shall not be subjected in the other country 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 country in the same circumstances are or may be subjected.

2. The term "nationals" means:

(a) in respect of Japan: all individuals possessing the nationality of Japan and all juridical persons created or organized under the laws of Japan and all organizations without juridical personality treated for the purposes of Japanese tax as juridical persons created or organized under the laws of Japan;

(b) in respect of the Netherlands: all individuals possessing the nationality of the Netherlands and all legal persons, partnerships and associations deriving their status as such from the laws in force in the Netherlands.

3. The taxation on a permanent establishment which an enterprise of a country has in the other country shall not be less favourably levied in that other country than the taxation levied on enterprises of that other country carrying on the same activities. This provision shall not be construed as obliging a country to grant to residents of the other country any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

4. Enterprises of a country, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other country, shall not be subjected in the first-mentioned country 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 country are or may be subjected.

5. In this Article the term "taxation" means taxes of every kind and description.

6. The application of the provisions of this Article shall not be limited by the provisions of Article 1.

*Article 26*

1. Where a resident of a country considers that the actions taken in one or both countries result or will result for him in taxation not in accordance with this Convention, he may, notwithstanding the remedies provided by the laws of the countries, present his case to the competent authority of the country 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 able to arrive at an appropriate solution, to resolve the case by mutual agreement with the competent authority of the other country, with a view to the avoidance of taxation not in accordance with this Convention.
3. The competent authorities of the countries 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 elimination of double taxation in cases not provided for in this Convention.

*Article 27*

1. The competent authority of a country, in accordance with the practices of that country, may prescribe regulations necessary to carry out the provisions of this Convention.
2. The competent authorities of the countries may communicate with each other directly for the purpose of giving effect to the provisions of this Convention.

*Article 28*

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 29*

This Convention may be extended, either in its entirety or with any necessary modifications, to Surinam and/or the Netherlands Antilles. Any such extension shall take effect from such date and subject to such modifications and conditions, including conditions as to termination, as may be specified and agreed between the Government of Japan and the Government of the Kingdom of the Netherlands in notes to be exchanged through diplomatic channels or in any other manner in accordance with their constitutional procedures.
Unless otherwise agreed by the two Governments, the termination of this Convention under Article 31 shall not automatically terminate the application of this Convention to Surinam and/or the Netherlands Antilles to which it has been extended under this Article.

*Article 30*

1. This Convention shall be ratified and the instruments of ratification shall be exchanged at Tokyo as soon as possible.[1]
2. This Convention shall enter into force on the date of exchange of the instruments of ratification and shall have effect in respect of income derived during the taxable years beginning on or after the first day of January in the calendar year in which this Convention enters into force.

*Article 31*

Either country may terminate this Convention after a period of five years from the date on which this Convention enters into force by giving to the other country, through diplomatic channels, written notice of termination, provided that any such notice shall be given only on or before the thirtieth day of June in any calendar year, and, in such event, this Convention shall cease to be effective in respect of income derived during the taxable years beginning

1. The instruments of ratification have not yet been exchanged.

on or after the first day of January in the calendar year next following that in which the notice of termination is given.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed this Convention.

Done at The Hague, on March 3, 1970 in six originals, two each in the Japanese, Netherlands and English languages. The Japanese and Netherlands texts are equally authentic and, in case there is any divergence of interpretation between the Japanese and Netherlands texts, the English text shall prevail.

For the Government of Japan:

Masato Fujisaki

For the Government of the Kingdom of the Netherlands:

J. Luns

# PROTOCOL

At the signing of the Convention between the Government of Japan and the Government of the Kingdom of the Netherlands for the Avoidance of Double Taxation with respect to Taxes on Income, the undersigned have agreed upon the following provisions which shall form an integral part of the said Convention:

1. Without prejudice to the position of the Government of Japan concerning the status under international law of the continental shelf, it is understood that the taxation by the Netherlands on income derived by a resident of Japan from or in connection with the exploration for and exploitation of subsoil mineral resources in the submarine areas of the continental shelf under the North Sea and adjacent to the Netherlands is not in contravention of the Convention; taxation on such income would be subject to the rules contained in the Convention.

2. With reference to Articles 13 and 14 of the Convention, it is understood that, in respect of the question whether a payment is to be treated according to Article 13 or according to Article 14, Article 14 applies only to the gains from a genuine alienation of a patent or similar property without leaving the alienator any right on that property.

3. With reference to paragraph 2 of Article 24 of the Convention, it is understood that, in so far as the Netherlands income tax or company tax is concerned, the basis mentioned in that paragraph is the gross income or profits in terms of the Netherlands income tax law or company tax law, respectively.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed this Protocol.

DONE at The Hague, on March 3, 1970 in six originals, two each in the Japanese, Netherlands and English languages. The Japanese and Netherlands texts are equally authentic and, in case there is any divergence of interpretation between the Japanese and Netherlands texts, the English text shall prevail.

For the Government of Japan:

Masato Fujisaki

For the Government of the Kingdom of the Netherlands:

J. Luns

## (Netherlands Note)

The Hague, March 3, 1970

Excellency,

I have the honour to refer to the Convention between the Government of the Kingdom of the Netherlands and the Government of Japan for the Avoidance of Double Taxation with respect to Taxes on Income which was signed today and to confirm, on behalf of the Government of the Kingdom of the Netherlands, the following understandings reached between the two Governments:

1. With reference to paragraph 3 of Article 11, paragraph 2 of Article 12 and paragraph 2 of Article 13 of the Convention, the two Governments agree that if Japan, in a convention with any other state, being a member of the Organisation for Economic Co-operation and Development, would limit its taxation at the source on interest, on royalties or on dividends distributed by a company to a company which owns at least 25 per cent of the voting shares of the company paying the dividends to lower rates than those provided for in the said provisions, the two Governments will undertake to review the said provisions in order to provide the same treatment.

2. With reference to paragraph 3 of Article 11 of the Convention, the two Governments, having in mind that the difference between the provisions of sub-paragraph (a) and those of sub-paragraph (b) of the said paragraph is based on the fact that in Japan the rates of tax on companies' distributed profits are substantially lower than those on companies' undistributed profits, agree to undertake the review of the said provisions in order to adapt sub-paragraph (a) to sub-paragraph (b), when the basis of such difference no longer exists.

I have further the honour to request Your Excellency to be good enough to confirm the foregoing understandings on behalf of Your Excellency's Government.

I avail myself of this opportunity to renew to Your Excellency the assurances of my highest consideration.

J. Luns

His Excellency
Mr. Masato Fujisaki
Ambassador extraordinary
and plenipotentiary
of Japan.

**(Japanese Note)**

The Hague, March 3, 1970

Excellency,

I have the honour to acknowledge receipt of Your Excellency's Note of today's date which reads as follows:

"(Netherlands Note)"

I have further the honour to confirm the understandings contained in Your Excellency's Note, on behalf of the Government of Japan.

I avail myself of this opportunity to renew to Your Excellency the assurances of my highest consideration.

Masato Fujisaki
Ambassador Extraordinary
and Plenipotentiary of
Japan

His Excellency
Mr. J.M.A.H. Luns
Minister for Foreign Affairs of
the Kingdom of the Netherlands

*Supplement* **D**
1970

# Convention between Japan and the United Arab Republic for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income

TO THE BULLETIN FOR INTERNATIONAL FISCAL DOCUMENTATION
SUPPLEMENT AU BULLETIN DE DOCUMENTATION FISCALE INTERNATIONALE

**Vol. XXIV, No. 10, October/octobre 1970**

INTERNATIONAL BUREAU OF FISCAL DOCUMENTATION

**Muiderpoort – 124 Sarphatistraat – Amsterdam**

*On September 3, 1968 an income tax treaty between Japan and the United Arab Republic was signed. The treaty is in effect according to the rules of Article 25.*

## TEXT

The Government of Japan and the Government of the United Arab Republic,
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 1*

1. This Convention shall apply to taxes on income imposed in each Contracting State enumerated in paragraph 3 of this Article, irrespective of the manner in which they are levied.
2. There shall be regarded as taxes on income all taxes imposed on total income, or on elements of income, including taxes on gains from the alienation of movable or immovable property and taxes on the total amounts of wages or salaries paid by enterprises.
3. The existing taxes to which this Convention shall apply are:

(a) In the case of Japan:
  (1) the income tax;
  (2) the corporation tax; and
  (3) the local inhabitant taxes (hereinafter referred to as "Japanese tax").

(b) In the case of the United Arab Republic:
  (1) tax on income derived from immovable property (including the land tax, the buildings tax and the ghaffir tax);
  (2) tax on income from movable capital;
  (3) tax on commercial and industrial profits;

(4) tax on wages, salaries, indemnities and pensions;
(5) tax on profits from liberal professions and all other non-commercial professions;
(6) general income tax;
(7) defence tax;
(8) national security tax; and
(9) supplementary taxes imposed as percentage of taxes mentioned above or otherwise

(hereinafter referred to as "United Arab Republic tax").

4. This Convention shall also apply to any identical or substantially similar taxes which are subsequently imposed in addition to, or in place of, the existing taxes.

5. At the end of each year, the competent authorities of the Contracting States shall notify to each other any significant changes which have been made in their respective taxation laws.

*Article 2*

1. In this Convention, unless the context otherwise requires:

(a) the term "Japan" or "United Arab Republic", as used in a geographical sense, means respectively all the territory in which the laws relating to tax of Japan or the United Arab Republic are enforced;
(b) the terms "a Contracting State" and "the other Contracting State" mean Japan or the United Arab Republic, as the context requires;
(c) the term "tax" means Japanese tax or United Arab Republic tax, as the context requires;
(d) the term "person" includes an individual, a company and any unincorporated body of persons;
(e) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;
(f) the term "Japanese company" means any body corporate created or organized under the laws of Japan or any entity which is treated as a body corporate created or organized under the laws of Japan for the purposes of Japanese tax;
(g) the term "United Arab Republic company" means any body corporate created or organized under the laws of the United Arab Republic or any entity which is treated as a body corporate created or organized under the laws of the United Arab Republic for the purposes of United Arab Republic tax;
(h) the term "resident of Japan" means any person other than a company who is resident in Japan for the purposes of Japanese tax and not resident in the United Arab Republic for the purposes of United Arab Republic tax and any Japanese company;
(i) the term "resident of the United Arab Republic" means any person other than a company who is resident in the United Arab Republic for the purposes of United Arab Republic tax and not resident in Japan for the purposes of Japanese tax and any United Arab Republic company;
(j) the terms "resident of a Contracting State" and "resident of the other Contracting State" mean a resident of Japan or a resident of the United Arab Republic, as the context requires;
(k) 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;
(l) the term "competent authority" means,

in the case of Japan, the Minister of Finance or his authorised representative; and in the case of the United Arab Republic, the Minister of the Treasury or his authorised representative.

2. In the application of the provisions of this Convention by a Contracting State any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws in force in that Contracting State relating to the taxes which are the subject of this Convention.

*Article 3*

1. For the purposes of this Convention, 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 establishment" shall include especially:

(a) a place of management;
(b) a branch;
(c) an office;
(d) a factory;
(e) a workshop;
(f) a warehouse;
(g) a farm or plantation;
(h) a mine, quarry, oilfield or other place of extraction of natural resources;
(i) a building site or construction or assembly project which exists for more than six months.

3. The term "permanent establishment" shall not be deemed to include:

(a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
(b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
(c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
(d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or for collecting information, for the enterprise;
(e) the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research or for similar activities which have a preparatory or auxiliary character, for the enterprise.

4. A person acting in a Contracting State on behalf of an enterprise of the other Contracting State—other than an agent of an independent status to whom the provisions of paragraph 5 of this Article apply—shall be deemed to be a permanent establishment in the first-mentioned Contracting State if he has, and habitually exercises in that 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.

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 Contracting State through a broker, general commission agent or any other agent of an independent status, where such persons are acting in the ordinary course of their business.

6. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other Contracting State (whether through a permanent establishment or otherwise) shall not of itself

constitute either company a permanent establishment of the other.

*Article 4*

1. Income from immovable property may be taxed in the Contracting State in which such property is situated.
2. The term "immovable property" shall be defined in accordance with the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting immovable property apply, usufruct of immovable property and rights to variable or fixed payments as a consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships and aircraft shall not be regarded as immovable property.
3. The provisions of paragraph 1 of this Article shall apply to income derived from the direct use, letting, or use in any other form of immovable property.
4. The provisions of paragraphs 1 and 3 of this Article shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of professional services.

*Article 5*

1. The profits of an enterprise of a Contracting State shall be taxable only in that Contracting 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 that other Contracting 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 Contracting State in which the permanent establishment is situated or elsewhere.
4. Insofar as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 of this Article shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles laid down in this Article.
5. 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.
6. For the purposes of the preceding paragraphs of this Article, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and

sufficient reason to the contrary.
7. Where profits include items of income which are dealt with separately in other Articles of this Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

*Article 6*

1. Profits from the operation of ships or aircraft in international traffic carried on by an enterprise of a Contracting State shall be exempt from tax of the other Contracting State.
2. In respect of the operation of ships or aircraft in international traffic carried on by an enterprise which is a resident of the United Arab Republic, that enterprise shall be exempt from the enterprise tax in Japan.
3. The provisions of paragraphs 1 and 2 of this Article shall likewise apply in respect of participations in pools of any kind by an enterprise of a Contracting State engaged in shipping or air transport.
4. Where profits as referred to in this Article are derived by a company which is a resident of a Contracting State, dividends paid by that company to persons which are not resident in the other Contracting State, shall be exempt from tax of that other Contracting State.
5. The Arrangement between the Contracting States constituted by the Notes exchanged in Cairo on April 27, 1964, for the reciprocal exemption from taxation on air transport enterprises shall, on the entry into force of this Convention, cease to be effective as from the dates from which the provisions of this Convention have effect.

*Article 7*

1. Where
(a) an enterprise of a Contracting State 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 a Contracting State 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.
2. If the information available to the taxation authority concerned is inadequate to determine, for the purposes of the preceding paragraph, the profits which might be expected to accrue to an enterprise, nothing in that 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 under the law of that Contracting State; provided that such law shall be applied, so far as the information available to the taxation authority permits, in accordance with the principle stated in that paragraph.

*Article 8*

1. Dividends paid by a company which is a resident of Japan to a resident of the United Arab Republic may be taxed in Japan at a rate not exceeding 15 per cent of the gross amount of the dividends.
2. Dividends paid by a company which is a resident of the United Arab Republic to a resident of Japan may be taxed in the United

Arab Republic. But such dividends shall be subject only to the tax on income derived from movable capital, the defence tax, the national security tax and the supplementary taxes. If paid to an individual, the general income tax levied on the net total income may also be imposed at a rate not exceeding 20 per cent. Dividends paid shall be deducted from the amount of the distributing company's taxable income or profits subject to the tax chargeable in respect of its industrial and commercial profits if such dividends are distributed out of the taxable income or profits of the same taxable year and not distributed out of accumulated reserves or other assets.

3. (a) Dividends paid by a company which is a resident of Japan whose activities lie solely or mainly in the United Arab Republic shall in the United Arab Republic be treated as mentioned in paragraph 2 of this Article.

(b) For the purposes of this paragraph, the activities of a company shall be considered to lie mainly in the United Arab Republic, if 90 per cent or more of such activities are carried out in the United Arab Republic through a permanent establishment situated therein.

4. Dividends, deemed to be paid out of the yearly profits of a permanent establishment maintained in the United Arab Republic by a company which is a resident of Japan whose activities extend to countries other than the United Arab Republic, shall in the United Arab Republic be treated as mentioned in paragraph 2 of this Article.

The permanent establishment shall be considered to have distributed as dividends in the United Arab Republic within 60 days from the closing of its financial year, an amount equivalent to 90 per cent of its total net profits liable to the tax on industrial and commercial profits without applying the provisions of Article 36 of the United Arab Republic Law No. 14 of 1939, provided that the remaining 10 per cent of the net profits shall be set aside to form a special reserve which shall be entered in the local balance sheet submitted annually to the United Arab Republic tax authorities. Such amount shall be subject only to the tax on commercial and industrial profits.

All amounts deducted from the aforesaid 10 per cent set aside to form the special reserve for purposes other than the redemption of losses incurred in the trade or business carried on by that permanent establishment situated in the United Arab Republic shall be deemed to have been distributed in the United Arab Republic and shall be taxed accordingly.

5. The provisions of paragraphs 1 and 2 of this Article 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, the provisions of Article 5 shall apply.

6. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other Contracting State may not impose any tax on the dividends paid by the company to persons who are not residents of that other Contracting 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 that other Contracting State.

7. The term "dividends" as used in this Article means income from shares, "jouissance" shares or "jouissance" rights, mining shares, founders' shares or other similar rights, not being debt-claims, participating in

profits, as well as income from other corporate rights assimilated to income from shares by the taxation law of the Contracting State of which the company making the distribution is a resident.

*Article 9*

1. Interest arising in a Contracting State and paid by a resident of that Contracting State to a resident of the other Contracting State may be taxed in the first-mentioned Contracting State according to the law of that first-mentioned Contracting State.
2. The term "interest" as used in this Article means income from Government securities, bonds or debentures (exclusive of debts secured by mortgages on real estate, in which case the provisions of Article 4 shall apply), 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 Contracting State in which the income arises.
3. The provisions of Article 5 shall 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.
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 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.
5. Interest shall be deemed to arise in a Contracting State when the payer is that Contracting State itself, a local government or a resident of that Contracting 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.

*Article 10*

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in the first-mentioned Contracting State at a rate not exceeding 15 per cent of the gross amount of the royalties.
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, 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. Nothwithstanding the provisions of this Convention, rents and royalties in respect of cinematographic films may continue to be taxed under the laws of both Contracting States.
4. The provisions of this Article shall not apply where founders' shares are issued in the United Arab Republic as a consideration for the rights mentioned in paragraph 2 of this Article and taxed in accordance with the provisions of Article 1 of the United Arab

Republic Law No. 14 of 1939. In such a case, the provisions of Article 8 shall apply.

5. The provisions of paragraph 1 of this Article 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, the provisions of Article 5 shall apply.

6. 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.

7. Royalties shall be deemed to arise in a Contracting State when the payer is that Contracting State itself, a local government or a resident of that Contracting State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment by which the royalties are paid, then such royalties shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

*Article 11*

1. Gains from the alienation of immovable property, as defined in paragraph 2 of Article 4, may be taxed in the Contracting State in which such property is situated.

2. Gains from the alienation of movable property forming part of the business property employed in a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable 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 Contracting State. However, gains from the alienation of movable property of the kind referred to in paragraph 1 of Article 6, shall be taxable only in the Contracting State of which the alienator of such movable property is a resident.

3. Gains from the alienation of any property or assets other than those mentioned in paragraphs 1 and 2 of this Article may be taxed in the Contracting State in which the gains are derived.

*Article 12*

1. 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 Contracting State unless he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities or he is present within that other Contracting State for a period or periods exceeding in the aggregate 183 days in the taxable year concerned. If he has such a fixed base or remains in that other Contracting State for the aforesaid period or periods, the income may be taxed in that other Contracting State but only so much of it as is attributable to that fixed base or is derived in that other Contracting

State during the aforesaid period or periods.
2. 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 13*

1. Subject to the provisions of Articles 14, 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 Contracting 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 Contracting State.
2. Notwithstanding the provisions of paragraph 1 of this Article, 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 Contracting State if:
(a) the recipient is present in the other Contracting State for a period or periods not exceeding in the aggregate 183 days in the taxable year concerned, and
(b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other Contracting State, and
(c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other Contracting State.
3. Notwithstanding the preceding provisions of this Article, remuneration in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State may be taxed in that Contracting State.

*Article 14*

Directors' fees and similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors of a company which is a resident of the other Contracting State may be taxed in that other Contracting State.

*Article 15*

Notwithstanding the provisions of Articles 12 and 13, income derived by public entertainers, such as theatre, motion picture, radio or television artistes, and musicians, and by athletes, from their personal activities as such may be taxed in the Contracting State in which these activities are exercised.

*Article 16*

Subject to the provisions of paragraph 1 of Article 17, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that Contracting State.

*Article 17*

1. Remuneration, including pensions, paid by the Government of a Contracting State (including local governments thereof), or paid out of funds which are created by such Government or to which such Government contributes, to any individual in respect of services rendered to such Government in the discharge of functions of a governmental nature shall be exempt from tax of the other Contracting State, unless the individual is a national of or admitted for permanent residence to that other Contracting State without being also a national of or admitted for permanent residence to the first-mentioned Contracting State.

2. The provisions of Articles 13, 14 and 16 shall apply to remuneration or pensions in respect of services rendered in connection with any trade or business carried on by the Government of a Contracting State (including local governments thereof).

*Article 18*

A resident of a Contracting State, who is temporarily present in the other Contracting State solely:

(a) as a student at a university, college or school in that other Contracting State,
(b) as a business or technical apprentice, or
(c) as a recipient of a grant, allowance or award for the primary purpose of study or research from a governmental, religious, charitable, scientific or educational organisation

shall not be taxed in the other Contracting State in respect of remittances from abroad for the purposes of his maintenance, education or training or in respect of a scholarship grant. The same shall apply to any amount representing remuneration for services rendered in that other Contracting State, provided that such services are in connection with his studies or training or are necessary for the purpose of his maintenance.

*Article 19*

A resident of a Contracting State who, at the invitation of a university, college or other establishment for higher education or scientific research in the other Contracting State, visits that other Contracting State solely for the purpose of teaching or scientific research at such institution for a period not exceeding two years shall not be taxed in that other Contracting State on his remuneration for such teaching or research.

*Article 20*

1. 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, United Arab Republic tax payable, whether directly or by deduction, in respect of income from sources within the United Arab Republic shall be allowed as a credit against Japanese tax payable in respect of that income.

2. (a) Where a person being a resident of the United Arab Republic derives income from Japan and that income, in accordance with the provisions of this Convention, may be taxed in Japan, the United Arab Republic shall, subject to the provisions of subparagraph (b) of this paragraph, exempt such income from tax but may, in calculating tax on the remaining income of that person, apply the rate of tax which would have been applicable if the exempted income had not been so exempted.

(b) Where a person being a resident of the United Arab Republic derives income from Japan and that income, in accordance with the provisions of Articles 8, 9 and 10 may be taxed in Japan, the United Arab Republic shall allow as a deduction from the tax on the income of that person an amount equal to the tax paid in Japan. Such deduction shall not, however, exceed that part of the tax, as computed before the deduction is given, which is appropriate to the income derived from Japan.

*Article 21*

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 Contracting 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. 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 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 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.

4. 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 Contracting State are or may be subjected.

5. The provisions of this Article shall not be construed as affecting:

(a) the provisions of the Japanese law under which distributed profits, are in the case of Japanese companies, taxed at a lower rate than undistributed profits; and

(b) the application in the United Arab Republic of Article 11, paragraphs 1 and 2 and Article 11 bis of the United Arab Republic Law No. 14 of 1939 and the exemptions conferred in the United Arab Republic by Articles 5 and 6 of the United Arab Republic Law No. 14 of 1939.

6. In this Article the term "taxation" means taxes of every kind and description.

*Article 22*

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 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 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 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 elimination of double taxation in cases not provided for in this Convention.

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 of this Article. When it seems advisable in order to reach agreement to have an oral exchange of opinions, such exchange may take place through a Commission consisting of representatives of the competent

authorities of the Contracting States.

*Article 23*

1. The competent authorities of the Contracting States shall exchange such information as is necessary for the carrying out of this Convention and of the domestic laws of the Contracting States concerning taxes covered by this Convention insofar as the taxation thereunder is in accordance with this Convention or for the prevention of fiscal evasion in relation to such taxes. 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 the provisions of paragraph 1 of this Article be construed so as to impose on a Contracting State 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 24*

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 25*

1. This Convention shall be ratified and the instruments of ratification shall be exchanged at Tokyo as soon as possible.*

2. This Convention shall enter into force on the date of the exchange of the instruments of ratification and its provisions shall have effect:

(a) In Japan:

as respects income for any taxable year beginning on or after the first day of January in the calendar year in which the exchange of the instruments of ratification takes place.

(b) In the United Arab Republic:

(1) as respects tax on income from movable capital and tax on wages, salaries, indemnities and pensions, which taxes are due on or after the date on which the exchange of the instruments of ratification takes place;

(2) as respects tax on commercial and industrial profits for any accounting period ending on or after the date on which the exchange of the instruments of ratification takes place;

(3) as respects tax on income derived from immovable property (including the land tax, the buildings tax and the ghaffir tax), tax on profits from liberal professions and all other non-commercial professions and the general income tax, for the calendar year in which the exchange of the instruments of ratification takes place.

The rules in subparagraph (b) of this paragraph shall be correspondingly applicable respectively to the defence tax, to the national security tax and to the supplementary taxes.

* The instruments of ratification were exchanged on August 6, 1969.

*Article 26*

Either of the Contracting States may terminate this Convention after a period of five years from the date on which this Convention enters into force, by giving to the other Contracting State, through the diplomatic channels, written notice of termination, provided that such notice shall be given only on or before the thirtieth day of June in any calendar year, and, in such event, this Convention shall cease to be effective:

(a) In Japan:

as respects income for any taxable year beginning on or after the first day of January in the calendar year next following that in which the notice is given.

(b) In the United Arab Republic:

(1) as respects tax on income from movable capital and tax on wages, salaries, indemnities and pensions, which taxes are due on or after the first day of July in the calendar year next following that in which the notice is given;

(2) as respects tax on commercial and industrial profits for any accounting period ending on or after the first day of July in the calendar year next following that in which the notice is given;

(3) as respects tax on income derived from immovable property (including the land tax, the buildings tax and the ghaffir tax), tax on profits from liberal professions and all other non-commercial professions and the general income tax, for the calendar year next following that in which the notice is given.

The rules in subparagraph (b) of this paragraph shall be correspondingly applicable respectively to the defence tax, to the national security tax and to the supplementary taxes.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done in duplicate at Cairo, this third day of September, 1968 in the English language.

For Japan:
Yoshimitsu Ando

For the United Arab Republic:
Ahmad El Sayed Shaaban

*Supplement* **E**
1970

# Convention between Japan and the Republic of Korea for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income

SUPPLEMENT TO THE BULLETIN FOR INTERNATIONAL FISCAL DOCUMENTATION
AU BULLETIN DE DOCUMENTATION FISCALE INTERNATIONALE

Vol. XXIV, No. 11, November/novembre 1970

INTERNATIONAL BUREAU OF FISCAL DOCUMENTATION

Muiderpoort – 124 Sarphatistraat – Amsterdam

## TEXT

Japan and the Republic of Korea,
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 1*

(1) The taxes which are the subject of this Convention are:
(a) In the Republic of Korea, the income tax and the corporation tax (hereinafter referred to as "Korean tax").
(b) In Japan, the income tax, the corporation tax and the local inhabitant taxes (hereinafter referred to as "Japanese tax").
(2) This Convention shall also apply to taxes, whether national or local, substantially similar to those covered by paragraph (1) of this Article, which are imposed in addition to, or in place of, the existing taxes after the date of signature of this Convention.

*Article 2*

(1) In this Convention, unless the context otherwise requires:
(a) the term "Korea" means the Republic of Korea;
(b) the term "Japan", when used in a geographical sense, means all the territory in which the laws relating to Japanese tax are in force;
(c) the terms "a Contracting State" and "the other Contracting State" mean Japan or Korea, as the context requires;
(d) the term "person" comprises an individual, a corporation and any other body of persons;
(e) the term "corporation" means any body corporate or any entity treated as a body corporate for tax purposes;
(f) the term "tax" means Japanese tax or Korean tax, as the context requires;
(g) the term "competent authorities" means:
(i) in Korea, the Minister of Finance or his authorized representative;

(ii) in Japan, the Minister of Finance or his authorized representative.

(2) As regards the application of this Convention by a Contracting State, any term not expressly defined shall, unless the context otherwise requires, have the meaning which it has under the laws of that Contracting State relating to the taxes to which this Convention applies.

*Article 3*

(1) For the purposes of this Convention, the term "resident of a Contracting State" means an individual who is a resident of that Contracting State for tax purposes of that Contracting State.

(2) For the purposes of this Convention, the term "corporation of a Contracting State" means a corporation which has its head or main office in that Contracting State.

(3) Where by reason of the provisions of paragraph (1) of this Article an individual is a resident of both Contracting States, then the competent authorities of both Contracting States shall determine by mutual agreement the Contracting State of which that individual shall be deemed to be a resident for the purposes of this Convention.

*Article 4*

(1) For the purposes of this Convention, the term "permanent establishment" means a fixed place of business in which a resident or corporation of a Contracting State wholly or partly carries on business.

(2) The term "a fixed place of business" includes, but is not limited to:

(a) an office;
(b) a store or other sales outlet;
(c) a factory;
(d) a workshop;
(e) a warehouse;
(f) a mine, quarry or other place of extraction of natural resources;
(g) a building site or construction, installation or assembly project which exists for more than six months.

(3) Notwithstanding the provisions of paragraph (1) of this Article, a permanent establishment shall not include a fixed place of business used only for one or more of the following activities:

(a) processing by another person of goods or merchandise belonging to the resident or corporation;
(b) mere purchase of goods or merchandise for the resident or corporation;
(c) mere storage of goods or merchandise belonging to the resident or corporation;
(d) collection of information for the resident or corporation;
(e) advertising, the conduct of scientific research, the display of goods or merchandise, the supply of information or similar activities which have a preparatory or auxiliary character in the business of the resident or corporation.

(4) Even if a resident or corporation of a Contracting State does not have a permanent establishment in the other Contracting State under the provisions of paragraphs (1), (2) and (3) of this Article, it shall be deemed to have a permanent establishment in that other Contracting State if it:

(a) engages in business in that other Contracting State through an agent who
  (i) has an authority to conclude contracts in the name of that resident or corporation and regularly exercises that authority in that other Contracting State, unless the exercise of the authority is limited to the purchase of goods or merchandise for the resident or corporation; or
  (ii) regularly secures orders in that other Contracting State wholly or

almost wholly for that resident or corporation or for that resident or corporation and other persons who are controlled by or have a controlling interest in that resident or corporation; or

(iii) maintains in that other Contracting State a stock of goods or merchandise belonging to that resident or corporation from which he regularly makes deliveries; or

(b) provides in that other Contracting State

(i) personal service, such as supervisory, technical or any other professional service performed for more than six months in connection with a contract of a building, construction, installation or assembly project; or

(ii) the services of public entertainers referred to in paragraph (4) of Article 12.

(5) Notwithstanding the provisions of paragraph (4) of this Article, a resident or corporation of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it uses the services in that other Contracting State of a bona fide broker, general commission agent, forwarding agent, custodian or other agent of independent status acting in the ordinary course of his business.

(6) The fact that a corporation of a Contracting State controls or is controlled by (a) a corporation of the other Contracting State or (b) a corporation which carries on business in that other Contracting State (whether through a permanent establishment or otherwise) shall not of itself constitute for either corporation a permanent establishment of the other.

*Article 5*

(1) A resident or corporation of a Contracting State shall be taxable in the other Contracting State only on income derived from sources within that other Contracting State subject to the limitations set forth in this Convention.

(2) Any item of income to which the provisions of this Convention are not expressly applicable may be taxed in each of the Contracting States in accordance with its own laws.

(3) The provisions of this Convention shall not be construed to restrict in any manner any exclusion, exemption, deduction, credit or other allowance now or hereafter accorded by (a) the laws of a Contracting State or (b) any other agreement between the both Contracting States in the determination of the tax of that Contracting State.

(4) The laws in force in either Contracting State shall continue to govern the taxation of income in that either Contracting State except where provisions to the contrary are made in this Convention.

*Article 6*

(1) A resident or corporation of a Contracting State shall be exempt from tax in the other Contracting State with respect to its industrial or commercial profits if that resident or corporation has no permanent establishment in that other Contracting State.

(2) If a resident or corporation of a Contracting State has a permanent establishment in the other Contracting State, the permanent establishment may be taxed in that other Contracting State on the entire income of that resident or corporation from sources within that other Contracting State.

(3) In the determination of the industrial or commercial profits of a permanent establishment which a resident or corporation of a

Contracting State has in the other Contracting State, there shall be allowed as deductions expenses, wherever incurred, which are reasonably connected with such profits, including executive and general administrative expenses.

(4) Notwithstanding the provisions of paragraph (5) of this Article, no profits shall be deemed to be derived from sources within a Contracting State in which a permanent establishment of a resident or corporation of the other Contracting State is located, by reason of mere purchase of goods or merchandise by that permanent establishment solely for that resident or corporation, or by that resident or corporation for itself.

(5) For the purposes of this Article, the industrial or commercial profits derived from the sale by a resident or corporation in a Contracting State of goods or merchandise purchased or manufactured in the other Contracting State by such resident or corporation shall be treated as income derived from sources in part within the Contracting State in which such goods or merchandise are purchased or manufactured and in part within the Contracting State in which such goods or merchandise are sold. The Governments or competent authorities of both Contracting States may, consistent with the principles of taxation laid down in this Article, consult and arrange details for the apportionment of sources of the industrial or commercial profits described above.

*Article 7*

(1) Notwithstanding the provisions of paragraph (2) of Article 6, income or revenue which a resident or corporation of a Contracting State derives from the operation in international traffic of ships or aircraft registered—

(a) in either Contracting State, or

(b) in any third country which exempts from its taxes on income or revenue derived by a resident or corporation of the other Contracting State from the operation of ships or aircraft registered in that other Contracting State

shall be exempt from tax in that other Contracting State.

(2) The provisions of paragraph (1) of this Article shall likewise apply in respect of participations in a pool, in a joint business or in an international operations agency of any kind by a resident or corporation of a Contracting State engaged in the operation of ships or aircraft in international traffic.

(3) For the purposes of paragraph (1) of this Article, the term "tax" includes the enterprise tax of Japan or the business tax of Korea, as the context requires.

(4) The arrangement made by the Notes exchanged at Seoul on April 1, 1969 between the Government of Japan and the Government of the Republic of Korea concerning reciprocal exemption from taxation of income or revenue derived from the operation of ships or aircraft shall cease to be effective as from the dates from which the provisions of this Convention are applicable.

*Article 8*

(1) Where a resident or corporation of a Contracting State deriving income in the other Contracting State is related to any other person and where such related persons make arrangements or impose conditions between themselves which are different from those which would be made between independent persons, then any income which would, but for those arrangements or conditions, have accrued to such resident or corporation but, by reason of those arrangements or conditions, has not so accrued, may be included in the income of such

resident or corporation for the purposes of this Convention and taxed in that other Contracting State accordingly.
(2) A person is related to another person if (a) either person participates directly or indirectly in the management, control or capital of the other, or (b) any third person or persons participate directly or indirectly in the management, control or capital of both.

*Article 9*

(1) The tax imposed in a Contracting State on dividends derived from sources within that Contracting State by a resident or corporation of the other Contracting State shall not exceed 12 per cent of the gross amount thereof.
(2) The provisions of paragraph (1) of this Article shall not apply if the recipient of the dividends, being a resident or corporation of a Contracting State, has in the other Contracting State in which the dividends arise a permanent establishment with which the holding by virtue of which the dividends are paid is effectively connected. In such a case, the provisions of Article 6 shall apply, as if they were industrial or commercial profits.
(3) Dividends paid by a corporation of a Contracting State shall be treated as income from sources within that Contracting State.

*Article 10*

(1) The tax imposed in a Contracting State on interest derived from sources within that Contracting State by a resident or corporation of the other Contracting State shall not exceed 12 per cent of the gross amount thereof.
(2) Notwithstanding the provisions of paragraph (1) of this Article, interest derived from sources within a Contracting State by the Government of the other Contracting State including local authorities thereof, the central bank of that other Contracting State, or any agency or instrumentality (including financial institution) wholly owned by that Government or that central bank or by both shall be exempt from tax in the first-mentioned Contracting State.
(3) The provisions of paragraph (1) of this Article shall not apply if the recipient of the interest, being a resident or corporation 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, the provisions of Article 6 shall apply, as if it were industrial or commercial profits.
(4) Where any interst, paid by a person to any related person, as defined in Article 8, exceeds a fair and reasonable consideration in respect of the indebtedness for which it is paid, the provisions of paragraph (1) of this Article shall apply only to so much of the interest as represents such fair and reasonable consideration; and the excess part of the payment shall be taxable according to the laws of each Contracting State and the provisions of this Convention where applicable.
(5) (a) Except as provided in subparagraph (b), interest paid by a Contracting State including any local authorities thereof or by a resident or corporation of that Contracting State shall be treated as income from sources within that Contracting State.
(b) Interest paid by a resident or corporation of a Contracting State with a permanent establishment in the other Contracting State or outside both Contracting States directly out of the funds of such permanent establishment on indebtedness incurred for the sole use of, or on banking deposits made with, such permanent establishment shall be

treated as income from sources within the country in which such permanent establishment is located.

*Article 11*

(1) (a) The tax imposed in a Contracting State on royalties derived from sources within that Contracting State by a resident or corporation of the other Contracting State shall not exceed 12 per cent of the gross amount thereof.

(b) The tax imposed in a Contracting State on income derived from sources within that Contracting State from the alienation of the property, right or information referred to in paragraph (3) (a) and (b) of this Article by a resident or corporation of the other Contracting State shall not exceed 12 per cent of the gross amount thereof.

(2) The provisions of paragraph (1) of this Article shall not apply if the recipient of the royalties or income, being a resident or corporation of a Contracting State, has in the other Contracting State in which the royalties or income arise a permanent establishment with which the property, right or information giving rise to the royalties or income is effectively connected. In such a case, the provisions of Article 6 shall apply, as if the royalties or income were industrial or commercial profits.

(3) For the purposes of this Article, the term "royalties" means any royalties, rentals or other amounts paid as a consideration for the use of, or the right to use—

(a) copyrights of literary, artistic or scientific works, motion picture films, films or tapes for radio or television broadcasting, patents, designs, models, plans, secret processes or formulae, trademarks, or other like property or rights, or

(b) industrial, commercial or scientific equipment, or information concerning industrial, commercial or scientific knowledge, experience or skill, or

(c) ships or aircraft leased under a bare boat charter contract.

(4) The provisions of paragraphs (1), (2) and (3) of this Article shall not apply to any royalties, rentals or other amounts paid in respect of the operation of mines, quarries or other places of extraction of natural resources.

(5) Where any royalties or income, paid by a person to any related person, as defined in Article 8, exceed a fair and reasonable consideration in respect of the property, right or information for which they are paid, the provisions of paragraph (1) of this Article shall apply only to so much of the royalties or income as represents such fair and reasonable consideration; and the excess part of the payment shall be taxable according to the laws of each Contracting State and the provisions of this Convention where applicable.

(6) Royalties paid for the use of, or the right to use, in a Contracting State, property, right or information described in paragraph (3) of this Article shall be treated as income from sources within that Contracting State. However, royalties from leasing ships or aircraft operated in international traffic shall be treated as income from sources within the Contracting State of which the lessee is a resident or corporation. Income from the alienation of property, right or information described in paragraph (3) (a) and (b) of this Article for use in a Contracting State shall be treated as income from sources within that Contracting State.

*Article 12*

(1) Subject to the provisions of Articles 13, 14, 15 and 16, remuneration received by a

resident of a Contracting State for his personal services shall be taxable only in that Contracting State unless such remuneration is derived from sources within the other Contracting State. If the remuneration is so derived, it may be taxed in that other Contracting State.

(2) (a) Income received by an individual for his performance of personal services (either as an employee or in an independent capacity) or for furnishing the personal services of other persons and income received by a corporation for furnishing the personal services of its employees or others shall be treated as income from sources within the Contracting State in which such services are performed.

(b) Notwithstanding the provisions of subparagraph (a) above, remuneration for personal services performed aboard ships or aircraft operated by a resident or corporation of a Contracting State shall be treated as income from sources within that Contracting State, if rendered by a member of the regular complement of the ships or aircraft.

(c) Notwithstanding the provisions of subparagraph (a) above, the remuneration received by an individual in his capacity as a member of the board of directors of a corporation shall be treated as income from sources within a Contracting State, if the corporation of which the individual is a director is a corporation of that Contracting State.

(3) Notwithstanding the provisions of paragraph (1) of this Article, a resident of a Contracting State shall be exempt from tax in the other Contracting State with respect to income from personal services rendered in the other Contracting State if—

(a) (i) he is present within the other Contracting State for a period or periods not exceeding in the aggregate 183 days in the calendar year concerned, and

(ii) the services are performed as an employee of a resident or corporation of the first-mentioned Contracting State, and

(iii) the remuneration is not deducted as such in computing the profits of a resident or corporation of the first-mentioned Contracting State taxable in that other Contracting State; or

(b) (i) he is present within the other Contracting State for a period or periods not exceeding in the aggregate 90 days in the calendar year concerned, and

(ii) he performs professional services, and

(iii) the remuneration received for such services does not exceed 3,000 United States dollars or its equivalent in Japanese Yen or Korean Won.

(4) Notwithstanding the provisions of paragraphs (1) and (3) of this Article, the income derived by public entertainers, such as theatre, motion picture, radio or television artistes, musicians and athletes, from their personal services as such shall be exempt from tax in the Contracting State in which the services are performed unless such income exceeds either 100 United States dollars or its equivalent in Japanese Yen or Korean Won for each day such person is present in that Contracting State or an aggregate amount of 3,000 United States dollars or its equivalent in Japanese Yen or Korean Won.

*Article 13*

(1) An individual who is a resident of a Contracting State at the beginning of his

visit to the other Contracting State and who, at the invitation of the Government of that other Contracting State or of a university or other accredited educational institution situated in that other Contracting State, visits that other Contracting State for the primary purpose of teaching or engaging in research, or both, at a university or other accredited educational institution shall be exempt from tax in that other Contracting State on his income from such teaching or research for a period not exceeding two years from the date of his arrival in that other Contracting State.

(2) The provisions of this Article shall not apply to income from research if such research is undertaken primarily for the private benefit of a specific person or persons.

*Article 14*

(1) An individual who is a resident of a Contracting State at the beginning of his visit to the other Contracting State and who is temporarily present in that other Contracting State for the primary purpose of—

(a) studying at a university or other accredited educational institution in that other Contracting State, or

(b) securing training required to qualify him to practice a profession or a professional speciality, or

(c) studying or doing research as a recipient of a grant, allowance or award from a governmental, religious, charitable, scientific, literary or educational organization,

shall be exempt from tax in that other Contracting State with respect to—

(i) remittance from abroad for the purpose of his maintenance, education, study, research or training;

(ii) the grant, allowance or award; and

(iii) income from his personal services rendered in that other Contracting State in an amount not exceeding 1,800 United States dollars or its equivalent in Japanese Yen or Korean Won during any calendar year.

(2) The benefits under the provisions of paragraph (1) of this Article shall only extend for such period of time as may be reasonably or customarily required to effectuate the purpose of the visit, but in no event shall any individual have the benefits of the said paragraph for more than five consecutive years.

(3) An individual who is a resident of a Contracting State at the beginning of his visit to the other Contracting State and who is present in that other Contracting State for a period not exceeding one year, as an employee of, or under contract with, a resident or corporation of the first-mentioned Contracting State, for the primary purpose of acquiring technical, professional or business experience from a person other than that resident or corporation of the first-mentioned Contracting State shall be exempt from tax in that other Contracting State on the remuneration for such period for his personal services performed in connection with the acquisition of such experience, if the total of amount received from abroad and of amount paid in that other Contracting State does not exceed 5,000 United States dollars or its equivalent in Japanese Yen or Korean Won during any calendar year.

(4) An individual who is a resident of a Contracting State at the beginning of his visit to the other Contracting State and who is present in that other Contracting State for a period not exceeding one year, as a participant in a programme sponsored by the Government of that other Contracting State, for the primary purpose of training, research or study shall be exempt from tax in that other Contracting State on the remuneration for such period for his personal services

performed in connection with such training, research or study, if the total of amount received from abroad and of amount paid in that other Contracting State does not exceed 5,000 United States dollars or its equivalent in Japanese Yen or Korean Won during any calendar year.

*Article 15*

Private pensions and private annuities paid to a resident of a Contracting State shall be taxable only in that Contracting State.

*Article 16*

(1) Salaries, wages, or similar compensation, and pensions or similar benefits paid by, or paid out of funds created by, the Government of Korea or local authorities thereof to any individual for personal services rendered to the Government of Korea or local authorities thereof in the discharge of governmental functions shall be exempt from Japanese tax, unless (a) the individual is a national of Japan or is admitted to Japan for permanent residence therein, or (b) the individual is admitted to stay in Japan under the law of Japan with regard to staying of a person who lost his Japanese nationality on April 28, 1952 in accordance with the provisions of the Treaty of Peace with Japan and who has been staying in Japan continuously since September 2, 1945 or a date prior thereto (including the child of such person born in Japan during the period from September 3, 1945 to April 28, 1952).

(2) Salaries, wages, or similar compensation, and pensions or similar benefits paid by, or paid out of funds to which contributions are made by, the Government of Japan or local authorities thereof to any individual for personal services rendered to the Government of Japan or local authorities thereof in the discharge of governmental functions shall be exempt from Korean tax, unless (a) the individual is a national of Korea, or (b) the individual is admitted to stay in Korea under a status similar to permanent residence, under the Immigration Law of Korea.

(3) The provisions of this Article shall not apply to salaries, wages, or similar compensation, and pensions or similar benefits paid for personal services rendered in connection with a trade or business carried on by a Contracting State or local authorities thereof for the purposes of profits.

*Article 17*

An individual who qualifies for benefits under more than one provision of Articles 12, 13, 14 and 16 may enjoy the benefits under the provision most favourable to him, but he shall not be entitled to the benefits of more than one provision in any taxable year or taxable period.

*Article 18*

Double taxation shall be avoided in the following manner:

(1) Korea shall allow to a resident or corporation of Korea as a credit against Korean tax the appropriate amount of tax paid or to be paid to Japan. Such appropriate amount shall be based upon the amount of tax paid or to be paid to Japan but shall not exceed that proportion of Korean tax which the income from sources within Japan bears to the entire income subject to Korean tax.

(2) Japan shall allow to a resident or corporation of Japan as a credit against Japanese tax the appropriate amount of tax payable to Korea in accordance with the provisions of the laws of Japan regarding the allowance of a credit against Japanese tax of tax payable in any country other than Japan.

(3) For the purposes of the credit referred to in paragraph (2) of this Article, there shall be deemed to have been paid by a taxpayer Korean tax which would have been paid:

(a) if the Korean tax would not have been reduced in Korea in accordance with the provisions of paragraph (1) of Article 9, paragraph (1) of Article 10 and paragraph (1) of Article 11 of this Convention; or

(b) if the Korean tax would not have been reduced or exempted in Korea in accordance with the special incentive measures designed to promote economic development in Korea, effective on the date of signature of this Convention or which may be introduced in future in laws relating to Korean tax in place of, or in addition to, the existing measures, provided that an agreement is made between the Governments of the Contracting States in respect of the scope of the benefit accorded to the taxpayer by the said measures.

*Article 19*

(1) A national 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 Contracting State in the same circumstances are or may be subjected.

(2) The taxation on a permanent establishment which a resident or corporation of a Contracting State has in the other Contracting State shall not be less favourably levied in that other Contracting State than the taxation levied on residents or corporations of that other Contracting State in the same circumstances.

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.

(3) A corporation of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents or corporations 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 corporations of the first-mentioned Contracting State are or may be subjected.

(4) In this Article the term "taxation" means national or local taxes of every kind.

*Article 20*

(1) The competent authorities of the Contracting States may communicate with each other directly for the purpose of giving effect to the provisions of this Convention.

(2) Should any difficulty or doubt arise as to the interpretation or application of this Convention, the competent authorities of the Contracting States shall endeavour to settle the question as quickly as possible by mutual agreement.

(3) The competent authorities of the Contracting States may, if necessary, also consult with each other in respect of the enterprise tax of Japan and the business tax of Korea.

*Article 21*

(1) The competent authorities of a Contracting State shall exchange such information with the competent authorities of the other Contracting State as is pertinent to carrying

out the provisions of this Convention or preventing fraud or fiscal evasion in relation to the taxes which are the subject of this Convention.

(2) Any information so exchanged shall be treated as secret but may be disclosed to persons (including a court or administrative body) concerned with assessment, collection, enforcement or prosecution with respect to the taxes which are the subject of this Convention.

(3) The competent authorities of the Contracting State to which a request for information is made shall not exchange information if:

(a) the information is not available under the tax laws and administrative procedures of that Contracting State; or

(b) the information is such as which would disclose any trade, business, industrial or professional secret.

(4) The competent authorities of the Contracting States shall notify each other of any amendments of the laws relating to the taxes referred to in paragraph (1) of Article 1 and of the adoption of any taxes referred to in paragraph (2) of Article 1 by transmitting the texts of any amendments or new statutes, if any at least once a year.

*Article 22*

(1) Each of the Contracting States shall endeavour to collect such taxes imposed in the other Contracting State as will ensure that any exemption or reduced rate of tax granted under this Convention in that other Contracting State shall not be enjoyed by persons not entitled to such benefits. The Contracting State making such collections shall be responsible to the other Contracting State for the sum thus collected.

(2) In no case shall the provisions of this Article be construed so as to impose upon either of the Contracting States the obligation to carry out administrative measures which are at variance with the regulations and practices of the Contracting State endeavouring to collect the tax or which would be contrary to the public policy of that Contracting State.

*Article 23*

A taxpayer shall be entitled to present his case to the competent authorities of the Contracting State of which he is a resident or corporation, if he considers that the action of the other Contracting State has resulted or will result for him in taxation contrary to the provisions of this Convention. Should the taxpayer's claim be considered to have merit by the competent authorities of the Contracting State to which the claim is made, the competent authorities shall endeavour to come to an agreement with the competent authorities of the other Contracting State with a view to the avoidance of taxation not in accordance with the provisions of this Convention.

*Article 24*

The provisions of this Convention shall not affect the fiscal privileges of diplomatic or consular officials under the general rules of international law or under the provisions of special agreements.

*Article 25*

(1) This Convention shall be ratified and the instruments of ratification shall be exchanged at Seoul as soon as possible.

(2) This Convention shall enter into force on the thirtieth day after the date of the exchange of instruments of ratification and shall be applicable—

(a) in Korea:
as respects income or revenue derived during the taxable years, taxable periods or accounting periods beginning on or after the first day of January in the calendar year in which this Convention enters into force; and

(b) in Japan:
as respects income or revenue derived during the taxable years beginning on or after the first day of January in the calendar year in which this Convention enters into force.

*Article 26*

This Convention shall continue in effect indefinitely but either of the Contracting States may, on or before the thirtieth day of June in any calendar year beginning after the expiration of a period of five years from the date of its entry into force, give to the other Contracting State, through the diplomatic channel, written notice of termination and, in such event, this Convention shall cease to be applicable—

(a) in Korea:
as respects income or revenue derived during the taxable years, taxable periods or accounting periods beginning on or after the first day of January in the calendar year next following that in which the notice is given; and

(b) in Japan:
as respects income or revenue 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.

IN WITNESS WHEREOF the undersigned, being duly authorized by their respective Governments, have signed this Convention.
Done in duplicate at Tokyo on this third day of March of the year one thousand nine hundred and seventy in the English language.

FOR JAPAN:
Kiichi Aichi

FOR THE REPUBLIC OF KOREA:
Hu Rak Lee

PROTOCOL

At the signing of the Convention between Japan and the Republic of Korea for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, the undersigned have agreed as follows:

1. A resident or corporation of Japan shall be exempt from the business tax of the Republic of Korea on revenue derived from the supply of products or services contracted on or after the date of the entry into force of the aforementioned Convention in accordance with the provisions of paragraph 1 (a) or (b) of Article 1 of the Agreement on the Settlement of Problem concerning Property and Claims and on the Economic Cooperation between Japan and the Republic of Korea, signed at Tokyo on June 22, 1965.

2. A resident or corporation of Japan shall be exempt from the business tax of the Republic of Korea on revenue derived from transactions made under contracts, concluded on or before December 31, 1967 and falling under the capital goods inducement contracts as provided for in the Foreign Capital Inducement Law of the Republic of Korea.

3. This Protocol shall come into force on the date of the entry into force of the aforementioned Convention.

Done in duplicate at Tokyo on this third day of March of the year one thousand nine hundred and seventy in the English language.

FOR JAPAN:
Kiichi Aichi

FOR THE REPUBLIC OF KOREA:
Hu Rak Lee

EXCHANGE OF NOTES

(Japanese Note)

Tokyo, March 3, 1970

Excellency,

I have the honour to refer to the Convention between Japan and the Republic of Korea for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income signed today at Tokyo, and to confirm the following understandings on behalf of the Government of Japan.

1. With reference to paragraph (3) of Article 6 of the Convention, the expenses to be allocable to a permanent establishment which a resident or corporation of a Contracting State has in the other Contracting State (hereinafter referred to as "the permanent establishment") in the determination of the industrial or commercial profits of the permanent establishment shall be computed in the following manner:

(1) The items of expenses subject to allocation
The items of expenses subject to the allocation to the permanent establishment shall be those of selling expenses and executive and general administrative expenses which are allowed as deductions under the provisions of the tax laws of the Contracting State in which the expenses are incurred.

(2) The amount of expenses subject to allocation
The amount of expenses subject to the allocation to the permanent establishment shall be that of the selling expenses and executive and general administrative expenses, as provided for in the preceding subparagraph, incurred by (a) the head or main office including branches making a sale to a person in that other Contracting State of the resident or corporation of the first-mentioned Contracting State having that permanent establishment (hereinafter referred to as "the head or main office") or (b) that permanent establishment, which is allowed as deductions according to the provisions of the tax laws of the Contracting State in which the expenses are incurred.

(3) The computation of the amount of allocable expenses

(a) The amount of expenses incurred by the head or main office which is allocable to the permanent establishment (hereinafter referred to as "the amount of allocable expenses of the head or main office") shall be that proportion of the amount of the expenses of the head or main office obtained in accordance with the provisions of subparagraphs (1) and (2) of this paragraph which the gross receipts derived by the head or main office from the sales transactions, excluding non-taxable sales transactions, with a person in that other Contracting State bear to the entire gross receipts from the world-wide sales transactions by the head or main office.

(b) The amount of expenses, excluding tax, incurred by the permanent establishment which is allocable to itself (hereinafter referred to as "the amount of allocable expenses of the permanent establishment") shall be that proportion of the amount of the expenses of the permanent establishment obtained in accordance with the provisions of subparagraphs (1) and (2) of this paragraph, excluding tax, which the gross amount of the transactions, excluding non-taxable trans-

actions, with a person in that other Contracting State bears to the entire gross amount of the transactions with a person in that other Contracting State. The amount of tax as expenses incurred by the permanent establishment which is allocable to itself (hereinafter referred to as "the amount of allocable tax of the permanent establishment") shall be that proportion of the amount of tax obtained in accordance with the provisions of subparagraphs (1) and (2) of this paragraph which the gross amount of the transactions, excluding non-taxable transactions, with a person in that other Contracting State which or the profits of which are subject to tax bears to the entire gross amount of the transaction which or the profits of which are subject to tax.

(c) In subparagraph (3) (b), the term "tax" means the enterprise tax of Japan or the business tax of Korea, as the context requires.

2. With reference to paragraph (5) of Article 6 of the Convention, the apportionment of sources of the industrial or commercial profits shall be made in the following manner:

(1) The income from purchase and sale

As to the income derived by a resident or corporation of a Contracting State having the permanent establishment from the sale in the other Contracting State of goods or merchandise purchased in the first-mentioned Contracting State, the apportionment to that other Contracting State shall be made on the net income basis according to the ratio of allocation to that other Contracting State which shall be obtained by dividing the amount of allocable expenses of the permanent establishment and the amount of allocable tax of the permanent establishment by the total of (i) the amount of allocable expenses of the permanent establishment and the amount of allocable tax of the permanent establishment and (ii) the amount of allocable expenses of the head or main office.

(2) The income from manufacturing and sale

As to the income derived by a resident or corporation of a Contracting State having the permanent establishment from the sale in the other Contracting State, such as exports of plants, of goods or merchandise manufactured in the first-mentioned Contracting State by the resident or corporation itself, the apportionment to that other Contracting State shall be made, if that income includes the profits derived from the manufacturing activities, on the net income basis according to the ratio of allocation to that other Contracting State which shall be obtained by dividing the amount of allocable expenses of the permanent establishment and the amount of allocable tax of the permanent establishment by the total of (i) the amount of allocable expenses of the permanent establishment and the amount of allocable tax of the permanent establishment, (ii) the amount of allocable expenses of the head or main office and (iii) the amount of manufacturing expenditure.

The amount of manufacturing expenditure referred to above shall be deemed to be 15 per cent of the amount of total manufacturing cost incurred by the resident or corporation in manufacturing such goods or merchandise.

As to the income derived by a resident or corporation of a Contracting State having the permanent establishment from the sale in that Contracting State of goods or merchandise manufactured in the

other Contracting State by that resident or corporation itself, the apportionment to that other Contracting State shall be made on the net income basis according to the formula corresponding to the one mentioned in this subparagraph.

(3) The income from building, construction, installation or assembly

With respect to the income derived by a resident or corporation of a Contracting State having the permanent establishment from the building, construction, installation or assembly project carried on in the other Contracting State, the competent authorities of both Contracting States shall consult with each other taking into consideration the nature of such activities.

I have further the honour to request Your Excellency to be good enough to confirm the foregoing understandings on behalf of the Government of the Republic of Korea.

I avail myself of this opportunity to renew to Your Excellency the assurances of my highest consideration.

Kiichi Aichi
Minister for Foreign Affairs
of Japan

His Excellency
Mr. Hu Rak Lee
Ambassador Extraordinary
and Plenipotentiary of
the Republic of Korea
to Japan

(Korean Note)

Tokyo, March 3, 1970

Excellency,

I have the honour to acknowledge the receipt of Your Excellency's Note of today's date which reads as follows:

"(Japanese Note)"

I have further the honour to confirm the foregoing understandings on behalf of the Government of the Republic of Korea.

I avail myself of this opportunity to renew to Your Excellency the assurances of my highest consideration.

Hu Rak Lee
Ambassador Extraordinary
and Plenipotentiary of
the Republic of Korea
Tokyo

His Excellency
Mr. Kiichi Aichi
Minister for Foreign Affairs
of Japan

(Korean Note)

Tokyo, March 3, 1970

Excellency,

I have the honour to refer to paragraph (3) (b) of Article 18 of the Convention between the Republic of Korea and Japan for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income signed today at Tokyo, and to propose, on behalf of the Government of the Republic of Korea, that the two Governments shall agree that the measures set forth in the following Articles of the Foreign Capital Inducement Law, Law No. 1802, 1966, of the Republic of Korea, effective on the date of signature of the aforementioned Convention are "the special incentive measures designed to promote economic development in Korea, effective on the date of signature of this Convention" referred to in the said paragraph:

(i) Article 15 (Exemption and Reduction of Taxes)—relating to exemption or reduc-

tion of income tax or corporation tax on the income of a foreign invested enterprise or foreign investor; and

(ii) Article 21 (Exemption and Reduction of Taxes) relating to exemption or reduction of income tax or corporation tax on the income derived from a cash loan contract, a capital goods inducement contract or a technological inducement contract.

I have further the honour to propose that the present Note and Your Excellency's reply confirming the acceptance by the Government of Japan of the above proposal shall be regarded as constituting an agreement between the two Governments under paragraph (3) (b) of Article 18 of the aforementioned Convention.

I avail myself of this opportunity to renew to Your Excellency the assurances of my highest consideration.

Hu Rak Lee
Ambassador Extraordinary
and Plenipotentiary of
the Republic of Korea
Tokyo

His Excellency
Mr. Kiichi Aichi
Minister for Foreign Affairs
of Japan

(Japanese Note)

Tokyo, March 3, 1970

Excellency,

I have the honour to acknowledge the receipt of Your Excellency's Note of today's date which reads as follows:

"(Korean Note)"

I have further the honour to confirm that the Government of Japan accepts the proposal contained in Your Excellency's Note and to agree that the same and the present reply shall be regarded as constituting an agreement between the two Governments under paragraph (3) (b) of Article 18 of the aforementioned Convention.

I avail myself of this opportunity to renew to Your Excellency the assurances of my highest consideration.

Kiichi Aichi
Minister for Foreign Affairs
of Japan

His Excellency
Mr. Hu Rak Lee
Ambassador Extraordinary
and Plenipotentiary of
the Republic of Korea
to Japan

*Supplement* **F**
1970

# Convention between Japan and the Republic of Zambia for the Avoidance of Double Taxation with respect to Taxes on Income

SUPPLEMENT TO THE BULLETIN FOR INTERNATIONAL FISCAL DOCUMENTATION
AU BULLETIN DE DOCUMENTATION FISCALE INTERNATIONALE

Vol. XXIV, No. 12, December/décembre 1970

INTERNATIONAL BUREAU OF FISCAL DOCUMENTATION

Mulderpoort – 124 Sarphatistraat – Amsterdam

*On February 19, 1970 an income tax treaty between Japan and the Republic of Zambia was signed. The treaty is in effect according to the rules of Article 27.*

## TEXT

Japan and the Republic of Zambia,
Desiring to conclude a Convention for the avoidance of double taxation with respect to taxes on income,
Have agreed as follows:

### *Article 1*

1. The taxes which are the subject of this Convention are:
In Japan:
(a) the income tax;
(b) the corporation tax; and
(c) the local inhabitant taxes
(hereinafter referred to as "Japanese tax").
In Zambia:
(a) the income tax; and
(b) the personal levy
(hereinafter referred to as "Zambian tax").
2. This Convention shall also apply to taxes substantially similar to those covered by paragraph 1 which are introduced in either Contracting State after the date of signature of this Convention. The competent authorities of the Contracting States shall notify to each other any changes which have been made in their respective taxation laws within a reasonable period of time after such changes.

### *Article 2*

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 in force;
(b) The term "Zambia" means the Republic of Zambia;

(c) The terms "a Contracting State" and "the other Contracting State" mean Japan or Zambia, as the context requires;
(d) The term "tax" means Japanese tax or Zambian tax, as the context requires;
(e) The term "person" includes a company and any other body of persons;
(f) The term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;
(g) 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;
(h) The term "competent authority" means, in the case of Japan, the Minister of Finance or his authorized representative, and, in the case of Zambia, the Commissioner of Taxes or his authorized representative.

2. As regards the application of this Convention in 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 to which this Convention applies.

*Article 3*

1. For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the law of that Contracting State, is liable to taxation therein by reason of his domicile, residence, place of head or main office, 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 the competent authorities shall determine by mutual agreement the Contracting State of which that individual shall be deemed to be a resident for the purposes of this Convention.
3. Where by reason 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 head or main office is situated.

*Article 4*

1. For the purposes of this Convention, 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 establishment" includes especially:
(a) a place of management;
(b) a branch;
(c) an office;
(d) a factory;
(e) a workshop;
(f) a mine, quarry or other place of extraction of natural resources;
(g) a building site or construction or assembly project which exists for more than twelve months.
3. The term "permanent establishment" shall not be deemed to include:
(a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
(b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
(c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
(d) the maintenance of a fixed place of

business solely for the purpose of purchasing goods or merchandise, or for collecting information, for the enterprise;

(e) the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research or for similar activities which have a preparatory or auxiliary character, for the enterprise.

4. A person acting in a Contracting State on behalf of an enterprise of the other Contracting State—other than an agent of an independent status to whom paragraph 5 applies—shall be deemed to be a permanent establishment in the first-mentioned Contracting State if he has, and habitually exercises in that 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.

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 Contracting State through a broker, general commission agent or any other agent of an independent status, where such persons are acting in the ordinary course of their business.

6. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other Contracting State (whether through a permanent establishment or otherwise), shall not of itself constitute for either company a permanent establishment of the other.

*Article 5*

1. Income from immovable property may be taxed in the Contracting State in which such property is situated.

2. The term "immovable property" shall be defined in accordance with the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting immovable property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph (1) shall apply to income derived from the direct use, letting, or use in any other form of immovable property.

*Article 6*

1. The profits of an enterprise of a Contracting State shall be taxable only in that Contracting 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 Contracting 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 Contracting State in which the permanent establishment is situated or elsewhere.

4. Insofar as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles laid down in this Article.

5. 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.

6. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

7. Where profits include items of income which are dealt with separately in other Articles of this Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

*Article 7*

Profits from the operation of ships or aircraft in international traffic carried on by an enterprise of a Contracting State shall be taxable only in that Contracting State.

*Article 8*

Where

(a) an enterprise of a Contracting State 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 a Contracting State 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 9*

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State shall be taxable only in that other Contracting State.

2. The provisions of paragraph 1 shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. The term "dividends" as used in this Article means income from shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights assimilated to income from shares by the taxation law of the Contracting State of which the company making the distribution is a resident.

4. The provisions of paragraph 1 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, the provisions of Article 6 shall apply.

5. Where a company which is a resident of a Contracting State derived profits or income from the other Contracting State, that other Contracting State may not impose any tax on the dividends paid by the company to persons who are not residents of that other Contracting State, or subject the company's undistributed profits to a tax on undistributed profits, even if the dividends paid or the undistributed profit consist wholly or partly of profits or income arising in that other Contracting State.

*Article 10*

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other Contracting State.

2. However, such interest may be taxed in the Contracting State in which it arises, and according to the laws of that Contracting State, but the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State and paid to the Government of the other Contracting State or local authority thereof or any agency or instrumentality (including financial institution) wholly owned by that Government or local authority shall be exempt from tax of the first-mentioned Contracting State.

4. 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, and any excess of the amount repaid in respect of such debt-claims over the amount lent, as well as all other income assimilated to income from money lent by the taxation law of the Contracting State in which the income arises.

5. The provisions of paragraphs 1 and 2 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, the provisions of Article 6 shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is that Contracting State itself, a local authority or a resident of that Contracting 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.

7. 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 this Convention.

*Article 11*

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other Contracting State.
2. However, such royalties may be taxed in the Contracting State in which they arise, and according to the laws of that Contracting State, but the tax so charged shall not exceed 10 per cent of the gross amount of the royalties.
3. 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.
4. The provisions of paragraphs 1 and 2 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, the provisions of Article 6 shall apply.
5. Royalties shall be deemed to arise in a Contracting State when the payer is that Contracting State itself, a local authority or a resident of that Contracting State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment, then such royalties shall be deemed to arise in the Contracting State in which the permanent establishment is situated.
6. 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 Convention.

*Article 12*

1. Gains from the alienation of immovable property, as defined in paragraph 2 of Article 5, may be taxed in the Contracting State in which such property is situated.
2. Gains from the alienation of property other than immovable 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 property other than immovable 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 that other Contracting State. However, gains derived by a resident of a Contracting State from the alienation of ships or aircraft operated in international traffic and property other than immovable property pertaining to the operation of such ships or arcraft shall

be exempt from tax of the other Contracting State.

3. Gains derived by a resident of a Contracting State from the alienation of any property other than those mentioned in paragraphs 1 and 2 shall be taxable only in that Contracting State.

*Article 13*

1. Income derived by a resident of a Contracting State in respect of professional services or other independent activities of a similar character shall be exempt from tax of the other Contracting State unless he has a fixed base regularly available to him in that other Contracting State for the purpose of performing his activities. If he has such a fixed base, the income may be taxed in that other Contracting State but only so much of it as is attributable to that fixed base.

2. 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*

1. Subject to the provisions of Articles 15, 17 and 18, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be exempt from tax of the other Contracting 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 Contracting 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 exempt from tax of that other Contracting State if:

(a) the recipient is present in that other Contracting State for a period or periods not exceeding in the aggregate 183 days in the calendar year concerned, and

(b) the remuneration is paid by, or on behalf of, an employer who is not a resident of that other Contracting State, and

(c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in that other Contracting State.

3. Notwithstanding the provisions of paragraphs 1 and 2, remuneration in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State may be taxed in that Contracting State.

*Article 15*

Remuneration derived by a resident of a Contracting State in his capacity as a member of the board of directors of a company which is a resident of the other Contracting State may be taxed in that other Contracting State in accordance with the law of that other Contracting State.

*Article 16*

Notwithstanding the provisons of Articles 13 and 14, income derived by public entertainers, such as theatre, motion picture, radio or television artistes, and musicians, and by athletes, from their personal activities as such may be taxed in the Contracting State in which these activities are exercised.

*Article 17*

Subject to the provisions of paragraph 2 of Article 18, pensions and other similar

remuneration derived from sources within a Contracting State in consideration of past employment by an individual who is a resident of the other Contracting State and subject to tax in respect thereof in that other Contracting State shall be taxable only in that other Contracting State.

*Article 18*

1. (a) Remuneration (other than pensions) paid by Japan or a local authority thereof to any individual in respect of services rendered to Japan or a local authority thereof in the discharge of governmental functions may be taxed in Japan. Such remuneration shall be exempt from Zambian tax if the individual is not resident in Zambia or is resident in Zambia solely for the purpose of rendering those services.

(b) Remuneration (other than pensions) paid by Zambia or a local authority thereof to any individual in respect of services rendered to Zambia or a local authority thereof in the discharge of governmental functions may be taxed in Zambia. Such remuneration 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.

2. Pensions paid by, or out of funds to which contributions are made by, a Contracting State or a local authority thereof to any individual in respect of services rendered to that Contracting State or a local authority thereof in the discharge of governmental functions shall be taxable only in that Contracting State.

3. The provisions of this Article shall not apply to payments in respect of services rendered in connection with a trade or business carried on for the purpose of profits.

*Article 19*

A professor or teacher who makes a temporary visit to a Contracting State for a period not exceeding two years for the purpose of teaching or conducting research at a university, college, school or other educational institution and who is, or immediately before such visit was, a resident of the other Contracting State shall be exempt from tax of the first-mentioned Contracting State in respect of remuneration for such teaching or research.

*Article 20*

Payments or income received for the purpose of his maintenance, education or training by a student or business apprentice who is present in a Contracting State solely for the purpose of his education or training and who is, or immediately before being so present was, a resident of the other Contracting State shall be exempt from tax of the first-mentioned Contracting State, provided that such payments are made to him from outside that first-mentioned Contracting State or that such income is received in respect of his personal services performed in the first-mentioned Contracting State in an amount not in excess of U.S.$1,000 or its equivalent in Japanese or Zambian currency for any taxable year for a period not exceeding three consecutive taxable years.

*Article 21*

Items of income of a resident of a Contracting State which are not expressly mentioned in the foregoing Articles of this Convention shall be taxable only in that Contracting State.

*Article 22*

1. (a) Where a resident of Zambia derives income from Japan which may be taxed in Japan in accordance with the provisions of this Convention, the amount of the Japanese tax payable in respect of that income shall be allowed as a credit against Zambian tax imposed on that resident. The amount of credit, however, shall not exceed that part of Zambian tax which is appropriate to that income.

(b) Where the income derived from Japan is a dividend paid by a company which is a resident of Japan, the credit shall take into account the Japanese tax payable in respect of its profits by the company paying the dividend.

2. (a) Where a resident of Japan derives income from Zambia which may be taxed in Zambia in accordance with the provisions of this Convention, the amount of Zambian tax payable in respect of that income shall be allowed as a credit against the Japanese tax imposed on that resident. The amount of credit, however, shall not exceed that part of the Japanese tax which is appropriate to that income.

(b) Where the income derived from Zambia is a dividend paid by a company which is a resident of Japan which owns not less than 25 per cent of the shares or the capital of the company paying the dividend, the credit shall take into account the Zambian tax payable in respect of its profits by the company paying the dividend.

(c) For the purpose of the credit referred to in sub-paragraphs (a) and (b) above, there shall be deemed to have been paid by a taxpayer the amount which would have been paid if Zambian tax would not have been reduced or relieved in accordance with

(i) the provisions of paragraph 2 of Article 10 and paragraph 2 of Article 11; and

(ii) the special incentive measures designed to promote economic development in Zambia, provided that an agreement is made between the Governments of both Contracting States in respect of the scope of such special incentive measures.

(d) In the application of the provisions of sub-paragraph (c), there shall not, in any event, be deemed to have been paid an amount of tax higher than which, but for the reduction or relief of tax due to the special incentive measures mentioned in sub-paragraph (c) (ii), would result from the application of the Zambian tax laws effective on the date of signature of this Convention.

*Article 23*

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 Contracting State in the same circumstances are or may be subjected.

2. The term "nationals" means all individuals possessing the nationality of either Contracting State and all juridical persons created or organized under the laws of that either Contraction State and all organizations without juridical personality treated for the purposes of tax of that either Contracting State as juridical persons created or organized under the laws of that either Contracting State.

3. 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 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 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.
4. 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 Contracting State are or may be subjected.
5. In this Article the term "taxation" means taxes of every kind and description.

*Article 24*

1. The competent authorities of the Contracting States shall exchange such information as is necessary for the carrying out of 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, including judicial determination, of the taxes to which this Convention applies.
2. In no case shall the provisions of paragraph 1 be construed so as to impose on a Contracting State 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 25*

1. Where a resident of a Contracting State considers that the actions taken in the other Contracting State 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 it to be justified and if it is not 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 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 elimination of double taxation in cases not provided for in this Convention.
4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of giving effect to the provisions of this Convention.

*Article 26*

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 27*

1. This Convention shall be approved by Japan and the Republic of Zambia in accordance with their respective legal procedures, and shall enter into force on the thirtieth day after the date of exchange of notes indicating such approval.
2. This Convention shall have effect as respects income derived during the taxable years beginning on or after the first day of January in the calendar year in which this Convention enters into force.

*Article 28*

This Convention shall continue in effect indefinitely but either of the Contracting States may, on or before the thirtieth day of June in any calendar year beginning after the expiration of a period of five years from the date of its entry into force, give to the other Contracting State, through the diplomatic channel, written notice of termination and, in such event, this Convention shall cease to be effective in respect of 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 of termination is given.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed this Convention.

DONE in duplicate at Lusaka on 19th February, 1970 in the Japanese and English languages, each text having equal authenticity.

For Japan:
Yoshio Kimura

For the Republic of Zambia:
E.H.K. Mudenda

EXCHANGE OF NOTES

(Zambian Note)

Lusaka, 19th February, 1970

Excellency,

I have the honour to refer to the Convention between the Republic of Zambia and Japan for the Avoidance of Double Taxation with respect to Taxes on Income which was signed today and to confirm, on behalf of the Government of the Republic of Zambia, the following understanding reached between the Government of the Republic of Zambia and the Government of Japan.

With reference to sub-paragraph (c) (ii) of paragraph 2 of Article 22:

1. the special incentive measures designed to promote economic development in Zambia are those set forth in Section 19 of the Pioneer Industries (Relief from Income Tax) Act 1965 and sub-paragraph (3) of paragraph 9 of the Second Schedule to the Income Tax Act 1966;
2. if new legislation is enacted in Zambia within the scope of the special incentive measures mentioned in the said Article or in substitution for the provisions of the above-mentioned Acts effective on the date of signature of the Convention, the Government of the Republic of Zambia will inform the Government of Japan on such legislation and the two Governments will consult for the purpose of a new exchange of notes with a view to including those modifications which arise from the above legislation.

I have further the honour to request Your Excellency to be good enough to confirm the

foregoing understanding on behalf of the Government of Japan.

I avail myself of this opportunity to extend to Your Excellency the assurance of my highest consideration.

E.H.K. Mudenda
Minister of Development and Finance

His Excellency Mr. Yoshio Kimura,
Chargé d'Affaires ad interim of Japan
to the Republic of Zambia.

(Japanese Note)

Lusaka, February 19, 1970

Excellency,

I have the honour to acknowledge the receipt of Your Excellency's Note of today's date which reads as follows:

"(Zambian Note)"

I have further the honour to confirm the understanding embodied in Your Excellency's Note, on behalf of the Government of Japan.

I avail myself of this opportunity to extend to Your Excellency the assurance of my highest consideration.

Yoshio Kimura
Chargé d'Affaires ad interim
of Japan to the Republic
of Zambia

His Excellency Mr. E.H.K. Mudenda,
Minister of Development and Finance,
the Republic of Zambia.